MUTA MARRIAGE: MARRIAGE UNDER MUSLIM LAW

By Diya Sharma & Laxmi Kumari
From Netaji Subhas Institute of Law, Netaji Subhas University, Jamshedpur Jharkhand

Abstract

The researcher has written this to amplify the voice of women and highlight their experience or thought regarding this. While doing our research we find out that young muslim womens very proud of their faith, its give them the strength and conviction to work everyday. There are so many misrepresentation and misuse and manipulation of religious scripture which had a great influence in our social and cultural norms. It was never taught that the god judge differently based on gender, Muta Marriage can be held as a form of prostitution as women in these arrangements receive money on dissolution of this marriage. Muta is a Islamic law a temporary marriage that is contracted for a limited or fixed period and involves a payment of money to the female partner, this is only recognize in Shia school. The Shia of male sex contract a muta marriage with a women professing the Mahomedan, Christian or Jewish religion or even with a women who is a fire worshipper, but not with a women following any other religion. With the change in time the concept of muta marriage is changing, now the practice of muta marriage is not very common in India because now the Shia population ladies are well educated of better

INTRODUCTION

Muta Marriage is a temporary marriage for a fixed period of time, to know the origin of muta marriage, we have to go back at the war time when the first jihad of Islam led by their prophet Mohammed raided caravans and attacked neighboring society for war. During the war they need slaves with whom they could enter into a marriage made for satisfying their sexual need by seeking permission from their prophet to visit prostitutes. Prophet who is the "Perfect man of Allah" did not allow them to undergo through such immoral activity and told that they have to marry to the girl whom they want to and made dowry mandatory and subsequently from here the concept of "Muta" arises. 1 Umar who was the second caliph abolished the term temporary marriage but Shia rejected his order because they believe Umar usurped prophet's rightful heir, his son-in-law Ali. 2

Marriage under Muslim Law is a civil contract and as per the essentials of a valid contract there should be an offer (Ijab), an acceptance (Qubool) and a consideration (Mehr) which is given by bridegroom.

---

1 John bastille, history of Muta and the future of Islamic society (Dec. 29, 2017), http://www.danielpipes.org/comments/2674
Mahomed Abid Ali Kumar Kadar vs Ludden Sahiba. Temporary marriage can only be perform by a man with a Muslim women, his believer or the friend of the household of the prophet. However there are some situations which prohibits temporary marriage such as if the man is already married or the slave belongs to someone else or she is the daughter of his sister-in-law or brother-in-law he cannot perform temporary marriage in absence of his wife's permission or from the permission of slave's master.

In Syed Amanullah Hussain and Ors. Vs. Rajammaand Ors, the male Shia Habibulla contracted a Muta with his wife Rajammaa which lasted till the death of Habibulla in 1976 as a result his wife inherit the property of her husband. This was challenged by Habibulla's brother questioning the marriage was a simple Muta marriage. It was held that although the word Muta was used but the terms were not specified as a result marriage was treated as permanent marriage and thus Rajammaa was held entitled to inherit her husband's property. In Muta marriage there is no fluctuations in the fact of dowry which is also to be known as property whether in cash or in kind.

The practice of temporary "Muta" marriage is widely spread in this new modern time and often arranged by Imams and other leaders in Europe, America and in the Mid East. It is mostly seen that widows and orphaned girls that are within the shell of temporary marriage are often sold to old rich men. Sometimes women with no desire or pleasure drives into this misery, as it is the only means to pay rents and feed themselves and their children or to survive their basic needs.

Muta marriage is a very rare form of marriage but quietly common in various regions were Shia population is high. The legal impact of marriage i.e., right to divorce, right to inherit, legitimacy of child born during Muta marriage should be understand by different case law.

(A) Literature Review

Statutes

Muslim Law Bare Act
All Muslims are governed by their personal law i.e. Shariat Law. The muslim personal law(Shariat) application act, 1937. The Muslim Law bare act is the exact text of a particular enactment or a statue passed by legislature. It is a dictionary of any section of a particular act, it does not includes any case laws or any other explanation of the section, apart from what the parliament and state legislature has made.

Constitution bare Act
Constitution of India, 1949 includes protection of certain rights regarding freedom of speech, freedom of religion, freedom of cultural and educational right, right against exploitation, right to equality, right to constitutional remedy. It also includes prohibition of employment of children in factories. Saving of laws for acquisition of estate. It also prohibit human trafficking and forced labour, safeguards right of the person who is accuse of an offence, protection of life and personal liberty. It include the idea that the state should keep in mind while formulating any policies and laws i.e.

3 Mahomed Abid Ali Kumar Kadar vs Ludden Sahiba, (1886) ILR 14 Cal 276 (INDIA).
4 Syed Amanullah Hussain and Ors. Vs. Rajammaand Ors, (1977) 152 AIR (INDIA)
5 Deepak Prasad, Does Muta Marriage amount to legalization of prostitution, (2014)
directive principles of state policy.

**Hindu Law Bare Act**

An act to amend and codify the law relating to adoption, maintenance, marriage, divorce, succession and guardianship. Be it enacted by parliament in 7th year of republic of India. Hindu law as a historical term refers to the code of laws applicable to the Hindu, Buddhist, Jain and Sikh in British India. Hindu Law in modern scholarship, also refers to the legal theory, jurisprudence and philosophical reflection on the nature of law discovered in ancient and medieval era Indian text. Hindu law consider to be of Devine origin. It proceeds on the story that hindu law was revealed to the sages who had attained great spiritual heights and they were in communication with super power i.e. God. According to Hindu jurist, Law is the enforceable part of Dharma.

**IPC Bare Act**

Act done by serval persons in furtherance of common interest. Indian Penal Code 1860, says who ever commits murder shall be punished with death or, imprisonment for life and shall also be liable of fine. IPC includes punishment for an offence. According to sec 53 of IPC, there are five types of punishment that a court may provide to a person convicted for a crime. These are death, imprisonment of life, simple and rigorous imprisonment, forfeiture of property and fine.

**Books**

**Constitution**

There is no hard and fast definition of Constitution in the generally accepted use of the term it means the rule which regulates the structure of principal organs of the government and their relationship to one another and determines their principal functions. Our Constitution is the lengthiest constitution in the world because of the source that is taken from various country's constitution example, Iris constitution, Japan Constitution, American Constitution, German Constitution, British Constitution etc. and its parent document Government of Indian Act, 1935, itself was lengthy. Our Constitution is based on Secularism, Socialist, Democratic, Republic, Fraternity.

**Hindu Law**

A Hindu law is a personal law, which includes Marriage, Dowry, Matrimonial causes, Adoption, Guardianship, Maintenance, Succession that only deals with hindu religion where in marriage they mentioned about different types of marriage i.e. Void, Valid and Voidable. It also includes the ceremonies to perform marriage, it also tell us why registration is important. If you are a hindu women and taking divorce from your husband then it includes your right to take maintainence.

**Muslim Law**

A Muslim Law is a contract where all provisions are related muslims only. Muslim marriage includes offer, acceptance, dower (Mehr), both the parties have to be of sound mind, must attained the age of puberty pubert. There are three type of marriage Sahi i.e. Valid where child born is legitimate, Batil i.e. Void where child born is illegitimate, Fasid i.e. Irregular. Marriage according to Mahomedan law it is not a sacrament all rights and obligations it creates arises immediately and, are not dependent of any condition precedent such as the payment of dower by husband to a wife.

**Indian Penal Code**

The indian penal code, 1860 contains the provisions related to criminal offence. It
deals with criminal law. It contains punishment related to offences. In ipc provisions related marriage is given in section 493 and 496 . for Adultery there is 497, for Bigamy there is section 494 and 495, Criminal elopement -seduction there is section 498.

(B) Research Question
1. What are the different procedures of performing a valid Muta Marriage?
2. How Muta marriage is different from Nikah?
3. Does women also have right to perform Muta Marriage?
4. What happens if women conceive during Muta Marriage?

(C) Research Hypothesis
1. Muta Marriage can be held as a form of prostitution as women who are engage in this receive money on dissolution of the union.
2. Muta increases the chance of becoming HIV positive as men travel frequently and get sexual contacts outside the shell of marriage.
3. Sometimes women and girls are trafficked and sexually exploit in name of temporary marriage.

(D) Research Objectives
1. To know about countries who are still practicing Muta Marriage.
2. To know the practical reason behind this.
3. To know about laws related to Muta Marriage.
4. To aware people that Muta is a curse.
5. To know women's thought process and acceptance reasons behind this.

6 Hunter Rising, How to Do Mutah, WikiHow (April 2, 2022, 8:40 p.m), https://www.wikihow.com/Do-

PROCEDURE OF MUTA MARRIAGE

(A) Agreeing on the Terms
A marriage is a marriage whether it is temporary or permanent and in every marriage consent is important. Although a Muta marriage is a marriage of enjoyment and pleasure for fix period of time. You have to make this sure that the woman with whom you want to go into this temporary marriage is comfortable and agreeing to your offers and terms and conditions, if she is young woman and wanted to know how a married life look like then she have to discuss with her guardian about all terms, conditions and consequences of Muta to see if they are agreeing or supporting your decision or not once they agree to your decision then only you can talk to your potential spouse.

If you are a woman and wanted a Muta marriage then you must be unmarried. You should either be a Muslim or people of book i.e. Christian or Jewish. You can't be Hindu and Jain. Here only mens are allowed to offer Muta marriage, Woman only have right of acceptance. Generally these type of marriage is used so you can hangout with you potential spouse before moving into a permanent marriage, sometimes you can do Muta to decide whether you want to remarry or not by divorced person.

Once you done with discussing the option of Muta with your potential spouse you need to talk to him about how long he want the temporary marriage last for because it is not similar to permanent marriage were time period exceeds till death or until your Mutah
spouse has given divorce (Talaq) to you. It is a marriage were time is fixed whether it can be one day, one month or one year, a Muta marriage needs to have a set time frame. Thereis no minimum or maximum time that the marriage needs to last but some says that it should be last at least three days minimum.\(^7\)

When offer is made and accepted by the woman, then they decide the Dowry (Mehr). Mahr is a gift which is given by man to his wife or can be anything on which you and sheagreed upon what will be the Mahr will be decided by both if anyone of them does not agree to or satisfied with the Mahr then they can't perform Muta marriage. If the womanis unmarried then she can discuss the set Mahr with her guardian i.e. father and grandfather, if needed. To analyse that the given Mahr is suitable, perfect and good enough for her. It is not necessary that it includes weeding ring or an extravagan gifts.

The Mahr is not a price which is paid for marriage. There are some reports which statesthat the dowry should be as little as a handful of grains and pulses i.e. reasonable.\(^8\)

b) Fulfilling the Contract
When you have agreed to the time period of Muta and the dowry(Mahr) of the Muta, then you have to speak louder to one another when you want the Muta to be start by stating the conditions of the marriage verbally will make all the obligations clear so once the marriage is start there is no any if and but. Once all the conditions are stated and agreed by both the parties you and your potential spouse are bind in a contract. Youhave to write the decided dowry (Mahr), fixed time period and the conditions of the Muta in written, if you want but there is no any provision to do so or for marriage to be legalised.\(^9\)

The Arabic formula which converted an Muta in legal is seegha. Firstly if you are a woman agreeing to all terms and conditions then you would, say "I married myself toyou for the known period and the agreed upon dowry" (Zawajtuka nafsi fil muddatil ma'loomati 'alal mahril ma'loom). Where if you are a man then you would, say "I accepted" (Qabiltu). Once both the parteners say the phrase in a proper order to one another from that time itself Muta is legal for the fixed amount of time they agreed upon. There is no need a Kazzi officials or witnesses to be present there at the time when the are agreed to Muta. The phrase should be said in Arabic then only it will considered to be a legal one.\(^10\)

Now you have to live together on the terms at which you have agreed, to know each other. Spend time have pleasure and enjoy the marriage to accomplish the purpose of being together. Follow any or all conditions on which you have agreed upon at the time of verbal contract throughout the duration of the marriagemarriage. You are not required to provide any subsistence if you are a man and performing Muta. Vice versa, if you are a woman who agreed upon the Muta's condition then you are not entitled to getany subsistence or neither in form of that unless and until you have agreed upon the terms and conditions of Muta marriage.

Living together under there terms and conditions means living as a husband and

\(^7\) Ibid
\(^8\) Ibid
\(^9\) Ibid
\(^10\) Ibid
wife for that period of time which means you will be going to share all the happiness, sad moments and ups and downs for that fix time period only. Once the time completed all the ties of you with your potential spouse will be break and no more you are going to be connected with him that means you are all alone, similarly like the time when you were discussing the terms or you are deciding to get into a Muta. Which means you can get the way of living that you were in before Muta.\(^{11}\)

C) Ending of Muta Marriage

Only mans are allowed to do end the temporary marriage before completing the time period which is mentioned in the contract. A woman cannot terminate the contract and also not allowed to do so. If they wanted to terminate it early they have to say "I donate you the time period" (\'ana \' atabarae lak alfatrat alzamanja) which is a Arabic sentence generally used to separate or terminate the contract, if you terminate the contract early before completing the time period you are still bounded to provide the dowry (Mahr) on which you have agreed upon at the time when Muta started.\(^{12}\)

Like every marriage you don't need to be get divorced when, want to get out of the marriage in Muta you just need to wait for the time period to be completed and then you can exit to your relationship immediately.

If you want to convert your temporary marriage into a permanent one you have only two options, first to renew the Muta marriage contract again and second, to start a permanent marriage. If the Muta marriage was consummated, renew the contract before the iddat started or a woman's waiting period is completed. Otherwise, you can renew the marriage at that stage when your Muta marriage or temporary marriage is finished. If you are a woman you are ristrictly not allowed to enter into a permanent marriage with a non muslim man and if you are a man you are not allowed to marry a non muslim woman unless and until, she is christian or jewish.\(^{13}\)

If you are a woman then you have to wait through atleast two menstrual cycle in case you are pregnant from the Muta during this period you are not allowed to remarry or have a sexual relation with other man if the marriage was not consummated you do not need to go through a waiting period and can enter another contract immediately.\(^{14}\)

1) Distinguish between Nikah and Muta Marriage

There is a very important topic under muslim law i.e., Nikah and Muta both are marriage

- Muta is a temporary marriage which lasts for a period of time while Nikah is a permanent marriage which lasts till life time, as muslim believes that in Nikah they only live together in this life only.
- Muta is recognize or follow among the Shia school and not on the Sunni school. But Nikah is recognize in both the schools i.e. Shia and Sunni.
- Muta marriage gets terminated only on the expiry of the stipulated term but there is no such provision of divorce in Nikah it only can dissolved after Talaq.
- As Muta marriage is based on the time period which have to fixed before undergoing the Muta or before the Muta started, with the

\(^{11}\) Ibid
\(^{12}\) Ibid
\(^{13}\) Ibid
\(^{14}\) Ibid
permission of both the parties. So it only can dissolved when the time period gets over. There is no such provision of divorce and nit recognized at all. But whereas there is one and only way to get out of Nikah i.e. Talaq.

- In Muta marriage there is no any provision related to maintenance under muslim law. Wife can only be entitled to claim maintenance under section 125 of Criminal Procedure Code 1973. In Nikah there are provisions where wife is entitled to claim maintenance for her survival or atleast to have a decent way of living.

- Dower is one of the most essential and specified term in Muta marriage to make it valid, otherwise Muta marriage will be consider as void. But in the scenario of Nikah, dower may or may not be specified there is no such provision which must the term dower to be specified it can be unspecified also, having unspecified dower does not make the marriage void it is still a valid marriage.

- Muta marriage does not create any liabilities except those that were specified or written in the contract for marriage but there is numbers of rights and liabilities in Nikah.

- Nikah gives right of mutual inheritance while in Muta it is not so.

- In Nikah you cannot deny for child but in Muta you have right to deny for child.

2) Can women perform muta marriage

Women, of course, have a crucial part in Shiite faith; the prophet's generation can only be continued through his daughter Fatima. Not only is she the prophet's daughter, but she is also the Shiite Imams' mother. She passes on the prophet's legacy to Shiite Imams, their sons, and future generations. Fatima's power as the wife of Ali b. Abi Talib, the prophet's cousin, her son-in-law, and the first Shiite Imam, assumes divine proportions. This figure of Fatima, which the prophet gave to the Shiites, is held in high regard and reverence in Shiite culture traditions and writings. This is a significant contribution to the role of women in Shiite tradition and communal memory. She is portrayed as the one who passes the prophet's wisdom and soul to the prophet's progeny and Imams in some Shiite traditions. She is a Quran commentator, and her heavenly understanding allows her to have scientific expertise similar to that of the Imams. The fact that she is a woman, however, does not preclude others from thinking her a divine reference in Shiite religion, one who not only epitomises divine purity and justice, as well as perpetual enlightenment, but also presents herself as the Islamic umma's teacher and divine guide. Fatima has long been a role model for Shiites. She is a role model not just because of her intellect, but also because she is the wife of Imam Ali, the prophet's successor, and she is the protector of his succession (contested by the caliphs). Ali b. Abi Talib's teachings, which later became the guide of all Shiites Imams, owe a great deal to his wife's spiritual influence. Such a status is not introduced or authorised for any woman in the Sunni tradition, which is a doctrine that is completely different from the Shites'. And this has had repercussions in Sunni thinking and conduct on this topic throughout history.

Mostly Women and Girls are trafficked within the Iraq only for the purpose of sexual exploitation on the word of temporary marriage they generally use the word

---

15 Hassan Farhang Ansari , The Shiite Interpretation of the Status of Women, IAS( April 5, 2022, 10:09 a.m.) https://www.ias.edu/ideas/2016/ansari-shiite-

women#:~:text=According%20to%20the%20Qur%C
A%BE%C4%81n%2C%20women,religious%20ritua
ls%20such%20as%20prayer.
temporary marriage as a shield for protecting themselves from going through any legal matters sometimes they buy women from their family as a result of which they give money to their families in several countries like Egypt, India, Indonesia, Yemen, Iran and Britain these marriage are generally use to sexually exploit young girls and womens overseas. Mostly refugees women are used for temporary marriage age 14 and 15 years girls were send to their home back after completing muta time period.\(^\text{16}\)

3) What if women conceive
The word Muta means pleasure for a fixed period of time also known as temporary marriage, the council that allows or common Muta in Arabia before the time of prophet is now not recognize by any school of muslim law in india, except Shia school. There are four essentials of Muta marriage. First, proper contract which means declaration and acceptance. Second, Subject where a man can perform Muta with Muslim woman, Christian or Jewish but not with the woman following any other religion. Third term, which is the period of time or the period of cohabitation. Then, forth Dower as it is different from permanent marriage where woman are not allowed to choose whether they wants to conceive or not. Here in Muta marriage woman have right to decide whether she wants to conceive or not. In other words she have right to deny for child and the potential spouse cannot force her to do so unless and until it is mentioned in the contract. Child conceived during Muta is consider as legitimate child and will get all the rights which he will be getting if it was a permanent marriage and entitled to inherit both Mother and Father's property if she is a girl, who is less than seven years then haveto live with her mother and if he is a boy who is less than two then he will be live with his mother after that if the father wants he can take them with him or if child will stay with her mother then father and is liable to give maintenance to the child and if he is taking him with himself then it's his duty to treat him like his other child nit like a slave or sell him or it's his responsibility to not force him to engage in any illegal activity he will be held liable for his sustainable way of living and both mother and father will be the guardian of the child.

Conclusion
Temporary "Muta" marriages are common in modern times in Europe, America (Shia portions of Dearborn, Michigan), and the Middle East, and are frequently arranged by Imams and other Islamic officials. The poor widows and orphaned girls are frequently caught in the clutches of temporary workers who are frequently sold to elderly males. There is no desire or pleasure that pushes women to such destitution; it is the desperate need to pay rent and feed themselves and their children\(^\text{17}\). As a result, this agreement has sparked outrage in a number of countries, as it appears to encourage the legalization of prostitution. The other point of view in this regard, which contradicts the above mentioned, is that both the man and woman entering the Muta marriage are fully aware of their goals, and there is no exploitation of anyone by anyone, and Muta marriage can in no way be called prostitution or degraded,\(^\text{18}\) as the authors oppose. Furthermore, it is believed that such a marriage is solely for the legaliziation of prostitution, (2014).

\(^\text{16}\) Astus Khandelwal and Shashwat Patwa, "Muta Marriage" ijlmh 2581-5369 (2018).
\(^\text{17}\) Deepak Prasad, "Does Muta marriage amount to both Mother and Father's property if she is a girl, who is less than seven years then haveto live with her mother and if he is a boy who is less than two then he will be live with his mother after that if the father wants he can take them with him or if child will stay with her mother then father and is liable to give maintenance to the child and if he is taking him with himself then it's his duty to treat him like his other child nit like a slave or sell him or it's his responsibility to not force him to engage in any illegal activity he will be held liable for his sustainable way of living and both mother and father will be the guardian of the child.

Conclusion
Temporary "Muta" marriages are common in modern times in Europe, America (Shia portions of Dearborn, Michigan), and the Middle East, and are frequently arranged by Imams and other Islamic officials. The poor widows and orphaned girls are frequently caught in the clutches of temporary workers who are frequently sold to elderly males. There is no desire or pleasure that pushes women to such destitution; it is the desperate need to pay rent and feed themselves and their children\(^\text{17}\). As a result, this agreement has sparked outrage in a number of countries, as it appears to encourage the legalization of prostitution. The other point of view in this regard, which contradicts the above mentioned, is that both the man and woman entering the Muta marriage are fully aware of their goals, and there is no exploitation of anyone by anyone, and Muta marriage can in no way be called prostitution or degraded,\(^\text{18}\) as the authors oppose. Furthermore, it is believed that such a marriage is solely for the legaliziation of prostitution, (2014).

\(^\text{16}\) Astus Khandelwal and Shashwat Patwa, "Muta Marriage" ijlmh 2581-5369 (2018).
\(^\text{17}\) Deepak Prasad, "Does Muta marriage amount to
sake of sexual enjoyment and so legalises prostitution. Because of transitory marriage practices, the pure and family-oriented ideas of Nikah have become subservient or altogether erased. As a result, Muta Marriage should be discouraged since it shatters the basic essence of mankind and the female sector's self-respect. Muta Marriage is not just about sex. There is also the concept of non sexual muta marriage for those who are wishing to pay a companionship to female this to has a time limit and the man cannot turn into a sexual relationship, that is the women prerogative alone. Non sexual sigheh is in vogue in Iran used for dating or for it is called a trial marriage before the couple opts for nikah or simply to overcome the countries excessive gender segregation it is becoming increasingly popular as the clerics and the Iranian state have consciously tried to destigmatise sigheh, sexual or otherwise. In this regard the most telling intervention was made by the president Hashemi Rafsanjani who, while delivering a friday sermon in 1960 challenge the notion that sexual abstinence was good is it wrong, he proclaimed from the pulpit it is anti Islamic.

Bibliography

(A) Text Book
5. Prof (Dr.) Mahendra pal singh, V.N. Shukla's Constitution of india, (Ebc Explore , Edition 13th, 2017)

(B) Bare Acts
5. The Indian Penal Code,( Universal LexisNexis, 2022 Edition)

(C) Case Laws
1. Syed Amanullah Hussain And Ors. Vs. Rajammaand Ors. , 1977 , 152 AIR
2. Mahomed Abid Ali Kumar Kdar vs Ludden Sahiba , 1886 ILR 14 Cal 276
3. Shoharat Singh vs Musammam Jafri Bibi , 1914 , 17 BOMLR 13
4. Akbar Hussain Sahib And Anr. Vs Shoukhah Begam Saheba ,1915, 31 Ind Cas
5. Aga Jan Asker Ali vs Smt.Zeenath Asker Ali @ Cuckoo 2018 , CCH 39
6. Sadik Husain Khan vs Hashim Ali And Ors. 1916, ILR 38 ,ALL 627
7. Mirza Sadik Husain Khan vs Nawab Saiyed Hashim Ali Khan, 1916, 18 , BOMLR, 1037
9. Syed Fateyab Ali Mirza vs Union of India And Ors. 2006 (3) CHL, 407

(D) Internet Source
According to the Qur'an, women, religious rituals such as prayer.

2. Deepak Prasad, Does Muta Marriage amount to legalization of prostitution,(2014)

*****