

Introduction

Though there are important differences between Twelve-Imam Shi'a m and Sunnism on the level of the principles of the religion (*usul al-din*), on the level of the *sharia* and *fiqh* or jurisprudence there are surprisingly few places where Shi'i or 'Ja'fari' law differs from all four Sunni schools, the Hanaf'i, Hanbali, Maliki, and Shafi'i.

Perhaps the most important difference occurs in relation to the institution of *mut'a*, or 'temporary marriage'. The Sunni authorities agree that *mut'a* was permitted by the Prophet at certain points during his lifetime, but they maintain that in the end he prohibited it completely.

In contrast the Shi'a maintain that the Prophet did not ban it, and they cite numerous *hadith* from Sunni as well as Shi'i sources to prove this. Having established its legality, they then devote tremendous care and attention to defining its legal status and all the rules and regulations connected with it.

One major purpose of the present study is to trace the origin of this divergence between Sunni and Shi'i law by going back to the sources and arguments on both sides. A second purpose is to describe the legal situation of *mut'a* in Shi'a m. In order to do this, it is first necessary to understand the rules and regulations that define marriage itself, since all the discussions of *mut'a* take place within this context.

Hence Chapter One describes the 'pillars' and 'conditions' of marriage according to the five schools of law, though in a manner which is by necessity truncated and which makes no attempt to give a thorough presentation of all the different opinions. Chapter Two discusses the 'four pillars' of *mut'a* and Chapter Three its 'statutes'. Once the nature of *mut'a* and its structural relationship to permanent marriage is understood, the debates concerning the legitimacy of *mut'a*—summarized in Chapter Four—can be better understood.

The present work is based on an MA dissertation completed in 1974 under the direction of Professor Abu 'l-Qasim Gurji of the Faculty of Theology at Tehran University (most of the Persian text was published under the title *Izdiwaj-i muwaqqat: (mut'a-sigha)* [Tehran: Hamdami, 1358/1979]).

The original work included a brief investigation of the contemporary relevance of *mut'a*, and nowadays I

am often asked my opinion on this topic.

Let me only remark that the modern West has not come near to solving all the legal problems that have grown up because of relatively free sexual relationships in contemporary society. If any real solution to these problems is possible, perhaps a certain inspiration may be drawn from a legal system such as *mut'a* which, with its realistic appraisal of human nature, has been able to provide for the rights and responsibilities of all parties.

As for the abuses of *mut'a* that have occurred in certain times and places, in large measure these can be traced to the refusal of people to observe the letter of the law; perhaps those who established *mut'a* had too high an opinion of human dignity, self respect, and fear of God.

They no doubt thought that the Prophet's saying: 'Every religion has its special character trait, and the special character trait of my community is shame (*haya'*) would continue in effect until the end of time. At least *mut'a* can be said to provide a legal structure which, when observed, prevents most of the well known problems and abuses connected with unregulated sexual relationships.

Sachiko Murata

Port Jefferson, NY 14 December 1986

Source URL:

<https://www.al-islam.org/muta-temporary-marriage-in-islamic-law-sachiko-murata/introduction>