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Chapter Four: 'Mut'a', Temporary Marriage

The Essence of this Marriage

The essence of this type of marriage is that a woman who is completely free, a Muslim, or, from the people of the book [Bible, Torah, (New and Old Testaments respectively), and the Book of Prophet Daw'ud (David)???? I don't know if its only Bible????], marries you, provided there is no impediment of her marriage [to you] according to the religion of Islam, whether [this impediment be] due to kinship (prohibited to marry brother with sister), relationship (marry a mother or father), through foster relationship (half-sister or half-brother is prohibited), or, marriage.

She should not be in her waiting period ('idda) [two menstrual periods until a woman marries another man], nor, have other religious obstacles like her being married to one of your fathers even if he has divorced her, or, he died before the consummation of marriage, or, her being your sister in law for example, etc.

This woman marries you with an agreed dowry for an agreed fixed time by performing an 'aqd' (intentional consent) encompassing the conditions which make it proper according to the shari`a, [thus] it has no shar`i impediments as you have read. So, she says to you after the mutual permission, and agreement between the two of you: "I marry you, or, perform 'mut'a' with you for a dowry whose amount shall be so much for one, or, two days, or, a month, or, two months, or, a year, or, two years"; for example, or, she mentions another precisely defined period, and you say to her immediately: "I accept."

Like other contracts, deputyship is also allowed in this type of marriage from both parties. When completed, she becomes your wife and you become her husband until the time period in the agreement expires.

By its expiration, she is separated [from you] without a divorce. The husband has the right to separate from her before the expiration time by acquitting her [remaining part] of the specified period, not by a divorce according to the special texts governing over it. If the marriage is consummated (copulation), it is obligatory for her to observe the 'idda'. She observes the 'idda' of two months if she menstruates after

being granted the period, or, after its expiration. If she does not observe 'idda', [the idda] of 45 days like a slave girl, according to the special proofs governing the case.

If he acquits her [the remaining part] of the period, or, it expires before he touches her then, like one who is divorced before being touched, there is no 'idda' for her. [As for] those who become pregnant in a temporary marriage, their 'idda' period, like that of divorced women, is upto when they give birth (cannot marry until they deliver the baby). As for the 'idda' of one whose husband dies in a temporary marriage it is always the same as the 'idda' of a woman whose husband dies in a permanent marriage.

The child born in a 'mut'a', whether male, or, female, is joined to the father. He is claimed by him (the father) like other sons and daughters. He has the right to inherit as prescribed to us by Allah (S.W.T.), the most Majestic, by His saying: "Allah prescribes for your children the male should get the portion of two females."

There is no difference between two children of yours, one of whom is born out of temporary marriage and the other out of a permanent one. All the shari'a principles [of inheritance] applicable to the children, the fathers and the mothers are [also] applicable to the children, and their fathers and mothers of a 'mut'a' marriage. Similarly, the principles are applicable to brothers and sisters, and their children, and the maternal uncles and aunts, and paternal uncles and aunts, and their children (and the people of the wombs take preference over each other in the book of God) always.

Yes, the marriage of 'mut'a' in itself does not lead to inheritance between the spouses, nor, sharing the number of conjugal nights, or, expenditure for the wife. The husband has the right to isolate himself from her according to the special proofs which are applicable to this matter of the rulings of wives.

This is the essence, and truth of the marriage of 'mut'a' with women and this is the point of dispute between us, and the masses.

The Consensus of the Community on its Legislation

All the people of the 'qibla' [means following same qibla but different schools???) have reached a consensus, that the Almighty Allah (S.W.T.) legislated this type of marriage in the religion of Islam. There is no doubt about it amongst any of the scholars of the Islamic schools regardless of the differences in their inclinations, schools, and views.

Perhaps this is appended, for the scholars, to the essential teachings, according to what has been ascertained from the seal of the Prophets (S). None of the 'ulama' of his community can deny it. What all the people of Islamic schools say in their ruling on this marriage (which has been established in their jurisprudence) is unfortunate. They know that they are all agreed on it being originally legislated, but they claim that it has been abrogated as you will realize soon, God willing.

Proof from the Book on its Legislation

It is sufficient for us to cite proof for its legislation the saying of the Almighty in chapter four:

"And, what you enjoy from them then give them their prescribed dowries (4:24)."

The Imams from the Ahlul Bayt and their devoted friends have agreed that this verse was revealed concerning the marriage of 'mut'a'. Abu Ibn Ka'b, Ibn 'Abbas, Sa'id b. Jubayr and al-Sadi used to recite it as "whatever you enjoy of them to the agreed term."

The companion [of the Prophet (S)] 'Imran b. Husayn clearly stated that this verse was revealed concerning the 'mut'a' and that it was not abrogated until a man said according to his own views what he wished." Mujahid has also stated that the verse was revealed for the 'mut'a' according to what al-Tabari has reported from him in his Tafsir al-Kabir.

This is also attested to by the fact that the Almighty Allah, at the beginning of the chapter, has clarified the ruling on the permanent marriage by His saying:

"Marry what pleases you amongst the women, two, three, or, four" (4:3)

then Allah said:

"Give the women their dowry as a gift (4:4)."

If the verse [on mut'a] was also clarifying the permanent marriage, it would have meant repeating [the same ruling] in one chapter. But, if it was to explain the mut'a, then it was explaining a new concept.

The people of understanding who contemplate on the wise Qur'an know that the chapter on the women (chapter 4) includes the explanation of all [types of] Islamic marriages, so the permanent marriage and the possession of the right hand are explained by the saying of the Almighty:

"And, marry what pleases you of the women, two, three, or, four, and if you fear that you will not be able to deal justly with them, then one only, or, whatever your right hand possesses."(4:3)

The marriage of the slave girl is clarified by the saying of the Almighty:

"And if it is not possible for any of you to marry the pure believing women, then marry the believing girls amongst those whom your right hand possesses (4:25),"

until He said

"then marry them with the permission of their guardians and give them their dowries according to what is proper." (4:25)

The 'mut'a' is explained by this verse

"And, what you enjoy from them then give them their dowries."(4:25)

Its legislation according to the Text of the 'Sunnah'

On this issue, sufficient proof from the 'sunnah' is provided for us by the authentic mutawatir traditions reported from the Imams of the pure family. The two Shaykhs, al-Bukhari and Muslim, have reported many authentic traditions on the legislation of this type of marriage from Salma b. al-Aqwa, Jabir b. `Abd Allah, `Abd Allah b. Mas`ud, Ibn `Abbas, Abu Dharr al-Ghaffari, `Imran b. Husayn, al-Aqwa b. `Abd Allah al-Aslami and Sabra b. Ma`bad. The traditions of all of these people are reported by Ahmad b. Hanbal in his Musnad. He also reported the hadith of `Umar and of his son, `Abd Allah.

Muslim, in the chapter on the 'mut'a' marriage, in the book of marriage, in the first volume of his 'Sahih' has reported from Jabir b. `Abd Allah and Salma b. al-Aqwa, the two said: "The caller of the Prophet of God (S) came to us, and said: `The Prophet of God has permitted you to perform 'mut'a', that is the 'mut'a' with women.'" The authentic traditions of this purport are more than can be examined in this treatise.

Those Who Claim the Abrogation and their Proofs and a Discussion on it

The people of the four schools of thought and other jurists of the masses have claimed that this type of marriage has been abrogated and forbidden. They claim that there are traditions reported by the two Shaykhs in their 'Sahih' books; so, we examined them impartially and free from prejudices. In them we found [so many] contradictions concerning the time of the issuance of the abrogation that we cannot have confidence in it (the abrogation).

Indeed some of them are clear that the abrogation was on the day of Khaybar, some claim that the abrogation was on the day of the conquest (of Mecca); some of them maintain that it occurred at the battle of Tabuk, while some claim that it happened at the time of the final pilgrimage. Some of them maintain it happened at the time of the 'umra al-Qaza' whilst some of them say it happened in the year of Awtas (battle of Hunayn).

Moreover, these are opposed by what you will read from the Sihahs of al-Bukhari and Muslim which prove that there was no abrogation and that the prohibition and interdiction were issued by the second Caliph (Umar b. al-Khattab) due to an unforeseen act of `Amr b. Harith which occurred in his time.

Before it, the companions were performing the 'mut'a' at the time of the two Caliphs, just as they were performing the 'mut'a' at the time of the Prophet of God (S). You will read the speech of `Imran b. Husayn, `Abd Allah b. Mas`ud, `Abd Allah b. `Umar, and `Abd Allah b. `Abbas and the Commander of

the Faithful. You will see it clearly that the prohibition was not from the Almighty Allah (S.W.T.), nor, from His Prophet, peace be upon him; rather, it was from `Umar.

It is impossible that there would be an abrogation which [all] these people would be ignorant about. The status of their knowledge and position in front of Prophet of God (S), and their close attachment to him (S) are known. If there was an abrogation, those who were aware of it would have informed them of it (the abrogation).

However, since no one opposed them in their attributing the prohibition to `Umar himself, we realize that they all acknowledged it, and they accepted that there was no abrogation from God, the Almighty, nor, from His Prophet (S).

Moreover, the second Caliph himself did not claim abrogation [of the verse on 'mut'a'], as you will read from his clear speech in his attributing the prohibition, and interdiction to himself. If there was an abrogating verse from the Almighty Lord, or, from His Prophet (S), he would have attributed the prohibition to the Almighty Lord, or, to the Prophet (S), that is the most effective [way] of preventing [accusations], and most appropriate [thing] to mention.

I believe that those who came after the time of the companions forged the traditions on abrogation to justify the opinion of the Caliph, for he interpreted the proofs and he prohibited and forbade ['mut'a'] promising punishment, saying: "I am prohibiting the two 'mut'as' which were at the time of the Prophet of God (S), and will punish those who undertake them, the 'mut'a' of hajj and 'mut'a' of women."

Amongst the strange claims of some later scholars is that the marriage of 'mut'a' has been abrogated by the saying of the Almighty:

"As for those who guard their private parts except from their spouses, or, what their right hand possess (23:5)."

They claim that the woman with whom you do the 'mut'a' is not your spouse, nor, one whom your right hand possesses. They said: "As for their not being amongst whom your right hand possess, that [point] is certain; as for their not being your wives it is because there is no expenditure for them, nor, do they inherit; moreover, one does not have to spend a night with them."

The answer: She is a legal wife contracted by a 'shar`i' marriage as you have read; the fact that there is no maintenance, nor, inheritance, nor, night to be spent is due to the special proofs which have been mentioned in the rulings of wives as we have explained before. Furthermore, this is a Meccan verse which was revealed before the emigration as agreed by all; so, it is not possible for it to abrogate the verse which allows, and legalizes the 'mut'a' [revealed in] Medina after the emigration as agreed by all.

A surprising thing from these [people] who burden themselves is that they claim that the verse of believers (23:5) abrogates the 'mut'a' of women since they are not [considered to be] wives, nor, those

whom the right hand possesses. We say to them: "Why does it [also] not abrogate the marriage of the slave girls to one who doesn't own them since they [also] are not considered wives of the one marrying them, nor, are they owned by them?"

They say at this point that the chapter of believers (chapter 23) is Meccan and the marriage to the slave girls mentioned has been legislated by the saying of the Almighty in the chapter of women which is Medinan:

"And, if it is not possible for any of you to marry the pure believing women, then marry amongst the believing girls whom your right hand possesses,"(4:25);

so, the Meccan 'surah' cannot abrogate the Medinan as the abrogated verse must come before the abrogating.

They say this and they forget that the 'mut'a' was [also] legislated in Medina, and that its verse is in the chapter of women [Surah an-Nisa], also. We have been afflicted with a community which does not contemplate; from God we come and to him we shall return.

Muslim has reported in the chapter of 'mut'a of hajj' and 'umra' in his Sahih with a chain of authority to Abu Nazra who said: "Ibn `Abbas used to order the 'mut'a' and Ibn al-Zubayr used to forbid it." This was mentioned to Jabir, he said: "In my hands the tradition revolved, we used to perform the 'mut'a' while in company of the Prophet of God (S.A.W) and when `Umar became the Caliph he said: `Indeed, Allah used to make 'halal' for his Prophet what he wished as he wished. Complete the 'hajj' and 'umra', and sever the marriage with these women; no man will come to me with a marriage to a woman for a specific period except that I will stone him."

This is what [School of] Ahmad b. Hanbal has reported about the tradition of `Umar in his Musnad. Reporting also from Abu Nazra, the words he uses are as follows: "Abu Nazra said: `I said to Jabir that Ibn al-Zubayr forbade the 'mut'a' while Ibn `Abbas used to command it.' He said to me: 'The tradition has come from me, we used to perform the 'mut'a' at the time of the Prophet of God (S), and Abu Bakr.

When `Umar became the Caliph he delivered a sermon to the people saying: `The Qur'an is the Qur'an, and the Prophet of God is the Prophet, there were two mut'as at the time of the Prophet of God (S), one of them was the 'mut'a of hajj' and the other was the 'mut'a of women.'"

It is clear and evident that the prohibition came from him after his becoming Caliph. Similar to this is the tradition of `Ata' reported by Muslim in the chapter of the 'mut'a' marriage in his 'Sahih', he said: "Jabir b. `Abd Allah went for pilgrimage of 'mut'a' so we came to him at his house. A group of people asked him a few things, and they mentioned the mut'a to him. He said: `Yes, we performed the 'mut'a' at the time of the Prophet of God (S), and Abu Bakr, and `Umar.'"

According to the hadith of Abu al-Zubayr, as in the afore-mentioned chapter in the 'Sahih' of Muslim, he

said: "I heard Jabir b. `Abd Allah saying: `We used to perform the 'mut'a' with a handful of dates and flour (as dowries) at the time of the Prophet of God (S), and Abu Bakr until `Umar prohibited it because of the matter of `Amr b. Harith."

Also, in the aforementioned chapter of the 'Sahih' of Muslim, he reported from Abu Nazra who said: "I was with Jabir and somebody came to him and he said: `Ibn `Abbas and Ibn al-Zubayr have differed regarding the two 'mut'as'. Jabir said: `We used to perform them at the time of the Prophet of God (A.S), and then `Umar forbade them."

The statement of `Umar whilst he was on the minbar spread (to the masses). "I am prohibiting the two mut'as which were at the time of the Prophet of God and I will punish anyone who performs them, the 'mut'a' of hajj and the 'mut'a' of women." Al-Razi has transmitted this saying from him (`Umar) arguing by it on the prohibition of the 'mut'a' of women, so refer to this verse in his Tafsir al-Kabir.

The Ash'ari theologian, and their Imam in what is rationally, and traditionally reported "al-Qushji" says in the later parts of the discussion on the Imamate in his great book called "Sharh al-Tajrid" that 'Umar said whilst he was on the minbar: "O people, there were three things at the time of the Prophet of God (S), and I forbid them and make them 'haram'. I will punish anyone who commits them, the 'mut'a' of women, the 'mut'a' of hajj and [the saying of] "hayya 'ala khayril al-'amal" (hasten to the best of acts)." He justified it claiming that this was his personal reasoning and interpretation. The traditions on this and others like it are many and could fill the pages.

Rabi'a b. Ummaya b. Khalf al-Thaqafi, the brother of Safwan, performed the 'mut'a' at the time of `Umar, according to what Malik has reported in the chapter of the marriage of 'mut'a' in his Muwatta' from `Urwa al-Zubayr who said: "Indeed Khawla, the daughter of Hakim al-Silmiyya, entered to see `Umar and she said to him: `Rabi'a b. Ummaya has performed the 'mut'a' with a lady who has become pregnant,' so `Umar went out pulling his robe, saying: `this 'mut'a', had I preceded it, I would have stoned for it," i.e., had I forbidden it and warned one who undertakes it with stoning before this time, I would have stoned Rabi'a, and the lady who performed the 'mut'a'.

This was his stand before prohibiting it as has been documented by Ibn `Abd al-Barr according to what al-Ruzqani reports from him in his commentary on the 'Muwatta'. There is no doubt that this speech shows that the discarding of the permissibility of 'mut'a' came from him, not from anybody else

Those who deny It

According to al-Tha`labi and al-Tabari, `Ali (as), the Commander of the Faithful, repudiated him. When these two authors reached the verse of 'mut'a' in their major tafsir works, they reported with a chain of transmission to him saying: "Had `Umar not prohibited the 'mut'a', nobody would have fornicated, apart from those on the verge [of death]."

Ibn `Abbas also repudiated him saying: "The 'mut'a' was nothing but a mercy which Allah showered on the umma of Muhammad (S), had he (`Umar) not prohibited it, no one apart from those on the brink of death would have needed to fornicate," that is, apart from a few people as explained by Ibn al-Athir [when discussing] the source of the word shafi'i in his Nihaya. Ibn `Abbas used to declare openly that it was permissible, and he had with Ibn al-Zubayr, even in the time of his rulership, many discussions, too lengthy to mention here. Jabir also repudiated him (`Umar) as you have read in his traditions.

Similarly, his own son `Abd Allah repudiated him as is proven from him. Imam Ahmad has reported on page 95 in the second volume of his 'Musnad' from the tradition of `Abd Allah b. `Umar. He said he was asked on the 'mut'a' of women: "By God, at the time of the Prophet of God (A.S), we did not use to fornicate, or, perform adultery." Then he said: "I swear by God I heard the Prophet of God (S) say there will be, before the day of Judgement, Jesus, the anti-Christ and thirty, or, more liars."

Then he was asked again about the 'mut'a' of women and he said, according to the 'Sahih' of al-Tirmidhi: "It is allowed." It was said to him that "your father prohibited it." He said: "Don't you see that if my father prohibited it while the Prophet performed it will you then leave the 'sunnah' and follow my [Abd Allah son of Umar b. al-Khattab] father [Umar b. al-Khattab]?"

`Abd Allah b. Mas`ud also repudiated him as is well known from him. The two Shaykhs have reported in their 'Sahihs', and the words are being from al-Bukhari, from `Abd Allah b. Mas`ud who said: "We were on an expedition with the Prophet of God (S), and we had nothing. So, we said: 'Shall we not castrate [ourselves]?' He prohibited us from that, and he allowed us to perform the 'mut'a' marriage to an appointed time. Then he read for us the verse:

'O you who believe, do not prohibit the good things which Allah has allowed for you, and do not transgress for Allah does not love those who transgress (5:87).'"

You know from the recitation of the verse of the severe repudiation of prohibiting it as has been clearly explained by the commentators of the two 'Sahihs'.

According to what has been widely reported, `Imran b. Husayn repudiated him. Al-Razi reported from him that he said: "Allah (S.W.T.) revealed a verse concerning the 'mut'a' and He did not abrogate it by another verse. The Prophet of God (S) commanded us to perform the 'mut'a', and he did not prohibit us from it. Then a man said something according his opinion as he wished." Al-Razi said he meant `Umar.

Al-Bukhari has reported in his Sahih from `Imran b. Husayn who said: "The verse on the 'mut'a' was revealed in the book of God (Holy Quran) and we performed it at the time of the Prophet of God (S). No verse was revealed to prohibit it, and he did not prohibit it until he died, then a man said according to his opinion what he wished."

Ahmad has reported in his 'Musnad' from Abu Raja' from `Imran b. Husayn who said: "The verse of 'mut'a' was revealed in the book of God (S), and we acted according to it with the Prophet of God (S); no

verse was revealed to abrogate it and the Prophet (S) did not prohibit it."

During the time of his Caliphate, al-Ma`mun ordered that it be proclaimed that the 'mut'a' was allowed. Muhammad b. Mansur and Abu Ayna' entered to see him and they found him brushing [his teeth] and he was saying, according to what Ibn Khallikan has reported, while he was in a furious state (quoting `Umar): "I have prohibited you from the two 'mut'as' which were at the time at the Prophet of God (S) and Abu Bakr."

He (al-Ma`mun) said: "Who are you, O dung beetle, that you prohibit what the Prophet of God (S) and Abu Bakr used to do?" Muhammad b. Mansur wanted to talk to him (al-Ma`mun), but Abu Ayna' signaled to him. He said: "The man is speaking against `Umar Ibn Khattab, shall we talk to him?"

They did not talk to him and Yahya b. Aktham entered to see him. He (Yahya) talked to him (al-Ma`mun) confidentially and scared him of sedition. He mentioned to him (al-Ma`mun) that the people thought that he was introducing a major innovation [bid'a] in Islam by this proclamation which would affect all the masses since, for them, there was no difference between the call to permit the 'mut'a' and the call to allow fornication. He was on that course until his resolution was dissolved as he had compassion on his kingdom and on himself.

Amongst those who rejected the prohibition of 'mut'a' and allowed, and practiced it was `Abd al-Malik b. `Abd al-`Aziz b. Jurayh Abu Khaliq al-Makki. He was born in the year 80 and died in 149 A.H. He was amongst the foremost of the successors. Ibn Khallikan has profiled him in his Wafayat and Ibn Sa'd on p. 361 in the fifth volume of his Tabaqat.

The people of the 'Sihah' have used him in their arguments. In his book "al-Jam' bayn rijal al-Sahihayn," Ibn al-Qaysarani profiled him on p.314. Al-Dhahabi mentioned him in his Mizan, and said that he married about ninety women by 'mut'a' and he saw it admissible to do that. He said: "He was a jurist amongst the people of Mecca in his time."

The View of the Imamis (Shi'i) on 'mut'a'

The Imamis have agreed, following their twelve Imams, on its continued permissibility in accordance with the proofs, some of which you have read i.e., the consensus of the people of 'qibla' that the Almighty Allah legislated it in His true religion, and allowed its proclamation by a caller of His great Prophet (S), and that no abrogation of it has been proven from Allah, the Almighty, nor, from His Prophet (S) until the revelation was severed by the Almighty by His taking His Prophet (S) to the abode of His nobility.

On the contrary, it has been proven that it was not abrogated by the texts of our authentic traditions successively transmitted from the Imams of the pure families; so, refer to its contents in the 'Wasa'il-ash-Shi'a ila ahkam al-Shari'a' [book of sayings revered as keystone for Shi'i].

Moreover, the 'Sihah' of the 'ahl al-sunnah' and all their 'Musnad' works are clear in documenting that it

remained permitted and was practised in the time of Abu Bakr and for a little while in the time of `Umar until the prohibition against it was issued by him concerning the matter of `Amr b. Harith. What we have mentioned in this quickly compiled report is sufficient for you [to start somewhere]. Indeed, in this is a reminder for those who have a consciousness, or, who lend an ear and witness it.

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