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## Part Two: Fixed-Term Marriage

Unlike many persons, I am never made uncomfortable by doubts and misgivings in the problems of Islam, despite my attachment to and belief in it. Rather, in the depth of my heart I feel glad, because I believe and have experienced during my life that whenever and howsoever any aspect of this pure, divine code of life is assailed, it displays itself with more force, vigor, clarity and splendour.

The distinct feature of truth, of course is that doubt and disbelief help to make it all the more vivid. Doubt precedes belief, and indecision is the source of investigation. *Zindah bida*<sup>1</sup> quotes from al-Ghazali’s treatise *Mizanul-‘amal*: “.....The utility of our exhortations is only this much that you may begin to have misgivings about your time-ridden traditional conceptions, for indecision is the basis of investigation and one who does not doubt is not reflecting on things in the right way. One who does not look in the right way does not see things well, and such a man lives in blindness and confusion.”

Let them speak, write, hold seminars and protest till, in spite of themselves, they will become a means of making clear the realities of Islamic teachings.

One of the brilliant laws of Islam, according to the Ja’fari (shi’ite) school, which is the formally established sect in our country, is that marriage may take place in two years: permanently or for a fixed period.

Permanent and fixed-term marriages are alike in some of their arrangements and different in certain others. One of the features that distinguish between them is, in the first instance, that in fixed-term marriage a woman and a man take a decision that they will undertake a marriage for a fixed period, and at the end of that period, if they are inclined to extend the period, they may extend it, and if they do not wish to do, they may separate from each other.

The other feature is that they have more freedom in the settling of terms and conditions according to how they wish. For example, in a permanent marriage a man is responsible, whether he likes it or not, for daily expenses, clothing, dwelling and the other necessities of life, such as medicine and medical treatment, but in a fixed-term marriage, the couple is joined by the free contract that was agreed upon

by them. It is possible that the man may not wish, or cannot afford, to bear these expenses, or that the woman does not wish to use the money of the man.

In a permanent marriage the wife, whether she likes it or not, must accept the man as the head of the household and carry out what he says in the interest of the family situation, but in a fixed term marriage everything depends upon the terms of the agreement they conclude between themselves.

In permanent marriage, the wife and the husband, whether they like it or not will have mutual rights of inheritance with each other, while in a fixed-term marriage this is not so. Thus the real and essential difference between the fixed-term and the permanent marriage is that the former, as far as limits and conditions are concerned, is “free”, that is, it depends upon choice and the contract between the two parties. The fact of the marriage being temporary gives to both parties a sort of liberty, because (with regard to the fixation of the duration of the agreement) they can exercise their opinion.

In the case of permanent marriage, neither of the two parties (without the consent of the other party) has a right to exercise restraint in having children or to practice birth-control, but in fixed-term marriage, the consent of the other party is not necessary. In fact, this is another sort of freedom that has been given to the couple.

The children born to the couple who have temporarily married are in no way different from the issue of a permanent marriage.

*Mahr* (dower) is also a pre-requisite in a permanent marriage as well as in a fixed-term marriage, with the difference that in a fixed-term marriage non-specification of the amount of the *mahr* nullifies the marriage, whereas in a permanent marriage the marriage itself not nullified and an unspecified *mahr* can be arranged.

In permanent marriage, the mother and the daughter of the wife, and the father and son of the husband are forbidden (for marriage) and are mahram;<sup>2</sup> it is similarly the case with the above relations in temporary (fixed-term) marriage. Besides, just as proposing marriage to a permanently married woman is prohibited, so is it also in the case of a fixed-term married woman; just adultery with a permanently married woman makes her prohibited to the adulterer forever, so also does it in the case of a temporarily married woman; just as a permanent wife has to observe a period of *iddah* (during which she may not marry) after divorce, so a temporary wife also has to observe a period of *iddah* after the termination of the agreed period of the marriage or its dissolution. There is this much difference, that the period of *iddah* for a permanent married woman after divorce is (the time of) three periods of menstruation, while for temporarily married woman it is (the time of) two period of menstruation or forty-five days. In the case of a permanently married wife, a man cannot, while she is alive, marry her sister. In the case of a fixed- marriage, also, two sisters cannot be married to the same person at one time.

These are some of the relevant principles of temporary or terminable marriage as mentioned in Shi'ite jurisprudence, and our Civil Law has observed them to the latter.

We, of course, uphold this law which has the above distinctive features. If our people have, in the name of this law, misused it and are still misusing it, the law itself is not at fault. If this law were nullified, the objectionable practice would not stop; only the form would be changed. Besides, there would be hundreds of evils that would result from the annulment of this law. We must not launch an attack on the spirit of the law, when we should be reforming and awakening man, simply because of man's lack of capability and fitness for reform, and then exonerate man and hold the law responsible.

Now, let us examine what necessity there is for a law in the name of fixed-term marriage, when there is already a law of permanent marriage? Is a fixed-term marriage, as the contributors to *Zan-e ruz* have written, incompatible with the dignity of a woman as a human being, and against the spirit of the Charter of Human Rights? Is not temporary marriage, if it ever was a necessity at all, a necessity of a by-gone era? And is it not true that the contemporary life-style, the conditions and demands of present-day life, argue against it?

We shall examine this point under two headings: —

- a) Contemporary life and fixed-marriage.
- b) The defects and evils of fixed-term marriage.

## **Contemporary life and fixed-term marriage**

As we already know, permanent marriage creates great deal of responsibilities and duties for the couple. This is why a boy and a girl in their early youth, when they enter the period in which natural puberty brings them under the pressures of the instincts, are not ready for a permanent marriage. The characteristic feature of our modern age is the lengthening of the span of time between natural puberty and social maturity, when one becomes capable of establishing a family. If, in the simple old days, a boy at the beginning of his natural puberty could take up a vocation in which he could still till the end of his life, this is no longer possible. A student who successfully passes through his education in primary school, secondary school and university without any interruption, and gets his school certificate and passes the university entrance examination, will graduate at the age of twenty-five. Surely it will then take three to four years to arrange things to get married permanently. The same applies in the case of an educated girl who has to pass through all the stages of study.

## **Modern youth, the time of puberty, and the onset of textual activity:**

If you ask a boy student of eighteen years of age who sexual ardor is naturally at its height, to get married permanently, people would laugh at you. The same is the case with a girl student of sixteen. It is not practically possible for this category of people to burden themselves at such an early age with the responsibilities of permanent marriage and commit themselves to a life with the many duties and obligations towards each other and also towards the children which they will have.

## **Monasticism for a fixed period, sexual communism, or fixed-term marriage:**

I ask you how, in these circumstances, with these natural instincts, should we behave. Is nature prepared to delay the advent of puberty till we complete our education, and bring our sexual instinct to stand still, because our modern way of life does not permit us to marry at sixteen or seventeen years of age?

Are the young ready to undergo a period of temporary asceticism and put themselves under the strain of rigid austerity till such time as there may arise an occasion for permanent marriage? Suppose a young person is prepared to undergo temporary asceticism, will nature be ready to forego the formation of the dreadful and dangerous psychological penalties which are found in the wake of abstention from instinctive sexual activity and which psychiatrists are now discovering?

There remain two alternatives only. We may leave the young to themselves and ignore what they do. We may allow a boy to have unlawful sexual relations with hundreds of girls, and allow a girl to have unlawful relations with tens of boys and have so many abortions. In other words, in practice, we accept sexual communism, and because we have given liberty to the young man and young woman equally we have satisfied the spirit of the Charter of Human Rights. We say this, because, according to so many persons lacking foresight, the spirit of the Charter of Human Rights is that if a woman and a man are to leap into the valley of Gehenna, they should leap together, hand in hand, shoulder to shoulder.

Can such young men and women, who have had sexual relations with a large and unlimited number during their student life, turn out to be new men of life and women of the family when they become permanently married?

The other course is fixed-term free marriage. Fixed-term marriage puts the limit on a woman that she must not be the wife of two men at the same time. Evidently such a restriction upon the woman itself necessitates a restriction upon the man. When every woman has exclusive attachment to a particular man, every man will necessarily be attached to a particular woman, excepting in cases which the number on one side may be more.<sup>3</sup> With this arrangement a young man and woman may live through the time of their education without falling back upon temporary asceticism and enduring its penalties, and without falling into the abyss of sexual communism.

## **Experimental marriage**

The occasion for such marriage is not confined to the period of study. It may arise in other circumstances too. In principle it is possible that a man and a woman who want to marry permanently, but have not had the opportunity to get to know each other well enough, may marry temporarily for a specified period as an experiment, If they are fully confident and satisfied with each other, they may give

permanence to this marriage, otherwise they can separate.

I ask you why Europeans think it necessary and unavoidable to maintain a number of prostitutes in a specified area in every town under the control and observation of the state. Is there any other reason except to make sure that the numbers of bachelors who cannot afford to marry permanently do not become a great danger for families?4

## **Russell's views on fixed-term marriage:**

Bertrand Russell, the well-known British philosopher in his book *Marriage and Morals* writes: "So long as the virtue of respectable women is regarded as a matter of great importance, the institution of marriage has to be supplemented by another institution which may really be regarded as a part of it — I mean the institution of prostitution. Everybody is familiar with the famous passage in which Lecky speaks of prostitutes as safeguards of the sanctity of the home and of the innocence of our wives and daughters. The sentiment is Victorian, and the manner of expression is old-fashioned, but the fact is undeniable. Moralists have denounced Lecky because his remark made them feel furious and they did not quite know why, but they have not succeeded in showing that what he said was untrue, The moralist asserts, of course quite truly, that if men followed his teaching there would be no prostitution, but he knows quite well that they will not follow it, so that the consideration of what would happen if they did is quite irrelevant" (p.97)

This is a Western formula for finding a remedy against the danger to men and women who cannot afford to marry permanently, and previously we saw the formula which Islam has put forward. If this Western formula be accepted and put into practice and a group of unlucky women are specifically allocated for fulfillment of this "social duty", will woman then rise to her real position and be given human respect, and ,will the spirit of the Declaration of Human Rights be satisfied?

Bertrand Russell has written a full chapter on the subject of experimental marriage in his book *Marriage and Morals*. He says:

"Judge Ben B. Lindsey, who was for many years in charge of the juvenile court at Denver, and in that position had unrivalled opportunities for ascertaining the facts, proposed a new institution which he calls 'companionate marriage'. Unfortunately he has lost his official position, for when it became known that he used it rather to promote the happiness of the young than to give them a consciousness of sin, Ku Klux Klan and the Catholics combined to oust him. Companionate marriage is the proposal of wise conservative. It is an attempt to introduce some stability into the sexual relations of the young, in place of the present promiscuity. He points out the obvious fact that what prevents the young from marrying is lack of money, and that money is required in marriage partly on account of children, but partly also because it is not the thing for the wife to earn her own living. His view is that young people should be able to enter upon a new kind of marriage, distinguished from ordinary marriage by three characteristics.

First, there should be for the time being no intention of having children and that accordingly the best

available birth–control information should be given to the young couple.

Second, that so long as there are no children and the wife is not pregnant; divorce should be possible by mutual consent. And third, that in the event of divorce, the wife should not be entitled to alimony. He holds, and I think rightly that if such an institution were established by law, a very great many young people, for example students at university would enter upon comparatively permanent partnerships, involving a common life, and free from the Dionysiac characteristics of their present sex relations. He brings evidence to hear that young students who are married do better work than such as are unmarried. It is indeed obvious that work and sex are more easily combined in a quasi–permanent relation than in the scramble and excitement of parties and alcoholic stimulation.

There is no reason under the sun why it should be more expensive for two young people to live together than to live separately, and therefore the economic reasons which at present lead to postponement of marriage would no longer operate. I have not the faintest doubt that Judge Lindsey’s plan, if embodied in the law, would have a very beneficial influence, and that this influence would be such as all might agree to be a gain from the moral point of view.” (*ibid.* pp. 107— 109)

That which Judge Lindsey and Russell call ‘companionate marriage’, though it is a little different from temporary Islamic marriage, clearly shows that thinkers like them have gone to the root of the problem and are satisfied on the point that the usual permanent marriage is not by itself sufficient for social requirements.

## **Fixed–Term marriage 2**

The particulars of the law of fixed–term marriage, the necessity of such law, and the insufficiency of permanent marriage in meeting human needs, especially in the present age, have formed the subject matter of our study. Now, want to present, as it were, the other side of the coin. We shall see what damage it may possibly do away with. By way of introduction I shall give a short history of the writer’s beliefs.

Among all the subjects, problems, topics and matters of discourse, that have existed and do exist now for man no subject or field of discourse in anywhere near as complex and garbled as the history of human sciences, beliefs, customs, traditions and manners. And this is the reason, why man has talked more nonsense on these subjects, than on any other, that he has an inordinate desire to express his views.

For example, any one who is in touch with Islamic philosophy, gnosis, Sufism and theology, and is acquainted with some modern writings, which are mostly extracts or the origin writings of foreigners will follow what I mean. It is something like this. To express their point of view or, this kind of topic, the orientalist, their admirers and camp followers, consider every thing, necessary except that they themselves should have a thorough grasp and comprehension of the problem.

For example, around the subject that is known in Islamic gnosis as *wahdatu'l-wujud* (the unity of existence), is there any thing that has not been said! Only one thing is missing and that is what exactly *wahdatu'l-wujud* is and what conception the giants of gnosis like Muhyi'ud din ibn al-'Arabi and Mulla Sadra had of *wahdatu'l-wujud*.

As I read a few of the articles with some of the ideas pertaining to fixed-term marriage in certain issues of *Zan-e ruz*, I could not help remembering *wahdatu'l-wujud*. I saw that all sorts of things had been discussed except that thing which is the spirit and the purpose of this law and the intent of the legislator.

Of course, since this law is part of the "heritage of the East", it is being received rather coldly. If it were a souvenir of the West, it would have been otherwise.

Certainly, if this law were imported from the Western part of the globe, there would have been conferences and seminars on how the restriction of marriage to permanent marriage does not suit the second half of the twentieth century, how the present generation wants to be free and live freely, and will accept anything but free marriage in which they individually choose all the restrictions and limitations.

For this reason, now that this call is raised from the west and someone like Bertrand Russell proposes the subject of Companionate marriage, it can be safely predicted that, to a greater extent than Islam, wants, this idea will be welcomed and permanent marriage will be forsaken altogether, and we will be compelled in future to defend, and propagate in favor of permanent marriage.

## **Objections and difficulties**

The defects and harm that have been mentioned in connection with fixed-term marriage are as follows:–

1. Marriage should rest on a stable foundation. A couple, when they are first joined by the pact of marriage, should consider them attached to each other for ever, and the idea of separation should not enter their minds. So a fixed-term marriage cannot be a stable pact for the couple.

That the foundation of marriage should be stable is quite right, but this objection arises when we replace permanent marriage by fixed-term marriage and wish to annul permanent marriage.

No doubt, when both parties have the means for permanent marriage, and have full and satisfactory information regarding each other and have full trust in each other, they may very well find themselves in the pact of marriage for ever.

Fixed-term marriage has been allowed in the *shari'ah* only because permanent marriage by itself, could not cope with human needs in all conditions and ,circumstances, and dependence entirely upon permanent marriage would unavoidably create a situation in which people would either be advised temporary asceticism or would be left to be drowned in the depths of sexual communism. It is quite clear that any young man and woman who had found all the desired prerequisites for a permanent marriage

would not be greatly enthusiastic about a temporary alliance.

2. The women and girls of Iran, who subscribe to the Shi'ite faith have not welcomed fixed-term marriage and have considered it rather as an insult to them. Thus, the general opinion of the Shi'ahs has rejected it.

Our reply is firstly that the dislike of *mut'ah* (fixed-term marriage) is due to the misuse made of it by sensual persons. The law should apprehend such persons, and we shall discuss shortly this point of misuse. Secondly, the wish that fixed-term marriage should be welcomed like permanent marriage is misplaced and wrong, because the philosophy of fixed-term marriage is based upon the non-availability of means, and the inability of both the parties, and one of them, to become permanently married.

3. Temporary marriage is detrimental to the position and honor of a woman because it is, so to say, the hiring of a human being. It is a religious license for the sake of human nature. It is against the dignity of a woman to give herself to a man in return for the remuneration she gets from him.

This is the most amazing objection of all. Firstly, in view of the distinctive features that we have already related in the previous section, what does it have to do with hire and a fee? Is the time limit in this marriage the cause of its being excluded from the definition of marriage and acquiring for itself a form in which 'fee' and 'hire' are appropriate terms? And is it only because it is explicitly ordained that the *mahr* (dower) must be 'fixed' and 'definite', that this *mehr* is being depicted as the rental charge? We ask whether, if there were no dower and the man did not place anything before the woman, she would then regain her human dignity? We shall discuss separately the subject of *mahr* (dower).

Incidentally, Islamic jurists have made clear, and the Civil Law has the same basis, been so arranged and brought together into sections, that temporary and permanent marriages, from the point of view of the substance of their stipulations, have absolutely no difference between them, and should not have. Each one of them is a marriage, and each one takes place with the recital of a specific formula. If the fixed-term marriage is set up with the recital of those terms that are specially intended for remuneration or fee, the marriage is void.

So we ask, how long and from which date has the renting of man been abolished? All tailors, barbers, doctors, artisans, all civil servants, from the Prime Minister to the lowest worker in a factory, are hired men.

The woman who has entered into the alliance of a fixed-term Marriage with, a particular man, out of her free will and of her own choice, is not a rented person and she has not acted against the honor and status of a human being. If you want to see a rented woman and wish to witness the slavery of woman, you should travel to Europe and America and call in on the film companies so that you may understand what a rented woman is. See how these companies put up the actions of women for sale, their poses, manners and sexual charms. The tickets that you purchase for cinemas and theatres are, as a matter of fact, a payment towards the rental value of the rented woman. You may see there to what the



unfortunate woman presents her body for the sake of money. For a long time under the directions of 'honorable' experienced specialists, she has learnt the secrets of sex-appeal. She puts her body, soul and personality at the mercy of a financial organization to get more sales for that organization.

Visit the cabarets and hotels and see what honors woman has attained. For a paltry sum as her wage she puts all her honor and prestige in the hands of the guests, so that she can contribute to filling the already full pockets of certain rich men.

Women on hire are those models who are wage-earners and hired workers for the big sales-stores and who give up their honor and prestige to satisfy their employers' avarice and greed.

Women on hire are those women who appear on the television screen with all sorts of beautification, most of which are un-natural, to attract buyers for some commercial firm to popularize some commercial commodity. But her basic aim is her wage.

Who does not realize that in western countries today the gracefulness of a woman, her sex-appeal, her voice, the art and originality of a woman, the soul and body of a woman and in the end, the whole personality of a woman is at the beck and call of American and European capitalists. It is so sad that you, knowingly, or unknowingly, drag the gentle and honorable women of Iran to such a servile position. I am unable to understand why if a woman marries a particular man on liberal terms temporarily, she is to be considered a rented woman, but if a woman at some wedding party or at a cabaret, before the greedy gaze of thousands of men, ruins her larynx for the satisfaction of their sexual inclinations, and turns a thousand and one manners of somersault so that she may get the promised money, is not to be counted a hired woman.

Has Islam, which has restrained men from exploiting women like this, and has forbidden woman, from such servility and submission and earning her livelihood in this way degraded women, or has the Europe of the later half of the twentieth century?

If, some day, woman fully understands this and is enlightened and notices the traps that twentieth century man has set in her path and concealed from her, she will rise in revolt against this fraud. That will be the time when she finds out that her only protector in all sincerity is the Qur'an. Of course, that day is not far off.

The magazine *Zan-e ruz*, in its issue No.87 on page 8, has published a report of a woman named Mardiyah and a man named Rida under the heading "A Hired Woman", and has given an account of the misfortune of the unfortunate woman.

The story, according to the statements of Rida, begins with the approach of the woman with the proposal of marriage. It means that the formula of the forty proposals was acted upon for the first time and a woman went forthwith a request for marriage. It is quite evident that a story which starts with the proposal of a woman for marriage could not end any better than it did.

On the other hand, according to the statements of Mardiyyah, the man, sensual and cruel as he was, portending that he would take her as his permanently married wife and would take care of her and her children, deceived her. Furthermore, without the consent and approval of the woman, with the excuse of having entered into a fixed-term marriage with, her, after gratifying his passion he abandoned her.

If these statements are true, the marriage was void. The man was cruel and the woman was ignorant of the religious and statute law. They violated the law and should be punished.

Before people like Rida are punished, they should be instructed and Mardiyyah should be warned.

How can the laws, as it is, be assailed for an offence the root cause of which is the cruelty of men and the ignorance and forgetfulness of women. The *Zan-e ruz* magazine supports the cause of Rida, and thus lashes out with its sword against the law. If there were no law of fixed-term marriage, would the cruel man, Rida, and the neglectful and ignorant woman, Mardiyyah have lived peacefully and comfortably?

Why do you shirk the responsibility of instructing and warning men and women, and why do you keep the rights and duties of man and woman secret from them? Why should you take advantage of a poor woman's ignorance and misrepresent the law which is her only protector and guardian as her enemy, and wish that she should destroy her only refuge with her own hands.

4. Fixed-term marriage is some sort of license for polygamy, and polygamy is prohibited by law. So temporary marriage is also prohibited by law. As regards the question of the category of persons for whom fixed-term marriage is allowed by the shari'ah, and the question of polygyny, we shall discuss these fully at a later stage.

5. Fixed-term marriage, because it has no permanence, is an unsuitable arrangement for children born of this alliance. The inevitable result of a fixed-term marriage is that the children born will be without a guardian and will remain deprived of kind paternal and loving maternal protection and will remain deprived of a home.

This is the objection on which *Zan-e ruz* magazine lays much stress, but after the explanation that we have made, we do not think there can be any occasion left for argument or dispute. In the preceding section we mentioned that one of the differences between fixed-term marriages and permanent marriages is to do with having children. In permanent marriage neither one of the couple is permitted, without the consent of the other, to avoid the responsibility of the birth of child, whereas in fixed-term marriage both sides are free. In fixed-term marriage the woman cannot refuse sexual intercourse with the man, but she has the option that, without causing interruption during coition, which is harmful for the man, she may avoid pregnancy. The problems of contraception have already been fully solved.

If, on the other hand, in temporary marriage couple wishes to have a child, and accept the responsibility of bringing up and looking after the child, they may have children. As far as natural affection is concerned

there is no difference between the children of a permanently married wife and a temporarily marriage wife. Suppose the father or the mother refuses to perform his or her duties, the law will then declare it their obligation and will oblige them; just as in the case of divorce, the law should take action and should safeguard the rights of the children. If they do not wish to have children, and their only aim is to satisfy their sexual instincts they should take steps to refrain from having children.

As far as we know, the church forbids birth control, but according to Islam, if the husband and wife prevent the birth of a child at its point of conception it is permissible. When the pregnancy has already begun, Islam in no case allows abortion. When the Shi'ite jurists say that the aim of permanent marriage is to have children, and the aim of temporary marriage is gratification and satisfaction of the sexual instincts, they mean the same thing.

### **Criticism:**

The writer of the forty proposals has, in issue No.87 of *Zan-e ruz* contributed an article criticizing fixed-term marriage.

He firstly says that "the subject of temporary marriage is so distasteful that even the writers of the law of marriage (in the civil code) could not manage to comment and give details of this law, as if they loathed their own work, and only as an outward compliance, according to Articles 1075, 1076 and 1077, stuck some words and phrases together and then passed on.

"The composers of the law relating to temporary marriage (*mut'ah*) disliked their business so much, that they did not even define the above mentioned marriage formally and did not explain its terms and conditions...."

Afterwards the learned writer himself makes amends for this defect in the Civil Law and says: "The above mentioned marriage means that an unmarried woman, in proportion to a certain settled fee and remuneration, for a limited and specified period, a few hours or a few minutes, gives herself into the hand of a man for the satisfaction, of his passions, and for the gratification of his lust and the performance of sexual acts."

He further says, "For the proposal and acceptance of the said marriage, special words are quoted from the Shi'ite books of jurisprudence in Arabic, to which the Civil Law does not refer and does not care to mention, as if in the eyes of the legislator it can be realized by the use of any words, Arabic or not, 'which need only signify the said purpose (that is the sense of acceptance of remuneration and a fee)."

According to the learned writer:

- a) The Civil Law does not define and does not explain its terms.
- b) The essence of temporary marriage is that a woman in return for a fixed remuneration gives herself to a man
- c) In view of the Civil Law, any word that signifies the sense of the woman being rented is sufficient to

connote proposal and acceptance of temporary marriage.

I invite the learned writer to study the Civil Law once again, and to study it carefully, and I likewise request the readers of *Zan-e ruz* somehow to get a copy of the Civil Law and carefully study the following parts.

In the Civil Law, the sixth chapter of the volume on marriage is given over to fixed-term Marriage, and it consists of not more than three simple sentences. The first is that temporary marriage is of fixed duration, as it is to be concluded for a specified period. The second is that the period of temporary marriage should be specifically agreed upon. Thirdly, that the law in respect of *mahr* and succession is the same as mentioned in the chapters pertaining to dower and succession.

The respected writer of the forty proposals is under the impression that whatever is mentioned in the five chapters of the volume on marriage is all in respect of permanent marriage, and that only these three sections deal with fixed-term marriage. He is unaware of the fact that all the sections of the five chapters, excepting where it is otherwise specified, as in section 1069 or the section about divorce, are all common to permanent and temporary marriage. For example, section 1062, which mentions that “marriage takes place with an offer and acceptance in words which unequivocally denote the intention of marriage”, is not only meant for permanent marriage. It applies to both kinds of marriage the conditions that the Civil Law lays down concerning the person who concludes the marriage, or the conclusion of the marriage, or the husband and wife, all apply to both kinds of marriage. The Civil Law did not define temporary marriage because there is no need to define it, just as it does not define permanent marriage and considers it too well-known to require a definition. The Civil Law has considered every word that clearly denotes marriage or the taking place of marriage sufficient for the conclusion of marriage, whether it is a permanent or a fixed-term marriage. If, on the other hand, any word conveys a meaning inconsistent with the meaning of marriage, such as remuneration’, ‘gratification’, ‘lease’ and rent’, it is not effective for the proper conclusion of a marriage, either permanent or temporary.

On the strength of what has been written, I pledge my word that if a number of learned judges and those who fully understand the law, who are most numerous in the Ministry of justice, decide that the objection against the Civil Law that has been discussed above is justified, I shall refrain from criticism of any of the articles in *Zan-e ruz*.

## **Fixed-Term marriage and the problem of the harem**

One of the subjects through which occidentals very often attack the Oriental and ridicule him, having made and still making films and writing plays on the topic, is the matter of harems, of which the east has had the misfortune to provide more examples.

The life of some of the caliphs and sultans of the eastern countries is reckoned to be the peak of indulgence in this matter, and the keeping of a harem is presented as the fullest and the most complete manifestation of the sensuality and voluptuousness of the man of the east.

It is said that accepting the permissibility of fixed-term marriage is tantamount to conceding the maintenance of a harem, which is a weakness and a source of shame for the east before the west. It is as good as licensing sensuality, and licentiousness, which can take any form and assume any shape, is against morality, and is the means and cause of downfall and ruin.

Now, in fact, the same thing has been said in respect of polygyny. The permissibility of polygyny is seen as permission to maintain a harem.

We shall discuss the question of polygyny separately. At present, we shall particularly confine ourselves to the question of fixed term marriage.

This problem must be studied and tackled from two points of view. First, to see which factor it was that, from the aspect of its social nature, brought about the formation of harems, and whether the law of fixed-term marriage led to the formation harem in the east.

Second, whether the object of making fixed-term marriage religiously permissible was, in a way, to legalize licentiousness and the keeping of a harem for a certain social class.

### **Social causes for harems:**

Firstly, the creation of harems was due to two factors, operating together.

The first and principle factor that brought about the creation of the harem was the virtue and chastity of woman. That is to say that the condition of morality and the social environment were such that women did not have license to have sexual intimacy with any other man when she already had such relations with a particular man. In these conditions, a wealthy, sensuous and lustful man saw no other antidote than to collect a group of women around him and establish a harem.

Obviously, if moral and social condition had not counted chastity and purity as necessary for women, and if women could have gratuitously and easily given themselves to any man, and every man could have indulged his desires with any woman at any time, if the means of sexual gratification had been available every where, at every time, under every kind of condition, this kind of man would not have given himself the trouble to establish a large harem at great expense.

The other factor was the absence of social justice. When there is altogether no social justice and one person drowns in a sea of riches, while another is stuck in a boat, a boat of poverty, want and misfortune, while a vast number of men are denied the possibility or establishing a family and having a marriage partner, in such social conditions the number of unmarried women exceeds the number of men and this paves the way for the establishment of harems.

If there is social justice and there are means for everybody to establish a family and choose a marriage partner, naturally every woman will be found associated with a particular man and the circumstances favorable to promiscuous and lascivious behavior and the keeping of a harem will not obtain.

Anyway, it is inconceivable that the number of women could be so much in excess that when all men of age are settled in marriage there may even then remain a chance to keep a harem for every man who had the ways and means.

It is the habit of historians to relate the intrigues of the harems and courts of the caliphs and sultans and to narrate with lurid details their luxurious and pleasure-seeking activities, but they remain silent when it comes to referring to the deprivations, and never explain and describe the humiliations, failures and mortifications of those who were buried alive under the walls of the forts of the caliphs and sultans. Social conditions did not allow them to choose someone in marriage, while tens and hundreds of women out of those detained in harems remained deprived of some of their basic instinctive needs and lived as virgins till the ends of their lives.

Certainly, if society were under the rule of an infallibly just and unerringly virtuous ruler, chastity would have been deemed an essential requisite for a woman and sexual satisfaction, would have been impossible except within the frame-work of a marriage (permanent or temporary); economic and social inequality, too, would have been done away with, and for all persons of age the possibility of satisfying the most natural and instinctive human right of having partner would have been attained, and the setting up of harems would have been an impossibility and an absurdity.

Even a merely cursory look at history is enough to show us that in the formation and establishment of harems fixed-term marriage has not been in the least instrumental. Of the Abbasid caliphs or the Ottoman sultans, the most notorious figures of all times, none subscribed to Shi'ism.<sup>5</sup> None of them can be said to have taken advantage of it.

The Shi'ite kings, despite the fact that they could have used it as an excuse, never reached the degree of the 'Abbasid caliphs and Ottoman sultans. This alone, shows that there were other special social problems which were at the root of this matter.

### **Is the provision of fixed-term marriage a license for promiscuity?**

In everything, there is some cause for doubt, but it is beyond all reasonable doubt that revealed religions take a stand against promiscuity and licentiousness. It is for this reason that, for the followers of most religions, the effacing of desires that lead to promiscuity and licentiousness is taken to be the purpose of practicing strict self-discipline.

One of the clear and admitted principles of Islam is to struggle against promiscuity. The noble Qur'an has placed promiscuity on a level with idolatry. In Islam a man who has an inordinate desire for women, that is, a man who aspires to have all sorts of women, to experience them, is declared to be a man cursed and condemned by Allah. When we discuss the subject of divorce, we shall quote the text of the Islamic commandments on this matter.

The distinction of Islamic commandments as compared with the laws of many other religions is that

Islam does not permit asceticism and the mortification of natural and instinctive physical needs, but neither does it allow promiscuity. According to Islam, all instincts, sexual or other, should be satisfied within the limits of necessity and experience. Islam however, never allows a person to raise the heat of his instinctive passions into a state of insatiable thirst. So if anything takes to itself a tinge of promiscuity, cruelty or injustice, it is enough to condemn it as against the spirit of Islam.

It is, however, irrefutable that the motive of the Law-giver was never to make fixed-term marriage source promiscuity, a reason for the establishment of the harem by lascivious persons, and a means of misfortune and homelessness for women and scores of children.

The forceful encouragement and exhortation of the leaders of Islam to fixed-term marriage has a special philosophy which we shall explain shortly.

### **Harems in the present world:**

Now let us see what the world of today has done about the setting up of harems. The world of today has abolished the custom of harems. The world of today considers the maintenance of harems disagreeable and has eliminated the factor which brought them into existence. Now the question is which factor? Is it social inequality that has been eliminated, and as a result all young persons have the chance to marry, and thus the main cause of the existence establishment of harems has been abolished?

No, it has done something else. It has campaigned against the foremost factor, the chastity and virtue of women, and has thus done the greatest service to the male sex. The virtue and chastity of a woman in so far as it enhances her worth and makes her dear and precious, is considered an obstacle for man.

Today's world has done one thing which has relieved the sensuous man of this age from the necessity of maintaining a harem with all the expenses and that involves. For a man of today, through the blessings of western civilization, there is a harem everywhere. A man of today does not consider it necessary to have financial resources like Harun ar-Rashid and Fadl ibn Yahya al-Barmaki, so that he may enjoy any variety of women in all the various ways and styles.

To keep a motor-car and to have an income of two to three thousand tumans is sufficient for a modern man to facilitate his sensual pleasure to an extent that even Harun ar-Rashid did not dream of. Hotels, restaurants and cafeterias are advertised as being equipped already with all facilities in place of a harem for the modern man.

A young man like Adil Kutuwali gives in this century detailed, vivid descriptions, and claims to have kept twenty-two lovers with different characteristics, and of different appearances at one time. What is better than that for a modern man? Modern man, through the blessings of Western civilization, does not miss anything of the harem except its enormous expense, trouble and inconvenience.

If the hero of 'A Thousand and One Nights' were to raise his head from underneath the ground and see

the possibilities of all sorts of amusement and frivolities, and the cheapness of women today, he would never dream of having to establish a harem with all its expenses and disadvantages. He would thank the west for having saved him all the trouble of maintaining a harem. He would forthwith proclaim that polygyny and fixed-term marriage were all hereby annulled, because these laws create responsibilities and liabilities for men as much as they do for women.

In this battle of the sexes, both in the past and in the present, we know which sex is the winner. Unfortunately we must say that the loser, both in the past and in the present, is that trusting and open-hearted creature we call the female.

### **Prohibition by the Caliph of fixed-term marriage:**

Fixed-term marriage is one of the distinctive features of Shi'ite jurisprudence. No other school of Islamic jurisprudence allows it. I never like to enter into the controversies between the Shi'ahs and the Sunnis, so I shall only briefly refer to a part of the history of this problem.

All Muslims unanimously believe, and have consensus of opinion, upon the fact that in the first period of Islam, fixed-term marriage was permissible, and the Holy prophet during one of his journeys, when the Muslims were away from their wives and passing their time in much discomfort, gave them permission for fixed-term marriage. It is like wise agreed amongst the Muslims that the second Caliph, during the period of his caliphate, prohibited fixed-term marriage. The second Caliph, in his well-known and oft-repeated words said, "There were two things that were permissible in the days of the Prophet which I do hereby prohibit today, and I shall punish anyone who practices them: the *mut'ah* of women and *mut'ah* of *hajj*."

A section of Sunni Muslims believe that the Prophet himself, at a later stage of his life, prohibited fixed-term marriage and the Caliph's prohibition was actually the commandment of the prohibition of the Prophet carried out by the Caliph in his stead. But as we know, in fact, the actual words of the Caliph are against this interpretation.

The correct interpretation of it is what the great scholar 'Allamah Kashif al-Ghita'6 took it to mean. He said that the Caliph assumed the authority of annulling *mut'ah* under the impression that the matter of *mut'ah* was also included in the subjects who were within the realm of his authoritative control as the ruler and guardian of the affairs of the Muslims. Every ruler and delegate of power may, under his own authority, and deeming appropriate according to the exigencies of the times and circumstances, make such changes.

In other words the prohibition of the Caliph was a political or an administrative prohibition, and not a religious or a legal prohibition. According to what history tells us, the Caliph made no secret during his reign of his campaign against the companions becoming dispersed and settling in newly conquered parts of the Muslim State and intermixing with communities who were newly converted to Islam. He was



against their scattering beyond Medina as long as he lived. He was of the opinion that they should not enter into blood relationships with the newly converted Muslims before these had a deep Islamic education. He thought untimely intermingling with them would be dangerous for the coming generation. It is evident that it was not more than a temporary reason. The fact that the Muslims accepted this prohibition of the Caliph without a protest also shows that they considered the ordinance of the Caliph to be based upon political and temporal reasons, for, otherwise, it would not be possible for a ruling Caliph to say that the Prophet had prescribed one rule and that he prescribed another rule, and for them to accept it without a murmur.

However, long afterwards, due to certain incidents and circumstances, the *sirah* (way of life) of the previous Caliphs, especial the first two, was accepted as a permanent model programme of life. This fanatical bias was extended to such lengths that it acquired the authority of the original law of Islam. So, the charge against our Sunni brothers is more justified than it is against the Caliph himself. Because the Caliph issued a temporary prohibition ordinance based on political exigencies (as with the prohibition of tobacco within our own times)<sup>7</sup> in respect of fixed term marriage, others should not have assigned to it a permanent character.

Obviously when ‘Allamah Kashif al-Ghita presented the above view, he did not deal with the question as to how far this interference of the Caliph was justified, and also as to whether the law of fixed-term marriage is or is not within the category of such things in which the ruling authority has a right to interfere and proclaim prohibitory orders, however temporarily. He simply traced the historical stages as to how and in what name and in what manner the prohibition began and saw whether it was because of that reason alone that the Muslims as a whole did not react and did not protest against the prohibitory order.

However, the influence and personality of the Caliph, the bias of the people in following his way of life, and his policy of administration, were the cause of relegating this law to the shadows of neglect and oblivion. This *Sunnah* of the Prophet, that is, fixed-term marriage, which is complimentary to permanent marriage and does away with hardships, has been forsaken for ever.

This was the situation when the holy Imams, who are the guardians of the faith, greatly encouraged and persuaded people to remember it so that this Islamic *Sunnah* might not be forgotten and abandoned. Imam Jafar as Sadiq (a.s.) said, “One of the matters about which I shall never keep precautionary silence (*taqiyyah*) is the matter of mu’tah.”

Thus it was that a secondary cause, in addition to the first cause of temporary marriage being permissible, was added. This was an effort to revive the *Sunnah* of the Prophet. In my opinion when the holy Imams forbade already married persons to enter in to a fixed-term marriage, it was on account of the first cause of this law. They wanted to say that the law was not in the interest of people who did not need it. Just as Imam Musa al-Kazim (a.s.) said to ‘Ali ibn Yaqtin, “What have you to do with fixed-term marriage, when Allah has made you able to do without it” and to another person he said, “This thing is permissible for a man whom Allah has not made independent of it, but any person who is already

married can have recourse to it only when he cannot reach his wife”.

Where the holy Imams encouraged and persuaded people generally, it was due to the relative secondary cause; namely so as to revive the *Sunnah* of the Holy Prophet which had been wrongly forsaken. In such it was necessary to make the people as a whole to know and understand the real position of the *shariah*. Encouragement of only those who were actually in need of it was not sufficient. This can be clearly deduced from the Shi'ite traditions and narrative sources.

It is, anyhow, clear that the intent and purpose of the first law-giver, in the explanation and commentary of this law, and the purpose and aim of the holy Imams in encouraging and persuading people to act according to it, was never meant to make it a source of promiscuity and licentiousness and a reason for keeping a harem by cruel persons, or a source of helplessness for a number of forsaken women and of creating children without guardians.

### **A tradition from 'Ali ibn Abi Talib:**

Mr. Mahdavi, the writer of the forty proposals, writes in issue No.87 of *Zan-e ruz*:

“In the book *al-Ahwal ash-shakhsiyyah* (Personal statutes) compiled by Shaykh Muhammad Abu Zahrah<sup>8</sup> it is quoted from Amir al-muminin that:

لا أعلم أحداً تَمَتَّعَ وَهُوَ مُحْصِنٌ إِلَّا رَجَمْتَهُ بِالْحِجَارَةِ

“(Mr. Mahdavi has translated it thus): ‘whenever I come to know that a person ‘not worthy of it’ has concluded a *mut’ah* marriage, I shall penalize him for adultery, and sentence him to be put to death by stoning.”

“Firstly, if we seriously intend to follow the sayings of Amir al-muminin faithfully, why should we avoid all those, narrations which are recorded in Shi’ite and non-shi’ite sources in respect of *mut’ah*, and cling to this one narrative quoted by a Sunni writer who did not even mention his source?

One of the valuable sayings of Ali (a.s.) is the following: “If ‘Umar (ibn al-Khattab) had not proceeded in taking such an initiative, and had not prohibited *mu’tah*, no-one, excepting those who were of a perverted nature, would have committed adultery.’

In other words, if the temporary marriages had not been prohibited, nobody would have been compelled to commit adultery for the satisfaction of his instinctual drives. Only those who always relish and prefer an unlawful act to a lawful one would have committed such an act.

Secondly, the meaning of the above expression is “whenever I come to know that a man who is *permanently married* has concluded a *mut’ah* marriage I shall sentence him to be death.”

I do not know why Mr. Mahdavi has translated the word *muhsin* which, means a permanently married man as “not worthy of it”.

Moreover, the purport of the narration is that permanently married men have no right to marry temporarily. If the intention had been that nobody had the right, the condition “who is permanently married” would have been redundant. So, this narration, if at all reliable, supports the view which can be expressed thus:

“Legal permission for mut’ah has been provided by the shari’ah for those who are in need of a wife, that is, bachelors or those whose wives are not with them.”

So, the narration supports its being permissible, and not its prohibition.

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1. Zan-e-ruz, no. 86, p. 72.

2. Within the Islamic family, those who are not permitted to marry because of consanguinity, or, as in this case, proximity of relationship are termed mahram to each other (Ed.)

3. i.e., polygyny. See Part 9 – (Ed.)

4. The practice of having a state-run brothel was an early twentieth century Western import into Iran. Suck establishments were actively encouraged during the reign of the Pehlavis, and could be found in most large towns in Iran. (Ed.)

5. See the heading “Prohibition by the Caliph of fixed-term marriage.”

6. Shaykh Muhammad Husayn ibn Shaykh ‘Ali al-Kashif al-Ghita’, (1294/1877 – 1373/ 1954), one of the most renowned scholars of the religious scholars of an-Najaf al-Ashraf (Iraq).

7. The granting of an exclusive tobacco monopoly to a private British company by Nasiru’d -Din Shah in 1890 in exchange for handsome bribes but no payment resulted in a successful protest movement (1891 – 1892). Instrumental in this was the fatwa issued by the then, leading Shi’ite mujtahid Mirza Muhammad Hasan Shirazi prohibiting the smoking of tobacco. This protest movement was a fore- runner of the later Iranian Constitutional Revolution (1905–1911).

8. A contemporary Egyptian religious scholar.

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