

Temporary Marriage in Islam Part 3: Evidences From the Sunni History–Fiqh–Miscellanea Books

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

After an overview of the commentaries of Qur'an and the authentic collections of Traditions, let us, now, look at some other types of Sunni references in with regard to Mut'a.

The previously–mentioned tradition of 'Ali Ibn Abi Talib (as) given in Sunni commentary books of Qur'an (please see Part I), has also been reported in many other Sunni books with a simple variation in some, that is, using the word "Shafa" meaning "a few" instead of "Shaqi" meaning a playboy:

"Ali (ra) said: The Mut'a is a mercy from Allah to his servants. If it were not for Umar forbidding it, no one would commit (the sin of) fornication except a (Shaqi/Shafa)."

Sunni references:

- Bidayat al–Mujtahid, by Ibn Rushd, v2, p58
- al–Nihaya, by Ibn al–Athir, v2, p249
- al–Faiq, by al–Zamakhshari, v1, p331
- Lisan Al–Arab, Ibn Mandhoor, v19, p166
- Taj al–Aroos, v10, p200
- Fat'h al–Bari, v9, p141
- Kanz al–Ummal, by al–Muttaqi al–Hindi, v8, p293

- Al-Iqd Al-Fareed, v2, p139

- Umadat al-Qari, by al-'Ayni, v8, p310, (reports Mut'a was Halaal at the time of the Prophet Abu Bakr some of the Umar's period.)

Also al-Hafidh Jalaluddin al-Suyuti said about Umar:

"He (Umar) is the first who made Mut'a forbidden (Haraam)."

Sunni reference: Tarikh al-Khulafaa, by al-Hafidh Jalaluddin al-Suyuti, p136

Also al-Qastalani wrote:

The phrase "But a man said with his opinion what he wished"(as was mentioned in the authentic Sunni books such as Sahih al-Bukhari), is Umar Ibn al-Khattab and not Uthman, because he was the **first** to forbid Mut'a. So the one came after him (i.e., Uthman) was only following him in that action."

Sunni reference: al-Irshad, by al-Qastalani, v4, p169

As we mentioned, Ibn Abbas supported Mut'a even after the battle of Camel (which happened when Imam 'Ali became the head of Islamic states), and years after he lost his eyes. Let me give you one interesting tradition reported by Ibn Abi al-Hadid. The brief version of this tradition was mentioned in Sahih Muslim (which was presented in Part II), but here there are more details including the events related to the war between Aisha and Imam 'Ali (as). Ibn Abbas (ra) was known for his smart answers in the debates. Here is the tradition:

Ibn Zubair gave a speech over the pulpit in Mecca when Ibn Abbas was sitting under the pulpit beside other people. Then Ibn Zubair said:

"Among these people is a man whom Allah has made his heart blind as He did with his eyes (referring to Ibn Abbas who was blind at the time); and he thinks that Mut'a of woman is permitted by Allah and his Messenger; and he issues religious verdicts for every single issues; and he has stolen the treasury of Basra yesterday and caused financial problems for the people of that city, and how can I blame him when he fought the mother of believers (Aisha) and the companions of the Messenger of Allah and those who protected him."Hearing that, Ibn Abbas said to Sa'd Ibn Khuthaimah to take him in front of Ibn Zubair since Ibn Abbas was blind. After he faced Ibn Zubair, Ibn Abbas said:

"O' Ibn Zubair! As for blindness, verily Allah said in Qur'an that:

***'For indeed it is not the eyes that grow blind, but it is the hearts, which are within the bosoms, that grow blind.'* (Qur'an 22:46)**

And as for my religious verdicts, there are reasons behind them that neither you nor your companions comprehend them. And as for the treasury, it was the money which was collected and we gave every

liable person his just share. As for Mut'a, you better ask your mother Asma'! (note: Ibn Zubair was born of Mut'a marriage between Zubair and the daughter of Abu Bakr, Asma'). And as for our fighting the mother of believers, her title is referring to us, not you and your father (i.e., 'believers' is referring to us).

Your father (Zubair) and your uncle (Talha) destroyed the protection that Allah provided for her, and used her for Fitna by fighting beside her while keeping their own wives at their homes; and they were not fair to Allah and His Messenger by exposing the wife of the Prophet and protecting their own wives; and as our fight against you (in the battle of Camel), we came forward to you, and if we were infidels (Kuffar) then you have become infidels by running away from us (after being defeated in the battle field), and if we were believers then you have become infidels by fighting against us. And if a woman was not among you, I wouldn't leave any bone among your people unless I would have broken."

When Ibn Zubair came back to her mother and ask her about Mut'a, she replied: "Did I not warn you from facing Ibn Abbas and facing Bani Hashim (The clan of the Prophet(S)), because they have answer for everything. O my son! Avoid this blind man for neither human nor unseen creatures (Jinn) can corner him."

Sunni reference: Sharh Ibn Abi al-Hadid, v4, pp 489-490

Also, in this connection, al-Raghib al-Isbahani reported:

Ibn Zubair denounced Ibn Abbas for his opinion on Mut'a. Thus Ibn Abbas told him: "Go and ask your mother what she did with your father." When Ibn Zubair asked her, she said: "By God, I did not conceive you except through Mut'a."

Sunni reference: al-Muhadhiraat, by al-Raghib al-Isbahani, v2, p96

It is also reported that:

Yahya Ibn Aktham asked a Shaikh from Basra: "Why do you permit Mut'a?" He answered: "Due to Umar Ibn al-Khattab". Yahya asked: "How is that? Umar was the most sever one against it?" He answered: "Yes, it is an authentic narration that Umar ascended the pulpit and said: 'Allah and His Prophet permitted you two Mut'a, but I forbid you on both and will punish those who commit it', so we accepted the witness of Umar (that Allah and His Prophet permitted it) but we did not accept his prohibition."

Sunni reference: al-Muhadhiraat, by al-Raghib al-Isbahani, v2, p94

Malik Ibn Anas and al-Shafi'i (two of the four Sunni Imams) as well as many Sunni traditionist reported the following with authentic chain of narrators:

Urwah Ibn Zubair narrated that Khulah Bint Hakim came to Umar Ibn al-Khattab and said: Rabi'ah Ibn Umayyah practiced Mut'a with a woman and the woman has become pregnant from him. Umar became angry and said: "About this Mut'a, **had I done (the ban) sooner than this, I would have stoned him.**"

Sunni references:

- al-Muwatta', by Malik Ibn Anas, on the topic of Mut'a, v2, p30
- Kitab al-Am, by al-Shafi'i, v7, p219
- Sunan al-Kubra, by al-Bayhaqi, v7, p206

Moreover, it is reported that:

Umm Abdillah, the daughter of Abu Khuthaimah said that a single (unmarried) man from Syria came to her and said: "I am under emotional pressure for remaining unmarried, thus find for me a woman so as to contract temporary marriage with her." Therefore She found a woman for him and he made Mut'a contract with her having some witnesses. He remained with her till the marriage was over. When Umar found out what happened, he called him and said: "Why did you do that?" The man replied: "We did it at the time of the Prophet and he did not forbid us till Allah took his soul, then we did it at the time of Abu Bakr and he did not forbid us till Allah took his soul too, and then we did it during your rule and you have not forbid us before." Umar replied: "By whom my sole is in His hand! Had I forbidden it sooner, I would have stoned you so that you could understand the difference between marriage and fornication."

Sunni reference: Kanz al-Ummal, by al-Muttaqi al-Hindi, v8, p294, via al-Tabari

How can Umar prohibit something which the messenger of Allah did not? How can he threaten to stone an unmarried man who did Mut'a, while the punishment of an unmarried man is not stoning? Even the four Sunni schools do not subscribe to such idea. They consider the punishment of a person who does Mut'a to be "Ta'zeer" which is even much less than the punishment of an unmarried person who commit fornication!

What I am trying to say is that there are numerous documented traditions as well as Sunni historical records which assert that Umar was the one who forbade Mut'a, and if he did that it means that the Prophet (S) really didn't; otherwise, Umar would not have had to! This is contrary to the various sporadic reports that claim otherwise, to a different point in time. These contradicting reports will be discussed in Part IV.

Now the question is: What is the "measure" for us? Which opinion and channel of transmission of Sunnah should we trust? As we know, there have been many other instances where the companions did not agree with one interpretation of Qur'an and Sunnah, and the Sunnah of the Prophet has reached us through these very same companions. In this case, (as well as other issues) we have chosen to follow 'Ali (as) who was admittedly the most knowledgeable among the companions. There is nothing intrinsically wrong with this choice, just as others have chosen to follow other parties. The fact is that one can not follow ALL the companions when they disagreed in such issues.

A Sunni brother claimed that the majority of the Companions held the view that after the completion of

the Islamic legislation, temporary marriage was made Haraam.

The above assertion is not true however. The fact is that No companion ever mentioned it Haraam until after the rule of Umar. It was then, that some started saying that it is made Haraam.

Even if we suppose that the majority of companions said something, this does not oblige us to follow them. What we are supposed to follow are the words of Allah in Qur'an and the Sunna of the Prophet (S). The Shi'a scholars also agree on the validity of Ijmaa' (consensus), not as a source of religion, but rather as a fact. Ijmaa' means what is unanimously held by ALL Muslims. This fact is taken from the Sunna and is due to the tradition of the Prophet (S) where he said:

"My community shall not unite on something wrong."

This proves the fact that even if most of Muslims go wrong in some issues there should exist one or some individuals who do not join them in that regard as they might have evidence at hand from Qur'an and Sunna regarding those issues.

It is clear that Ijmaa' does not give any weight to the majority. In fact, it gives more weight to the minority because even if one scholar disagrees, the Ijmaa' (consensus) is broken!

There is no Ijma' in the subject of Mut'a. Most of the companions and their disciples did not agree with its prohibition by Umar. But only some of them dared to raise their voice.

There is no Ijma' in this issue among the Sunni scholars either. I have mentioned the name of some the Sunni scholars in the previous parts who believed Mut'a is permitted. Moreover Shi'a scholars are another reason for breaking this Ijma'.

Ibn Hazm (d. 456) who is one of the Sunni scholars, in his book "Muhalla" gave the name of some of the companions and their disciples who believed that Mut'a is Halaal. In the 9th section of the chapter of Marriage in his book "Muhalla", Ibn Hazm gives a detailed account of Mut'a and its regulations. Among the numerous companions and their disciples who believed in practicing Mut'a after the demise of the Prophet are:

Imam 'Ali (as), Abu Dharr, Jabir Ibn Abdillah, Abdullah Ibn Abbas, Abdullah Ibn Masud, Zubair Ibn al-Awwam, Imran Ibn Husayn, Abdullah Ibn Umar, Ubay Ibn Ka'ab, Abu Sa'id al-Khudri, Salamah Ibn Umayyah, Awka' Ibn Abdillah, Salamah Ibn al-Awka', Khalid Ibn Muhajir, 'Amr Ibn Huraith, Rabi'a Ibn Umayya, Suhair, Sa'id Ibn Jubair Tawoos, Qotadah, Mujahid, Ataa al-Madani al-Suddy, and Imam al-Hasan (as), ...

Many of their narrations in this regard has been recorded in many Sunni references such as the first volume of Musnad Ahmad Ibn Hanbal.

To give a better picture of the opposition of the companions, let us look at the History of al-Tabari

(English version) which reports that the companions were unhappy about four things out of the innovations made by Umar. One of those who dared to talk to Umar about these issues was Imran Ibn Sawadah. The report indicates that even Umar was unhappy about what he did and surprisingly confessed that temporary marriage is permitted (Halaal)!!! Here is the report:

Imran Ibn Sawadah reported:

I went to Umar's house and told him that I want to give him some advice. His reply was, "The person giving good advice is welcomed anytime." I said, "Your community finds fault with you on four accounts." Umar put the top of his whip in his beard and the lower part on his thigh. Then he said, "Tell me more." I continued, "It has been mentioned that you declared the lesser pilgrimage forbidden during the months of pilgrimage..." He answered, "It is permitted. (But the reason that I forbade it was that) if they were to perform the lesser pilgrimage during the months of the pilgrimage, they would regard it as being a lieu of the full pilgrimage, and (Mecca) would be celebrated by no one, although it is part of God's greatness. You are right."

I continued, "It is also said that you have forbidden temporary marriage, although it was a license given by God. We enjoy a temporary marriage for a handful (of dates), and we can separate after three nights." He replied, "The Messenger of God permitted it at the time of necessity. Then people regained their life of comfort. I do not know any Muslim who has practiced this or gone back to it (after I forbade). Now, anyone who wishes to, can marry for a handful (of dates) and separate after three nights. You are right." I continued, "You emancipate a slave girl if she gives birth, without her master's (consenting to) the emancipation... (and the fourth complain is) There have been some complaints of your raising your voice against your subjects and your addressing them harshly."...

Sunni reference: History of al-Tabari, English version, v14, pp 139-140

I was really astonished when I read the above passage. Umar is saying that people can engage in Temporary Marriage again!!! Interesting to see that the one who was talking to Umar, says that you forbade it but we still enjoy this type of marriage! He uses the word "enjoy" and not "enjoyed" meaning that what is important to us is Allah's command and not Umar's, and thus we still do it. He also mentioned that Temporary Marriage is licensed by Allah and people are unhappy about this innovation of Umar.

It is interesting to note that Umar never attributed the prohibition of Mut'a to the Prophet (S). They were others who did that after his death, mainly to justify what Umar did which was also being enforced in the reign of Uthman. We gave two different traditions in Part I where Umar clearly mentioned that: "Mut'a WAS permitted at the time of the Prophet and I prohibit it!" If it was really the Prophet who canceled Mut'a, Umar would have said: The two Mut'a were Halaal and then became Haraam at the time of the Prophet, and I am informing you about the second law set by the Prophet which canceled the first.

Moreover, Sunnis believe that Mut'a of al-Hajj is permitted, and Umar made a mistake in his judgment in

prohibiting it. Then the question is that: why do the Sunnis differentiate between the two Mut'a while both were prohibited by Umar according to the above tradition and the traditions of Sahih al-Bukhari and Sahih Muslim? When Sunnis agree that Umar made a mistake in forbidding the Mut'a of al-Hajj, then isn't it probable that he also made the very same mistake for the Mut'a of women?

I only would like you to observe that the Shi'a follow the Imams of Ahlul-Bayt (as), the pure descendants of the Prophet (S), and if the Prophet (S) had said something to that effect (i.e., prohibition of Mut'a), then his Ahlul-Bayt would not have hidden it from their followers. This gives more credence and leads one to believe that Umar did forbid it and not the Prophet, and Umar did it as an act of "Ijtihad", on his own!!

In the next part, Insha Allah, we will analyze the few Sunni reports which allege that the temporary marriage was forbidden by the Prophet (S).

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