

Debate on the Legitimacy of Mut'a

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

The following piece is adopted from the book "Temporary Marriage in Islamic Law," by Abul Qasim Gourji, and is presented with some modifications.

Introduction

The word Mut'a was more commonly used than other terms for temporary marriage both during the lifetime of the Prophet and afterwards. Both its proponents and opponents preferred this word and its derivatives. In books on jurisprudence the terms Mut'a, al-Nikah al-Munqati' (discontinued marriage), and al-Nikah al-Muwaqqat (temporary marriage), Istimta' (having pleasure), and the related word of tamattu' (pleasure) are all employed.

The scholars both Sunni and Shi'a, agree that Mut'a was permitted at the beginning of Islam. However, they disagree as to the reasons it was permitted.

The Shi'a View

In the chapter titled "Women", after listing those women to whom marriage is forbidden, the Qur'an states as follows:

"Lawful for you is what is beyond all that, that you may seek, using your wealth, in wedlock and not in license. So those of them whom you enjoy, give them their appointed wages; it is no fault in you in mutually agreeing after fulfillment (of the wage). God is All-Knowing, All-Wise"(4:24).

All Shi'a scholars and many Sunni scholars hold that this verse – especially the words: "Such woman as you enjoy (Istamta'tum)" – refers to the permissibility of Mut'a. The Shi'a present several arguments to prove this point. (See Sharh al-Lum'a, v5, p248–253; Jawahir, v5, p163).

This verse was revealed towards the beginning of the Prophet's stay in Medina. By the revelation of this verse, the temporary marriage became a legal custom in Medina and was looked upon as one kind of marriage and was referred to by the term *Istimta'a*, the same word employed in the Qur'anic verse – even though the literal meaning of the word is "to seek benefit" or "to take enjoyment".

Hence the meaning of the Qur'anic verse must be understood in terms of the conventional usage of the time, for as is well-known in the science of Qur'anic commentary and Islamic jurisprudence, the Qur'an follows the conventional usage of the people in all edicts and legal prescriptions. If someone wants to understand a word in the Qur'an in other than the conventional meaning of the time, he must supply a strong reason for doing so.

Moreover if one looks up the traditions of the chapter of temporary marriage in the authentic Sunni collections such as *Sahih al-Bukhari* and *Sahih Muslim*, one can see that the messenger of Allah and his companions exactly used the word *Istimta'a* when referring to this contract, which is exactly the same word as what Qur'an employed.

The context of the verse also indicates that it is referring to the temporary marriage. In the previous verse, i.e. 4:23, the Qur'an enumerates the women who are forbidden to men. These are divided into seven kinds stemming from blood relationship and seven more stemming from other causes:

"Forbidden to you are your mothers and daughters..."

The next verse adds a fifteenth category of women forbidden to men: "And married women, save what your right hands own." It continues with the words quoted above: "Lawful for you is what is beyond all that." In other words, any woman not belonging to one of the fifteen categories is permitted, whether by marriage or ownership.

Next the verse states: "that you may seek, using your wealth, in wedlock and not in license." Grammatically, this clause is in apposition to "what is beyond all that." It explains the legitimate mode of seeking sexual relationships with women, whether as the result of marriage or the purchase of slaves.

The next part of this same verse states as follows: "So those of them whom you enjoy, give them their appointed wages." The word "so" (*fa*) shows that this part of the verse is either part of the previous subject matter, or an example of it; in other words, its relation to the previous section is either that of the part which is completing the whole, or the particular example to the universal principle.

And since the previous section deals with the different kinds of legitimate sexual relationships, either by marriage or the purchase of slaves, we can conclude that this section of the verse is the exposition of a further kind of marriage, not mentioned previously; a kind which also requires that the man pay the wages of his wife.

Many sayings have been related from the Companions of the Prophet and those who followed them (al-

Tabi'een) confirming the Shi'a view that verse 24 of this chapter concerns Mut'a. Several of the companions, including Ibn-Abbas, one of the highly respected companions of the Prophet, Ibn Masud, one of the first to accept Islam, and Ubayy Ibn Ka'ab, one of the scribes of the revelation, and many others used to read the verse with three more words resulting in the sentence of the form: "So those of them whom you enjoy to an appointed time (Ila Ajal Musamma)." This clearly indicates that the verse refers to Mut'a.

In Majma' al-Bayan, Abu 'Ali al-Fadl Ibn al-Hasan al-Tabarsi (d. 548/1153), one of the Shi'a commentator of the Qur'an summarizes the Shi'a arguments:

the word 'enjoy' in this verse refers to the marriage of Mut'a, i.e., a marriage for a specified dower and a determined time period. This opinion has been related from Ibn Abbas and many of the 'followers' of the Companions such as Isma'il Ibn Abdurrahman al-Suddy (d. 127/744-45) and Sa'id Ibn Jubair al-Asadi (95/713-14).

In fact, this clearly must be the case, for although the words Istimta'a and Mut'a have the literal meaning of 'enjoyment', in Shari'ah (divine law) they refer to the contract of temporary marriage, especially when they are followed by the word 'women'. Hence the meaning of the verse is: 'Whenever you draw up a contract of Mut'a with a woman, you must pay her wages.'

Reference: Majma' al-Bayan, by Abu 'Ali al-Tabarsi, v3, p32

The Sunni View

As was indicated above, the Sunnis agree that at the beginning of Islam Mut'a was permitted. For example, Fakhr al-Din al-Razi (d. 606/1209), the famous Sunni theologian, writes in his Commentary on the Qur'an that Mut'a was at first permitted. The Prophet made a lesser pilgrimage (Umrah) to Mecca, and the women of Mecca made themselves up especially for the occasion. Some of the Companions complained about the long separation from their wives, and the Prophet replied: "Then go and enjoy (Istamta'a) these women." (Tafsir al-Kabir, by Fakhr al-Razi, v3, p286)

Those Sunnis who hold that the Qur'anic verse mentioned above (4:23) does indeed refer to the permissibility of Mut'a also maintain that the verse was subsequently abrogated (Naskh) by other Qur'anic verses. They offer three arguments to prove their point: other Qur'anic verses, the sermon of Umar banning Mut'a, and the Hadith transmitted by some Companions. The Shi'a, in turn, reject each of the arguments:

Debate On The Qur'anic Verse Of Mut'a

Some Sunnis argue that sexual intercourse is forbidden except with one's wife or a slave by reason of the verse:

"Prosperous are the believers ... who guard their private parts save from their wives and what their right hands own."(Qur'an 23: 14).

According to the Prophet's wife Aisha and others: 'Mut'a is forbidden and abrogated in the Qur'an where God says: "who guard their private parts..."

(al-Jami' li Ahkam al-Qur'an, by al-Qurtubi, v5, p130).

The Sunni argument continues by pointing out that without question a woman enjoyed through Mut'a is not a slave. Nor is she a wife, for several reasons: if she were a wife, she and her husband would inherit from each other, since God says:

"And for you a half of what your wives leave..."(Qur'an 4: 12).

But everyone agrees that Mut'a does not involve inheritance. If she were a wife, the child would belong to the husband, since according to the Prophet: "The child belongs to the bed." But again this is not the case. And finally, if she were a wife, it would be necessary for her to maintain the waiting period, since this is commanded by God (2:234); but this also is not the case.

We have already seen that some of these arguments, taken from Fakhr al-Razi's Commentary, do not in fact apply to Mut'a as the Shi'a understand it. It is the Ijma' of the Shi'a scholars that the child born of Mut'a belongs to the husband and that the woman is obliged to observe the waiting period after the expiration date of the marriage. However, it will be useful to see how the Shi'a answer each of the above Sunni claims:

As for the 'abrogation' of the verse concerning Mut'a, historical considerations show that this can not be the case. The verse mentioned as abrogating Mut'a was revealed in Mecca before the migration, while the verse establishing Mut'a was revealed after the Prophet had emigrated to Medina. But a verse which abrogates another verse must have been revealed after it, not before it.

It is also well-known that the Prophet allowed the companions to practice Mut'a in Medina, and if Mut'a had already been illegalized in Mecca (before Hijra) by Qur'an, then the Prophet would not have allowed his companions to practice it after the migration. (Tafsir al-Mizan, by al-Tabatabai, v3, p132).

As for the Sunni claim that a wife by Mut'a is not a legitimate wife because she does not fulfill the religious requirements for being a 'wife', this also is false. In the question of inheritance, the Qur'anic verse is a general one, and there is no reason to suppose that it may not have certain exceptions. In fact, the specific requirements of Mut'a as established by the Hadith literature show that Mut'a is an exception. Nor is it the only exception, since a non-Muslim cannot inherit from a Muslim, nor can a murderer inherit from his victim.

Also if a man is sick and marries a woman, but dies due to that sickness before consummating the marriage, the woman will not inherit from his husband. Thus being husband and wife (even in the

permanent marriage) does not always necessitate the inheritance. Qur'an usually provides the general rules and he was the Messenger of Allah who clarified the exceptions as well as the conditions for applying the rule.

In short, inheritance pertains to permanent marriage, but even in permanent marriage it has certain exceptions, so that the verse establishing it cannot be interpreted as nullifying the validity of Mut'a. Also inheritance is possible in the temporary marriage as long as it is made condition at the time of contract. (See *Asl al-Shi'a wa Usuliha*, by Kashif al-Ghita', p116; *al-Bayan Fi Tafsir al-Qur'an*, by al-Khoei, p219)

In the question of the child, there is no reason to claim that it is illegitimate. In Mut'a the "bed" is legitimate, so is the offspring. (*Sharh al-Lum'a*, v5, p277)

The Imam Ja'far was asked: "If the wife becomes pregnant as a result of Mut'a, to whom does the child belong?" He replied: "To the father," i.e., the child is legitimate. (*Wasa'il al-Shi'a*, v14, p488)

In a similar manner numerous traditions exist to prove that a wife by Mut'a must observe the waiting period of two months. Some of such traditions are even documented in the Sunni sources. For example Fakhr al-Razi himself quotes a relevant saying from Ibn Abbas that:

Ibn Abbas was asked: "Is Mut'a fornication or marriage?" He answered: 'Neither the one nor the other.' The questioner then asked: "Well then, what is it?" Ibn Abbas replied: "It is Mut'a', just as God has said." The questioner continued: "Is there a waiting period in Mut'a?" He replied: "Yes, a menstrual period." He was also asked: "Do the husband and wife inherit from each other?" He answered: "No."

Reference: *Tafsir al-Kabir*, by Fakhr al-Razi, v3, p286

Certain Sunnis also argue that Mut'a cannot be considered a legitimate form of sexual union because it excludes such things as inheritance, divorce, sworn allegation, forswearing, and Bihar. Since these necessary concomitants of marriage do not apply to Mut'a, it cannot be considered marriage, so the woman cannot be considered a legitimate wife.

If she is neither a wife nor property, sexual intercourse with her is illegitimate: "Prosperous are the believers, who... guard their private parts, save from their wives and what their right hands own. . . ; but whosoever seeks after more than that, those are the transgressors" (23: 1-7). Hence, people who engage in Mut'a transgress God's law.

A typical Shi'a answer to this argument runs as follows: First, the Qur'anic verse is a general statement, and there is no reason why its specific applications may not be clarified by other verses and the traditions. Second, it is not true that the above things are concomitants of marriage: there is no inheritance in the case of a non-Muslim wife, a murderer, or a slave-girl.

A legitimate sexual relationship may be dissolved without divorce in the case of a wife who is the subject

of a sworn allegation, a spouse who leaves Islam, or a slave-girl who is sold. Sworn allegation, forswearing, and Bihar are all concomitants of permanent marriage, not of legitimate sexual relationships in general (i.e., they do not apply to sexual relationships with a slave).

Even if we suppose that these things do in fact pertain to legitimate sexual relationships, then it will be necessary to specify that there are certain exceptions. This is the only way we will be able to combine the Qur'anic verses and the traditions which show that these pertain to legitimate sexual relationships with those traditions which demonstrate that they do not pertain to Mut'a. (Jawahir, v5, p163).

Debate Over The Sermon Of Umar

In a famous sermon the second caliph Umar banned Mut'a with the following words: "Two Mut'a were practiced during the time of the Prophet: Mut'a of women and Mut'a of Hajj, but I forbid both of them and will punish anyone who practices either."

References:

- Tafsir al-Kabir, by Fakhr al-Razi, v3, commentary of verse 4:24
- Musnad Ahmad Ibn Hanbal, v1, p52

Al-Razi summarizes the Sunni interpretation of Umar's words by saying that they were pronounced in a gathering of Companions and no one protested. Therefore, the situation must have been as follows: either

1. everyone knew that Mut'a was forbidden, so they remained silent; or
2. they all knew that it was permitted, yet they remained silent out of negligence and in order to placate Umar; or
3. they did not know whether it was forbidden or permitted, so they remained silent since the matter had just then been clarified for them, so they had no reason to protest.

Reference: al-Tafsir al-Kabir, by Fakhr al-Razi, v3, p287

Al-Razi continues by saying that the first possibility is what he is trying to prove. If we maintain the second possibility, then we must call Umar and the companions who were with him unbelievers. For they knew that the Qur'an and the Prophet had permitted Mut'a, yet Umar went ahead and banned it without the Qur'anic verse permitting it having been abrogated. This is unbelief (Kufr); and those who knew Umar was wrong without protesting shared in his unbelief. But such a supposition requires that we call Islam a religion of unbelief, which is absurd.

The third possibility that Umar's listeners had not known whether Mut'a was permitted or forbidden is

also absurd. For, if we suppose that Mut'a was permitted, then people would need to have knowledge of that fact in their everyday lives, just as they need to have knowledge about the permissibility of marriage. So the legal situation of Mut'a must have been known, just as everyone knew about marriage.

Al-Razi concludes that as soon as we see that the second and third possibilities are in absurd, then we know for certain that the companions remained silent only because they all knew that Mut'a had already been abrogated.

The Shi'a answer Fakhr al-Razi's arguments as follows: Umar's sermon demonstrates that during the lifetime of the Prophet Mut'a was permitted. The reason Umar attributed the banning to himself is that he wanted to show that he was expressing his own view. If the Prophet himself had prohibited Mut'a, or if its permissibility pertained only to a specific period in time, then Umar would have attributed its prohibition to the Prophet, not to himself. (Majma' al-Bayan, v3, p32).

Another saying concerning Mut'a is also attributed to Umar: "God permitted for His Prophet what He willed, and the Qur'an has been revealed in its entirety. So complete the Hajj and the Umrah as God has commanded you. But avoid marrying these women, and do not bring before me any man who has married a woman for a specified period, or I will stone him."(Sahih Muslim, Arabic version, 1980 Edition Pub. in Saudi Arabia, v2, p885, Tradition #145. For English version see: v2, chapter 442, Tradition #2801)

As for the fact that no one protested against Umar's pronouncement cannot be considered proof that the Prophet himself had forbidden Mut'a. For Umar threatened the people with stoning, and considering his fabled severity and harsh temper, no one would have dared to speak against him

. If 'Ali had been able to protest against Umar, he would not have remained silent. But because of the circumstances he had no choice but to have patience and to bide his time. The case of Mut'a is similar. For it was 'Ali himself who said: "If Umar had not prohibited Mut'a, no one would commit fornication except the wretched!"(Sunni commentaries of Qur'an by Tabari, Tha'labi, Qurtubi, Fakhr al-Razi, Suyuti, Ibn Hayyan, Nishaboori, and Jassas. As for Shi'a, see al-Mut'a, by al-Dizfuli, pp 68-69).

The Shi'a scholars also point out that without question stoning as a punishment for having performed Mut'a could not be permissible, even if we were to accept that Mut'a is forbidden. For stoning can only be a punishment when a married man has committed fornication with a woman. Hence Umar had no right for laying down this edict. (Jawahir, v5 p161, al-Bayan, p229).

Fakhr al-Razi answers this line of reasoning by saying that perhaps Umar only mentioned stoning to intimidate his listeners and make them think more seriously about the consequences of temporary marriage. (al-Tafsir al-Kabir, by Fakhr al-Razi, v3, p287).

Concerning Umar's two sayings banning Mut'a, the Shi'a argue as follows: If his prohibition was based on "independent judgment"(Ijtihad), then it is baseless, since all scholars agree that independent

judgment can never gain or contradict the saying of the Qur'an or the traditions. (Sharh al-Lum'a, v5, p182-183; Jawahir, v5, p161; al-Bayan, p229).

As for the Qur'anic basis of Mut'a, we have already seen that as far as the Shi'a and certain individual Sunnis are concerned, the Qur'an permits it in the chapter of Women. As for its basis in the prophetic Hadith, many traditions have been related in the standard Sunni collections which proves the permissibility of Mut'a of women at the time of the Prophet.

Concerning Umar's "independent judgment", one of the contemporary Shi'a scholars argues as follows: Umar may have made his judgment completely on his own initiative and in direct contradiction to the words of the Prophet; or he may have based his judgment on a prohibition issued by the Prophet himself. If the first case is true, then Umar's judgment is groundless, as noted above. And the second case cannot be true, since a number of the companions have given witness to the fact that Mut'a was permitted during the lifetime of the Prophet and up until the time of his demise. (al-Bayan, p229).

In general the Shi'a argue that if Umar's prohibition had been based upon the words of the Prophet, then other Companions would have known about it. How is it possible for the Prophet to have forbidden Mut'a, yet, during the rest of his life, the period of Abu Bakr's caliphate and the beginning of Umar's caliphate, for prohibition to have remained unknown to everyone but Umar? Moreover, if his prohibition were based upon the words of the Prophet, why did he not attribute it to the Prophet instead of to himself?

Fakhr al-Razi answers that it might be that beside Umar, some other Companions had heard the prohibition from the Prophet, but they forgot it later. But when Umar mentioned the prohibition in a large gathering, everyone knew he was speaking the truth, so they remained silent.

The Shi'a reply to the argument of Fakhr al-Razi as follows: It is impossible to imagine that all of the Companions other than Umar had forgotten that Mut'a had been forbidden, considering its everyday importance. People need legitimate sexual relationships almost as much as they need food and water. They could not have forgotten when they continued practicing Mut'a after the demise of the Prophet till the time of Umar's rule.

The Shi'a authors also point out that Umar banned the two kinds of Mut'a together, whereas everyone, Sunnis and Shi'a agree that the Mut'a of al-Hajj is permissible. Hence the Mut'a pertaining to women should also be permissible. (Majma' al-Bayan, v3, p33).

Debate On The Controversial Reports

In the Sunni sources few traditions have been attributed the Prophet showing that he banned Mut'a during his lifetime. In most of the Sunni "sound" collections (Sihah), it is related from 'Ali that he said: "Verily the Prophet of God banned the Mut'a of temporary marriage and the eating of the meat of

domesticated asses on the day of Khaibar."

Ibn Sabra relates from his father the following: I came upon the Prophet of God who was leaning against the Ka'ba. He said: "O People! I commanded you to seek enjoyment (Istimta'a) from these women, but now God has forbidden that to you until the Day of Resurrection. So if you have a temporary wife, let her go her way; and do not take back anything of what you have given her."

Another Hadith is related from Salama Ibn al-Akwa'. Through his father he reported that the Prophet of God permitted Mut'a in the year of Autas (8/629) for three days; but then he prohibited it.

Shi'a do not consider these three traditions of any authority. To illustrate how they reject them, we can summarize the arguments of al-Khoei. The Hadith attributed to 'Ali cannot be authentic, since all Muslims agree that Mut'a was permitted in the year Mecca was conquered. So how could 'Ali have claimed that Mut'a was banned on the Day of Khaibar (close to two years before Mecca's conquest)?!

Because of this obvious discrepancy, some of the great Sunni authorities have maintained that the words "on the day of Khaibar" probably refer only to the meat of domestic asses. But this is absurd, for two reasons: First, it is counter to the rules of Arabic grammar: if the phrase referred only to asses, the verb would have to be repeated.

Thus, in Arabic one says: "I honored Zaid and Amr on Friday", or one says: "I honored Zaid and I honored Amr on Friday", thus making it clear that "on Friday" refers only to Amr. If the adverbial phrase referred only to the meat, the text of the Hadith would have to read: "Verily the Prophet of God banned Mut'a, and he banned the eating of the meat of domesticated asses on the Day of Khaibar." In short, since everyone agrees that Mut'a was permitted when Mecca was conquered, the Prophet cannot have banned it three years before that. Hence the Hadith is not authentic. (al-Bayan, pp 222-224).

The second reason that the "Day of Khaibar" cannot refer only to the meat of domesticated asses is that this clearly conflicts with Hadith related by al-Bukhari, Muslim, and Ahmad Ibn Hanbal (three of the authoritative Sunni collections). For their versions of 'Ali's Hadith is as follows: "The Prophet banned the Mut'a of marriage on the Day of Khaibar, as well as the meat of domesticated asses."

As for the tradition related by Ibn Sabra from his father, al-Khoei points out that although his Hadith has been related by many chains of authority, they ALL go back to Ibn Sabra himself, and thus the Hadith is of the type known as Wahid, i.e., it derives from a single companion. And a Qur'anic verse cannot be abrogated even by the most authentic kind of Hadith, and thus by far, it can not be abrogated by a relatively weak one.

Moreover the very content of the Hadith shows that it is not correct. It is hardly conceivable that the Prophet could have stood before the Ka'ba in front of a large group of Muslims and ban something until the Day of Resurrection, and that then only one person Sabra should have heard him or related his words.

Where were those Companions who recorded even the gestures and the glances of the Prophet? Certainly they should have joined Sabra in reporting the prohibition of Mut'a until the Day of Resurrection. And where was Umar himself? He certainly should have known about the prohibition so that it would not have been necessary to attribute the banning of Mut'a to himself.

Finally, there are discrepancies in the various versions of the Hadith of Sabra. In some versions the prohibition is said to have occurred in the year of the victory of Mecca (8/630), in others in the year of the Farewell Pilgrimage (10/632). This discrepancy makes the Hadith even more untrustworthy.

Shahid al-Thani points out another problem concerning the Hadith of Ibn Sabra. He mentioned Ibn Sabra himself is the only source for his father's words, but no one knows anything about him. He is not mentioned in any of the books on Hadith as a transmitter, nor has any other Hadith been related from him. For this reason al-Bukhari the most famous Sunni authority, and generally considered the most reliable for the Sunnis, left the Hadith of Ibn Sabra out of his collection. (Sharh al-Lum'a, v5, pp 264–282).

As for the Hadith of Salama Ibn al-Akwa, al-Khoei remarks that again it is a saying related from only one Companion (Wahid) and cannot abrogate a Qur'anic verse. In addition, if it is an authentic Hadith, it is strange that it remained unknown to such important Companions as Ibn Abbas, Ibn Masud, and Jabir Ibn Abdillah. How is it possible for the Hadith to be authentic, while Abu Bakr did not forbid Mut'a during the whole period of his caliphate and Umar only banned it towards the end of his own? (al-Bayan, pp 222–223).

There are many sayings of the Companions which indicate that Mut'a was permitted up until the time of Umar's prohibition. Three of the most famous are those of 'Ali, Ibn Abbas, and Imran Ibn al-Husayn. As we have already seen, 'Ali said: 'If Umar had not prohibited Mut'a, no one would commit fornication except the wretched.' This is the most famous form of a saying reported in numerous sources and a number of different versions.

The above version is derived from Sunni works; a Shi'a version is related from the fifth Imam, al-Baqir: "If it were not for that (i.e., Mut'a) with which (Umar) Ibn al-Khattab preceded me, no one would commit fornication except the wretched."

The saying related from Ibn Abbas is reported by the tenth/sixteenth century Sunni scholar al-Suyuti in this form: "God have mercy on Umar! Mut'a was naught but a mercy from God, through which He showed mercy to Muhammad's community. If Umar had not banned it, no one would need fornication except the wretched." (al-Durr al-Manthoor, by al-Suyuti, v2, p141).

More Arguments On The Hadith

The Sunni argument for the prohibition of Mut'a based upon the Hadith can be summarized as follows:

The reason that the scholars have differed concerning Mut'a is that it was permitted and then banned a number of times.

Ibn al-Arabi (d. 638/1240), the famous Sufi who wrote on the meaning of the Shari'ah, calls Mut'a one of the most remarkable edicts in Islamic law, since it was permitted at the beginning of Islam, then forbidden at the Battle of Khaibar, then permitted again at the war of Autas. Finally it was forbidden and remained forbidden. No other edict in Islam was changed a number of times with the exception of the Qibla (the direction of prayer), for that was abrogated twice before being finalized.

Al-Qurtubi reports that other authorities who have studied the traditions concerning Mut'a say that its edict was changed seven times. He refers to the traditions in six Sunni collections explaining how the situation of Mut'a was changed.

As for the Hadith of Sabra, which states that the Prophet permitted Mut'a at the Farewell Pilgrimage in the year 10/632, Abu Ja'far al-Tahawi acknowledges that this is not in keeping with the other Hadith. He explains that the Prophet permitted Mut'a at the conquest of Mecca, when the men complained of separation from their wives. They could not have complained of such separation during the Farewell Pilgrimage, since all of the wives were present, and the single men could have taken permanent wives in Mecca.

So the special situation that existed during the other journeys and battles was lacking. However, we can explain the situation as follows: Since the Prophet usually permitted Mut'a during journeys away from Medina, in this case also he permitted it; but then he banned it for the final time wanting all the Muslims to know about it, for all of them were present for the Farewell Pilgrimage. There is also the fact that the Meccans were in the habit of practicing Mut'a widely. Thus the Prophet banned Mut'a in Mecca so that they would understand that they could not continue in their former custom.

The Shi'a answer to the Sunni argument on the basis of Hadith can be summarized as follows: As has been mentioned already, if Mut'a was made forbidden in the last pilgrimage where according to al-Tahawi's argument most of the Muslims were with the Prophet, then how can only Sabra have heard of the saying of the Prophet?! Moreover, the Hadith demonstrating that Mut'a is forbidden are in conflict with those that show it is permitted. They also conflict with Hadith that show that Mut'a continued to be permitted during the times of the Prophet, Abu Bakr, and Umar, up until the time that Umar banned it. The correct course of action is to prefer those Hadith which establish its permissibility, for a number of reasons:

- The Hadith indicating the permissibility of Mut'a outnumber those which show that it is banned.
- Everyone agrees that the traditions indicating that Mut'a was permitted at certain times are authentic and have been transmitted in parallel, but this is not the case concerning those which indicate that it was banned. Hence one can speak of a consensus (Ijma') in the sense that all Muslims at one time agreed that Mut'a was permitted, even though afterwards a disagreement arose. In order to choose the right

course, we can not base ourselves upon opinion but must hold fast to that which we have certainty. Hence we must conclude that Mut'a is still permitted, as long as we do not have firm knowledge to the contrary.

- The traditions which point to the banning of Mut'a are themselves questionable. When we realize that one of the incontestable elements of Shi'a as established by the Imams of Ahlul-Bayt is the permissibility of Mut'a, then no Hadith related from 'Ali stating that Mut'a is forbidden can be authentic. Someone who held without question that Mut'a is permissible would not relate a Hadith from the Prophet that it is forbidden. On many occasions 'Ali censured Umar's banning of Mut'a. His saying: 'If Umar had not banned Mut'a, no one but the wretched would practice fornication' is well-known, and no one has questioned its authenticity.

Reference: Jawahir, v5, pp 162–163.

Those who hold that Mut'a is forbidden have also claimed the consensus of the Community as one of their proofs. They say that after Umar banned Mut'a, all of the Prophet's Companions went along with him with the exception of Ibn Abbas, and perhaps he might have changed his opinion towards the end of his life.

In answer to this claim, the Shi'a point out that 'consensus' was never established for the banning of Mut'a; and in any case, the very fact that the Shi'a Imams (the Household of the Prophet) who are the very pillars of Islam, have all agreed that Mut'a is permitted shows that there was in fact no consensus. Moreover, from the first the Shi'a have agreed on the permissibility of Mut'a, to such an extent that this view has always been singled out as one of the specific features of Shi'a. Given this fact, to claim consensus is meaningless.

In addition, as we have seen above, many of the Prophet's outstanding Companions and their followers held that Mut'a was permitted. Finally, the claim that Ibn Abbas changed his view on Mut'a toward the end of his life has never been substantiated. Even if it were to be proven, one could only claim consensus if we were certain that no one was opposed to the view that Mut'a is forbidden; whereas we know that in fact the number of opponents was quite large. In short, the Shi'a conclude, there is no real evidence to show that Mut'a is not permitted; and when the Hadith are investigated, the conclusion is likely to be reached that not only is it permitted (Mubaah), it is even recommended (Mustahabb).

The Opinion Of The Four Sunni Schools Of Law

The four Sunni schools of law agree that temporary marriage is invalid. That which invalidates the contract is the stipulation of a time period. If such a marriage takes place, it must be annulled, and if it is consummated before the annulment takes place, the woman must be paid the "normal dowry".

The Shafi'i school adds that even if the time period stipulated by the contract is the life-time of the

husband or the wife, the contract is still invalid, since the contract of marriage requires that its effects continue after death. That is why a spouse may give his or her spouse the ritual purification of the dead before burial (otherwise, the washer of the dead must be of the same sex as the corpse). A marriage contracted with a stipulation that it comes to an end when one of the spouses dies would mean that the effects of the marriage would end at death. So such a stipulation invalidates the contract.

The Hanafis add that if the time period stipulated is so long that as a rule the spouses could not remain alive until it comes to an end (e.g., if the man were to say: "I will marry you until the hour of Resurrection"), then we can no longer call the marriage "temporary". In effect this stipulation means forever.

Hence it is not considered as a stipulation of a time-period and the contract is sound. If the husband's intention in contracting the marriage is to enjoy the woman's company only for a period of time, but he does not make such a stipulation in the contract, the marriage is correct. In the same way, if a person should marry making it a condition of the contract that a divorce will take place after a certain period of time, the contract is correct but the condition is nullified, since such a condition can not limit the contract.

Reference: Fiqh Ala al-Madhahib al-Arba'a, v4, pp 90-94

In any case the four Sunni sects agree that the punishment for a person who enters into a temporary marriage is not the same as that of the fornication. In the latter case the punishment (Hadd) is 100 lashes for each party in the case of an unmarried woman, and stoning to death in the case of a married woman. But the punishment for Mut'a is defined as Ta'zeer, i.e., less than the full punishment for fornication, depending on circumstances and the opinion of the judge. The penalty for fornication is not specified by the Sunnis because certain doubts remain concerning the status of Mut'a as a result of the traditions of Ibn Abbas.

The Opinion Of The Shi'a School Of Law

The Shi'a have always considered Mut'a to be of special importance and have tried to keep it alive as an institution of Islamic society. The Shi'a law of Jurisprudence is often referred to as the "Ja'fari school of law", since in reality the sixth Imam, Ja'far al-Sadiq (as), had a golden opportunity of teaching during the clashes between the Umayyad and the Abbasid.

During that short period when the tyrants of both sides were busy with each other, the Imam was teaching Jurisprudence and theology in classes with as much as 5000 students. Hence it is appropriate to quote a few of his many sayings concerning the Mut'a.

Imam Ja'far Sadiq (as) said: "Mut'a was approved by the text of the Qur'an and became part of the Sunnah of the Prophet." (Wasa'il al-Shi'a, v14, p437).

Imam Ja'far considered the Qur'anic verse referred to above (4:24) the basis for Mut'a. He said: "The

verse proves the permissibility of Mut'a."(Wasa'il al-Shi'a, v14, p439).

Once Abu Hanifa, the founder of one of the four Sunni sects (who was a student of the Imam Ja'far before he starts his business), asked the Imam about Mut'a. He replied: "Which of the two Mut'a do you mean?" Abu Hanifa answered: "I have already asked you about the Mut'a of the Hajj. So tell me about the Mut'a of marriage." The Imam said, "Glory be to God! Have you not read the Qur'an? 'So those of them whom you enjoy, give to them their appointed wages' (4:24)." (Wasa'il al-Shi'a, v14, p437).

Someone asked Imam Ja'far (as): "Why is it that four witnesses are necessary (for proof to be established) in cases of adultery, but two are sufficient in the case of murder?" He replied: "God made Mut'a permissible for you, but He knew that you would not approve of it. So He made the witnesses to number four as a protection for you. If it were not for that, it would be brought against you (that you are committing fornication, whereas you are in fact practicing Mut'a). But seldom do four witnesses come together on a single matter." (Wasa'il al-Shi'a, v14, p439).

The Imam Ja'far (as) considered Mut'a a divine mercy by means of which people were saved from the sin of fornication and delivered from God's retribution. Concerning the Qur'anic verse: "Whatsoever mercy God opens to men, none can withhold (35:2)," the Imam said: "Mut'a is part of that mercy." (Wasa'il al-Shi'a, v14, p439).

The Imam Ja'far said: "I do not like a man to leave this world without having married temporarily, even if only on one occasion." (Wasa'il al-Shi'a, v14, p444).

The Imam Ja'far said: "It is reprehensible in my eyes that a man dies while there yet remains a practice of the Messenger of God that he has not adopted." He was asked: "And did the Messenger of God practice Mut'a?" He replied: "Yes." Then he recited the Qur'anic verse: "And when the Prophet confided to one of his wives a certain matter...(66:3-5)" (Wasa'il al-Shi'a, v14, p442).

Note how beautiful the Imam explains the reason why one should uphold the practice of Mut'a. The encouragement, promotion, and rewards for the Mut'a are not for the physical/sexual action, but are rather due to REVIVING the Sunnah of the Prophet (S) which has been forsaken by the majority of Muslims. If Umar would not have abolished this Sunnah of the Prophet, such reward would not have been attached to the Mut'a.

The Shi'a call Abu Ja'far Muhammad al-Tusi (d. 460/1068) the "Elder of the Denomination" (Shaikh al-Ta'ifa), since he was the first who organized a systematic methodology for demonstrative jurisprudence (al-Fiqh al-Istidlali). We can conclude this discussion with a summary of his views on Mut'a. He writes that the Shi'a reasons for considering Mut'a permissible are as follows:

- The Consensus of the Twelver Shi'ites.
- The words of the Qur'an:

"Marry such women as seen good to you! (Qur'an 4:3),"

since Mut'a is a kind of marriage, but one which men desire to perform by expending their property.

- The words of the Qur'an:

"So those of them whom you enjoy, give to them their appointed wages (Qur'an 4:24)."

The word Istimta'a (enjoy), unless otherwise qualified, signifies temporary marriage.

- Ibn Masud's version of the Qur'an, which adds the words "to an appointed time" to the above verse.
- There is no disagreement over the fact that Mut'a was allowed at the beginning of Islam. So those who claim that the verse was abrogated must prove their assertion.
- The principle from which discussion must begin is that Mut'a is permitted. That it should be forbidden should be proven.
- The words of Umar concerning the two types of Mut'a. Here Umar tells us that at the time of the Prophet, Mut'a was permitted, i.e., that it was a part of the religion of Islam. Proof must be provided that it is no longer so.

Reference: al-Khilaf, v2, pp 179–180

After referring to the above reasons, al-Tusi answers the arguments of those who claim Mut'a is forbidden in much the same way that we have seen above.

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