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2nd Year, BBA LL.B.**ANALYSIS OF MUTA MARRIAGE UNDER MUSLIM LAW****Abstract**

India as a secular nation, craves out ways to respect every religion. Different religions are marked by difference of beliefs, ideology and rituals, and the constitution till now provides equal protection to all. India has not yet cultivated the concept of Uniform Civil Code (UCC)¹ as given in Article 44 of the Indian constitution. Therefore, we have separate personal laws which govern as per the religious scriptures. Uniform Civil Code is to formulate and implement personal laws of citizens which apply on all citizens equally regardless of their religion. Marriage establishment is one of the most scared as well as complicated contract in our country. Therefore, in order to formulate marital relation, laws were formulated. Public policy is strongly in favor of marriage based on the belief that it preserves the family unit. Traditionally, marriage has been viewed as vital to the preservation of morals and civilization. And for a country like India, which is both modern and traditional, it was necessary to have laws formulating the establishment and termination of marriage institute. A unique feature of the existing matrimonial law in India is its vibrancy and diversity in consonance with the country's heterogeneous population. The policy of application of personal laws in marriages was introduced by the first Governor-General of British India, Warren Hastings, in the year

¹ Article 44 of Constitution- Uniform civil code for the citizens. The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

1772, which was then pursued by the British colonials throughout their rule in India. Even after the independence of the country, the Government of India decided to continue with the same legal stance on marriages, making their intention clear of not prying with the religious sentiments of the people. Described by M.P. Jain as “communal pieces of legislation”, marriage laws can be classified under the following headings on the basis of religion.

*Hindu marriage laws²

*Muslim marriage laws

*Sikh marriage laws

*Christian Marriage Laws

*Parsi marriage laws

This research article deals with the concept of Muslim law and its specifications. It would analyze the Muta Marriage under the Muslim law. It also endeavors to cull out the legitimacy of Muta Marriage by highlighting them. To further reiterate the legitimacy of the notions of such marriage, its practices in Britain and Iran will be mentioned. The Indian perspective pertaining to the same shall also be put forth. The legal impacts of marriage i.e., the right to divorce, right to inherit, legitimacy of child pertaining to Muta Marriage are also enumerated with reference to several case laws.

Introduction

Marriage can be defined as the legal status, condition, or relationship that results from a contract by which one man and one woman, who have the capacity to enter into such an agreement, mutually promise to live together in the relationship of Husband and Wife in law for life, or until the legal termination of the relationship.³ Marriage is a legally sanctioned contract between a man and a woman. Entering into a marriage contract changes the legal status of both parties, giving husband and wife new rights and obligations. For Muslims, the personal laws are, The Muslim Personal Law (Shariat) Application Act 1937 and The Dissolution of Muslim Marriages Act 1939. Marriage or nikah, according to Muslim law, is defined to be a contract which has for its object the procreation and legalizing of children. The essential ingredients for a valid Muslim marriage are the capacity to contract marriage, proposal, and acceptance, and the absence of any impediment to the marriage. As per Duhaime's Law

² [The Hindu marriage act, 1955.pdf](#)

³ <https://legal-dictionary.thefreedictionary.com/marriage> last accessed on 9.08.2020.

Dictionary, Muta Marriage is a temporary marriage for a fixed period of time⁴. Muta marriage also known as Nikah al-Mutah. A marriage is perceived as a legal institution because of the number of 'pillars' (arkan) and 'statutes' (ahkam) it comprises of.⁵ The word "muta" literally means "enjoyment, use". It is a 'marriage for pleasure' for a fixed period of time, also known as temporary marriage. It is a type of marriage used in Twelver Shia Islam. It is a private contract which might be verbal or written in which the declaration of the intent to marry is done followed by the acceptance of the terms in the same way as is done in nikah.⁶ After the specified period, the marriage ends without going through the process of divorce. A man pays a woman a sum of money and he can have sexual relations with her for however long they agree for in the Mutah contract. The Mutah time period can be as little as one night, or even one hour, which is enough for the man to do the sexual act.

History

The origin of Muta Marriage can be traced back to the war times when the first Islamic jihadis, led by their prophet Mohamed, raided caravans and attacked neighboring societies. The absence of war slaves with whom they could enter into marriage made them seek permission from their prophet to visit sex workers. Mohamed, being a "righteous man of Allah" did not grant them the permission to undertake such immoral activity and hence decreed that these soldiers shall have to marry the girls that they wanted. The institution of muta, which was fairly common in Arabia before and at the time of the prophet, is now not recognized by any school of Muslim law in Indian, except the Ithna Ashari Shiite or Shia school.⁷ In practice, however, the institution of muta marriage is almost obsolete in India. The second caliph, Umar, banned temporary marriage, but Shiites reject his authority. The presence of muta marriage or temporary marriage can be seen in the Islamic jurisprudence over a period of time.⁸ In India, temporary marriage is not recognized, although there exist few who contract Muta marriage but such marriages are not enforceable in court. Hyderabad is considered to be the epicenter of the practice where marriage can be instituted for time span as short as one or two days.

⁴ Indra Sharma v VKV Sharma 2014 (1). RCR (Crl). 179. (SC).

⁵ Mulla D., PRINCIPLES OF MAHOMEDAN LAW, 239 (14 ED. 1955).

⁶ https://advocatespedia.com/Muta_Marriage, last accessed on 10.08.2021.

⁷ Konika Mondal, 'Concept of Marriage Among Muslims: A Study on Muta Marriage' (2016) 3 International Journal of Law and Legal Jurisprudence Studies 295 <<http://ijlljs.in/wpcontent/uploads/2016/02/18.pdf> > accessed on 9.08.2021.

⁸ John Bastile, History of Muta and the future of an Islamic society.

Essentials of Muta Marriage

The Marriage is legalized by a contract which, like all other contracts in Islam, consists of a declaration (ijab) and an acceptance (qabul). The woman declares that she is entering into a relationship of marriage with the man, and he accepts her as his wife.

The essentials of Muta marriage are: -

1. Muta marriage can only be concluded by a man with a Muslim or one of the 'People of the Book'. Marriage with an unbeliever or an enemy of the Household of the Prophet is prohibitive. Certain situational restrictions are also imposed pertaining the persons contracting the marriage such as if the man is already married or the slave belongs to someone else or she is the daughter of his sister-in-law or brother-in-law he cannot contract a Muta her in absence of the wife's permission or the permission of the master of the slave. The contract in such a case is invalid until the permission is given.
2. The period of cohabitation should be fixed. The time period must be set forth in a manner which leaves no possibility of increase or decrease. According to the Imam al-Rida, 'muta must be a stipulated thing for a stipulated period.' The absence of a stipulated period renders the contract of marriage as invalid. In Syed Amanullah Hussain and others. Vs. Rajamma and others,⁹ a Shia male Habibullah contracted a Muta with Rajamma which lasted till the death of the man in 1967 and subsequently the wife inherited his properties. This was challenged by the brother of Habibullah contesting that the marriage was simply a Muta marriage. It was held that although the word Muta was used but the term was not specified, therefore, the marriage was treated as permanent marriage and thus Rajamma was entitled to inherit her husband's properties.
3. Another prerequisite of Muta Marriage is the fact of dower of known property, whether in cash or kind, whose amount is safe from any fluctuations. The fact that the two sides have agreed over articles which may properly be exchanged is sufficient. If the woman asks for the whole amount of the dower at the beginning of the marriage, the man is not entitled to take back any of the dower under any circumstances, provided contract have been invalid from the beginning.

⁹ AIR 1977 AP 152

4. If dower specified, term not specified, it could amount to permanent or regular marriage and if term fixed dower not specified, it amounts to void marriage.
5. No witnesses are required for mut'ah. And just like in any other contract, the woman being a party can lay down conditions for her sexual union throughout this time limit, this can also include her daily maintenance. Her temporary husband must respect these conditions. The marriage automatically dissolves at the end of the stated period.

Legitimacy of Muta Marriage

Muslim law has been derived from various codified and uncoded sources like- Quran, Ijma, Qiyas, customs, urf, precedents, equity and various legislations. There are 4 major Sunni school of thoughts- hanifa, hamabli, maliki and shafai. These four schools recognize each other's validity. In India, Hanifa school of Islamic law is dominant. The most important verse of the Holy Quran which establishes the legitimacy of Muta is verse 24 of Surat an-Nisa, known to all hadeeth commentators (Sunni and Shi'a) as "the verse of Muta." The Shariah prohibits fornication, but at the same time allows the practice of Muta. The Holy Quran evidently states that: "Forbidden to you are married woman, except what your right hand possesses. This Allah has written for you, and all other women besides these are permitted to you, so that you may seek them out with your wealth, seeking chastity and not fornication. So, when you have contracted temporary marriage [istimtatum] with them, then give them their words. There is no sin on you for whatever you agree to after this. Indeed, Allah is Knowing Wise."¹⁰ However, the enforceability in legal terms is still vague. There is the Sunni Muslim, who considers the practice of Muta marriage same as the practice of sex working. If we analyze the analogy established, we may find that the practice of Muta marriage somewhat resembles the concept of live-in relations as well. With the Supreme Court recognizing, at least partially, the rights of partners in live-in relationships, it is debatable whether muta can be held constitutionally invalid. In fact, it can be argued that the Shia institution of temporary marriage is superior to live-in relationships, particularly those that do not endure for long. In *Indra Sarma v VKV Sarma*¹¹, 2013, the Supreme Court identified five types of live-in relationship, two of these being relationships between male and female adults and between married men and unmarried women. Muta can be clubbed under both these two categories. The judgement also laid down

¹⁰ Ansar, Chapter Four: Qur'anic evidences for the legitimacy of Mut'ah, SHIA PEN NEWSLETTER

¹¹ 2014 (1) RCR (CrI)179(SC)

eight guidelines for considering a live-in relationship to be “in the nature of marriage”. These relate to the duration of the relationship, the partners’ respective roles during cohabitation, and whether others perceive them as husband and wife. There have been several petitions filed in the Apex court against temporary marriages and polygamy under the Muslim personal law.

Muta Marriage and Live in Relationship.

Live-in relationships have been identified by Indian courts as a legalized institution till recently and although there is no explicit provision in the Hindu Marriage Act, 1955 to contain this relatively new concept, nevertheless, time and again it has been recognized and upheld by the courts in India and it gets its legitimization through judicial precedents. However, from a religious point of view, live-in relationship is considered to be a ‘haram’ in Islam as under the Islamic jurisprudence one can only have sexual relationship in a temporary marriage, permanent marriage or slave ownership. In the case of *Mohabbat Ali Khan v. Md. Ibrahim Khan*¹², the apex court identified that a Muslim couple moving into live in relationship is valid. Therefore, if compared, live-in relationship as we have in Hindu law as interpreted by the court as “relationship in nature of marriage”¹³, is to some extent comparable to the practice of Muta that had been in existence from the pre-Islamic time and is practiced even today in modern-day India. Nonetheless, there are several technical disparities between the two practices. Muta is more of a contractual agreement while live in relation is not. Again, due to the presence of a contract, in muta-marriages there is a greater of freedom of choice as everything is pre-agreed for example, one can have a muta marriage with a prior condition of not consummating the marriage¹⁴, but in a live-in relationship although there is freedom of choice to some extent, live-in couples are expected to behave as couples of a fixed marriage and sexual relationship with the partner enhances the chance of establishment of such institution.

Relevant Case Laws and Precedents for Muta Marriage

¹² 1921 SCC Online PC 21: AIR 1929 PC 135

¹³ *D Velusamy v D Patchaiammal*(2010) 10 SCC 469.

¹⁴ Allamah Murtaza Mutahheri, *Woman and Her Rights*, M A Ansari(tans.) (Islamic Seminary Publications)

India is a country that has partially approved live-in relationships; However, it will still be quite difficult for the Supreme Court to constitutionally invalidate this form of marriage. Below are the few established rules as by the precedents.

There are no mutual rights of inheritance created between the spouses, however, children are considered legitimate and capable of inheriting from both parents. A son from the Muta is legitimate and has same proprietary rights in his father's property as the offspring of the nikahi marriage. In *Syed Amanullah Hussain and ors. Vs. Rajamma and ors.*, it was held that, such type of marriage does not create mutual rights of inheritance between husband and wife but children conceived are legitimate and capable of inheriting from both parents. This was further reiterated in *Shoharat Singh Vs. Musammat Jafri Bibi*¹⁵. It was held that, A muta marriage is, according to the law which prevails among the Mohammedans of the Shia sect, a temporary marriage, its duration being fixed by agreement between the parties. It does not confer on the wife any right or claim to her husband's property, but children conceived while it exists are legitimate and capable of inheriting from their father. A nikah marriage is a religious ceremony, and confers on the woman the full status of wife, and the children born after it are legitimate, children conceived during that period of cohabitation were legitimate and capable of inheriting from their father. Wife is not entitled to maintenance, unless specified. However, she is entitled to maintenance as a wife under the provision of section 125 of Code of Criminal Procedure.¹⁶ In a Hyderabad case, *Shahzada Qanum v. Fakher Jahan* it was held that there is no difference between muta for an unspecified period and a muta for life, a permanent nikah marriage for life can be contracted by the use of word muta also, specification of the period for which a muta marriage is contracted alone makes a marriage a temporary marriage for the period specified.¹⁷

Status of Women in Muta Marriage

Men and women are not on a par in every aspect of muta. A man can simultaneously enter into multiple temporary marriages, but a woman can have only one temporary husband at a time. A married man can have a muta marriage, but not a married woman. The rule of sexual abstinence too does not apply to men. There are school of thought that are of the viewpoint

¹⁵ Shoharat Singh v. Musammat Jafri Bibi. (1915) 17 BOMLR 13.

¹⁶ Luddun Sahiba v. Mirza Kamar Kudar (1882) 8 ILR 736

¹⁷ Shahzada Qanum v. Fakher Jahan (1953) 6 AIR.

that as a consequent of Muta Marriage, the women are left at the mercy of the man who in such an arrangement exercise a position of dominance. Further, it is felt that such sort of marriage is only for sexual gratification and legalizes prostitution. The pure and family-oriented notions of Nikah have become subservient or completely obliterated due to the practices of temporary marriage. The other viewpoint in this regard which runs contrary to the above mentioned that is the fact that man and woman entering the Muta marriage are fully aware of their purposes and there is no exploitation done on the part of anyone to anyone and in no way Muta marriage can be called prostitution or degraded. However, owing to the poverty and vulnerability of the lower strata of the society, the practice of Muta acts a clutch trap for destitute widows and orphaned girls. It is widely criticized and considered as prostitution, as women in these arrangements receive money on dissolution of the union and thus, have been universally devalued. After the contract expires, the temporary husband and wife can renew it. The husband has the unilateral right to revoke the contract, but must pay the amount agreed upon. The woman, theoretically, cannot revoke the contract, a mark of her subordinate status, but she can refuse to be intimate with him or leave him. In that case, she must pay back a part of the amount agreed upon. on one hand, it represents the personal liberty and right of a person, while on the other hand it shows the deep roots of patriarchal society. This marriage gave a license to the Muslim men to fulfil their sexual desires with as many women as they want and with woman whom they could financially afford. Such an arrangement led to the categorization of such woman as hired woman and lowered the status of the woman in the society. Moreover, the health factor is completely at stake especially for men who travel often and as a result of multiple sexual contacts outside marriage in line with Muta, increases the chances of becoming HIV positive. Women and girls are trafficked within Iraq for the purpose of sexual exploitation through the use of temporary marriages, as a result of which their family's money in the form of a dowry in exchange for permission to marry the girl for a limited period of time.

Conclusion

The major problem behind deciding any issue, is the complimentary aspects attached to it. For Muta Marriage, the religious sentiments as well as personal choice and liberty of a person is brought to test. In modern day era, where feminists all across the globe see this arrangement equivalent to prostitution. There are many advocates of Nikah mut'ah who believe that being a contract, this arrangement is superior to the live- in relationships. However, a uniform

codified regulating the practice would help to flush out the evils attached to the practice. Muta marriage has its own pros and cons but one cannot turn a blind eye to the fact that it is indeed a form of Islamic prostitution and such a practice should be curbed in order to bring an end to gender discrimination and promote equality of women to men.



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