

A COMPARATIVE STUDY OF TEMPORARY MARRIAGE IN INDIA & IRAN

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INTRODUCTION

The Author aims to study whether temporary marriage should be recognized in the country like India. The study also analyses the laws prevailing in the country where temporary marriages are lawful to provide a focused research. It further defines the major incidents of Muta marriage which took place in India and Iran.

Purpose of the study is to identify whether temporary marriage has any legal standing so as to give it legal recognition in a country. Also, to see that whether such marriages are committed only to satisfy the sexual need of a person who is incapable of managing a normal marriage. Further, the paper focuses on the legal incidents of such marriage with respect to the women in the marriage and status of the child born of such marriage.

The report will initiate with a brief discussion on concept of temporary marriage, its essentials and legal effects. Subsequently, it will follow with a focused analysis on temporary marriage prevailing in India, where such marriages are not recognized and in Iran, where temporary marriages are recognized.

There was a time when certain women use to entertain men in their own tents but neither party had the right over the other. There was freedom to both the parties to discontinue the relation at any time. In earlier days of Islam, when Arabs used to live away from home for quite a long period of time either on account of wars or trade-journeys they used to satisfy their sex-desires through prostitutes. In order to avoid evolution of prostitution and confer legitimacy upon children, Muta marriage evolved and was given recognition by the Prophet, as the practice was convenient enough

for the men during long travels. But, later when the Prophet realized that the allowance was being exploited he absolutely prohibited it.

Parties contracting Muta ought to be of fifteen years of age i.e. age of puberty. A Shia male can only have Muta with any Muslim who is either a kitabia¹ or a fire-worshipping woman while no woman is allowed to have Muta with a non-Muslim male. The contract should be made with free consent of both the parties, after which the offer is made and accepted in the presence of two witnesses. The period of time is to be fixed while contracting Muta marriage,² and in case it is not specified and continued till death of one of the parties, the marriage will be considered to be of permanent nature.³ Life-long Muta will be inferred in case cohabitation continues after the expiry of the term decided by the parties.⁴ Maher must be fixed in such a contract⁵ or else the contract is considered to be void.

Muta marriage is temporary in nature and confers no mutual rights of inheritance but as the children born out of such marriages are legitimate, they have right of inheritance from both the parents.⁶ Wife is not entitled to get maintenance from husband of Shia law but she can claim under Criminal Procedure Code.⁷ Muta wife is required to observe Iddat period of four months and ten days, however if the wife is pregnant the period is extended till her delivery.

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Temporary marriages are named differently in different states. In some countries such marriages are recognized whereas, in other countries it is not enforceable. In Iran, it is called Sigheh and in India, it is Muta marriage. In Iran, Sigheh is further categorized.

¹ women who qualify for marriage with Muslim men as belonging to acceptable religions for this purpose.

² Akfar Hussain Sahib vs Shokhat Begam Saheba AIR 1916 Mad 152

³ S.A. Hussain v. Rajamma

⁴ Hasanali Mirza v. Nushrutali, AIR 1935 Cal 572

⁵ Official Assignee v. Ma Hla Htwe, AIR 1929

⁶ Shoharat Singh v. Mst. Jafri Bibi AIR 1914 PC 63

⁷ Luddon v. Mirza Kamar, (1882) 8 Cal 736

The term used in Iran for temporary marriage is Sigheh. The original term was Sigheh-i-mut'a but as the practice was emerging people over there dropped the ending of the term. Iranians classified the term of marriage into two types: sexual and non-sexual. Former is the solution to male-female sexual desires & latter fulfills exclusively different idea of interpersonal relation and communication between the male & female. There were four variations of Sigheh which are novel interpretations and innovations espoused apparently by number of the doctrinarians of the present Islamic regime.

First & foremost, Non-sexual Trial Marriage, which propels the idea that sexual desires are common in nature of both male as well as female which needs to be satisfied. Permanent marriage costs a huge amount imposing responsibilities on the youth inconvenient to their growth and development. In this kind of marriage both can limit themselves to the sexual pleasure. As per the author, this genre of marriage is a trial of permanent marriage, not just to satisfy sexual needs rather is committed by those who cannot afford to have permanent marriage.

Group Sigheh, it is agreed between a single woman and few men but not at the same time. Basically it is, when a men agree to a non-sexual type of Sigheh with a women, the man can enjoy the company of the woman wherever and whenever he wants for multiple times until penetration takes place. This is the case where the woman is not required to have iddat period after the completion of the marriage and can contract another Sigheh immediately. Similarly, she can have Sigheh but both the parties should not have sexual relation i.e. intercourse. In views of author, such marriage is just to have company of opposite gender for mental satisfaction. The iddat period is the time in which woman can be acquainted with the fact that whether she is pregnant or not, as such marriage does not allow intercourse, iddat period is not required.

Penance Sigheh, was when government of Iran wanted to purify western decadence, they demolished red-light districts in Tehran, capital of Iran. Some females due to such action were jailed, arrested and some of them were even executed. Some were taken to rehabilitation centers. There the women were forced to enter into Sigheh with either the revolutionary guard or the soldier returning from war. Many of them were forced to enter into sigheh frequently with another guard or the new soldier. The justification behind this was that the women who are divorced are the unattached woman and are the source of temptation.

Penal Sigheh, as due to the demolition of red-light district many young teen age girls were arrested. In accordance with the religious belief it was said that if they were to be executed virgins, they would go to paradise. So, these girls were forced into Sigheh with one of the jail-owners. The motive was not only to humiliate them, rather preventing them from going to heaven. Penal sigheh is almost the direct opposite of penance sigheh. While in one the sexual demonstration is accepted to "absolve" a lady's sin, in the other it's accepted to "dissolve" her purity and innocence.

There is a famous love story on temporary marriage of Maryam and Karim, who belonged to Iran. The relationship was officially sanctioned though they had a valid contract of temporary marriage. They chose to have temporary marriage on the basis that no one should be able to question them or declare that they are doing something illegal, as they both used to go together very often. They decided on an uncomplicated contract of six months of marriage, the renewal of which took place again and again. The boy used to give her a little amount of money from time to time along with some clothes during their marriage but failed to give her the gold coin which he promised. They were behaving as typical husband and wife. Boy even met with girl's mother but hid the fact that they have undergone temporary marriage. In fifth year once the contract was finished Karim married (permanent) another girl. Maryam was so much in love with Karim that she still offered to be his temporary wife, but he refused. She then thought of getting married permanently as soon as possible.

In author's viewpoint, whether this marriage can be considered as a valid marriage? Was the contract completely adhered to before entering into a permanent marriage by Karim? What about the gold coin which he was supposed to give after each renewal of their contract? Practice of Sigheh is good for some but bad for others. This practice can play with emotions just like it played with the feelings of Maryam. It has just legalized the practice of prostitution where emotions are not considered. Author thinks, in faith of making it legal, it would be legalizing prostitution.

In India, temporary marriage is not recognized, although there exist few who contract Muta marriage but such marriages are not enforceable in court. If issues raised neither of the party can seek help from the court.

A college girl, Nagma entered into Muta marriage with a Muslim boy for a month and then went onto their own ways. She repeated the practice several times with the friends of the boy who were

of different age. When she shared this with her sister, she was shocked and said that such marriages are an indirect method of prostitution. Nagma was guilty of the fact that she repeatedly went into such marriages.

A 19years old female, college student from a Christian family fell for a Muslim boy. The girl once going through the holy literature read that the physical contact, even kissing, should be saved until marriage. Every time they met, she was put to the test as they both liked each other. After several meetings, the boy started explaining about Mu'ta marriage. He states that his religion does not allow dating so he wanted to contract Muta with her. At instance, she was not ready as the word marriage was taking her back. But, when she thought, she had no reason to deny for the marriage, moreover, she found no disadvantage for herself at that moment. The boy kept her in secret as whenever his friends were at his place he use to ask the girl to hide in the bathroom or a closet. Later, she realized that such marriages were unacceptable in the society and were not permissible in the courts. In author's view, emotions of female are hurt in India. Due to lack of knowledge of religion, girls become victim of such practice.

Temporary marriage includes both male and a female. From male point of view, it is a means of forming companionship throughout student life. The boys who are not yet earning cannot contract Nikah as then they will have to bear responsibilities. A story of a boy who is in a need of a companion to share his thoughts with, whom he can spend time with. He wants someone in his life who can fill the existing empty space and does not leave him alone. He is completely frustrated and unable to concentrate in studies as well, as, when he see his friends having girlfriend and their grades are not affected by this fact. He also wants to share that special space with someone.

According to the author, there is no use of such desires when muta marriages are not accepted in India. Due to one or the other reasons, people residing in India can contract such temporary marriages but, if desired, cannot enforce them in courts.

Recently, news flashed that a 60year old wealthy Arab came to India and married 3 girls at a time namely Afreen, Farheena & Sultana in Hyderabad. He could have married to several other girls without violating Sharia, as his marriages were Muta marriage. Similarly, many rich Arabs from gulf countries visit India, contract Muta with girls by paying huge amount to their parents as mehr,

use them till the time they are in India and return to their hometown, the marriage then automatically dissolves.

An incident of May 2004, an old man landed in India from a city in UAE, to undergo a cataract operation. He married a girl of Hyderabad and within 2 days divorced her. He then married another girl. The former girl complaint to local police about what has happened. It was then discovered that he had been married to 3 girls till that time. During the interrogation, it was revealed that there are certain criminals who on arrival of rich Arabs chase them with the photographs of young girls, decide the amount, place and time of marriage. Although, the Arab committed no crime by entering into a contract of temporary marriage but in India, marrying a girl of less than 18years i.e. a minor is a criminal offence and is considered a rape in eye of law. Such practice is nothing but an offence of forcing a minor into prostitution. So, it is evident from the above incident that Arabs coming to India and marrying young girls of our Nation would result in trafficking of these young girls.

CONCLUSION

Temporary marriages have different names in different societies of the world. In India, it is termed as 'Muta', in Iran it is 'Sigheh' whereas in Saudi it is 'Misyar'. The concept of temporary marriage has its own positive and negative effect. If conversed about positive parts it helps youth to fulfill their desires without being rich. A practice in which one does have sexual pleasure without responsibilities and can continue it for as long as they want to. It is basically a trial of permanent marriage. If both parties will be satisfied and would further want to live together can contract permanent marriage with each other. If it is recognized, people will get a name to such relationship consequently, no one would question them. The Author is of the viewpoint, that such marriages are similar to live-in relationships. Now live-in relationships are given legal recognition as that of a valid marriage in India, so Muta marriage is a similar concept under Muslim Law. Like Live-in relationships, Muta marriages can also be regulated and their can be guidelines to give such marriages a legal recognition.

On the other hand, it negatively affects the girls who are unaware of the fact that even if, Quran has a mention about temporary marriage, yet countries like India does not recognize such

marriages. Whatever their partner states they assume it to be true and then later realize that they can't enforce such marriages in court.

This practice could be worldwide recognized but a fine layer of strict rules need to be applied so that no one gets hurt and everyone should be benefited from such type of marriage.

