

**COMPARATIVE ARGUMENTS ON THE POSITION OF TEMPORARY MARRIAGE  
(MUT'AH) IN ISLAMIC FAMILY LAW**

**By**

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**ABSTRACT**

Temporary marriage (Mut'ah) in Islamic family law is a type of marriage which is accepted by all Muslim jurists to be legislated by the noble prophet of Islam during his life time. However, Muslim scholars from the Sunni and Shi'ah sects differ in opinion with regard to the legal position of the said type of marriage in Islamic family law. Most of the Sunnis assert that the position of temporary marriage in Islamic family law was sound at the infancy period of the first Islamic government in Medina but later on abrogated by the prophet of Islam (SAW). The Shi'ah on the other hand, maintain that the position of this category of marriage is up to date and very sound in Islamic family law, thus the noble prophet of Islam (SAW) never abrogates it. The research Problem and Question is that the main debate around the practice of Mut'ah is regarding its permissibility, and if it was ever forbidden in the past. The difference arises due to differing interpretations of the verses of the Qur'an and various opinions narrated from prominent early Muslims which are apparently contradictory. This study adopts Qualitative content analysis methodology which is based on the comparative studies that 'balance descriptive particularities with explanatory generalities.' This research recommended utilizing systematic comparison, the flip-flop technique and waving the red flag technique in trying to address the differences between Sunni and Shi'ah on the subject-matter, so as to reach a lawful solution in combating indecency among Muslim Youths in the contemporary world.

**Keywords:** *Sunni, Shi'ah, Islamic Family Law, Temporary marriage*

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## 1.0 Introduction

while reading some Islamic texts, one will come across the fact that Muslim scholars from among the four Sunni schools of Islamic Legal Thought and those from the Ja'afari school, generally differ on many issues of Islamic Jurisprudence. The four Sunni mazhabs (Schools of Islamic legal thought) also are bitterly divided amongst themselves on issues of fiqh to the point that they cannot even agree on how the prophet of Islam (SAW) offered Salat. One of the most controversial issues that almost tear apart the cordial relationship between the four Sunni schools and that of the Shi'ah, Ja'afari school is the issue of Mut'ah's (Temporary Marriage) position in Islamic family law. Mut'ah is an issue linked to fiqh, a topic which like many has created many differences among the ulama. The writer decided to research on Mut'ah as this was a topic on which Sunni and Shi'ah Muslims are sharply divided, with Sunni Muslims absolutely forbidding it and Shi'ah Muslims actively encouraging it. This is a controversial topic which is surrounded by taboo and there did not seem to be a lot of open debate regarding it. The aauthor had also not found any texts on this subject-matter which outlined the opinions in a balanced manner so he felt there was a need which he could fulfil. The author committed himself to research on the topic so as to present an objective balanced study of the key points.

The practice of Mut'ah has been well established among some Muslims in some countries of the world which include Iran, Lebanon, Syria, Iraq, India, Bahrain, and Pakistan and even in Nigeria and United States of America. In America for example, a highly educated Iranian woman and an American professor agreed on a short-term contract of Mut'ah marriage privately. The idea of temporary marriage was suggested by the Iranian woman to her American suitor, who did not take it very seriously but accepted it only to please her. For her, as she later claimed in the court, it was a binding moral and legal contract. They renewed their 'contract' several times for two years. When however, the American man left his 'temporary wife' in order to marry another woman, she took him to court and demanded a proper marriage settlement.<sup>1</sup> Therefore the aim of this research is to present a balanced view on Mut'ah, dealing with its origin, and its authenticity from the

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<sup>1</sup> - Haeri M.M, Essencials of Temporary Marriage, Jusho Publishers, Tehran (1989, P. 216)..

Qur'ān and Prophetic traditions. The research also explores the opinions of the different schools of thought within the Sunni and Shi'ah tradition

## **2.0 Sex as deemed by Islamic law**

Islamic law considers sex as one of the essential human needs that must be properly satisfied. It is a necessity of the human being that requires favorable consideration. In fact, Islam considers it one of the requirements of life that should be properly and lawfully satisfied. Moreover, Islam does not treat it as a distasteful, filthy, or heinous act of man. Allah (subhanahu wa ta'ala) states in the Glorious Quran that:

*“Fair in the eyes of men is the love of things they covet: women and sons; heaped-up hoards of gold and silver; horses branded [for blood and excellence]; and [wealth of] cattle and well-tilled land. Such are the possessions of this world's life; but in nearness to Allah is the best of the goals [to return to]”*<sup>2</sup>

In addition, Allah's Messenger (SAW) is reported to have said, which reads as follows: “Three items of this world were made attracted [or likeable] to me: women, perfume [but] the [utmost] pleasure of my eyes [soul] is in prayer”<sup>3</sup>.

Islam does not, at any time, conflict with the requirements of the human's requirements or desires. Islam rather attempts to answer and fulfill all human needs and requirements. Islam does so by setting certain lawful limits and restrictions to ensure satisfying these needs in a right and lawful manner. Islam endeavors to keep the sex within the framework of human needs and elevates it above the savage and uncivilized way. Allah's Messenger (SAW) is reported to have said, which reads as follows: “People enter Jannah (Paradise) mostly based on Taqwa of Allah (SWT) [full respect and obedience to the Commands of Allah (SWT) and His Messenger (SAW)], and based on their good conduct. While most people enter the Hellfire because of the ill use of the mouth and private parts”<sup>4</sup>.

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<sup>2</sup> Noble Qur'an, Sura Al-Imran [The Family of Imran] (3:14):

<sup>3</sup>- Ahmad and Nasa'i reported this Hadith.

<sup>4</sup>- Tirmithi reported this Hadith.

Islam looks at the proper use of the sex as an act of worship (Ibadah). A Muslim would be rewarded when he practices this act, as he is rewarded when he does any other acts of prescribed types of worship. Allah's Messenger (SAW) alluded to this concept when he said, which reads as follows: “[A Muslim] would have an intercourse with his spouse and would be rewarded for it. The Companions asked: Oh, Messenger of Allah! A person would be rewarded while satisfying his sexual need? Allah's Messenger (SAW) replied: Yes. Isn't it that he would be punished had he practiced sex illegally? The same applies if a Muslim practiced a lawful intercourse with his spouse. As such, he would be rewarded”<sup>5</sup>.

### **2.1 The only acceptable way for sexual satisfaction under Islamic law**

The only acceptable way for sexual satisfaction in Islam is either with a lawful "marriage" or having a slave lady (Mulku-Yamin).<sup>6</sup> Having a slave lady (Mulku-Yamin) nowadays is difficult because of the controversial issues related to lawfully possessing such ladies in the present time. Islam urges Muslims to seek marriage and encourages them to practice it.

Hence, the objective of marriage in Islam is to achieve tranquility and peace of mind for both spouses. Allah (SWT) states in the Quran:

*“And among His Signs is this that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your [hearts]: verily in that are Signs for those who reflect”<sup>7</sup>.*

In fact, one of the objectives of marriage is to protect both spouses against indulgence in unlawful sexual practices that may lead to corruption and immoral acts [such as prostitution, fornication and adultery or else] in the society.

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<sup>5</sup>Ahmad reported this Hadith.

<sup>6</sup> Noble Qur'an: Chapter 23, Verse 06.

<sup>7</sup>-Noble Qur'an: Chapter 30, Verse 21.

### 3.0 The definition of Mut'ah

The second type of marriage under Shari'ah (the Islamic law) with regard to the time limit, is the temporary marriage, which is also known as “mut'ah”.<sup>8</sup>

Arabic dictionaries define mut'ah as ‘enjoyment, pleasure, delight’. The root from, m-t, signifies, ‘to carry away, to take away’.

Mut'ah is a type of marriage, used in the same way as a permanent marriage (Nikah) in order to make a man and woman physically halal (legitimate) to each other.<sup>9</sup> Mut'ah is a temporary marriage that ends at a fixed period.<sup>10</sup> Imam of Ahl as-Sunnah Waheed ad-Deen az-Zaman, in his footnotes of Sunan ibn Majah, defined Mut'ah as follows:

Mut'ah is a type of Nikah until an agreed time. It can be for a day, two days, a month, one year, three years etc.<sup>11</sup>

Nawawi in his commentary of Sahih Muslim relied on the definition of Mut'ah advanced by Imam of Ahle Sunnah Qadi Iyad as follows:

“Scholars agree that this Mut'ah is a marriage in which the husband and wife do not inherit from each other and separation would take place on the completion of the Specified time without Talaq(divorce)”.<sup>12</sup>

The Sunni scholar Allamah ‘Abd Ar-Rahman al-Jazeri in his Al-fiqh ‘Ala Al-Madhahib al-Arba’a said:

“The reality of Nikah Mut'ah is that, in the marriage recital performed with a woman, words are added which stipulate that the marriage is for a fixed time. For example, a man shall say ‘she shall remain as my wife for a month, or I shall have Nikah Mut'ah with you for a year.’” The parties themselves act as witnesses. It can occur in the presence of a Wali or witnesses, or without them.”<sup>13</sup>

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<sup>8</sup>- Muhsin al-Asfoor, translated by Abbas Javad safi, The Personal status law, volume one, Dar al-Tafsir-Isma'ilian publishing(January-2000) PP.78.

<sup>9</sup> - Ibid

<sup>10</sup> - ibid

<sup>11</sup>-Waheed ad-Deen az-Zaman. Sunan Ibn Majah. Volume 2, p. 76

<sup>12</sup>-Sharh Sahih Muslim, Volume 4 page 13.

<sup>13</sup> Al-fiqh ‘Ala Al-Madhahib al-Arba’ (Lahore Edition) Volume 4, page 167.

The book can also be downloaded from the following Salafi library

<http://saaaid.net/book/open.php?cat=4&book=2692>

The Sunni and Shi'ah have no disagreement as to the original permissibility of Mut'ah, though in recent years a number of Wahabis have claimed that Mut'ah was never permissible at all (contradicting the mainstream Sunni attitude). Sunnis believe that, in spite of its original permissibility in Islamic law, it was later abrogated, whereas the Shi'ahs reject this view. According to the teachings of the Shi'ah Imams, who came after the Prophet (peace and blessings of Allah be upon him), Mut'ah was never abrogated and continues to be halal until the Day of Judgment. The Prophet (peace and blessings of Allah be upon him) neither deemed it haram, nor put an end to it, nor did Allah (SWT) send a verse abrogating it.<sup>14</sup> The Shi'ah hold that Mut'ah was declared impermissible by 'Umar ibn al-Khattab, in direct contradiction to the command of Allah (SWT) and His Prophet (peace and blessings of Allah be upon him).<sup>15</sup>

### 3.1 How Mut'ah is contracted

The contracting of Mut'ah (Temporary marriage) is just like that of permanent marriage; both require specific words to make the contract halaal. Both types of marriage have Dower.<sup>16</sup> The difference between Mut'ah and permanent marriage is that there is no specified time scale, whilst a time scale is necessary with Mut'ah.

In contracting mut'ah marriage, the man and the woman can assign a learned Muslim scholar to conduct the marriage for them or conduct it by themselves, with or without witnesses. If they decide to conduct the marriage by their own selves, they must first of all agree upon the dowry the man should give to the woman. Secondly, they also have to agree upon the time limit for the marriage (i. e one hour, one day, one week one month, one year etc.). When this is done the next step is to pronounce the formula. By formula it means a declaration from the lady and acceptance from the man. Since it is a contract, mut'ah requires a declaration and an acceptance. As in permanent marriage, the declaration is the prerequisite of the woman. The lady should say: "I married myself to you for the agreed dowry and to the agreed time limit". The man here should say: "I have accepted the marriage". When this is done, they now become halaal (legitimately free) to each other as temporary husband and wife, up to the end of the time that they have agreed upon.

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<sup>14</sup>- Waheed ad-Deen az-Zaman, o.p.c.i.t.

<sup>15</sup>- *ibid*.

<sup>16</sup>- Muhsin al-Asfoor, translated by Abbas Javad safi, The Personal status law, volume one, Dar al-Tafsir-Isma'ilian publishing (January-2000) P.78.

The whole of the dowry or part of it can be given to the woman immediately after reciting the formula if she so demands, and it can also be a loan on the man which must be given to her anytime she is in need of. In mut'ah marriage the man and the woman can agree upon any condition that is accepted by Islamic law (e.g.-not having children, not having sexual intercourse but only hugging, rubbings and kisses etc.) and such a condition will be binding on both of them to the expiration of the marriage time limit.<sup>17</sup>

### **3.2 The type of women a person can contract Mut'ah with**

Similar rules that apply for permanent marriage also apply for Mut'ah (Temporary marriage. If certain types of women are haram (forbidden) for a man to contract a permanent marriage with them, then the same rule also applies to Mut'ah. For example, a man cannot contract temporary marriage (Mut'ah) with a married woman, a polytheist woman, a woman who does not believe in any of the heavenly religions and an apostate woman, as is the case with a permanent marriage.<sup>18</sup> And according to the verdicts of all Shi'ah scholars, it is highly undesirable to contract a mut'ah marriage with a woman who is involved in fornication and prostitution.

It is not recommended for a man to enter in to a temporary marriage contract with a woman who is indecent like helot or hoe because most of them do not observe IDDA (waiting period) after the expiration of the Mut'ah period, before having sexual relationship with another man.<sup>19</sup>

### **3.3 Iddah (Waiting Period) in Mut'ah**

Iddah is obligatory upon women in Mut'ah, just like in permanent marriage<sup>20</sup>. Therefore:

1. A woman cannot enter into Mut'ah marriage, till the time she has become pure by observing the 'iddah (waiting period) from her earlier husband.
2. After expiration of Mut'ah marriage, again she has to observe 'iddah, before getting married (either permanent or Mut'ah) to any other person.

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<sup>17</sup> - Ibid

<sup>18</sup>-Ibid

<sup>19</sup> - Ibid

<sup>20</sup> Ibid

3. The 'iddah (waiting period) is 45 days or 2 times menstruation.<sup>21</sup>

### **3.4 The position of children born from Mut'ah?**

There is no difference between the children of permanent marriage or Mut'ah. Both are considered legitimate under the Shari'ah – they inherit from their parents, and all Islamic laws apply with regards to paternity.

All principles that apply on women in permanent marriage also apply in Mut'ah, and it means that the same principle/rights apply; i.e. two people cannot contract Mut'ah with the same woman at one given time, and so forth.<sup>22</sup>In terms of rights related to feeding, clothing and shelter, a temporary wife cannot enjoy them from her temporary husband except where they have agreed to include them or any one of them in the marriage contract. There is also no inheritance between temporary spouses except where they have agreed to include it in the contract as a clause.<sup>23</sup>

**3.5 Principles that apply on women in permanent and temporary marriage** The same principle/rights apply to both Mut'ah and permanent marriage. Two people cannot contract Mut'ah with the same woman at one given time, and so forth.<sup>24</sup>The most important difference between the two types of marriage is that the woman does not have right of feeding, shelter and any other expenses from the man apart from the dower unless where they have agreed on that as part of the conditions for the marriage contract. In case of death, none of them have the right of inheritance from one another.

### **3.6 Historical example of Mut'ah**

A historical example of nikah mut'ah is described by Ibn Hajar Asqalani (1372 - 1448 CE (852 AH)) in his commentary on the work of Sahih al-Bukhari.<sup>25</sup>

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<sup>21</sup>-Ibid

<sup>22</sup>-Ibid

<sup>23</sup> - Ibid

<sup>24</sup>- ibid

<sup>25</sup>-"Hadith" Fath al-Bari Vol 9 p143 - 144. At Al-eman.com website.

Muawiyah (602 - 680 AH), a mediaeval Sunni caliph, entered into a nikah mut'ah contract with a woman from Ta'if. She was a slave who was owned by a man called Banu Hazramee. She received a yearly stipend from Muawiyah.

The scholar, 'Abd ar-Razzaq as San'ani (744 CE), described how Saeed bin Jubayr frequently visited a woman in Mecca. When asked why, he said he had a contract of nikah mut'ah with her and seeing her was "more halal than drinking water".<sup>26</sup>

There is no doubt that during the time of the Prophet and Abu Bakr, Mut'ah was lawful, as Jabir Ibn Abdullah Ansari says that, "I performed Mut'ah during the time of the Messenger of Allah (S) and in the time of Abu Bakr," and also in Tirmidhi1 it is mentioned that a Syrian asked Abdullah Ibn Umar that, "Mut'ah of Hajj was lawful with Umrah, but your father made it unlawful," Abdullah replied, "My father made it unlawful but the Messenger of Allah (S) has made it lawful. Shall I leave the Sunnah (practice) of the Prophet and obey the commands of my father?"

### **3.7 Examples of Solutions the Temporary Marriage May Give<sup>27</sup>**

The temporary marriage has many useful solutions, which cannot be obtained except from such a marriage. The following solutions are some of those examples:<sup>28</sup>

**First Example:** It is an appropriate time for the woman to discover her husband's behavior during this contract and decide whether he is the right man she dreamed of or not, before she agrees on the permanent marriage. Naturally, a woman fears that if she made a permanent contract with her husband and discovered, after the contract, that he is not the husband she loves, she may not be able to rescue herself if the contract was permanent. So, the same woman can make a temporary contract in which she can put a condition saying that he hasn't the right to touch her or have any kind of sexual intercourse with her. After a certain period, she can be sure of her emotions toward her husbands; therefore, she can either annul the contract or convert it into a permanent one.

**Second Example:** The temporary marriage is considered a fundamental solution for the man who cannot afford forming a family, so, he can practice the temporary marriage, in which he is not

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<sup>26</sup>- "Musannaf of Abd al-Razzaq, Kitab al Talaq, Bab al Mutah, Hadith 14020." Islamweb.net website.

<sup>27</sup>- Muhsin al-Asfoor, translated by Abbas Javad safi, The Personal status law, volume one, Dar al-Tafsir-Isma'ilian publishing (January-2000) P.78.

<sup>28</sup> Muhsin al-Asfoor, O.P.C.I.T

obligated to pay the expenses of a wife and children, nor shall he be forced to specify or pay back a heavy dower, to keep himself aloof from committing sins.

**Third Example:** The temporary marriage is a suitable situation for those (men) who are usually travelling abroad for long period of time whether for study, trading or working, so that they can chasten themselves from falling in **haraam** and from not being affected by sexual diseases, especially nowadays where thousands of hotels all over the world become full of cheap and sick whores.

**Fourth Example:** This kind of marriage is suitable for those women who work outside their houses and are unable to have the responsibility of forming a family and working at the same time. They can be protected from vice by practicing such kind of marriage.

**Fifth Example:** It is also fruitful for those men who have, for example, four wives, and they became unable to satisfy him sexually for any reason, and or are unable to serve their husband in doing the housekeeping. In this case, the husband may agree to have a temporary wife without being forced to divorce one of his four permanent wives because he loves them, so he can practice the temporary marriage and lawfully satisfy his desire.

**Sixth Example:** There may be a woman who became a widow and has children from her dead husband, and she is forced to work to afford her children and house expenses. Such a woman may be afraid that if she got married, she might be hindered by her new husband to work, which is the only way to sustain her children. Such a woman can have a husband through a temporary marriage and so, she now has peace of mind that this type of marriage will not affect her normal style of life, and it also keeps her children from vagrancy, homelessness and injustice.

**Seventh Example:** There may be a man who is eager to marry a woman who shall not inherit him or vying with his wife or wives with whom he is enjoying permanent marriage. Such a man can go for temporary marriage with that woman so as to achieve his goal.

**Eighth Example:** There may be a woman too, who is eager to marry a man who shall not inherit her, and wants that her properties be conveyed to her parents or brothers after her death, for certain purposes. Such a woman can go for temporary marriage with that man so as to achieve her goal.

**Ninth Example:** This type of marriage is suitable for a Muslim man who wants to marry a non-Muslim woman, since according to the legal opinion of some Muslim jurists, he is not permitted to marry such a woman through permanent marriage.

**Tenth Example:** There may be women who do not want their husbands to have full authority over them, like controlling their going and coming to and from their working place, especially those who are physicians, nurses or midwives that work in hospitals and such people may be called in any hour for treatment or surgery. Or like that woman who has an old mother who needs care and protection, especially when there is nobody except this woman (i.e her daughter) who can take care of her, and she is afraid that if she marries a man through permanent contract, she might be prevented by her husband from going to work or from taking care of her mother. Temporary marriage is the solution for such women.

**Eleventh example:** There may be a lady (a university student) who wants to complete her academic carrier and have a useful certificate without any obstacle or banning reasons. She may think that marrying a man through permanent marriage may prevent her from reaching her goals. She can therefore get married to a man through temporary marriage and keep on her goals.

**Twelfth Example:** There may be a woman who is eager to go to Hajj, but she cannot find a Mahram person on whom she can depend and who can accompany her in this long trip. Such a woman can marry any suitable man through temporary marriage termed with the period of Hajj, in which she can go and return without committing sins or facing difficulties. She can also marry a young boy of any man through this kind of marriage, because if she make a permanent contract with this boy, she would not be able to annul this contract, and she would be forced to wait until the boy becomes fifteen years old and then ask for divorce, where she might face other unexpected difficulties.

**Thirteenth Example:** This kind of marriage is also suitable for male students who are studying outside their Islamic societies or outside their countries, especially in non-Muslim countries, where they may be afraid to commit sins because of the abnormal situations of those societies or countries. Such students can have wives through temporary marriage.

**Fourteenth Example:** The female students who have school relationship with other male students can also marry them through temporary marriage to remove legal prohibition, and be able to speak to each other even in privacy.

**Fifteenth Example:** This type of marriage can serve as a way of tackling sexual harassment of women by men or of men by women for grade or for pride in tertiary institutions.

**Sixteenth Example:** This type of marriage can be a unique solution for the remainder of men who remained alive after a devastating war in their countries, or after the invasion of some certain plagues or deadly infectious diseases which destroyed most of the women in those countries.<sup>29</sup>

**Seventeenth Example:** Unmarried, divorced or widow women, who want to chasten themselves from committing sins, especially if the divorced or widow woman has children, and she is afraid to marry again because her children may object to her marrying another man other than their father. Or she may not be eager to make another family other than her own one, but she wants to marry and protect herself from committing sins or falling in haram. She can then go for this type of marriage.<sup>30</sup>

#### **4.0 Sunni and Shi'ah Arguments on the Legality of Mut'ah**

The present validity of mut'ah(temporary marriage) is a heavily controversial issue among the Shi'ah and Sunnis. While Sunni scholars are prone to view that the hadith literature support the notion that mut'ah is presently illegal, Shi'ah scholars are prone to arrive to the opposite conclusion.

The ulama, both Sunni and Shi'ah, agree that mut'ah was permitted at the beginning of Islam. However, they disagree as to the reasons why it was permitted.

#### **4.1 The Shi'ah Views**

In the Qur'anic chapter entitled "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; 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 agreeing together, after the due apportion date. God is All-knowing, All-Wise"<sup>31</sup>**

All Shi'ah and some Sunni scholars hold that this verse is especially to the permissibility of temporary marriage (mut'ah). The Shi'ahs present several arguments to prove this point.

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<sup>29</sup> Ibid

<sup>30</sup> - Ibid

<sup>31</sup>- Noble Qur'an: Chapter 4, Verse 24.

This verse was revealed towards the beginning of the prophet's stay in Medina, which lasted from 622 to 632 CE. At that time the men of Medina used to seek enjoyment from women for a limited period of time in exchange for a specified sum of money.<sup>32</sup> By its revelation this verse in effect confirmed an existing situation, and it emphasized that men must fulfill their promises concerning the agreed upon sum. In Medina this custom was looked upon as one kind of temporary marriage and was referred to by the term *istimta*, 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 term 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 statues and legal prescriptions. If someone wants to understand a word in the Qur'an in other than the conventional meaning of the term, he must supply a strong reason for doing so.<sup>33</sup>

The context of the verse also indicates that it is referring to temporary marriage. In the preceding verses the Qur'an forbids acts of injustice toward women. On believers, it is not lawful for you to inherit from women against their will; neither debar them that you may go off with part of what you have given them<sup>34</sup>. The most commonly accepted interception of this verse is that it forbids the pre-Islamic Arab custom of inheriting stepmothers. When a man died, one of his sons would inherit his wife, as long as she was not his own mother. The stepson would place a cloth upon his dead father's wife and thereby become her owner. If he wished he could then marry her without paying her a dower. Or he could keep her a virtual prisoner. He could also marry her to someone else and take her dower for himself, or forbid her to marry anyone as long as he was alive. If the woman possessed property, he was entitled to take possession of it for himself.<sup>35</sup>

The next verse reads in part of another as follows: ***“And if you desire to exchange a wife in place of another, and you have given to one a hundred-weight, take of it nothing”***<sup>36</sup>.

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<sup>32</sup>- Gourji Abul-Qasim, Temporary marriage (mut'a) in Islamic law, translated by Sachiko Murata, Ansariyan Publications. Qum-Iran, 1986, P. 51.

<sup>33</sup>- Ibid

<sup>34</sup>- Noble Qur'an: Chapter 4, Verse 19.

<sup>35</sup>- Gourji Abul-Qasim, Tr. Murata Sachiko, o.p.c.i.t. P. 51.

<sup>36</sup>- Noble Qur'an: Chapter 4, Verse 20.

In other words, if a man divorces a wife to marry a different wife, he must not, he must not take back any of the dower that he has given the first, even if the dower is a very large one and he desires only a small part of it.

The next subject referred to in this passage is the marriage of one's father's wife: ***'And do not marry women that your fathers married...'***<sup>37</sup>.

Both this verse and verse 19 were revealed after Abu Qays b. al-Aslat died and his wife was inherited and married by his son Muhsin. The son refused to pay the daily expenses of his stepmother and wife, nor would he give her share of the inheritance or allow her to visit her relatives she came to the Prophet and explained what has happened he told her to return to her husband and wait, that perhaps God send down a statute that would clarify her situation. Then these verses were revealed.<sup>38</sup>

In the following verse (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 wedded women, save what your right hands own. It continues with the words quoted above: lawful right 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.<sup>39</sup>

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 relationship 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 the conclusion reaches by the previous words. This section 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

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<sup>37</sup>- Noble Qur'an: Chapter 4, Verse 19.

<sup>38</sup>- Gourji Abul-Qasim, Tr. Murata Sachiko, o.p.c.i.t. P.53.

<sup>39</sup>- Ibid

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, kind which requires that the man pay the wages of his wife.<sup>40</sup>

The next verse states that if a man is too poor to marry a free Muslim woman, he should marry a Muslim slave girl, and the verse which follows it concerns certain statutes related to such marriages.

Finally, this section of the chapter concludes with these words of *those who went before you, and to guide you to the customs of those who went before you, and to turn towards you, God is All-knowing All-wise*<sup>41</sup>.

Many sayings have been related from the companions of the Prophet (peace and blessings of Allah be upon him) and those who followed them (al-tabi'un) confirming the Shi'ah view that verse 24 of this chapter concerns Mut'ah. Many of the companions including Ibn Abbas, the ancestor of the Abbasid caliphs, Ibn Mas'ud, one of the first to accept Islam, and Ubayy bin Ka'ab, one of the scribes of the revelation, hold that three words have been dropped from this passage in the Qur'an and that the original version reads: ***“So those of them whom you enjoy to a specified term (ila ajal musamma).”***<sup>42</sup> This clearly indicates that the verse refers to mut'ah. For example, it has been related that Ibn Abbas was asked about mut'ah, he answered: Have you not read the sura “Women”<sup>43</sup>. His questioner replied: Of course, I have. He said: Did you not read: “So those of them whom you enjoy to a specified term...” ‘He answered: I did not read the verse like that.’ Ibn Abbas said: ‘I swear by God, this is how God revealed it, and he repeated this statement twice.’<sup>44</sup>

In majma al-bayan, al-Tabarsi, the famous Shi'ah commentator of the Qur'an summarizes the Shi'ah arguments: “the word enjoy in this verse refers to the marriage of mut'ah, i.e a marriage for a specified dower and determined time period. This opinion has been related from Ibn Abbas and

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<sup>40</sup>- ibid

<sup>41</sup>- Noble Qur'an: chapter 4, Verse 22.

<sup>42</sup>- Gourji Abul-Qasim, Tr. Murata Sachiko, o.p.c.i.t. P.54.

<sup>43</sup>- Ibid

<sup>44</sup>- Abu Ali al-fadl bn al-Hassan al-tabarsi, *Majma al-bayan, Tehran, 1960, m. 32.*

many of the followers of the companions such as Isma'il b. Abd al-Rahman al-Suddi (d. 12/744-45) and Sa'id b. Jubayr al-asadi (95/713-14).<sup>45</sup> In fact, this clearly must be the case, for although the words *istimta* and *mut'ah* have the literal meaning of enjoyment, in the language of the shari'ah 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'ah* with a woman, you must pay her wages<sup>46</sup>.

## 5.0 The Sunni Views

As was indicated above, the Sunnis agree that at the beginning of Islam *mut'ah* was permitted. For example, Fakhr al-Din al-Razi (d.606/1209), the famous sunni theologian, writes in his Great Commentary on the Qur'an that *mut'ah* was at first permitted. The prophet made a lesser pilgrimage (*umra*) to Mecca, and the women of Mecca made themselves up especially for the occasion. Some of the companions complained about their long separation from their wives, and the prophet replied. Then go and enjoy these women.<sup>47</sup>

Those Sunnis who hold that the Qur'anic verse mentioned above does indeed refer to the permissibility of *mut'ah* also maintain that the verse was subsequently abrogated (*naskh*) by other Qur'anic verse, the sermon of the second Khalif, Umar bn khattab, banning *mut'ah*, and hadith of the prophet(SAW) transmitted by the companions.<sup>48</sup> The Shi'ahs in turn reject each of the arguments.

## 5.1 The Sunnis' Qur'anic Argument

The 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”***<sup>49</sup> According to the Prophet's wife A'isha and others, *Mut'ah* is forbidden and abrogated in the Qur'an where God say:” **who guard their private parts....**<sup>50</sup>

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<sup>45</sup>- *ibid*

<sup>46</sup>- *Ibid*

<sup>47</sup>- Fakhr-Razi, *Al-Tafsir al-Kabir*. Istanbul 1307/1889-90 n.286

<sup>48</sup>- *ibid*. 287.

<sup>49</sup>- Noble Qur'an: Chapter 23, Verse1-6.

<sup>50</sup>- *Ibid*

The Sunni arguments continue by pointing out that without question a woman enjoyed through mut'ah 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...*<sup>51</sup>. But everyone agrees that Mut'ah 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<sup>52</sup>, but this also is not the case.

We have already seen that some of these arguments, taken from al-Razi's Great Commentary, do not in fact apply to Mut'ah as the Shi'ahs understand it. However, it will be useful to see how the Shi'ahs answer each of the Sunni claims as follows:

## **5.2 Shi'ah answers to the Sunni Qur'anic argument**

As for the abrogation of the verse concerning Mut'ah, historical considerations show that this cannot be the case. The verse mentioned as abrogating Mut'ah was revealed in Mecca, while the verse establishing it was revealed after the prophet has immigrated to Medina. But a verse which abrogates another verse must be revealed after it, not before it.

As for the Sunni claim that a wife by mut'ah is not a legitimate wife because she does not fulfill the shari'ah requirements for being a 'wife' this also is false.<sup>53</sup> 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'ah as established by the hadith literature show that mut'ah is an exception.<sup>54</sup> Nor is it the only exception, since an unbeliever cannot inherit from a Muslim, nor can a murderer inherit from his victim. 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 mut'ah validity.<sup>55</sup>

In a similar manner numerous hadith exist to prove that a wife by mut'ah must observe the waiting period. Some of these are even related in Sunni sources. For example, al-Razi himself quotes a

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<sup>51</sup>- Noble Qur'an: Chapter 4, Verse 12.

<sup>52</sup> - Noble Qur'an: Chapter 2, Verse 234.

<sup>53</sup>- Gourji Abul-Qasim, Tr. Murata Sachiko, o.p.c.i.t. P.56.

<sup>54</sup>- ibid

<sup>55</sup> - Ibid

relevant saying from Ibn Abbas. He was asked: Is mut'ah 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'ah just as God has said. The questioner continued: Is there a waiting period in mut'ah? he replied: Yes, a menstrual period. Do the husband and wife inherit from each other? He answered: No.<sup>56</sup>

Certain Sunnis also argue that Mut'ah cannot be considered a legitimate form of sexual union because it excludes such things as inheritance, divorce, sworn allegation, forswearing, and zihar.<sup>57</sup> Since these necessary concomitants of marriage do not apply to mut'ah, 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 whoever seeks after more than that, those are the transgressors*"<sup>58</sup>. Hence, persons who engaged in mut'ah transgress God's law.<sup>59</sup>

A typical Shi'ah answer to this argument runs as follows: First, the Qur'anic verse is general statements, and there is no reason why its specific applications may not be clarified by other verses and hadith. Second, it is not true that the above things are concomitants of marriage: there is no inheritance 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 zihar 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).<sup>60</sup> If we suppose that some proof is found in the form of a Qur'anic verse or a hadith demonstrating relationship with a slave). If we suppose that some proof is that these things do in fact pertain to legitimate sexual relationship, then it will be necessary to specify that these pertain to legitimate sexual relationships with those hadith which demonstrate that they do not pertain to mut'ah.<sup>61</sup>

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<sup>56</sup>- ibid

<sup>57</sup> - <http://www.al-islam.org/al-serat/muta/4.htm#r15>

<sup>58</sup> - Noble Qur'an: Chapter 23, Verse 1-7.

<sup>59</sup> <http://www.al-islam.org>, O.p.c.i.t.

<sup>60</sup>- Ibid

<sup>61</sup>- ibid

## 6.0 Evidences from the Sunni Hadith Collections

7.1 Jabir Ibn Abdullah and Salama Ibn al-Akwa' narrated: There came to us the proclaimer of Allah's Messenger (May peace be upon him) and said: "Allah's Messenger has granted you to benefit yourself (Istamta'u), i.e., to contract temporary marriage with women."<sup>62</sup>

إِنَّ رَسُولَ اللَّهِ قَدْ أَدِنَ لَكُمْ أَنْ تَسْتَمْتَعُوا. يَعْنِي مَتْعَةَ النِّسَاءِ.

In the above tradition the verb Istamta'a (to enjoy; to have pleasure) has been used which is the exact form of the verb used in Qur'an in the verse of Mut'a 4:24, and moreover, Jabir said in the above tradition that Istamta'a means performing Mut'a of women (temporary marriage).

Salama Ibn al-Akwa' and Jabir Ibn Abdullah reported: Allah's Messenger (May peace be upon him and his progeny) came to us and permitted us to contract temporary marriage.<sup>63</sup>

Moreover al-Bukhari narrated from another companion of the Prophet (peace and blessings of Allah be upon him) the following tradition:

Narrated 'Imran bin Husayn:

**"The Verse of Mut'ah was revealed in Allah's Book, so we did it at the time of Allah's Apostle, and nothing was revealed in Qur'an to make it illegal, nor did the Prophet prohibit it till he died. But a man (who regarded it illegal) expressed what his own mind suggested."**<sup>64</sup>

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<sup>62</sup> - • Sahih Muslim, English version, v2, chapter DXLI (titled: Temporary Marriage), Tradition #3246

• Sahih Muslim, Arabic version, 1980 Edition Pub. in Saudi Arabia, v2, p1022, Tradition #13, "Kitab al-Nikah, Bab Nikah al-Mut'a"

<sup>63</sup> - • Sahih Muslim, English version, v2, chapter DXLI (titled: Temporary Marriage), Tradition #3247

• Sahih Muslim, Arabic version, 1980 Edition Pub. in Saudi Arabia, v2, p1022, Tradition #14, "Kitab al-Nikah, Bab Nikah al-Mut'a"

<sup>64</sup> - • Sahih al-Bukhari, Arabic-English, v6, Hadith #43

• Sahih al-Bukhari, Arabic, v2, p375, v6, p34

• Musnad Ahmad Ibn Hanbal, v4, p436 on the authority of 'Imran Ibn al-Qasir

(Note: For the above Hadith, the Saudi translator of Sahih al-Bukhari (Muhammad Muhsin Khan) has changed the word "Mut'ah" to "Hajj-at-Tamatu". This is while in the Arabic text of the Hadith of al-Bukhari which is beside the English text, the word "Mut'ah" has been used alone:)

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As pointed out, Mut'ah can be of two kinds: Mut'ah of women (pleasure marriage) and Mut'ah of Hajj (Hajj-at-Tamatu). Both were practiced at the time of the Prophet (peace and blessings of Allah be upon him) and Abu Bakr and the early days of Umar's rule.

Thus basically, the above tradition refers to both types of Mut'ah which were prohibited by Umar. Moreover, as evidences were given, many Sunni commentators have put this very same tradition of Imran Ibn Husayn under the commentary of verse<sup>65</sup> of Mut'ah marriage showing that this Mut'ah refers to Mut'ah marriage.

### 6.1 Sunni reported Hadiths prohibiting Mut'ah Marriage

1- Narrated by Ali (radiyallaahu 'anhu) that:

**“Allāh’s Messenger (ﷺ) forbade temporary marriage with women, and the eating of the meat of the domestic donkey on the day of the battle of Khaibar.”<sup>66</sup>**

2- Narrated by Rabee' Ibn Sabrah from his father that Allāh’s Messenger (ﷺ) said:

**“I used to permit for you temporary marriage with women. And Allāh has now forbidden that until the Day of Resurrection. So if anyone has any of these women, he should let her go. And you are not to take back anything of what you have given them [as dowry or gifts].”<sup>67</sup>**

Shaikh Sālih al-Fawzān (hafidhahullāh) said:

<sup>65</sup> - Noble Qur'an, Chapter 4 Verse 24. (4:24)

<sup>66</sup> - This hadith was reported by the seven except Abu Dawood: (Bukhāree, 4216; Muslim, 1407; Ibn Mājah, 1961; At-Tirmidhee, 1121; An-Nasā'ee, 6/126, 7/202; Ahmad, 592)

<sup>67</sup> - Reported by Muslim, 1406; Abu Dawood, 2072; An-Nasā'ee, 6/126; Ibn Mājah, 1962; Ahmad, 15345; and Ibn Hibbān, 4147.

All of these narrations are concerning the forbiddance of temporary marriage (mut'ah); it is from the invalid types of marriage<sup>68</sup>. The Prophet (ﷺ) forbade it in the year of the battle of Khaibar, in the seventh year after the Hijrah, before the conquest of Makkah and after the treaty of Hudaibiyah.

## 6.2 Shi'ah answers to the Sunni reported Hadiths abrogating Mut'ah marriage

The Shi'as in rejecting the abrogation of Mut'ah marriage by the above two Hadiths or any other Hadith that was related to the Prophet (SAW) by the Sunnis, say that the permission of Mut'ah marriage comes directly from Allah (SWT) in chapter 4, verse 24 of the holy Qur'an<sup>69</sup> and there is no any other verse of the holy Qur'an that abrogated that verse of mut'ah up to the time when the prophet of Allah (SAW) left this world. Therefore, for some people saying of the Prophet abrogating Mut'ah or not, neither the statement of the Prophet can abrogate a verse of Qur'an nor the saying of any of his companions. A true Muslim must believe that it is only Allah (SWT) who can abrogate His own command.<sup>70</sup> Even the Prophet or a descendent of a Prophet cannot abrogate a divine command.<sup>71</sup> Allamah Qaushiji writes in Sharh Tajrid<sup>72</sup> 11 that certainly, the Holy Prophet (S) had no right to abrogate even a small verse of Quran. Only Allah had the right to abrogate His command from Quran as some abrogated commands are seen in the Holy Quran. It is not possible for any tradition of Prophet to abrogate a verse of Quran, as is clear from the statement of the Prophet that "If our tradition conforms to Quran, accept it and whatever is opposed to Quran, reject it."<sup>73</sup> 12

## 7.0 The Sermon of Umar bn AL Khattab (The second caliph)

In a famous sermon the second caliph Umar banned Mut'ah with the following words:

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<sup>68</sup> - Adapted from volume 4, no. 996-997 (English, 848 to 851), Kitābun-Nikāh (The Book of Marriage) from Shaikh Sālih al-Fawzān's explanation of Bulūgh Al-Marām min Adillatil-Ahkām of Al-Hāfidh Ahmad Ibn 'Ali Ibn Hajr Al-Asqalāni (born 773H, died 852H), entitled Tas-heel al-Ilmām bi-fiqhil-Ahādeeth min Bulūghil-Marām and is printed in seven volumes.

<sup>69</sup> - As it was discussed in the Shi'a Qur'anic argument above

<sup>70</sup> Gourji Abul-Qasim, Tr. Murata Sachiko, o.p.c.i.t. P.99.

<sup>71</sup> -Ibid p. 101

<sup>72</sup> -. Chapter of Awaliyate Umar, Pg. 385.

<sup>73</sup> - Tafseer Kabir, Vol. 3, Pg. 537.

*“Two mut’ahs were practiced during the time of the Prophet [i.e. temporary marriage and mut’ah al-hajj], but I forbid both of them and I will punish anyone who practices either”.*<sup>74</sup>

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 it was permitted, yet they remained silent out of negligence and in order to placate Umar, or (2) 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.<sup>75</sup>

Al-Razi continues by saying that the first possibility is what he is trying to prove. If we maintain the first possibility, then we must call ‘Umar and the companions who were with him unbelievers.<sup>76</sup> For they knew that the Qur’an and the prophet had permitted mut’ah, 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 is unbelief. But such supposition requires that we call Islam a religion of unbelief, which is absurd.<sup>77</sup>

The second possibility that Umar’s listeners had not known whether mut’ah was permitted or forbidden is also absurd. For, if we suppose that mut’ah 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 mut’ah’s legal situation must have been known, just as everyone knew about marriage.

Al-Razi concludes that as soon as we see that the two possibilities are in fact absurd, then we know for certain that the companions remained silent only because they all knew that mut’ah has already been abrogated.<sup>78</sup>

The Shi’ahs answer al-Razi’s arguments as follows: Umar’s sermon demonstrates that during the lifetime of the prophet mut’ah was permitted. The reason why Umar attributed the banning to himself must be that he wanted to show that he was expressing his own view. If the prophet himself

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<sup>74</sup>- Ahmad bn Hanbal. Al-Musnad. Beirut. n.d 1.52.

<sup>75</sup>- Gourji Abul-Qasim, Tr. Murata Sachiko, o.p.c.i.t. P.58.

<sup>76</sup>- Ibid. P. 59.

<sup>77</sup>- Ibid

<sup>78</sup>- Ibid. P. 61.

had prohibited mut'ah, or if its permissibility pertained only to a specific period of time, then Caliph Umar would have attributed its prohibition to the prophet, not to himself.<sup>79</sup>

## CONCLUSION

What can be concluded from the above research is that the position of temporary marriage (Mut'ah) in Islamic family law is that of being part and parcel of Islamic marriage, accepted by all Muslims to be legislated by Islam in order to safeguard believers from indulging in to adultery and fornication. All Muslim scholars believe that this type of marriage was practiced by the companions of the noble prophet (SAW) during the lifetime but only differ on its legitimacy after the demise of the prophet (SAW). While some Sunni scholars are with the view that Mut'ah was banned by the prophet (SAW), all the Shi'ah scholars, who give legal rulings according to Ahlul-Bait school of Islamic legal thought, confirm that Mut'ah is still now and to the end of time a legitimate type of marriage. Drawing evidences from the Qur'an and Prophetic tradition. Sunni scholars do not accept Mut'ah as a form of Nikāh whereas the Shi'a scholars consider both as marriage; Nikāh being permanent marriage (Nikāh al-Dā'm) and Mut'ah being a temporary marriage. The Qur'anic arguments from both sides and also the hadiths ascribed to the noble prophet (SAW) banning temporary marriage need thorough examination, verification and clarification, so as to reach a positive conclusion to be accepted by all Muslim Jurists from the Sunni and Shi'a sects so as to pave a way of tackling indecent acts and vices within the Muslim communities in the contemporary social life. May Almighty Allah increase our knowledge in rightly comprehending the shari'ah and practicing it in the way He so wishes.

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<sup>79</sup>- ibid.