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the muta



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Literal meaning of the Arabic word ' Muta' is ' enjoyment'; therefore, it may also be regarded as ' marriage for pleasure'. In the earlier days of Islam, when the Arabs had to live away from their homes for a considerably long period either on account of wars or on trade-journeys, they used to satisfy their sex-desires through prostitutes. In order to avoid the development of prostitution in the society and to confer legitimacy upon children of such unions, temporary marriage was recognised and permitted by the Prophet for some time. But later on, when he felt that this concession was being exploited, he prohibited it absolutely. It is said that Caliph Omar had made an attempt to suppress and condemn the practice of Muta and tried his best to abolish it from the society. Since then, the Muta form of marriage has not been in practice under any school of Muslim law except the Ithna Asharia Shia law. Accordingly, the Muta form of marriage is now not recognised under any school of Muslim law except the Ithna Asharia.

However, the practice of Muta is not very common in India.

#### **Essentials of Muta Marriage:**

The Iùt`-marriage must be contracted according to the rules prescribed by Ithna Asharia law. A Muta contracted against any of the following legal conditions is an unlawful union. Essential conditions for a valid Iùt`-marriage may be summarised as under: (1) The parties must have attained the age of puberty (fifteen years) and must also possess a sound mind. Guardians cannot contract Muta of any minor.

Minor's Muta is void even if it has been contracted by marriage-guardian. (2)

The Shia male may contract Muta with any Muslim, Kitabia or a fire-

worshipping woman, but he has no right to contract Muta with the woman of any other religion. Muta with a Hindu woman is void. But, a Shia woman cannot contract Muta with any non-Muslim. There is no restriction as to the number of Muta-wives.

One may contract a Muta form of marriage with as many wives at a time as he likes. (3) The consent of both the parties must be a free consent. (4) The formalities of offer and acceptance, which are necessary for a regular marriage, are also essential in the Muta form of marriage. Muta may be contracted lawfully without the witnesses. The Muta marriage may be contracted either by the use of the word ' Muta' or any other word signifying temporary marriage. (5) There must not exist any prohibited relationship between the parties. (6) The period for which the Muta is being contracted, must be clearly specified.

It may be for a day, for a week or for certain years. As a matter of fact, the fundamental difference between a Muta and a Nikah is that, in a marriage if its period has been specified (how so long that period may be) the marriage becomes a Muta, whereas a marriage without any specific period is always a Nikah. It may be noted that the word ' Muta' in itself does not render a marriage temporary. If a Muta form of marriage has been contracted but its duration has not been specified, it is regarded as a permanent marriage (Nikah). In *S. A. Hussain v.*

*Rajamma*, a Shia male *Habibulla* contracted a Muta with *Rajamma*, a Harijan converted to Islam. This marriage continued till the death of *Habibulla* in

1967. After death of her husband, Rajamma inherited the properties of her husband.

But this inheritance was challenged by Hussain (brother of Habibulla) on the ground that the marriage between Rajamma and his brother was simply a *lutà*-marriage under which a widow is not entitled to inherit the properties of her husband. A Shia witness confirmed that he had seen the Muta form of marriage between Habibulla and Rajamma, but he also said that no period was specified at that time. It was held by the court that a Muta without any specified period is to be treated as a permanent marriage (Nikah). In this case, although the word Muta was used but the term was not specified, therefore, the marriage was treated as permanent marriage under which Rajamma was entitled to inherit her husband's properties. In *Shahzada Qanum v. Fakhr Jahan*, the High Court of Hyderabad observed that there is no difference between a Muta in which the period has not been specified and a Muta contracted 'for life'. It was held by the court that a Muta 'for life' is like a Muta for unspecified period, and it must be treated as a permanent marriage (Nikah). But, it is respectfully submitted that fixation of die period by the words 'for life' is nothing but to specify the period of a Muta and it can never be regarded as a permanent marriage.

Fyzee rightly observes that to equate a 'Muta for life' with a regular Nikah is a serious step. (7) The dower (consideration) must be specified at the time of the contract. Where the dower has not been fixed, the *lutà*-marriage is void. It may be noted that specification of the dower is necessary for the validity of a Muta form of marriage but it is not essential for a permanent marriage (Nikah).

**Legal Effects of Muta-Marriage:**

(1) The cohabitation between the parties is lawful. (2) The children are legitimate and have rights to inherit the properties of both the parents.

(3) But, the Muta-husband and wife have no mutual rights of inheritance. (4) The wife is entitled to get full dower even if the husband does not cohabit for the full term and leaves the wife before the expiry of the term. But, if the wife leaves the husband, then husband has a right to deduct the amount of dower proportionate to the unexpired period of the duration. (5) A *lutà*-wife is not entitled to get any maintenance from the husband under the Shia law; but she is entitled to claim maintenance under the Criminal Procedure Code.

(6) Where consummation has not taken place, the wife need not observe any Iddat. If the *lutà*-marriage terminates after consummation, the wife is required to undergo an Iddat of two monthly courses. But, where the marriage dissolves due to death of the husband, the Muta-wife is required to observe an Iddat of four months ten days. Where the *lutà*-wife is pregnant, the period of Iddat extends till delivery of the child.

(7) There is no divorce in a Muta form of marriage. The marriage in this form dissolves: (i) By death of either party, or (ii) On the expiry of the specified period, or (iii) The husband leaves the wife before expiry of the term. Where a husband leaves the wife before the term, it is said that he had made a gift of the unexpired period in favour of the wife (*Hiba-i-Muddat*) because in that case he has to pay the full amount of dower. If wife leaves, her dower is deducted in proportion to the remaining period of the term. (8) In a Muta form of marriage, if it is not known as to when the term expired but the cohabitation continues till the death of the husband, the proper inference <https://assignbuster.com/literal-from-the-society-since-then-the-muta/>

would be that Muta continues throughout the life. Similar would be the inference where the cohabitation continues after the expiry of a known period.

It is submitted that in such cases a life-long Muta is to be presumed. The issues are legitimate and may inherit the properties of the parents, but husband or wife may not mutually inherit each other.