



Fiqh of Marriage: Class Nineteen

الحمد لله و الصلاة و السلام على رسول الله و بعد:

49utThe Hadith:

وَعَنْ سَلَمَةَ بْنِ الْأَكْوَعِ (قَالَ : { رَخَّصَ رَسُولُ اللَّهِ (عَامَ أُوطَاسٍ فِي
الْمُتْعَةِ , ثَلَاثَةَ أَيَّامٍ , ثُمَّ نَهَى عَنْهَا } رَوَاهُ مُسْلِمٌ

Narrated Salama bin al-Akwa': In the year of Autas, Allah's Messenger permitted Muta' marriage for three nights, then he prohibited it afterwards.

[Reported by Muslim]

The Explanation:

The year of Autass was the year of the Fathi Makkah, and there are other texts that mention the year of Fathi Makkah, or the Year of Umrah al Qadiyyah, or Khaibar, or Tabook, and they all indicated that the Prophet s forbade Zawaj Muta'ah.

They year of Autass the year Makkah was opened, and it was is in the 8th year after Hijra, and the Prophet allowed a dispensation for three days, and in some narrations, after three days, the Prophet alahi as salam said: Any person who has had (temporary marriage) for three days let him turn his back to her.

This Rukhsaa (dispensation) was given when the Sahaba said, "We have been celibate for a long time, should we castrate ourselves, oh Messenger of Allah?"

He said “No, you may take benefit from these women,” and in some narrations, he said, “and after three days, leave them behind.” That Rukhsa was enough, since they complained of the hardship of celibacy.

And in some narrations, when Makkah was opened, the people of the city dressed up, and complained to the Prophet about celibacy, and so the Prophet allowed them to benefit from these women, but the women refused without setting a time limit for the temporary marriage, since we were coming and going.

And Ibn Abdul Barr mentions that one of the Sahabah said, “I and a cousin of mine went out, and I was younger than him, and we passed by a very beautiful woman, like a camel with a long neck, and we asked if she would marry one of us temporarily. She said, what will you give me? He said, “I will give you my shoulder cloth.” He says, my cousin had a nicer shoulder cloth than mine, and I was younger than him. She looked at me, and at my cousin, and she looked at our clothes, and said, “Shoulder clothes are the same, but youth is more beloved to me.” So he said I stayed with her for 3 days. Then I left, and I saw the Messenger of Allah at the door of the Kaaba, and he commanded an announcer to say, “I had previously allowed you to have mut’ah with these women, but I forbid you from it, **for Allah has forbidden it until the Day of Judgment**, and whoever has one of these women, let her go, and do not take anything he had given her.”

This is a clear text that the Prophet forbade Mut’ah in the year of Fathi Makkah.

And this is a clear text that there was a period that it was made permissible to negotiate with a woman and have the temporary marriage in exchange for the clothe.

Thus, in the year of Autass, there was a Rukhsaa (leeway) for temporary marriage, and then it was forbidden.

And when studying this hadith, for the sake of knowledge, when temporary marriage was allowed, was it permitted for a long period of time, or was it only for a short number of days?

Some ulema say the maximum period was two menstrual cycles, and others said 45 days.

They also mention that if a person mentions a long period of time for marriage, even 100 years, this nullifies the contract. This is because the Islamic marriage

lasts even after death, and she will inherit from him, and he from her, and it is permitted for a man to make the funeral washing for his wife and vice versa, since the effects of the marriage contract remain even after one's death.

And likewise, there is the 'iddah, or waiting period that is required, after the death of the husband or wife.

But in this hadith, we see that the period was restricted for 3 days, and in their books they mention that the shortest period is a day and a night, or a certain number of times. In this case, what is the difference between zinaa and temporary marriage?

And we see in the next hadith, in a hadith narrated by Ali, may Allah be pleased with him, who said:

"Allah's Messenger forbade Muta' in the year of Khaibar." [Agreed upon]

and in another narration says, "The Prophet forbade Muta' and the flesh on donkeys on the day of Khaibar."

Those who try to join between the various narrations understand the prohibition of the flesh of donkeys to be on the day of Khaibar, and the prohibition of Muta' to be independent.

Imam Nawawi says Nikaah Mut'ah was permitted on two occasions, and forbidden on two occasions. The last time, it was forbidden until the Day of Judgement.

Some ulema say it was only permitted once, and then it was abrogated altogether only once.

But why are their various narration regarding its abrogation, during Fathi Makkah, or Autaass, or Khaibar?

The reason was that the people who heard about the prohibition at the time of Khaibar were only those who attended the battle. No one else heard about it.

Then later on, during the Fath of Makkah, the announcement of the prohibition was repeated. In this way, the people of Makkah could learn about its prohibition, just like it was announced at Khaibar to teach the people of Madina.

And then, after Islam spread throughout the Arabian peninsula, and many tribes came to Islam, the Prophet sent messengers to all the sources of water around the peninsula to inform the Arab tribes that I am performing the pilgrimage, and whoever would like to join me is welcome.

He then stood up on Safaa or Marwaa, and the Arabs used to think that performing Umrah during the months of Hajj was a great sin, so announced that it was permissible, and he himself performed Umrah 4 times during this months.

Then he repeated this ruling during Farewell pilgrimage.

So likewise, the Prophet repeated the pronouncement of the prohibition of Mut'ah, but he simply announced the prohibition as emphasis on separate occasions.

And likewise during the Khilafah of Umar, when Umar announced the prohibition he was only repeating the prohibition made during the lifetime of the Prophet alayhi as salam.

Thus, it is clear that the religion of Islam clearly prohibits temporary marriage.

And it is only the Shia' Imamiyyah, we hold on to the view that it was permitted and they do not accept the narrations that it was abrogated.

And Allah knows best.

I love students of knowledge to learn the proofs of this issue, since many Shia' argue vehemently in support of it. But if you ask them, do you wish this for you daughter, or sister, they will so no.

Then why do you allow it for others.

Once, Shaikh Atiyya was reading from the Muwatta', and he mentioned that if a Shia dies amongst Sunni, he should be washed, since this is from the Haqq of la illaha illa Allah. A Shii' stood waiting for him by the door of the masjid, wanting to talk to the Shaikh. The shaikh said, I do not have time to speak with you, since you like to talk and there will be no end to our conversation. But if you insist, come back tomorrow after Fajr and I will speak to you.

The Shii' insisted on talking. So the Shaikh said: "But in your books of Fiqh, it says, if you find a person who is against our affair, do not make friends with them except by tuqyaa (to save yourself from them.) Isn't this true?"

The man said, "Let me come back tomorrow and I'll let you know."

My brothers, this issue has taken up a lot of time, but the student of knowledge must know this, since there is a lot of argumentation about it, and the student of knowledge must be equipped to respond to this issue.

End of Class 19.