

Theories legitimate purposes and the mention of marriage

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Abstract: When a disease is generally considered the entire material and spiritual efforts to combat and prevent the b is used to although jurors disagree; the civil law accepts the mention of in deals but disagrees with marriage mention. The basic reasons for disagreement are cautious, estehab of religious quotations. The idea of some jurator or like moghadas Ardabili and others disrupt the collection of marriage mention disagrees. Cautious and estehab are the basic basis that is not true base of reasons. Here the idea of maghased legitimate by famous jurator of 7th century Abu Eshagh Shatebi omit the wills about deal sides and his aims are more than the appearance of words, the concentration of Islam to people animus. Says the actions follow the animus that is one of basis of marriage mention idea.

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1. Introduction

From the beginning of *ejtehad* in *feqh-h*, it means after Shaikh Mofid they work about the mention of deals he says in *al Maghnae*: deal with sides agreement about selling good and knowledge about term will do if they are really agree.

It seems terms about the mention of firstly expressed in deals and was exact terms about it in deals. For example is the mention of create deals or just create doubt in owner ship? If it's true is it necessary or just one of appearance? Is the really choice in it? Do as the mention of exists in other deals like – loan lend – repos it or not? But the extinction of it in some deals like *eghatat* confirmed. Although in quotation of Shahidan and jurors before sheikh Ansari this matter mentioned but seems sheikh Ansari is the first jurator that talked about it in a vast situation.

Today's believed based on the basic rule trust deals and being agree of sides and request in Islam deals is free without mention (*Moatat*) and now a day's most of jurors accept it but in term of marry they say it's an essential need and separated from other facts. But with this agreement the jurors and law makers, hasn't some idea.

The idea of marriage mention changes this idea to a topic of today's discussion and we face with below question:

Why law makers don't agree with mention in marriage?

And focusing on below terms sound fair;

Imagination of using words in term of marriage with adding jurors cautious drives it to disagreement with mention (*Moatat*) in marriage. Possibility of discovering aims and animus more than word's and by

actions, is the effect of maghased legitimate to deals publically and to marriage specially.

Marriage mention based on the idea of maghased legitimates the topic no one work on it.

1- Mention (*Moatat*)

1. Mention (*Moatat*) is a feature of deal that force to accept of it isn't oral written but it's happens with deals like deal of mention (*Moatat*). Most of jurator says mention (*Moatat*) isn't a deal, for example they say mention deals s not an espousal. Deal from have two types: material deal that acceptance of it is oral and non-material deals or mention that happens with capture.

2. Imam Khomeini says logic action needs to update deals based on situation: it seems mention (*Moatat*) deal in term of time has priority in compare with material deal and the first deal is vaster, and we should have no doubt about that the first man based on his needs change the goods without oral agreement.

Sayed Mohammad Kazem *tabatabaee yazdi* says: it's better to say moreover mention (*Moatat*) is deal if it's a situation deal it should be in an animus term deal should be done.

3. Civil law against jurator, its accepted deal done by giving or getting goods. So in cases that when price is clear and buyer knows the situation it's possible to deal without any talks. A deal with giving or getting is mentioning (*Moatat*). In other situation says: in term of saying animus we no need ceremony, because writing just talks about the unconscious animus. Sometimes we don't use talk to say our animus and just an action happening.

4. Amend 193c.1 says: writing of deal may happen with action to show willing like giving but we

have some expectations. A deal with expressing the animus with action is mention deal.

1- Jafari , langerodi , Mohammad Jafar , justice terminology,P66.

2- Tabatabaee Yazdi , Sayed Mohammad Kazem , Hashia al makaseb v1 darAlelm Qom , darAlmaaref al Islam Tehran , P67.

3- Katozian Nasser civil rights, 6 print, P91 , 92.

4- Safaiee , Hossain introduction level of civil rights P 72, 73.

Amend Khomeini's idea:

Imam Khomeini says: if we want use Aye's to confirm the truth of mention(Moatat) we should say Aye confirms that and contain all parts of deal and one of this item is mention(Moatat).

He says: based on this Aye, what before this could pay back was cleared because when people say: "the deal" what deal it means? It means every deal induction based on trade Aye:

People whom believed don't use each other property illegally else there is a trade with both side agreement and benefits.

Based on sheikh Ansari "don't eat properties illegal's means all rasps is harm expect "trades with agreement" if a trade with agreement happened it's true and legal.

Now if we say mention (Moatat) is shape of trade with agreement, two person do mention deal are clear and true.

The result is in Aye "deal with agreement" we seen feature of that and anything show rights biologic man's. Mention (Moatat) by national person cause to get your right and Aye exactly refers to mention (Moatat).

Using of "trust in deal" says:

Moghadas ardabili and moghadas yerevani using the Aye of "trust in deal" to believe in mention (Moatat) and say like oral deal: its benefits. Imam Khomeini using this Aye and accept its content and what it's in it.

Person whom believed do your promises by other and create trust the meaning of deal in this Aye is promises and we see no doubt that promise in deal with oral mention (Moatat) is true.

1- Nesa Aye 29.

2- Amoli, sheikh Mohammad Taghi , TaleghAla makaseb ,N1,P135.

3- Ardabili moghadas ,majmae Alfaede and Alborhan book v8,P14.

4- Maede Aye 1.

Definition of marriage mention

Somebody says marriage mention means type of marriage that just need oral agreement of sides and no need to force to grasp. It's seems the meaning of marriage mention(Moatat) is that male and female express their interests to life by activities because the inner animus doesn't create the marriage promise but

this item should happen with action.

Imam Khomeini in definition of marriage say: if man and woman talk together and decide to marry, woman create the marriage by going to man home and man do it by condescension of woman too and by this the mention(Moatat) marriage happening.

If ceremonies and weddings or any of her action create and was against of marriage they are really enough and we don't need any Arabic or Persian concubine. It should clear the rise no friendship relation or adultery and the aim is just life temporary or all time one.

But in the idea of Shia jurators the animus of marriage should be express by clear words because marriage is an important deal and create heavy responsibilities and sides clearly express their animus to living by words to show the face of marriage. By this way in term of marriage against other deals in term of talking about animus we see more hardship and law makers wants to clear any doubt about it and we call it cautious un foroj and as words are the first animus and it's really stronger it's seems law maker says the word express is essential in marriage.

Idea of mention (Moatat) in marriage movement

1- Tabatabaee Yazdi ,Sayed Mohammad Kazem ,Ha Shia al makaseb,P68 ,Makarem Shirazi ,Nasser anvar alreghaha,P61 ,Shahid sani Masalek alafham v4,P23.

2- Mohaghegh Damad, analysis of family rights, P166.

3- Adyani abul Hassan, article and analysis chapter 74.

4- Imam Khomeini tahrir alvaite albaye book, P180.

5- Tehrani sadeqi vasayel, P173.

Some jurators have plethora about the concept of necessity oral acceptance of marriage and said marriage without it is adultery like sheikh Ansari: the marriage won't be halal with actions and difference between marriage and adultery is concubine because we see agreement in adultery in mention marriage the agreement is for long life and this heart agreement express in a way but in adultery we see no agreement for life and the aim is adultery, regard these how we could compare them.

Khoye talks in analysis of sheikh Ansari: the difference between marriage and adultery isn't speaking because sometimes oral talking adultery and sometimes without oral is marriage –by his idea this difference is a credital option it means man called woman as wife and woman too.

To be cautious is really needed in marriage but it should mentioned that create hardship and plethora an unusual ceremony is as in. the basis of Islamic is to make marriage easy and to make divorce hard regard this as we need witnesses in divorce we didn't need

them in marriage

**Reason of omission of mention marriage
Surah Ahzab , Aye 33 to 37**

As you told a person whom god gave him freedom and Islam:

Protect your wife and be afraid of god and hide something in your mind after that god appear it and you be afraid a doubt others advice and it's better to be afraid of god and as zaid divorced that woman we marry her to you show believed people the marriage with step – son – it's a reason for performing the concubine.

Quotations

- 1- Ansari , almarriage book,P78.
- 2- Khomeini ,Mabani Fi Sharh or vatal vosgha ,v33,P129 ,Khoye mesbahAl Feghah V2,P192.

Some of jurors believes in the necessity of oral acceptance of marriage and we talk about some of them.

Aban Ibn taghleeb say: I asked Imam Sadiq (P): if I want to temporary marry with woman what should say? Imam said: say I temporary marry with you based on holly Quran and prophet sonnet... if she says: yes, she accepted and she your wife and you deserve her.

The way of deduction is how teller asked about marriage and Imam said tell: "I marry you" and she the oral acceptance is necessary. Although this quotation is about temporary marriage but the necessity is clear because in temporary marriage oral acceptance is needed and in full time is essential.

Discussion

It's possible the Imam answer that say: "I marry you" is for the speaker and asked "what should I say" and imam answer it

Performing basis

In some parts to approving the credit of mention marriage we have performing basis that we talk about them below:

Esteshab basis:

Naraghi wrote: it's necessary in matrimony, because we see that the acceptance is necessary in marriage. It means when see the trace of marriage and we doubt about acceptance, esteshab say no marriage created.

Cautious basis

- 1- Hor amoli ,vasael Al Shia v21,P43.
- 2- Khoye ,mabani Sharh Al orve Alvogh v33, P129.
- 3- Naraghi mostanad Al Shia v16,P84.

Its possible said the marriage is different from other deals and it's really important. Sahib vasael Al Shia has a chapter about "to be cautious" in marriage. The importance of marriage force to do it as a correct way although we don't see any correctness in mention marriage.

Discussion:

It's seems the usage of performing basis is cases with no doubt. Now if we use "trust in deal" in mention

(Moatat) in marriage based on this the, is no reason to perform on it. Mention deal like marriage other types is a deal and base on Aye's trust in deals is necessary expect we have some special cases. Persons whom used performing basis hadn't such a reason:

Consensus:

Based on some jurors the important reason about uncredited of mention marriage and the necessity of oral acceptance is jurors Consensus and Muslims process.

Ayatollah Makarem Shirazi says: we should be little the Consensus because we haven't another acceptable reason to use it.

Sahib riaz says the oral acceptance in matrimony is confirmed by jurors and religious necessity and says: Consensus on this option is essential and without it the marriage trace isn't acceptable. The marriage doesn't happening without performing the rules and creating trace. The quotation by barid Aj Ali from Imam Baqer (P) about translation of holly Aye "took them with firm deal" and the purpose of deal is marriage.

Discussion:

- 1- Makarem Shirazi ,bohos Fegh-hi hamze,P122.
- 2- Makarem Shirazi ,Solse mbahe kharej Fegh-h v1,P89.
- 3- Nesa Surah, Aye 21.
- 4- Sahib riaz v16,P84.

Consensus may use as a document for this matter because it's possible that this agreement should be based on quotation.

Jurors aren't completely agreed about mention (Moatat). Is there any Consensus about oral acceptance in marriage and uncredited of mention (Moatat) with misunderstanding about ideas can be used as a document. Is it true that jurors whom say acceptance is necessary doesn't believe in mention (Moatat) as a deal? It's clear this kind of Consensus is not confident.

- 5- Idea of correctness mention marriage:

What we should know about it, is the writing of marriage is really needed? If it's necessary should it just happen with oral perform or we could use it in other ways and marry? Most of jurors use of the "its make speecheshalal or haram" in term of deals and say the writing is necessary with oral actions.

But it's seems omit of oral effect is disagree with religious fact because factors like in her it and marriage with maharem isn't term oral facts. Using the quotation doesn't solve problem? Because mention (Moatat) based on Consensus is halal based on the concept of quotation every quotation us in a circle of halal or haram, so using oral couldn't have trace about mention (Moatat).

Based on elements of quotation should be used when deals created with oral acceptance but if we have deal with and the way of acceptance (like writing or actions) we couldn't use quotations.

In final item jurators just used the oral express of deals but if a deal happen with oral accepted and this advice, loan and based on Aye said writing is accepted and the philosophy of writing deal is the reason of approving. With this feature we can use writing in every deal or action that it should be correct.

1- Makarem Shirazi ,bohos fegh-hi v1, P123.

It's possible trust to oral in animus and don't use writing cause to that at the beginning of Islam we have no wiring and just speech accepted

The reason for necessity of matrimony by jurators is cause of clarity of orals in telling the animus of marriage this topic mentioned in most of jurators book and we use some:

Shahih sani said: the aim of the quotation is that orals refers to animus. Mohaghegh korki says: writing is a jest and marriage doesn't regard exist with jest. Mentioned topic and like this we see jurators search for to express the animus and by this they use oral and they didn't use other ways because it's not valuable

So if the aim is to say the animus clearly we shouldn't limit it just by oral against the talks of mohaghegh korki in jame Al Maghased that said writing is a jest and it's not enough for marriage. We see cases that writing is more valid than oral express.

When man and woman decide to marry and write it the marriage created and wife couldn't marry others without divorce. Mention marriage in some cases doesn't advise but we see no reason about the relation that it's illegal in mention marriage.

So we see Consensus and jurators idea is for carefulness so by this the writing acceptance or reject it is not cancelled. And esteshan of marriage traces doesn't need oral talks and contain mention (Moatat) and there is no Consensus about necessity of oral talks.

Sadeghi tehrani writes in resale tozih Al masael "the marriage contract with any language is true and without special words "I Marry you" if there is a relation between man and woman whether oral or writing or gestures is a reason to marry

1- Khoye mabani Fi Sharh or vat Al Vosgh ,v2,p144.

And in continue he says: if ceremonies or any gestures and action is assign to marry that is enough and we no need to Arabic matrimony or Persian one the important point is to clear that the activities are not for, friendship and adultery and aim is to live with each other, temporary and full time.

6- Reasons for correctness of mention marriage.

1-6 Ayes

We see in holy Quran surah Maeda: persons who believed put the trust in every deal you make with god and other. Also said: and you are responsible about promises that we asked about it, In this two Ayes we see holly god emphasized on the necessity of doing our job about promises. The word deal bring with no term. The

importance is just the agreement of both side that it's necessary to creation of deals and the agreement is enough and talk about it in different ways like –oral –gesture or writing is possible Imam Khomeini says: based on situation the mention (Moatat) in every deal necessary to make it possible because actions are like orals are important in marriage the writing deal is important because actions that is possible to accept them aren't limited to harm cases. Sides could express their agreement about halal action for example buy the dowry and send them so husband house or do some actions to show the marriage deal

2-6 to approving the mention marriage we could use some quotation the important ones are

1- Sadeghi tehrani ,resale tozih Al masael novin,P173.

2- Maeda Aye 1 and 5.

3- Esra Aye 34 and 17.

4- Imam Khomeini ,Albay book ,v1,P267

Mohammad Ibn Ismael Al bazi say I asked Imam Reza (P) about woman that was wrong because of her drunk and it is not force deal? Is the halal marriage created? Imam answered: if woman stayed and live her life with man, this stay: means the agreement is remaining teller said asked Imam: is the created marriage is true? Imam answered, yes. This quotation is correct.

We could say a deal in drunk situation is not true but as woman stay at there after it, this remaining shows agreement to marry with man and a kind of mention marriage created and should be perform based on it.

3-6 al oghod-tabe Al ghosad basis:

Based on this the important factor to deal is the animus of deal and we see any sin to the express of animus. So the value is to discover the aim beyond the animus and credit need to actions and without action we have no credit.

May we cans relate this idea to sheikh Mofid. Because we can see this idea in his talks as in definition of deal he says side's agreement so the writing on paper is enough to show agreement.

To approving this idea it's enough to use civil law amends. As amend 19 says:

Deals created in condition that both side benefits with agreement

And amend 41984 says: if we have some terms in deal and it's clarified that one side doesn't agree the deal rules are not allowed and in amend 1149 we see: the divorce is just created with the aim of returning expect we see no sign to return.

1- Toosi ,tazbih Al ahkam ,v7,P392.

2- Imam Khomeini ,tahrir Al vasile ,v3,P249.

3- Al maghae P92.

4- Ardabili Majma Alfaede Al Borhan,P22 from almotajer.

1-3-6 the generality formula

Na eni says about this: following marriage from aims don't limit to some deals based on Aye "trust in deal" and this Aye contain all deals. As mir fatah confirmed this idea.

The reason of generality is clear because as we see the creation and remaining of marriage is the aim of it and deal needs the agreement of sides and aim is important.

7- **Maghased Legitimateidea:**

Abo eshagh Shatebi the famous jurator of 7 country say in Al movafeghat book it's seems the law maker based on some general rules is really illegal. This general rules and important items are: health protection, Religious protection – rationality property protection and generation protection.

Shatebi says: as sub amend disagree with general laws we change the sub amends based on generals – as the result we see in cases that we see a marriage between man and woman based on mention marriage they are spouse. In fact to provide to aims of law maker health protection and generation we could use mention (Moatat) for marriage and based on this marriage types are:

- A) Matrimony marriage
- B) Mention marriage

Discussion

As we see marriage is a heart feeling and the aim is important, if the purpose of writing is oral, this called oral writing or the aim created by actions it called action marriage

- 1- Maniye Al taleb v1_P52
- 2- Anavin abosol_P1 from topic 28
- 3- Shatebi Abu Eshagh –Almovafeghat v3_P57

Important issues like rejection –force are not accepted and most jurators believe in the agreement. The orals are the only way to express aims and animus. The aim should be approved.

Moghadas ardabili reject the rule of orals to acceptance of marriage. Fayz Kashani the aim of marriage will approve by oral. In marriage the oral acceptance of woman is enough

Disagree, people with mention talks: marriage isn't usual deal and is really important so law makers shouldn't agree with the agreement of sides or doing an action is not assign of marriage.

Amend 194c.l: finally accept jurators idea in terms of deals and says mention isn't enough to marriage and reject the cares.

If the term was about acceptance the law makers should advise to general and tell it to all.

Why we couldn't say mention is an example of trade acceptance so by this the mention will reject.

Trust in deal has generality to contain all deals and based on definition deal is heart action so it contain mention (Moatat).

In previous times they doubt believe in gesture or writing to ownership but today sure the ways of transport or the sign of matrimony or marriage in general using the rules like careens and esteshab in term of necessity of oral acceptance and rejection of mention(Moatat) is useful when we haven't words like "trust in deals".

It's seems Consensus create hardship to alligate about mention marriage but this talk isn't completed because Ejam isn't adirection and it's not a deal.

So yes at beginning at Islam the common way to express feeling was oral but this is not a reason with creation of writing we haven't wrote agreement and acceptance

Credit of oral is just away and its necessity to express the aims so we discuss if we find an option against oral it should be enough and we how have no reason.

Limit acceptance to orals. On the other hand based on idea of maghased Legitimate the protection of generation and human jest is agree with mention marriage that fully expressed.

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