

The study of temporary marriage on the approach of imamites and the common people canon law

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Abstract: Of view of whole muslims, the temporal marriage was permissible at early islam. For this was in point on the great quran and the prophet's sunah as well on the time of Abubakrvicegerency and parts of "umar" one's people are doing it. The only issue of dispute about the temporary marriage on islamis it's continuance or abrogation of this decree of god. The shi'ites and some of distinguished companions of the prophet are believed that this decree hasn't abrogated yet. However some of the sunni orthodoxy claim that this decreeof god has abrogated. And this is when there are plenty of reports on the discord of "umaribnkhatib" concerned with this divine decree on it'svicegerency. Some objections also are related on this cause of "umar", for his prevention is in reality on apparent objection with the book of god and the sunnah of prophet. As a result of this matter the sunniorthodoxy jurisprudents are planned for its justification and some of concubine verse and as well as some other people aknowledged "umar's" prevention the same of prophet one, and narrated some contradictory traditions on this case, whichshiite scholars of jurisprudents bu using from presented narration and verses in this field rejected their inferences. At the cessation of this paper it was hinted that the islamic state ought to prepare some limitations and terms for prevention of arduousnesseson temporal marriage based upon benefits due to the time and place and at the same time to coach the ground to the logical using of it.

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1. Introduction

1. Legality of concubine.

1.1 quranic proofs

On the indication of this verse on intention have been brought up a few mode and face, Some people have used the term of sexual pleasure (estemta) which it meaning as temporal marriage on the customary, but have deducted some hidden meaning out of it and had have this idea that the intention of law-giver was that the islamic laws ought to be stressed with regard to people comprehend of common acknowledgment (Tabarssi and ibnZohreh quoted by Morwarid).

Thus the purpose of "estemta" on the said verse is the same of temporary marriage, as on the time of revelation of verse the term of concubine was known by this meaning, and as a result the term of "estemta" is used as the same of lexical one and the verse has indicated on permanent marriage (Fakhr-e Razi). Tabarssi has narrated on this subject matter that: even though the word of "estemta" has been enacted originally for sexual pleasyre. How ever on the customary noble law it's meaning is the same as of nominate contract, importantly if this term has been added to the word of women.

According to this narration the meaning of this verse is as the following: ever time you had concubine contract on a woman pay her marriage-

portion. The aim of the problem is that the lord has suspended and beard in mind the alimony for "estemta" or sexual pleasure and this suspension necessitate that the meaning of "estemta" to be the same of this destinctive contract not the intercourse and to ake sexual pleasure out of her for the alimony can be compulsory only by contract. As well the attribution of verse to the other thing except of concubine contract is need of recurrence and we have to be exact on the aim of this verse because there are three possibilities for it here that is:

A. The aim of verse is lawfulness of permanent marriage.

B. B. The aim of verse is focusing on payment of alimony after sexual pleasure.

C. The aim of verse is concubine or temporal marriage.

The first likelihood is not right for it is required of that, unreasonably has been occurred one reitration, because the deity of glory on the third verse of this chapter has elucidated the permanent marriage prescription and ordered that:

If you are afraid that don't observe the equity on marriage with the orphan girls, marry the other woman of your own selected one. You can approve two, three or four apouses and if you are afraid don't observe the justice take only one.

The second eventuality is the same as the first one, for the lord has expressed the problem of marriage-portion and payment of it on the fourth verse of the same chapter and commended that: and pay the alimony of women as a one debt or donation to them.

Thus of the three probabilities that mentioned above remain only the third one, that is, the aim of the noble verse is the expression of concubine or temporal marriage.

Anyway there isn't any dispute on the indication of this verse as regards to legality of concubine among the jurisprudents of shiit and even the sunnism people are on unanimity relating to the principle of concubine legality.

1.2. Narrational indications

"Bokhari" on the validation of his document has narrated of " Jaber-ibn-Abdullah and Salmeh-ibn-Akoal " that : we were on the corps that the prophet of lord came to us and ordered that do concubine, then, when you are permitted (Bokhari).

"Mohammad ben muslim" has narrated of Imam Baqer that he commanded: Jaberibnabdullah was speaking of the life story of the prophet and for example he has spoken these words:

Me and my mates along with the prophet of God were going into the war so the prophet of lord made concubine lawful for us and did so with regard to us until he was alive concerning concubine, and Ali(pbuh) has ordered repeatedly that: if the son of "Khatab" that is "umar" didn't aquired the vicegerency before me and hasn't snatched it out of my hand no anyone but wretched committed fornication. (Nayshapouri).

Thus the concubine's legality is one of the necessary permissions of religion and the sunnism people are on the same as regards it with imamites of prophet's time, however the dispute of sunnism with shiit, return to the abrogation of this legal status which on the continuation of it we can refer to that as the following:

2. Concubine abrogation

3. Abrogation of verses.

Sunnism assumes that the verse of the concubine has been abrogated by the verses such as divorce, waiting time of divorce, and law of inheritance, but these reasons are blemished.

Although it is being said that the concubine judicial decision has been abrogated by the verse of "believers" it is for that, in this verse we read "anybody who intercourse with anyone other than his spouse or bondswoman is adult. However we can respond to this that the said verse hasn't any competence for such an abrogation, for it has no meaning that the abrogation verse to be a long chain of transmission before the abrogated verse and the

"believers verse" has been revealed in Mecca that is the times that the concubine still hasn't being the divine legislation and the verse of concubine has revealed on the "Medina" in addition of that it is the word of marriage that we come to face of it on the "believers verse" which it is as well include of concubine and hasn't any contradiction with the concubine verse until we can say that this verse is the abrogator of concubine, for the woman of temporal marriage is also the woman of any man and the contract of this sort is as well the first marriage, for on the narration of related to the station of prophecy and on the words of companions and successors to the prophet's companions, the concubine is being called first marriage and is the temporal or lengthy first marriage. Concerning to the matters such as this one that says if we had first marriage we have to have the woman and men that has to receive inheritance from each other and if they would like to separate from each other have to do it by divorcing, ought to be said that on the concubine there is neither inheritance nor divorce.

On the verse of "women" polygamy is abrogated and in it we read that: conclude a marriage contract to women of two ones, three ones and four ones but this verse hasn't ordered that the people can do temporal marriage. Because on concubine more than four women are as well permitted to be married.

In this case we have to remind that the relation among those verses and concubine is not the relation of abrogating verse and abrogated one so that those verses to be abrogating of this concubine verse, on the contrary their proportion is the connection of comprehensive terms and particular terms or absolute and conditional relation as the verse of "heritage" for example has had the general decree on this issue that the whole women, either the women of concubine or the women of permanent marriage receive the heritage from the husband and as well the husbands take inheritance from their spouses. But the tradition and the word of prophet (pbuh) has referred to this general decree and ordered that the whole women take inheritance from their husband and as well the whole men receive heritage out of their women and every woman that aspires to separate from his husband she can do this by ending of legal marriage except the temporal spouse which no need to the lawful separation and every man can't take more than four spouses for himself except in temporary marriage that is permitted more than four ones. Here some commentators due to this matter that they haven't distinguished between the comprehensive terms and particular ones as well as the relation between abrogation and abrogated has committed some faults and have thought that there is the proportion of

abrogating and abrogated between the said verses and the verse of concubine.

Abrogation on transmission of texts.

The sunnism by narrating of traditions from prophet have claimed the abolition of concubine. This proof is also alterable because the quranic text is aware and isn't deniable. Although the islamic traditions of narrated are some sort of weak too. For example a number of these traditions are as the following:

Baihaqi has narrated from Abuzar that "the concubine of women was permitted to the companions of the prophet of god for three days and then the prophet prohibited it for them (seyouti). Muslim by description of traditions on the prohibition of concubine by prophet recites from his highness Ali (pbuh) that the prophet has ordered that the temporal marriage is not permitted (nay shapouri and bita). There are another islamic traditions on the lawfulness of concubine and it's continuation that their authority and basis belong to the some of the companions. For example "Jaberibne Abdullah" is one of them and "muslim" has recounted from "Zabir" that "I heard from Jaberibn Abdullah Anssari" that is saying we on the time of prophet and Abubakr were having temporary marriage with a fistful of flour and date with women until the "umar" prevented the "Amir ibnHerith" from it (Nayshapoury). Again another example is "Abdullahibnumar" and "Tirmidhi" has reported from him that "a man of "Sham" people asked from "ibnumar" on the concubine of women and he returned that "it is allowed". And the same man asked: but your father prevented it then "ibnumar" replied: in your opinion when my father to prohabite anything that prophet has enacted it, we have to set at liberty the tradition and to follow from my father's saying? (Tirmidhi).

In spite of such contradictions both of these two groups of transmissions are invalidate and in these situations the only reference is the book of the lord which is stable and honoured and until the concubine allowable verse has not been abolished. The canonist for announcement of his opinion have to refer to the quran.

The reality is that the claim of concubine abrogation and it's evidences are so far contradicted and confused that the sunni orthodoxy are as well on perplexity and distress so that based on their affirmation the concubine have to be even allowable for seven times and then has become prohibited (Qotebi).

Attribution of concubine forbidding to the caliph

There are many traditions that according to them the prohibition of concubine has attributed to the caliph itself, and it was the caliph that prohibited

the concubine and threatened the people to stone to death if they committed it. In this short time narration of the entire sayings of historians on the life of the prophet is not possible. Thus we content ourselves with some of these transmissions:

"omran ben hassin" explained that: the concubine verse revealed by the book of god and we were doing it and the verse that can to forbid it not revealed also the prophet of God not prevented anybody from it, till he passed away. Latters a man from us said about it on own discretion every thing which he would like (Bokhari).

"muslim" has narrated from AbiZabir that: I have heard from Jaberibn Abdullah Anssari that he said: we were made temporary marriage with women by a fistful of date and flour until the "umar" prevented "Amir ibnHerith" from foing it. (nayshapoury).

There are a lot of traditions which indicating that "Amr ben khetab" has explained on the pulpit that two concubines were legal on the time of prophet of god and I don't prevent you from it: pilgrimage concubine and first marriage concubine (Fakhrrazi and et al).

Based on these transmissions of texts the prohibition of concubine by second caliph was on the strength of governmental principle and he have thought that this way of invocation of islamic law is among the authorities of government. As well it is clear from the "umar's" words that its mean was the same, as he attributes prohibition to itself and in his believe this action was the expediency of those times. Motahhari of martyr on the justification of this matter, as he attributes it to the "Allameh Kashefulkhta" says that: caliph's forbidding with regards to the concubine was a political consideration not a legitimate one and lawful. According to what we can take and use from the matters of history the caliph onit's leadership didn't hide his worry on the scattering of his companions across the newly expanded countries of islamic and interchange of new muslim nations with each other and that is why he mad eall his struggle for not allowing the muslims to be scatter out of "Maddina". On the other hand the caliph was unsatisfied out of the mixtue of the blood of new muslims with the blood of muslims of Meddina before that the islamic training to be effectful on them deeply...it is clear that this justification wasn't anything but a temporary order and the cause that the muslims went under this prohibition of temporal was that they comrehended it as a political expediency and temporary one, not as a permanent law. So the others ought to understand it as a temporal law, and it is evident that the opinion of "AllamehKashefulkhata" is not governed to this idea

that the intervention of caliph from the first of it has been exact in this regard, or not (Motahhari- 1357).

4. Discussions

Attention to the issue of concubine legislation and the positive impressions on it clearly shows that the concubine on the legislation principle wasn't the temporal order, but rather had the permanent effect. As the alertness to the words of innocent doesn't leave any doubt to the followers of the truth.

As the concubine enjoys from qualification of prevention and restraining from committing of fornication it's forbidding possesses detrimental effects. Thus for achievement of this purpose that is prevention from fornication it is favourable generally. Namely the people who are needful of it in reality and not the people who like concubine by hedonism and lewdness ought to be able to do it as says Islamic law. What is important is that the Islamic rule can determine limited regulation and provisions based on the expediency of itself in order that to prevent from the possible abuse of certain people particularly those who are threatening the family organ by their sensuality. However the best justification on concubine on the deed of caliph of second as before referred to it, is that the prohibition of concubine by "umar" was due to the best course of action that he thought it is right and the same thought has enforced him to fulfill, and by forbidding of concubine has punished its doer. Since the prohibition of caliph on concubine was temporary and due to the expediency of those times thus every time that the prevention to be left off it is clear that the concubine can be allowable and once more this order will find its place on the Islamic legislation and again the place of sanctuaries would be put in and the Islamic community will achieve to its capabilities.

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