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Abstract

Customary marriage (*nikāḥ 'urfi*)—non-official married life of a couple is a new phenomenon increasingly spreading throughout the Arab world. Legal and social consequences of customary marriage have led many socio-jurisprudential scholars to forbid all its varieties. The strategy has, nevertheless, failed to restrain the spread of this type of marriage. In this paper, I argue that one fundamental religiously acceptable solution is *temporary marriage*. Although Muslims have disagreed over the legitimacy of temporary marriage, I argue that they all agree over its original legitimacy according to the Quran and Hadith, and then I show that there is no decisive evidence for the subsequent abrogation of its legitimacy. Moreover, I argue that temporary marriage can serve the purposes of customary marriage. Thus, all Muslims can accept temporary marriage as a religious replacement for customary marriage.

Keywords: marriage, temporary marriage, customary marriage, *mut'a*, emergency.

1. Introduction

The majority of Sunni jurists (fuqahā') believe that temporary marriage as recognized in Imāmī jurisprudence (*figh*) came to be forbidden in the early years of Islam by a governmental decree though it was originally legitimate and practiced by the Companions of the Prophet of Islam. At the same time, contemporary Sunni jurists are faced with the everexpanding problematic phenomenon of *nikāh* '*urfī*, to which I shall refer as "customary marriage," particularly among tourists and graduate students of co-educational universities in the Arab states of the Persian Gulf and Egypt. For over a decade, Sunni jurists have been under pressures to stand against different forms of illegitimate customary marriage. Such marriage, its religious legitimacy, and its legal and social consequences have been studied in dozens of books, papers, social media posts, and mass media discussions, while nevertheless it continues to rapidly grow, posing a challenge to such jurists. However, Imāmī jurists seem rather unconcerned with customary marriage; they permit temporary marriage and thus see no need to discuss customary marriage or any other forms of unregistered married life (which has come to be known as "white marriage" in Iran-not to be confused with "white marriage" as understood in English).

In this paper, I argue that Sunni jurists need not deny the legitimacy of temporary marriage, since there is jurisprudential ground available to them based on which they can acknowledge its legitimacy. I will then suggest that temporary marriage can preclude certain disadvantages of customary marriage, and can thus serve as a religious substitution for it. Before that, however, I survey some of the reactions of Sunni scholars to the phenomenon of customary marriage.

2. What Is Customary Marriage, and Why Has It Spread So Widely?

Customary marriage is said to consist in a particular agreement between a man and a woman to have a surreptitious married life—hidden from their families and the society at large—which is sometimes accompanied by a non-officially signed document and two witnesses, and is sometimes fully surreptitious (Mutlaq 2006, 200). Of its various forms, the most common is a relationship in which the woman relinquishes her basic rights such as a specific *mahr*, a specific duration, spousal support (or alimony), and accommodation. Moreover, considering the surreptitious nature of this marriage, requirements such as the permission of her guardian, the presence of two witnesses, and the public announcement of the marriage in Sunni jurisprudence, are waived. Thus, the man and woman sign a non-official, ordinary document and embark on a married life, which would lead to numerous legal and social consequences for the couple, for the families involved, and for courts.

In Arabic social media, such marriage is variously referred to as "surreptitious," "secret," "illegitimate," or "free of charge." It is said that customary marriage was initiated by Arab tourists in the lush green country of Yemen (Ali-Mohammadi and Zargooshnasab 2014, 99). Today, customary marriage is popular among tourists and university students. It has now turned into one of the greatest social and legal challenge in Arab countries, prompting jurists to search for a solution. Such marriage is known in Persian as "white marriage." It is characterized by secrecy—the man and the woman embark on a married life without going through Sharia and legal procedures and without observing the relevant manners and etiquettes of an official marriage (Young Journalists Club 1393 Sh).

Although different social, environmental, economic, and cultural factors contribute to the spread of customary marriage (Abū Aḥmad, n.d., 40; Ali-Mohammadi and Zargooshnasab 2014, 109), the main factors are said to include permissivism, the urgency of satisfying one's sexual needs without having to acquiesce to spousal obligations, psychological reasons (e.g., not having received sufficient family affection and love or having excessive freedom), extensive propagation of customary marriage by mass media, and trying to avoid the burdens of a permanent marriage (Taʿāmura 2016).

3. Varieties of Customary Marriage

There are various types of customary marriage, which I will survey in this section. Such marriages emerge out of cultural and social developments and pose a challenge for jurists who fail to recognize a less problematic religious version thereof, such as temporary marriage.

Sunni scholars of family law usually draw upon the pillars and conditions of common legitimate marriage in Sunni law to suggest that there are legitimate and illegitimate types of customary marriage. Taking into account the disagreements among Sunni jurists on the one hand, and familiar cases of customary marriage on the other, I put forth a classification of customary marriage into three distinct types: corrigible, incorrigible, and controversial.

3.1 Corrigible Customary Marriage

If a customary marriage fulfils the four pillars of marriage—that is, the woman's consent, her guardian's permission if she is a virgin, the presence of two righteous witnesses (for Sunni Muslims), and publicity—then it is corrigible; that is, it might be considered as religiously legitimate in one way or another. For although an official registration of marriage in judicial courts is a condition of a legitimate marriage, it does not constitute a pillar of marriage and thus can be

waived (Mutlaq 2006, 200). Such marriage has been characterized by some people as perfectly consonant with the purposes of the Sharia, having all the pillars and conditions except for official registration (Zuḥaylī 2008, 3:90). Official registration is indeed a recent requirement of today's life, without any precedents in early Islam. Official registration of a marriage was first made mandatory by Egyptian legislators in fragment 4 of article 78 in 1931 for purposes of dispute prevention (Mutlaq 2006, 191).

3.2 Incorrigible Customary Marriage

Customary marriages that fail to satisfy the above pillars of Shariaendorsed marriage and take place in anti-Sharia and uncommon manners are deemed incorrigible; that is, there is no religious way in which they can be deemed legitimate. The following are some of the instances of such marriages:

- *Tattoo (washmī) customary marriage* is a marriage in which the man and the woman tattoo the same picture on their arms or other parts of their bodies as a sign for their betrothal. They consider tattooing as a permit for a married life((Mutlaq 2006, 201).
- *Cassette customary marriage* is more common among graduate students. Both parties record their consent on a cassette tape, and then embark on a married life. They keep the recorded consent as a document for their agreement (Mutlaq 2006, 202).
- *Stamp customary marriage* is another type of customary marriage in which one party puts a stamp on his or her forehead, and then the other party immediately does the same as a sign of agreement and mutual faithfulness (Mutlaq 2006, 204).

- **Blood-blending customary marriage** is a type of customary marriage in which both parties cut their fingers and mix their blood as a sign of marriage (Mutlaq 2006, 206).
- *Offering customary marriage* is a fifth type of such marriage in which the woman expresses her interest in the man by saying: "I have offered myself to you," and the man answers by saying: "I accept your offer as a wife," and thus the bond of marriage is formed. Some people refer this type of marriage to Quran 33:50 (Mutlaq 2006, 207).

In such marriages, the condition of mutual consent obtains though it is deemed insufficient by the majority of contemporary Sunni jurists.

3.3 Controversial Cases of Customary Marriage

In the proper sense of the term, customary marriage refers to marriages in which one of the four above-mentioned pillars of legitimate marriage is absent. Therefore, there will be at least four types of such marriage depending on which of the four pillars is missing—one of which is deemed outright illegitimate, whereas the others three are subject to jurisprudential controversies:

(1) Unregistered customary marriage in which witnesses are present, the woman's guardian offers his permission, the couple express their consent, and the marriage is publicly announced, but it is not officially registered in judicial courts. The majority of Sunni jurists recognize this marriage as legitimate though the couple count as sinful because of the negative legal and social repercussions of such marriage, such as the possibility of the wife being abandoned by the husband and the possible confusions over the identity of the children (Saqr 2010, 5:190; see Abū Aḥmad, n.d., 33). Some scholars take this type of

marriage to be, religiously speaking, merely *makrūh* or disliked (Tayyib 2017).

- (2) Unannounced customary marriage, which takes place with the permission of the woman's guardian, two qualified witnesses, and the couple's consent but is neither officially registered in judicial courts nor publicly announced. This type also considered legitimate, but it is deemed sinful because of its negative legal and genealogical repercussions, rendering it a suspicious kind of marriage (Tayyib 2017, 34).
- (3) *Customary marriage without the guardian's permission*. This is a marriage hidden from the woman's guardian, without public announcement, and without official registration, which takes place only by the mutual consent of the man and the woman in the presence of two witnesses. This type of customary marriage is deemed invalid and illegitimate by all jurists. It is usually common among university students and is often aimed at satisfying sexual needs (Taʿāmura 2016).
- (4) Absolutely liberal customary marriage. If a marriage takes place without the guardian's permission, the presence of witnesses, official registration, or public announcement, and is purely constituted by the mutual consent of the man and the woman, then it is a definite case of an illegitimate customary marriage. It is referred to in some writings as a "great disaster" (Abū Aḥmad, n.d., 35). The term "white marriage" in Iran refers to this type of marriage.

Thus, in this section we considered three categories of customary marriage. The first category (i.e., corrigible customary marriage) is deemed religiously disliked (Abū Ahmad, n.d., 33), sinful (Taʿāmura

2016), or a violation of the law (Tayyib 2017), because its failure to be officially registered is likely to result in negative consequences. The second category (incorrigible), as well as what has come to be known by some young Iranians as white marriage, is deemed illegitimate and somewhat rebellious, norm-breaking, and a sort of fornication by all Sunni and Imāmī jurists. Within the third category, there is no doubt that the fourth type is illegitimate, but there is disagreement among Sunni jurists as to the legitimacy or illegitimacy of the other three types. In the next section, I will survey the views propounded by Sunni jurists with respect to these controversial cases.

4. Views on the Legitimacy or Illegitimacy of the Controversial Cases of Customary Marriage

Given the above outline, three types of customary marriage within the third category are matters of dispute among Sunni jurists: marriage without the permission of the woman's guardian, without the presence of witnesses, or without public announcement. Generally speaking, there are three views on these controversial cases of customary marriage.

4.1. The Majority View: Illegitimacy

For the majority of Sunni jurists, it is illegitimate and invalid to get married without the permission of the woman's guardian, without two qualified (or "righteous") witnesses (other than the couple), and without public announcement. Thus, if the couple only sign a non-official piece of paper, their marriage is not legitimized (Saqr 2010, 190; Mutlaq 2006, 200). Sayyid Muhammad Tantawi, the head of al-Azhar University, has pointed out some negative consequences of customary marriage in the above sense, including the negligence of the woman's rights and confusion about the identity of the children born in this marriage (Jāriḥī, n.d., 46). Nasr Farid, the mufti of Egypt, maintains that

it leads to confusion about the identity of the children born in this marriage (Jāriḥī, n.d., 47); Mohammad Beltagy, a professor at Dar al-Ulum College in Egypt, sees it as against explicit Quranic texts and the Tradition (Jāriḥī, n.d., 47); and Muhammad Nabil Ghanaim, the head of Dar al-Ulum College, characterizes it as the divine punishment of our age, destructive of the institution of family, and a challenge to the religion (Jāriḥī, n.d., 47).

In many questions and answers posted on Arabic social media concerning the legitimacy or illegitimacy of customary marriage, it strikes most people as forbidden, illegitimate, and as being a kind of fornication, without drawing a distinction between a virgin woman, a divorced woman, and a widow. For example, in response to a question about a woman who wants to have a customary marriage unbeknownst to her family after the death of her husband, so as to be able to still receive her late husband's pension, it is said that, according to the majority of jurists, it is invalid, because of the absence of the guardian and qualified witnesses (Islam Web 2015, no. 311695). In response to a question about a forty-year-old widow who wants to have a surreptitious customary marriage without the permission of her younger brother and sister, so as to be able to inherit from her deceased husband, it is said that the marriage is legitimate only if its conditions, including the permission of her guardian, are fulfilled (Islam Web 2015, no. 106154).

Therefore, the majority of Sunni jurists consider it illegitimate to have a customary marriage in which the permission of the woman's guardian is missing for whatever reasons, even if she is mature, sane, divorced, or aged.

4.2 The Legitimacy View

In contrast to the majority of jurists, Dr. Shita, the head of the Egyptian appellate court, considers the above notion of customary marriage legitimate. He believes that marriage consists in an agreement between two free individuals over the enactment of a judicial or legal effect. Thus, if a sane and mature couple are willing to live together and enact their will in terms of the marriage contract, such a marriage is legitimate, although they are required to register their marriage in order to protect the wife's rights and their children's identity (Jārihī, n.d., 48).

The Egyptian Status Law recognizes such marriage as legitimate under "civil marriage" (al-zawāj al-Madanī), where it refers to a marriage governmentally recognized and judicially registered only on grounds of mutual consent between the parties involved, without the need for the permission of the woman's guardian though the presence of witnesses is required (Rabī[°] 2016). Moreover, according to Egyptian civil law, Egyptian women can have official customary marriages with non-Egyptian men provided certain conditions, including the presence of the foreigner and the declaration of his marriage to the Egyptian woman, there being no age gap of over twenty-five years between the man and the woman, the woman not being younger than sixteen, the permission of the woman's guardian if she is younger than twenty-one, the presence of two mature Egyptian witnesses for the marriage, a written certificate from the relevant embassy to the effect that the foreigner is not forbidden from marriage, and a certificate provided by the woman for the death of her husband or her divorce (Ta'āmura 2016).

4.3 The Cautious View

Some people have tried to escape from both alternatives—the prohibition of customary marriage and the alleged permissivism—and thus have adopted a cautious middle position, according to which

customary marriage is religiously disliked (Jāriḥī, n.d., 48; Abū Aḥmad, n.d., 33) and the couple are sinners though their marriage remains valid (Taʿāmura 2016). This position can be attributed to Egyptian and other Arab jurists.

5. Suggested Solutions to the Problem of Customary Marriage

Having outlined three views on controversial cases of customary marriage, I consider in this section proposed solutions to the predicament of customary marriage. There are disputes among Sunni scholars over what count as *pillars* and *conditions* of marriage. A pillar is a requirement without which marriage is invalid, and a condition is a requirement without which marriage remains effective though the couple commit sin by failing to comply therewith. There are things considered by some jurists as pillars of marriage, while they are characterized by others as mere conditions or even as unrequired.

Studying this issue will help us understand whether controversial cases of customary marriage should be deemed effective or not.

5.1 Majority View on Pillars of Marriage

The majority of Sunni jurists take the following four requirements as pillars of a valid or effective marriage: enactment of the religious betrothal declaration by the woman's guardian, the presence of the guardian, the presence of two qualified witnesses, and public announcement of marriage in the usual way (Abū Aḥmad, n.d., 22-23). Thus, customary marriage is forbidden and illegitimate, because it fails to fulfil some of these requirements.

5.2 Minority View on the Pillars of Marriage

Contrary to the majority view, some jurists do not consider the guardian's permission a requirement for marriage at all, let alone

considering it as a pillar: Hanafīs consider $ij\bar{a}b$ and $qab\bar{u}l$ as two main pillars of marriage, without requiring the guardian's permission even in the case of mature and sane virgin women (Tahmāz 2008, 2:65; Madanī al-Husaynī 2008, 1:104). Mālikīs do not consider the presence of two qualified witnesses to be a requirement of marriage. They just require a betrothal declaration, the presence or permission of the woman's guardian, the presence of the couple, and *mahr* as pillars of religiously legitimate marriage (Mālikī 2008, 3:505). Shāfiʿīs require the presence of the woman's guardian, witnesses, the man, and the woman, as well as a betrothal declaration as five pillars of marriage (Khaṭīb al-Sharbīnī 1994, 2:408). Finally, Hanbalīs require three pillars for marriage: absence of certain obstacles in the couple (such menstruation in the woman), $ij\bar{a}b$ by the woman's guardian or his representative, and $qab\bar{u}l$ by the man or his representative, where both $ij\bar{a}b$ and $qab\bar{u}l$ are stated in eloquent Arabic (ʿAṣimī al-Najdī 1397-99 AH, 6:246).

Therefore, Sunni schools of jurisprudence do not have consensus over the requirement of the "permission of the woman's guardian," "qualified witnesses," and "public announcement" of the marriage. Notwithstanding this, one might suggest that there is a consensus among both Sunni and Shiite schools of jurisprudence over the mutual consent of the couple, $\bar{i}j\bar{a}b$ and $qab\bar{u}l$, and the specification of *mahr* (Fāḍil al-Hindī 2001, 7:43, 52). Interestingly, it seems that Sunni jurists are strict about marriage and lenient about divorce, whereas Imāmī jurists are lenient about marriage and strict about divorce.

In the section to follow, I will argue that Sunni scholars admit the original or initial legitimacy of temporary marriage in early Islam. Nevertheless, they believe that its initial legitimacy was subsequently abolished or abrogated. I will argue, however, that there is no convincing evidence for the abrogation of the initial legitimacy of temporary marriage.

Therefore, it can still be deemed legitimate even within the framework of Sunni jurisprudence. Moreover, I argue that temporary marriage—as a religiously legitimate type of marriage—can have the benefits of customary marriage without sharing many of its disadvantages.

6. Potential Solution: Temporary Marriage

Notwithstanding their laudable and praiseworthy intellectual attempts for over a decade, Arab and Sunni scholars have not been able to provide a solution that fulfils the following two desiderata: a firm grounding in the letter of Islam and a reasonable satisfaction of sexual needs. Relying on 'Umar b. al-Khattāb's political decision to abolish temporary marriage (Bayhaqī 1993, 7:206), they still dismiss such marriage as religiously illegitimate and even reject customary marriage partly due to its commonalities with temporary marriage (Mutlaq 2006, 375). Given the philosophy behind temporary marriage, on the one hand, and its original legitimacy and practice at the time of the Prophet of Islam, on the other, it seems that we can rightly see it as having a great capacity as an alternative to customary marriage, or white marriage (in the sense in which some Iranian youths understand it) for that matter. Fairly considered, temporary marriage can provide a reasonable solution to the problem at hand-that is, the spread of illegitimate marriages in some Muslim societies today. Temporary marriage can provide a legitimate alternative that can fulfil much of what is sought in a customary marriage.

6.1 The Nature of Temporary Marriage

In Im $\bar{a}m\bar{n}$ jurisprudence, two types of marriage are recognized: permanent and temporary. The main ground for the religious legislation of temporary marriage or *mut*^{*i*}*a* consists in reasonable satisfaction of sexual and emotional needs of both parties, and is characteristically

distinct from permanent marriage (Karakī 1994, 13:19). The four pillars of temporary marriage are enactment of the judicial declaration of $\bar{i}j\bar{a}b$ and *qabūl*, a specified duration, a specified *mahr*, and the man and the woman both being Muslims (Baḥrānī 1988, 24-122). It is distinct from permanent marriage in that, in temporary marriage, the woman has no rights for receiving spousal support and accommodation, and neither party inherits from the other (unless they stipulate otherwise in their agreement) (Fayyāḍ, n.d., 3:48). All Muslims agree over the initial legitimacy of temporary marriage, but Sunni Muslims believe that its legitimacy was later abrogated (Karakī 1994, vol.13; Qaḥṭānī 2011, 3:287). The crucial feature of temporary marriage which has led contemporary Sunni jurists to reject it is its limited or "specified duration."

6.2 Commonalities and Differences between Customary and Temporary Marriages

In Imāmī jurisprudence, temporary marriage has positive requirements as its pillars, including declarations of $\bar{i}j\bar{a}b$ and $qab\bar{u}l$, a limited duration, the man and the woman both being Muslims, and a specified *mahr* (Najafī 1992, 9:73), as well as negative requirements such as temporariness, nonnecessity of spousal support or accommodation for the woman, lack of mutual inheritance, and non-applicability of divorce (Fayyād, n.d., 48). Therefore, temporary marriage is invalid absent any correct marriage declaration or specified *mahr*. And if no limited duration is specified, then it will count as a permanent marriage. When the specified duration expires, and the woman finishes her *'idda* (that is, the time when a woman has to wait before she can marry another man), the man and the woman will officially separate without the need for divorce (Najafī 1992, 9:713-19). If spousal support, accommodation, and mutual inheritance are stipulated in the marriage contract, then these conditions will be binding for both parties (Fayyād, n.d., 48).

Now, controversial cases of customary marriage are, at best, mainly constituted by declarations of $\bar{\imath}j\bar{a}b$ and $qab\bar{u}l$, mutual consent over a *mahr* by signing a non-official piece of paper, and taking close friends as witnesses without a public announcement. Negative aspects of this marriage are the woman not having a right for spousal support or accommodation, lack of mutual inheritance, and the surreptitiousness of the relationship (Saqr 2010, 190; Taʿāmura 2016).

Thus, the only main characteristic of temporary marriage, which distinguishes it from customary marriage, is its specified "time limit," though the nature of, and the philosophy behind, customary marriage as practiced in Arab countries, particularly in Egypt, is its temporariness, because it is mainly aimed at the satisfaction of sexual needs (Jārihī, n.d., 261). Annually, there were over 88,000 cases of customary marriage among students and Arab tourists, which amounted in 2014 to more than 953000 cases ('Isām 2017). In cities such as Giza and Rifah in Egypt, such marriage has become a common phenomenon, and it was legalized in Egyptian courts in 2016 ('Isām 2017). There are women who enter into customary marriages without the permission of their guardians or the presence of any witnesses so as to satisfy their sexual needs or preserve rights (financial or otherwise) bequeathed to them from their deceased husbands. Its surreptitious nature stands witness to its limited duration. However, since it will then be similar to temporary marriage, Sunni scholars have insisted on the permanence of marriage as a requirement for its legitimacy (Jārihī, n.d., 34).

6.3 An Analysis of the Grounds for Customary and Temporary Marriages The four alleged requirements of marriage, which are subject to disagreements between Imāmīs and the majority of Sunnis, are the permission or presence of the woman's guardian, the presence of

witnesses, public announcement of the marriage, and time limit. The majority of Sunni jurists consider temporary marriage as immoral and a kind of fornication. Furthermore, customary marriage is considered forbidden and illegitimate partly because of its similarity to temporary marriage. Taking into account the grounds for either side, one can reach an agreement between the two views over the minimal requirements. In the next section, I will begin by showing that some of the so-called pillars of marriage—be it permanent or temporary—are not essential to its legitimacy or not required at all. I will then argue for the legitimacy of temporary marriage within a Sunni jurisprudential framework.

6.3.1 Disagreements over the Pillars of Marriage

As is obvious from the above remarks, the necessity of the permission of the woman's guardian is not a matter of consensus among Sunni jurists: early jurists such as Abū Ḥanīfa, Zufar, Shaʿbī, and Zuhrī, as well as some contemporary jurists (Tahmāz 2008, 65; Madanī al-Ḥusaynī, n.d., 1104), reject the necessity of the permission of the guardian or any sort of guardianship in marriage not only as a pillar but even as a requirement of marriage. Thus, in their view, a sane and mature girl can decide to marry her equal on her own.

The disagreement among Sunni jurists goes back to the fact that the Quranic verses (such as 2:221, 232) and hadiths (Tirmidhī 1999, 3:399) that are usually appealed to as grounds for guardianship are not explicit about guardianship in marriage, and fall short of establishing it as a requirement: "Quranic verses and traditions usually relied on to argue for such a condition are all equivocal, as is the case with the Quranic verses and traditions relied on to argue for dropping the condition" (Qurtubī 2009, 4:28).

Moreover, Mālikīs reject the presence of witnesses as a pillar of marriage, contrary to Hanafis and Shāfi'is, and take it to be a mere condition for the excellence, rather than legitimacy, of marriage (Ghiryānī 2005, 513; Majjājī 2009, 2:11). What is at stake here is something which is considered a condition of legitimacy by some and a mere condition of excellence by others: the fact that having witnesses can be helpful in the prevention of possible disputes (Qurtubī 2009, 4:47). Furthermore, the hadith adduced as a ground for the requirement of having witnesses is the following hadith transmitted by Ibn 'Abbās: "There is no marriage except with two righteous witnesses and a sane guardian" (Bayhaqī 1993, 2:485). This hadith has a defective chain of transmitters: "It is cited with omitted people in its chain of transmitters, as pointed out by al-Daragutni (Dāraqutnī 1966, 3:221) and allegedly there are unknown people in its chain of transmitters" (Qurtubī 2009, 4:47). Moreover, the proponents of this requirement dispute over whether the witnesses need to be righteous. The above hadith is deployed by Shāfi'īs as evidence for the righteousness requirement, whereas Hanafis allow impious witnesses as well (Khinn 2006, 518).

Although public announcement of marriage is helpful in the prevention of unfortunate repercussions—such as the denial of the betrothal, spousal support, and children born in the marriage (Abū Aḥmad, n.d., 36)—and thus, it might count as a condition of excellence, there is no reason to count it as a condition of validity. For such a requirement has no ground except personal rational discretion (*al-istiḥsān al-'aqlī*), as evidenced by the definition provided for the public announcement of marriage: "It consists in playing a drum and singing among women and celebration and the gathering of people so that everyone would know that this woman has married that man" (Abū

Ahmad, n.d., 38). Moreover, since the presence of witnesses is not required by Mālikī jurists, they will *a fortiori* dismiss the requirement of public announcement.

The last controversial requirement is the "time limit" of marriage: Imāmī jurists allow time limit in marriage and thus consider temporary marriage legitimate, whereas Sunni jurists have consensus over the illegitimacy of any time limit in marriage (Khinn 2006, 520). Some jurists believe that for marriage to be valid it needs to involve an unqualified or unconstrained betrothal declaration with respect to its temporal duration: "It is not allowed to issue a betrothal declaration contingent on future conditions or relative to a particular duration of time. For marriage declaration has to be unqualified in order for betrothal to obtain" (Jāriḥī, n.d., 25).

Imāmī and Sunni jurisprudential schools base their claims on two groups of hadiths, one of which allows, and the other forbids, temporary marriage. Sunni jurists have preferred hadiths of forbiddance and Imāmī jurists have preferred those of permission. No solution has yet been provided or accepted as a middle path between the two approaches. However, all jurisprudential schools agree that temporary marriage was initially legitimate in the early years of Islam (Khinn 2006, 520). However, there is highly conflicting evidence as to when or if its legitimacy was later abrogated. In what follows, I uncover these conflicts in order to show that there is no decisive evidence for the abrogation of the initial legitimacy of temporary marriage.

6.3.1.1 Disagreement over the Time at Which Temporary Marriage Was Forbidden

There are conflicting reports as to when the Prophet of Islam allegedly forbade temporary marriage (Qurtubī 2009, 4:165; Ibn Qayyim al-Jawziyya 2005, 3:132): during the Battle of Khaybar (Muslim 2000,

602, no. 1987:30-32), the Conquest of Mecca (Muslim 2000, 600, no. 1406), the Battle of Tabūk (Bayhaqī 1993, 206, no. 13956), the Farewell Hajj (Abū Dāwūd 2008, 3:416, no. 2072), the Compensatory 'Umra (Ṣanʿānī 1982, 7:75, no. 14040), or the Year of Awṭās (Bayhaqī 1993, 205, no. 13939). There is no doubt that such disparity renders such reports extremely unreliable.

One might try to solve this problem by claiming that, notwithstanding their conflicts over the occasion on which temporary marriage was forbidden, all these hadiths agree over a subsequent abolishment of the initial legitimacy of temporary marriage. Thus, the legitimacy was definitely abrogated at one point or another though the exact point cannot be confidently determined. This solution, however, is not in line with some of these reports, according to which upon his arrival in Mecca, the Prophet of Islam allowed temporary marriage for three days, and before his exit from Mecca, he announced it as illegitimate: "In the Year of Awtas, the Messenger of God permitted temporary marriage for three days, and then prohibited it" (Muslim 2000, 601, no. 1404:18) and "The Messenger of God ordered us to have temporary marriage in the year of the Conquest when we entered Mecca, and then before our exit from the city, he prohibited us from it" (Muslim 2000, 601, no. 1404:22). These hadiths contradict 'Umar b. al-Khattāb's well-known forbiddance of temporary marriage (Dhahabī 1992, 15:418; Bayhaqī 1993, 206, no. 13948), since his decree implies that the legitimacy of temporary marriage was never abrogated by the Prophet. This renders dubious any claim as to its abrogation in the period of the Prophet.

In order to find a solution for such conflicting reports, Sunni scholars make resort to one of the following accounts: (i) temporary marriage was forbidden by the Prophet of Islam, but no one was aware of it except 'Umar: "Temporary marriage was allowed in the period of the Prophet, and 'Umar forbade it because he knew that the Prophet had abrogated its permissibility" (Rāzī 1999, 10:45); (ii) it was forbidden by the Prophet, but some of the Sahaba were not aware of that until the period of 'Umar (Ibn Qayyim al-Jawziyya 2005, 134); and (iii) it was forbidden by 'Umar (rather than the Prophet), and it is obligatory to follow the tradition of the Rightly Guided Caliphs at the command of the Prophet (Ibn Qayyim al-Jawziyya 2005, 135). These three accounts not only fail to solve the conflict, they even exacerbate it (Husaynī Mīlanī 2010, 51-77).

6.3.1.2 Precedence for the Legitimacy View

if we assume that there is conflicting evidence for and against temporary marriage, the former should be preferred over the latter. First of all, the proponents of the legitimacy of temporary marriage make resort to the Quranic verse "For the enjoyment you have had from them thereby, give them their due compensation, by way of obligation, and there is no sin upon you in what you may agree upon after the obligation" (Quran 4:24). This verse implies the permissibility of temporary marriage: although the term "*mut*'a" (literally "enjoyment") is a religious terminology or a widely used metaphor, which was later formed, what primarily occurs to mind from "the enjoyment you have had" is temporary marriage. Moreover, the term. "*ujūr*" (compensations) is characteristic of temporary marriage, unlike the words "mahr" or "sadāq" (dowry), which are characteristic of permanent marriage (Khinn 2006, 522).

Second of all, some of the Sahaba recited this Quranic verse in this way: "The enjoyment you have had from them *for a specified duration*" and this has been verified by some Quranic exegetes as well:

And this is what Imāmīs have maintained, and this verse is one of their arguments for the permissibility of temporary marriage, and they have supported their argument from this verse on the ground that Ibn 'Abbās and Ibn Mas'ūd read the verse in this way: "The enjoyment you have had from them for a specified duration." (Ālūsī, n.d., 5:5).

The same thing is verified by 'A $t\bar{a}$ ' as well: "The enjoyment you have had from them for such and such a specified duration in return for such and such a thing" (Ṣan'ānī 1982, 496, no. 14021).

Thirdly, there are hadiths in Sunni sources to the effect that years after the demise of the Prophet of Islam, temporary marriage was deemed legitimate until it was forbidden by 'Umar b. al-Khattāb:

'Atā' said that he heard Ibn 'Abbās say: "May God have mercy upon 'Umar. Temporary marriage was nothing but a permitted act from the Esteemed and Glorified God with which He bestowed His mercy upon the nation of Muhammad. Had he not forbidden it, no one needed to fornicate except the wretched." (Ṣan'ānī 1982, 496, no. 14021)

Muslim cites hadiths from Jābir b. 'Abdullāh al-Anṣārī through numerous chains of transmitters to the effect that temporary marriage was practiced by the Sahaba before the reign of 'Umar (Muslim 2000, 599, no. 1404:14, 16, 17). Moreover, the text of 'Umar's decree suggests that such marriage was practiced before his reign: "There were two *mut* 'as at the time of the Messenger of God; I forbid them and punish for them: *mut* 'a of women and *mut* 'a of Hajj" (Dhahabī 1992, 418; Bayhaqī 1993, 206, no. 13948).

Thus, given the above body of evidence, temporary marriage was practiced since the period of the Prophet of Islam until the reign of 'Umar when he forbade it because of the troubles made by 'Amr b.

Hurayth through such marriage (Ṣan'ānī 1982, 496, no. 14021). Therefore, the legitimacy view on temporary marriage should be preferred, as there is no evidence for its divine abrogation.

6.3.2 Temporary Marriage as the Final Remedy

Since, for one thing, temporary marriage was originally legitimate in Islam, and for another, there is no convincing evidence for its abrogation, and for a third, it was deemed permissible by a group of prominent Sahaba and Tabi'un (Tayyib 2017), its legitimacy can be established by an appeal to the principle of continuity (*aşl al-istişhāb*): the principle that if a ruling was valid at time t_1 , and there is no decisive reason for its abolishment at a later time t_2 , then the ruling will remain valid at t_2 .

Firstly, the picture of temporary marriage suggested by some researchers as disguised fornication, which falls short of all the pillars or conditions of marriage, as leading to simultaneous marriages, or as involving divorce without 'idda (Mutlaq 2006, 261) is not consonant with jurisprudential doctrines of Imāmiyva. The fact of the matter is that temporary marriage has remarkable commonalities with permanent marriage, such as the requirement of a betrothal declaration, lack of marriage obstacles (such as the woman being married or the man and woman being siblings), recognition of the identity of children born in the marriage, legitimacy of stipulating extra conditions within the marriage agreement, the forbiddance of a Muslim woman marrying an unbelieving man, and the necessity of observing 'idda (equal to the 'idda of a woman whose husband passes away). Of course, it is distinguished from permanent marriage in certain respects, such as the absence of divorce, non-necessity of spousal support or inheritance except if otherwise stipulated within the marriage agreement, the requirement of a specified duration and *mahr*, and the permissibility of *coitus interruptus* without the need for the woman's consent (Sharifi 2006, 62).

Secondly, the most prominent difference between temporary and permanent marriages in terms of Imāmī jurisprudence is the former's time limit, which is justified by the qualification "for a specified duration" in verse 24 of Sura al-Nisā' according to some recitations, in addition to its indubitable and consensual legitimacy at the time of the Prophet of Islam and his Sahaba while there is no convincing evidence for its abrogation. Thus, temporariness of marriage can be justified within the Sunni jurisprudential framework as well. Imāmī sources of hadiths require the specification of the duration in temporary marriage (Hurr al-ʿĀmilī 2008, 21:85).

Thirdly, although there are four views on the guardianship of a woman's father or paternal grandfather over her marriage in Imāmī jurisprudence (Fazel Lankarani 2007, 95-101), just like Hanafīs, the majority of Imāmī jurists do not consider such guardianship over marriage a requirement not only in the case of a widow or a divorced woman but also in the case of a sane, mature, virgin, and free girl (Hillī 2000, 3:430; Karakī 1994, 12:85; Najafī 1981, 29:146; Fazel Lankarani 2007, 102). Thus, guardianship is restricted to immature and insane girls or concubines. Furthermore, just like Mālikīs, Imāmīs do not require witnessing for marriage (Hillī 2000, 3:430). However, they consider it supererogatory to have one man as a witness, not for purposes of publicity, but for preventing the thought that this might not differ from fornication: "And that [witnessing] is for the sake of the woman, lest she tells herself that this is fornication" (Hurr al-ʿĀmilī 2008, 21:64).

Fourthly, given the hadiths from Shiite Imams, the philosophy behind temporary marriage is not promiscuity, debauchery, or lechery. Instead, it is the urgency to reasonably satisfy one's sexual desires and

avoid fornication and immorality: "This [temporary marriage] is absolutely permitted for one whom God has not satisfied through marriage so that he can remain chaste via temporary marriage" (Hurr al-ʿĀmilī 2008. 21:21-22). Moreover, there are particular circumstances in which Imām al-Ridā prohibited temporary marriage. He wrote to some of his companions: "Do not persist on temporary marriage. Your obligation is to keep the tradition. So do not let temporary marriage distract you from your permanent wives, lest they disbelieve and be revolted by you and pray against those who have instructed temporary marriage and curse us" (Hurr al-'Āmilī 2008, 21:23). Furthermore, the philosophy behind the legislation of mut a in the period of the Prophet of Islam was, according to Ibn Abī 'Umra, emergency and urgency, rather than promiscuity: "It was a permission in the early years of Islam for those who had an urgent need for it, just like carrion, blood, or swine flesh [which are permissible to eat in emergency circumstances]" (Muslim 2000, 601, no. 1406:27).

Given the above account, although temporary and customary marriages have similar social and legal consequences such as parentless children, the collapse of families, postponement of permanent marriage, loss of virginity for girls, distrust between boys and girls who seek permanent marriage, and the promotion of promiscuity (Sharifi 2006, 110-13), it is undeniable that in emergency circumstances temporary marriage can serve as a reasonable and religiously acceptable solution. For given various challenges posed by customary marriage in Arab and Sunni countries, temporary marriage is the most efficient solution. The unrestrainable spread of customary marriage has led jurists to launch a campaign against both religious fanaticism and excessive modernism. Moreover, it presents a challenge for the dynamism and responsiveness of Islamic doctrines. The urgency of the issue is such that voices of scholars and researchers in mass and social media are ignored, and not

only students, tourists, and employees of foreign embassies but also masses of people have practiced customary marriage.

Having said that, we need to seek an optimistic future in which both Imāmī and Sunni jurists relinquish their extremist positions on pillars and conditions of marriage and introduce temporary marriage as an alternative to customary marriage under particular conditions as a minimal solution. 'Umar b. al-Khaṭṭāb's decree, which seems like a redline for Sunni jurists, does not seem to have a religious ground. Rather, he decided to forbid temporary marriage in his capacity as the ruler and in response to the story of 'Amr b. Hurayth, which posed a problem for the government (San'ānī 1982, 496, no. 14021). This can change with the changing circumstances of our time. Moreover, the conflicting hadiths appearing in Sunni sources could be merely aimed at justifying 'Umar's position, because the public opinion of the time had it that his decree was merely political and governmental.

7. Conclusion

Customary marriage, or what has come to be known among some young Iranians as "white marriage" (not to be confused with the standard English denotation of the term), is a new phenomenon spreading among Muslims in line with the rise of secularism and sexual variety-seeking. It is remarkably common among graduate students, Arab tourists, and employees of foreign embassies. It has various types reflecting the two parties' character types, identities, financial abilities, and national and religious tendencies. The most common is an agreement between a man and a woman hidden from their families and the society at large. It sometimes comes with an ordinary, non-official signed text in the presence of two witnesses, and is sometimes absolutely surreptitious.

The promotion of customary marriage is partly due to permissivism, sexual drives, heedlessness of families, and heavy burdens of permanent marriage. It was first introduced by Arab tourists in Yemen, and today it has permeated the majority of Arab and Islamic countries. Legal and social consequences of such marriage have set off alarm bells and led to different kinds of reactions on the part of Sunni jurists. The majority of such jurists consider all forms of customary marriage to be forbidden, vicious, and a kind of fornication, but others take some of its varieties as legitimate.

However, despite the absence of a reasonable and religiously acceptable solution to the problem, Sunni jurists still reject temporary marriage, whereas a consideration of grounds for its permission and prohibitions reveals that temporary marriage satisfies the minimal conditions of marriage as conceived by all denominations, and can be offered as a religiously acceptable alternative to customary marriage. It is hard to deny the efficiency of temporary marriage given its legislation in Islam without any decisive evidence for its abrogation and given the present emergency circumstances, which suit the philosophy behind the original legislation of temporary marriage.

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