

Mo'atat Marriage and Verbal or Non-Verbal Temporary Implementation of the Constitution Evidence from Iran

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ABSTRACT — Marriage is an institution that lives come together in various forms of emotional and economic. Mo'atat marriage has different meanings in jurist and law. One of the most prevalent meanings is lacking performance acceptance. The most questions are, can marriage contract be dictated without acceptance? The known of the jurist conditioned lexicon of acceptance and believed that Mo'atat marriage is void, but about consent claim, civil law accelerated on acceptance in marriage. But others, as for reasons for reasons for Mo'atat marriage, claimed for it, this writing considered concept of Mo'atat and respond it that is replacement for marriage?

KEYWORDS: Marriage, Matrimony, Mo'atat, Matrimony, Civil Law

Introduction

The marriage is institution in which life of people bonds with emotional and economical methods. In some of western cultures, marriage is resulted to establish new families where live in shared home and often, use similar bed. In other side, marriage is not required coexistence. In some cases, the couples live each other and don't like to know as married. For example, when right of retirement or alimony is influenced as negative or because of taxation consideration, migration of other causes. In western society, some of couples live before marriage to examine efficiency of long term life. In some of cases, it is possible coexistence is resulted to recognize marriage in benefit tax and social security. From Islam point of view, nature of marriage is contract with special terms and it is so suitable to regard it as imperative from Islamic laws. Based on Islamic laws in the case of barrier of marriage and lacking forbidden marriage of the parties (like to be married of woman or to be prohibited) the marriage is realized with I married with you or word like it from woman and confirmation of man. Some require attendance of two witnesses and father of woman. About immature children, insane and lunatic persons, right of marriage is with father, administer and legal dominance for slaves. Also, the parties can give attorney to other party which is not required religious agency to marry each other. At same time, there is another type of marriage which is known as Mo'atat marriage. This article considers this marriage in which the parties live each other regardless Islamic customs and without citation of words. The aim of this article is to respond is this matrimony has legacy or not in other word, does volition of the parties cause legacy or uses the words volition of the parties.

Mo'atat Concept

Mo'atat is transaction without special contract and business. Generally, Mo'atat is transaction of business in which acceptance is not including other words. By legal point of view, the parties show their commitments by saying words which show their purpose. These words are contract. If the parties don't apply them, there is another type which is named as Mo'atat².

Mo'atat in Contract and its Similar:

Informing of pectoral volition is named to exigency and acceptance, they form base of business and doubtless, since difference between it is barrier of contract.

In this regard, sensual volition of buyer and seller is not discussed and this difference is volition.

Known Theory of Imam

The famous theory of Imam is that the acceptance and exigency has to be as verbal is done as if incumbency of acceptance is consented.

Thus, some of recent jurists³ because of lacking confidence to agreement, believed in pectoral volition of the parties and it is sufficient for it and some of reasons are regarded in all contracts like transaction.

Theory of public Jurists

It is seen difference of theory between public jurists.

It is attributed to Malik ebne Ens and Ahmad Ebne Hanbal that the actions can be as verbal and some of Shafeyon believed that Mo'atat is current in low value things.⁴

Iran Civil Law

Iran civil law followed with acceptance of contract by actions⁶ which is possible to result transaction⁵ from jurists theory. Article 557 of civil law regards Egypt law about consent of the parties in transaction.

Thus, it is possible the transaction is performed as leaving action about consent of pectoral consent⁷.

Regardless manner of pectoral volition, there is not special ceremony for contract and for realization of contract, this pattern is cited. This principle is regarded as consent, thus this element is not without exception and as required, it is about ceremony, like as mere transaction like sale of gold and silver or sale of governmental property against the court is sold by auction or registered based on article 46 and 47 of registration law by official deed,

Mo'atat in Matrimony

The jurists don't regard matrimony for Mo'atat, but in this regard, the claim of consensus claimed that civil law is influenced by jurists claim and accepted it and this problem is regarded as public belief between the jurists. Thus, this legal and judicial consensus don't Mo'atat concept and the jurists don't similar consensus from this concept.

In this part, we discuss different theories of jurists and law makers and conclude at last.

Proponents of void theory for Mo'atat Matrimony

Theory of void Mo'atat matrimony in Imam judicial has so credit. Nearly, all jurists discussed this relation, emphasize on Imam Khomeini theory in this regard.

Matrimony is divided on two parts as permanent and temporary and each needs contract which consist of acceptance and he cited that mere heart consensus is sufficient for the parties and the Mo'atat is current, thus it is not sufficient in matrimony, in other word, in other word, it is cited as in legal sources⁹.

Theory of Mo'atat Correction Matrimony

Theory of correction Mo'atat theory is not place in legal judicial position, and nearly, neither known legal jurist is famous. Of course, owner of Javaher, authenticity of matrimony is attributed to Feiz Kashani and group of Zaheriyeh and cited that: ¹⁰ some of writers cited that this word is incorrect and word of owner of Javaher doesn't pertain to it¹¹. Discussion of Mo'atat matrimony is important and Mo'atat means matrimony without acceptance whereas, the above discussion is pertinent to possibility of non-special case. These contents are derived from other discussions of owner of Javaher and during current years, some of persons cited about it: Contract or concluding marriage is correct in any case and if it is without word of matrimony, if the affair is between man and woman as writing or verbal, it is sufficient.... If they locate shoe upon shoe or salutation sweetie each other, it is reason for marriage. The common reason is that it is not peer to peer and adultery but it is marriage and establish new life as temporary as permanent, this theory will be discussed for proving claim of narrations.

Verses

One of the most important causes for Mo'atat matrimony is to necessity of truth in commitment and compact. It is cited in Koran that oh who believed in God; trust in contracts (Maedeh, 1) and in another verse, and trust in your contract that will be requested because of it. (Asra, 34) Manner of reasoning is as two verses that the God emphasizes upon trust in commitment. Contracts is plural contract and is derived to A and L. and because of it, this word consists of any contract and agreement which is true for it including contract which is concluded between people or contract which is concluded between two parties for example he swears to do or not to do it¹². Also contracts have not any limitation in above verse and don't intervene in that mean. What is necessary and establishes without contract is agreement for making legal work and inform it explicitly. Thus, Mo'atat is contract as for its definition and the result is Mo'atat contract is required to trust and in this case, there is not difference between contract and matrimony. Imam Khomeini doesn't accept Mo'atat in matrimony because of Muslims narration and consensus and he reasoned on necessary of trust and contract: The requirement of Mo'atat is contract and concluding which it is possible to act it, because action is like as narration and it is for optional comprehension. It is possible to make objection about above reason, Mo'atat marriage is necessary to trust if composition of action is possible like as transaction which is for business. In some cases (like will), the acceptance is not possible by narration. Matrimony contract is like it and composition of the couples is not possible, because actions like touching or sexual touch is not possible before marriage. And this action cannot be for mutual relation. As result, it is due to word to make relation between couples. In respond to objection, we can say that in matrimony, it is possible to compose action, because actions can be regarded and made acceptance are not true about illegal. The parties can inform their intention by authorized and legal actions, for example, woman purchases dowry and took it into home of man who want to marry with him or affairs which cause on this mean¹³. Thus, the reason for trust into contract is perfect and it is not seem to objection it if it is for matrimony and exclude and for requirement to trust in contract.

Narrations

In order to prove Mo'atat matrimony, it is reasoned to some of narrations: Narration of Nouh ebne Shoaib: in this narration, it was narrated from Imam Sadegh that Imam Said: a woman came to second caliph and stated I gave adultery (purge me by administer punishment). Second caliph ordered that she has been beaten by stone. Imam Ali aware about it and said: how did you give adultery? She said: (I passed desert and was so thirsty and demanded water from man, I avoided it, then when thirsty disabled me, feared because of my body and submitted me to him. Imam said: this is matrimony in God of Kebbba.¹⁴

The manner of reasoning to above narration is that there is agreement between woman and man and the words were transacted with emphasize upon matrimony and the water is dowry and regarded as one turn, as result, the relation is temporary matrimony and Imam says: this is matrimony¹⁵. There is objection for this reason: Incompatibility for above and below narrations, because according first part of narration, women is being regarded as sinful and guesses that she is being committed adultery and shall be punished and it is obvious that she did not want to marry whereas, based on last part of narration, Imam said: their relation was marriage, how can someone marry if her intention is not marriage, thus above narration is not acceptable. Discrepancy to other narrations, this narration is cited with another form, based on second narration, when woman wanted caliph administers her punishment and caliph ordered to it, Imam said when he heard detail of adventure: Someone who is inevitable in order to save his property or body, he is not sinful (Baghareh, 173), this woman is not cruel, then free her. Thus, based on second narration, the relation did not change to marriage, but it is action which is illegal based on Islamic verdicts but there is not sin for woman because of her concern. Thus, above narration is strange with discussion. Also, the contents which were being pointed by Feiz Kashani are strange based on matrimony, because in text of narrations, the words are not seen for matrimony, in this case, marriage is performed and matrimony is as concubine and it is not Mo'at matrimony, thus, above narrations don't pertain to discussion. Narration of Mohamad Ebn-e-Esmaeil Bazi: I asked about woman from Imam Reza who concluded her in drunken manner and regarded her work as ugly, but it is required to stay with man, is that man legal for woman? Imam said: if woman stays with man after acceptance, it is matrimony. The narrator says: is the marriage correct? Imam says: yes. (Tousi, 1986: volume 7, pp 392) The above narration is accurate from documentary and it is not objection, but about its reason, there are some discussions, based on narrations, woman is drunk in the time of marriage and she did not want to marry and her marriage is void and she cannot emend matrimony. As pointed in above narration, the above narration is correct and if the probable is accurate, this narration can be reason for legacy of Mo'at matrimony and the current probable is that lacking drunken contract is not violated.

Theory of Cancellation of Mo'at Matrimony

This theory is so valid in Imam judicial. Almost, all jurists who are violators for matrimony, emphasized upon acceptance. For example, Imam Khomeini stated in this regard: Matrimony is on two divisions as permanent and discontinuous and each needs contract including acceptance. He emphasized that singularity of heart consensus is not sufficient. The word is like as legal sources. (Shahid Sani, 1410, volume 5, pp 108, Tabatabaei, 1419, volume 11, pp 10, Tabatabaei Yazdi, 1409, volume 2, pp 851, Bohrani, 1405, Volume 23, pp 157, Alame Helli, Bita, volume 2, pp 4, Nadjafi, 11995, volume 29, pp 132). Some of jurists discussed acceptance because it is obvious. (Tousi, 2008, volume 4, pp 193, refer to Helli, 1410, volume 2, pp 574, Mohagh Helli 1409, volume 2, pp 217-216). Some of jurists cited about verbal aspect of acceptance so that matrimony without conical is as void. Sheikh Ansari says: Foruj is not void with Mo'at and difference between Mo'at and stupid is true about concubine because consensus is seen in concubine. (Ansari, 1415, pp 78) It seems that this content is strange from great jurists like Sheikh Ansari, because there is difference between Mo'at matrimony and stupid. In moat matrimony, the consensus is on couples and this heart consensus is informed whereas, in stupid, the agreement is not on couples and the parties want to make adultery. In this case, how can we compare each other? Deceased khomeini cited in critics of Sheikh Ansari: difference between matrimony and stupid is not in word because it has opposite with two genders and sometime without word, the relation is matrimony. From his point of view, difference between matrimony and stupid is credit one. That means man takes woman as wife and against, woman takes man as husband. Also, word of Sheikh is true about special one and it is not true for all adultery. (Khomeini, Bita, volume 33, pp 129, Khomeini 1992, volume 2, pp 192) regardless criticism which is true about word of Sheikh Ansari, necessity of verbal point of acceptance is absolute (instead of inability for lecture) From view of contemporary jurists, Mo'at matrimony has no credit and regarded it as acceptance. Ayatollah Bahjat stated about Mo'at matrimony: Mo'at is not about matrimony (sum of judicial votes in legal affairs, matrimony, 1, 2003, volume 1, pp 69). Ayatollah Makarem Shirazi said in this regard that: there is not Motata matrimony and this marriage is void. (Same, 71) deceased Ayatollah Golpaygani stated that: it is illegal and adultery. (Same, 70) Ayatollah Khamenei said that: it is illegal (same). Ayatollah Safi Golpaygani writes: Mo'at is not true in matrimony, we will discuss this theory.

Continuation of cancellation of moat Matrimony

From judicial point of view, in order to prove cancellation of matrimony without concubine, firstly, we point to reason and then discuss the case.

Verses

Some of jurists tried to compare verse 21 of Nesa based on its narration interpretation and concludes discredit of Mo'at matrimony. and if you decided to select other wife instead of your own wife and pay much property to her as dowry, don't take anything, do you recourse to libel and sin in order to withdrawal women dowry? And how do you withdrawal it? Whereas, you had intercourse each other and they took strong compact during marriage? In some of narrations, it was narrated hard compact to God trust based on parsimony to known or accelerates on good in relation between man and woman and this discussion is without relation.¹⁷ based on other narration, these words are upon words of matrimony. Barid Ebn-e- Moaviyeh Ajali said: I asked from Imam Bagher about interpretation: he says: The pact is same as word which matrimony is based on it.¹⁸ Barid Ebn-e- Moaviyeh Ajali is regarded from prominent persons of consensus and the narration has been cited by him is credit. Ayatollah

Khoei accepted narration of Barid on necessity of matrimony and writes: this narration is on credit of word and lacking heart sufficient but it has clear credit for reason.¹⁹ Other group of jurists made objection about above discussion and stated that: above verse negates credit of Mo'atad matrimony. Because the verse cites most prevalent case²⁰. In other side, the verse proved maximum accuracy of matrimony and this is required to show its distrust. Thus, narration of Barid reasons for discussion.²¹

Narrations

Some of jurists considered acceptance verbal aspect of matrimony. Khalid Ebn-e- Hojaj narrated that I said to Imam Sadegh, a man came and said: purchase this cloth and I give you interest. Imam said: if he wants to leave or withdrawal, I said: yes, imam says: It is not prohibited²². This is word which makes legal and this is word which makes illegal. Manner of reasoning to above narration is that Imam regarded it as legacy and as for word is prohibited. As result, the word is legacy and it has not effect. In other side, although narration is due to transaction, but below its pattern is obtained. Thus, its content is as general pattern and in all contracts, it is flowing. As result, Mo'atad is void in contracts including matrimony.²³ There are many objections for above discussion as well as weak of deed of narration. Sheikh Ansari cited four possibilities which negate effect of Mo'atad in contracts. The prohibition of thing and its analysis is done with lecture and it is not realized with singularity of actions. He writes in weakness of this probable: if this probable is correct, devotion is required. Because, in some of contracts, Mo'atad is accepted, and if this probable is correct, the relation between them is lost. As for above discussions, we cannot derive from it. Eban-e-Taghalob said: I asked Imam Sadegh, what to say if want to make matrimony for woman. (Tell, I want to marry with you with God's book and tradition, if she says yes, she is your wife and you are the worthy than her)²⁴ Manner of reasoning on above narration is that he narrator asked from manner of couple relation and said: this is suitable narration which is necessary in matrimony. This narration is about discontinuous but necessity of verbal because, in permanent matrimony, respond of Imam is about verbal so that it is claimed that verbal of acceptance if absolute. Other narrations are in narrated societies which are true in this regard and are supervisor on words of contract. It is possible to emphasize upon verbal of acceptance and it is said that since necessity of verbal is discreet, thus, there is ensured reason for it and it is not unlikely these responds and questions are in the time of narrations. Maybe, because of it, some of jurists found to Mo'atad matrimony but did not recourse to it.

Conclusions

As for reason which cited, it seems that Mo'atad matrimony is not correct in all symbols. Thus, based on some traditions, it is sufficed to locate show on shoe or welcome sweetie, but there is no reason for Mo'atad matrimony. For example, when woman and man accepted couples, they informed by writing, couple relation is made and woman cannot marry without divorce. Mo'atad matrimony is not based on void; it is illegal relation between man and woman and commences shared life. Thus, as for publicity of necessity of contract and marriage, when man and woman inform their nature intention as explicitly, the couple is on. From legal point of view, credit of matrimony is not subjective. Thus, if there is another tool for intent on, origin of effect of couple so important. As result, the writer considers acceptance but it is not worthy on intentional target because of lacking explicit, otherwise, it is not possible to write it.

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