

## WHITE MARRIAGE

Mohammad Mollaei\* and Ali Reza Milani\*\*

***Abstract:** Meaning of white marriage is that man and woman express their conscious aims (marriage) by action because conscious willing and agreement won't make marriage and willing should be expressed by something and it is by action or pronunciation. Now we want to know whether the marriage is correct without nekah (marriage) and only by offering and acceptance or not? And whether man and woman could accept marriage without talking and by actions like pointing or wife subservience or not? Shia researchers view during ages has shown that they reject white marriage and marriage without talks and none of famous Shia jurators accepts it. But Sahib Javaher returns agreement in nekah to Fayz Khashani and Zaheriye and claims that agreement of both parties is enough .moreover some neo thinkers recently have confirmed this marriage. Here we try to analyze the agreements and disagreements to this topic.*

***Keywords:** white marriage, create, accept, man, woman, marriage*

### INTRODUCTION

White marriage is kind of emotional and sexual relation between man and woman and it has 2 terms. Some said the aim is to live without reading and accepting full time concubine and others said its shared life without marriage and it is called as white marriage. It's a kind of marriage in which boy and girl live without any deal and it's a kind of living together.

Islam respects selecting spouse in terms of evolution and good tradition and determines woman's rights in family and saves them from man misuse and this is the point in which neo thinker forget it with slogan of woman rights and create doubts like feminism and white marriage to destroy holy marriage and weaken family.

God said: one of god powers is that he has created spouse from yourself to make you calm and be friends and create kindness between you(Surah room Aye 21).

Regard this as creation and acceptance are essential items of marriage in this research we try to find whether marriage could be accepted without talks and as a

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\* Department of Law, Saveh branch, Islamic Azad University, Saveh, Iran 2

\*\* PH.D. Department of Criminal Law and Criminology, Faculty of law, Farbi Compus, University of Tehran, Iran

white marriage or not? In this research we analyze reasons and juratory basis of this idea to accept or reject the white marriage.

### CONCEPT OF MARRIAGE AND CREATION AND ACCEPT

Marriage morphologists believe that the word "Nekah" or marriage means (Jema) EibnManzour - lesan al arab v2 - p626 - Johari - alsahah v1 - p413 - Tarihi - majma - al Bahrain v4 - p394) and used is virtually (Johari - alsahah v1 - p403) for Nekah. And other said: nekah means marriage and virtually means jema because it's a scenic duchy (Raghebisfahani - mofaradat fi gharib Quran p505).

Some said it means (Yoze) (Ibn manzour - lesan al arab v2 - p626) and others said it's something between deal and marriage (Tahririmajma - al Bahrain v4 - p396). And some juratory sources accept it (Ansari - kitab al nekah p25) because they said the meaning of word somehow refers to deal and marriage and use it virtually is not correct regard what mentioned about marriage we could define it: marriage is agreement of 2 willing to create a relation. Its agreement definition.

**Creation and acceptance:** talking about rejection or acceptance of white marriage depends on expressing willing. In fact we try to realize whether it's necessary to express willing by talk or other instruments of actions like writing or pointing are enough as well. The meaning of correctness or wrongness of white marriage is whether marriage is true without oral acceptance or not?

An idea which said oral acceptance is necessary has 2 different branches:

Some believe acceptance with talks is dependent and said just religious fact refers to marriage. Another group said any word is enough to create marriage. Regard this in jurator view white marriage is temporary marriage without concubine or marriage without special Concubine. In this study, the White marriage is the marriage without the concubine (without words of offer and acceptance)

**Offer and acceptance in transactions in terms of civil code:** In terms of civil code, there is no need for oral offer and acceptance during making contracts. Article 193 of the Civil Code reads as follows:

the contracts can be made using practical expressions except when it comes to exceptions in law. According to this article, except in exceptional cases, willing to trade is also possible through the action (not literally saying it). Article 192 of the Civil Code says that in the cases where the pronounciation is not possible for the parties or one of them, pointing out that the expression is volitional will be enough.

The point that must be considered is that in terms of civil code, silence cannot be an expression of the will. Article 249 of the Civil Code states:

the party's silence even when he/she is present in the contract is not acceptable. It is a general rule and since for marriage in this particular case there is no special rule, provisions of Article 249 of the marriage are also extended.

## **THEORIES ABOUT NECESSITY OF OFFERING AND ACCEPTING DURING MARRIAGE, PEOPLE AGAINST WHITE MARRIAGE**

Since marriage is a kind of a contract, will and like, as another contractions, are the most important elements. Marriage without a will (intention) is void and invalid. So getting married when the person is drunk or making contract for joking or even contract made by an insane are all worthless.

Also, if someone joins a marriage by force while he lacks the will to demand, the marriage is void.

Based on The Shiite jurists' opinion, willingness to get married should be using words that express the purpose. Because it's an important agreement and has many commitments for both parties so parties should clearly announce their willingness to make the legal family using clear sentences showing their will.

Willing and law makers want make it clear and without doubt and something it called law makers continuous. And as talks are source it's stronger than aims and law makers said talks express willing but actions are vague and has different possibilities.

As Shia nekah need no ceremony and may happen without record in official offices and to avoid struggles its record been necessary. In Islamic punishment law we have taziri jail for not to record law. And amend 645 Islamic punishment law in 1375 said "to protect family recording full-time marriage and divorces is necessary. When man do something like marriage divorce or return will jail for 1 years" (Mansour - Islamic punishment law p178). regard this to record or not to do it is not reasons to accept or reject marriage and it's just for avoid some corruption based on law. Nearly all of jurors confirm the topic of acceptance in nekah.

For example Imam Khomeini said: nekah has to branches full-time or temporary and both need deal with acceptance(Khomeini tahriralvasila v2 - p246).

Like mentioned talks we saw in jurors ideas(Khomeini tahriralvasila v2 - p246). Some jurors said marriage without concubine is adultery like sheikh ansary which said: marriage and sex without acceptance is not halal and the difference between these 2 is concubine because in adultery we see willing(Ansari - kitab al nekah p78).

Sayed Morteza alam al hoda said: full nekah is one of two talks: nekah or marriage, but temporary marriage we have nekah, marriage or tamatoe and said or reasons is ejma(Morvarid - selseleyanabialdegh-hi - kitab al nekah v8 - p74).

Mohaghegh helli said: nekah needs acceptance which confirm marriage and clear possibilities and talks of acceptance are: (ZOJATEK) and (NEKHAT) (GHABELTO ALTAZVIJ) and (GHABELTO ALNEKAH) and other words are useless(Hellisharae al eslam v2 - p273).

In recent jurators view acceptance is marriage term. Ayatollah behtaj answers a question about this topic and said: concubine is not accepted without acceptance (Naraghi - set of juratory idea in rights - nekah 1 - v1 - p69).

Ayatollah makarem shirazi said: we haven't something like white marriage and it's rejected (Same v1 - p71) ayatollah safi golpaygani said: in marriage acceptance needed ayatollah golpaygani said it's haram and like adultery (Same p70) ayatollah Khomeini said: it's not religious ayatollah safi golpaygani said: in marriage acceptance needed. Fazel lankarani believes any marriage need acceptance is essential in marriage and acceptance is not enough without talks. Regard above jurators talks we see acceptance is essential in marriage and without marriage is not correct. Now we bring some reasons about necessity of acceptance in marriage and to reject white marriage: Reasons of individuals about necessity of acceptance in marriage and reasons to reject white marriage.

## 1. Ayes

When you decide select spouse and replace with current spouse pay a lot of property to her (as cabin) won't get anything's from her do you use betray to get back cabin? And how you get it back when you have complete sex relation and you get firm promise in deal time (Surah nesa Aye 20-21) In some quotation (Misaq Al Ghaliz) refers to god promise and emphasize on (order to goods) in relation between man and woman and it's not irrelevant in this topic (Arusihovayzi - tafsiralsaghalin v1 - p460). And in other quotations it refers to marriage words.

Yazid ibn moaviye said: I asked imam bagher and imam said: misagh is any word which refers marriage (Kolinikafi v5 - p561 - horamelivasael al shia v20 - p262).

Ayatollah khoyee and naraghi said this quotation confirm concubine in marriage and write: this quotation conforms talks and said heart agreement isn't enough (regard white marriage) and said just certain words should be used to approve marriage (Khoyee - Mabani fi sharhorva al vosgha v33 - p129 - naraghi - mostanadshia v16 - p84).

## 2. Quotations

We have lots of quotations about necessity of talks in marriage which mentioned below:

A) Khaled ibn hajaj said I said to imam sadegh about this topic

Imam come and said: but this and I give you benefit dike never before imam said: doesn't it means of haven't leave or get. I said: yes. Imam said: no problem because talks makes deals halal and haram (Tousi - tahzibalihakam v7 p50).

Discussion in mentioned quotations how's that imam confirm talks as approval with using expression (enma). Regard this just talks could make something halal or haram and has no other effect.

- B) Aban ibn taghlab said: I asked imam sadegh: says I will marry on regard god book and prophet ceremony, if he said yes and accept she is your wife and merit him(Horamelivasaelalshia v21 - p43).

Induction based on mentioned quotation is in which teller ask about marriage and imam said: say (Tazojak). This quotation said in marriage just talks are enough? Although it's based on temporary marriage but its necessity refers to fulltime marriage because if it's necessary in temporary marriage its essential as more in fulltime marriage(Khooe - mabani fi sharhorvaalvosgha v33 - p129).

### 3. Action basis

- A) Estehbab: naraghi writes: concubine is necessary in marriage because it's trace will not without concubine(Naraghi - Mostanad Al Shia - v16 - p84) - it means when we create doubt in trace of marriage regard estehbab. Marriage traces lack.
- B) Cautious basis: although marriage refers to deal category juratory orders, in quotations and interpretation its place get rise and make it better than other deals with quotations(Nori - mostadrakalvasael v14 p152 - horamelivasael al Shia v2 - p216) and regard this jurators ordered to estehbab(Tabatabaee Yazdi - orvat al vosgha v2 - p797).

Cautious in religion and obey rules force us to pay more attention in term of selecting wife and in alnekah book chapter of vasaal al Shia we have a title as (chapter about attention in marriage) and it focus on this item importance of marriage force us to do it as correct while in a marriage without acceptance there is no confident.

One of quotation in this term is imam sadegh quotation in which answer a question and said (it's a no pending in this item and we emphasize on it and child is result but be cautious) (Horamelivasael al Shia v20 - p258 )and in another quotation by prophet (p) (do not sex with women in doubt)( Horamelivasael al Shia v20 - p258)although question is related to another item but answer are general and make sexual relation in family really important and shows law makers cautious(Khooe- basis fi sharhorvate al vosgha v5 - p243).

### 4. Ejma and Muslims procedures

Some jurators used ejma in term of necessity of acceptance in marriage and rejecting white marriage: sheikh ansari noted to Muslim juratorsejma and confirm necessity of acceptance and said: Muslim jurators have ejma and confirm it plural and said

concubine necessary in marriage (Ansari – alnekah book – p78). Even naraghi said oral marriage is (religion necessity) (Naraghi – mostanad al Shia v16 – p84).

In some jurators view the most of important reasons to reject marriage without acceptance or white marriage is Muslim juratorsejam and Muslims procedures reason of those don't acceptance in marriage and confirm white marriage

A few number of jurator don't accept acceptance as a term of marriage and said heart acceptance of man or woman regard situation is enough to white marriage they mention some quotation we mention then below:

One of quotation which could confirm white marriage is abdul Rahman quotation by imam sadegh (p).

A woman come to Omar and said do adultery learn me. Omar ordered to stone this news inform to amir almomenin we told woman: how did you do adultery. Woman answered I thirsty in desert asked water from an Arab he avoided expect I give me to him when thirsty hot harder and I was afraid of my life I do so amir al momenin said: I swear this is marriage(HorAmelli, vasaal al Shia v14, p268m v18, p412).

Some confirm allow of white marriage regard of this quotation. Feizkhasani said this is marriage because both side are agree and talks transferred (not special talks) and cabin determined (water) and the time was cleared (one time stoop)(Feizkashani, alvafi, v15, p528; v21, p241).

The dedication of this quotation is clear because in this story we nothing expect oral acceptance and white marriage and imam ordered said this is marriage but reasons are not complete because:

First documented quotation is rejected because teller is abdul Rahman ibn kasir which najashi said about him his is weak and our follow said they saw him when forging quotation(Najashiasadi – rejal al najashi p251) Another teller is ali ibn kasir son of abdul Rahman brother najashi about him again said.

He is really weak and some of our follower said he is wrong and his believes are corrupted and his book (tafsirbaten) is completely wrong(same )reasoning of this quotation to confirm white marriage is deny because topic specially refers to adultery and difference between adultery and marriage is not existence of them to say water to woman changes and avoid it as adultery we have lots of cases which adultery has substitute. Difference of adultery and marriage is writing of deal even without concubine “ if religiously is correct “ and it's clear the desert man didn't want marry and want to force woman to adultery.

Second: it may this quotation was a detour of like quotation by faker which said by amro ibn saeed: woman came to Omar said: amiralmomenin I do adultery perform god punishment to me, Omar order to stone and Ali (p) in desert I got

thirsty I saw tent went there I saw Arab man and asked for water he avoided expect gave myself to him I escaped but thirsty got harder and hot back watered me and did a adultery with me. Ali (p) said this woman is an example of holy Aye: when person got disappointed while he is not monarch or attacker(Surah Baqare Aye 173/ surah anam aye 145/ surah nahl aye 115).She's not monarch and not attacker so free her Omar said: if Ali wasn't there I killed(Hor ameli vasael al Shia v28 p112/ chapter 18 from adultery chapters p7).

Third: quotation itself has no appearance for mentioned allegations because a woman perception was adultery and came to governor to clearness and it shows she didn't want to marry nether temporary nor fulltime.

Moreover than this quotation, if marriage without acceptance and just by some talks between man and woman be accepted it is necessary to sex with agreement for these sides and talks transferred there and man pay to woman. So their action is considered as white marriage and a case for adultery. And (Surah noor 2)Should be accepted like adultery of mad or unmetred?

## CONCLUSION

Base on mentioned analysis it's clear that jurators in Islam didn't accept white marriage to substitute with oral deal. Marriage between men and woman should be done by oral agreement and white marriage idea didn't follow jurators ideas and it's not agree with religion and it's based on some ideas which they had not approved and somehow vague and has negative effect regard science.

One of negative and harmful effect of this phenomenon is an opening gate for hearts sick's to adultery and they could do their crime by a religious, reason every time.

So based on jurators idea alongside history we could find out they are against white marriage or marriage without acceptance and none of Shia famous jurators accepted it.

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