

Flygtningenævnets baggrundsmateriale

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UDENRIGSMINISTERIET

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NOTAT

IRAN. Oplysninger vedr. midlertidigt ægteskab "Sighch"

Udlændingestyrelsens mail af 18. februar 2014.

Udenrigsministeriet har fra en af de sædvanligt benyttede lokale juridiske kilder modtaget følgende svar på de stillede spørgsmål:

Temporary marriage is basically envisioned to address the sexual needs of the two parties without being caught. It is being vilified by many human rights activists, feminists, intellectuals to the point that even the more enlightened Ayatollahs tend to restrict its scope and would recommend imposing some conditions to ensure its regulation and compliance with the more acceptable norms of social behaviour and family values. In recent years it has basically become a way to engage in safe sex without being accused of whatever in the light of the otherwise too inquisitive laws of the Islamic establishment indicted by citizens of intruding upon their private life.

1. Hvad er proceduren for indgåelse af et midlertidigt ægteskab i Iran, tidsmæssige begrænsninger etc.

There are no particular procedures involved contrarily to long-term marriage (commonly referred to as "permanent marriage").

Short-term marriage is normally established in writing (mainly in order to be able to prove it), but it may also be done orally. And a man, regardless of being married or not, can have as many "short term" wives (commonly and pejoratively referred to in Iran as "*sighch*" which is a rather derogatory term meaning a concubine) by way of just pronouncing the religious formula of "sighch." It will not require the parties to go through formalities laid down for civil marriage such as non-drug addiction test, medical tests to ensure that the future spouse is not suffering from such sexually transmitted diseases as HIV, or infectious diseases or tuberculosis).

On substantive issues, as well, there are many features that differentiate long term marriage contract from short term (temporary) marriage:

- In short term (temporary) marriage, setting a "marriage portion" (dowry) in writing or orally is the condition sine qua non for validity of the marriage failing, in which case the marriage would be null and void.

- Unless otherwise agreed as a collateral binding condition, in short term (temporary) marriage, the husband has, unlike long term marriage, no obligation to provide support and maintenance.
- Short term marriage is fixed for a specific period and is never open-ended. In short term (temporary) marriage, there is no divorce or separation possibility between the spouses. Short term marriage intervenes through expiry of marriage validity period or waiver of the remaining period (i.e. under the Iranian law, divorce applies only to long term marriage).
- The abstention period before remarrying is two menstrual cycles for short term marriage (three cycles for long term marriage). However, it is the same in both marriages for post-widowhood or for a pregnant wife, see below 2 and 4.
- Unless otherwise agreed, in a short term marriage, the two spouses do not inherit each other.

a) Hvem er bemyndiget til at forestå et midlertidigt ægteskab?

If by "conducting", you mean "officiating" the marriage (like a Christian priest would do in a religious marriage in a church), short term marriage can be celebrated (i.e. the religious formula be read out) by anybody (a mullah i.e. a Shia cleric, a lay person or even by the husband himself).

b) Er der krav fra myndighedernes side om registrering af et midlertidigt ægteskab?

Yes.

But the calls go unheeded as the judges tend to de-penalize extramarital sex by men (not by women) choosing not to be too strict or not to apply hard and fast rules regarding any registration. For some compromising circumstances, the judges are even openly lax and accept that short term marriage is not only not registered, but also (and they justify this by a Shia thesis that "necessities warrant restrictions") could have no witnesses "because of the emergency".

c) Bliver et midlertidigt ægteskab, der indgås på et vielseskontor, automatisk registreret?

No, short term marriage is seldom registered.

Even if the two parties (couple) bother to get it registered, it will be with a marriage registrar, and the marriage will not be reported to the authorities, being the Civil Registration Organization affiliated with the Ministry of the Interior.

d) Får parret udleveret et bevis på indgået ægteskab ved vielsen?

Yes.

But such a certificate would not have the cogent force of that of long term marriage (which, printed out by the state and issued through authorized registrars of marriage, is considered a deed or an authentic document). Thus, at best, it would allow the couple to share a room at a hotel (otherwise impossible if they could not produce such a certificate) or to engage in sex without being bothered or risking anything.

e) Skal begge parter være til stede ved vielsen?

No, unlike the laws of some states (such as France which require exchange of vows in pro se), both the wife and the husband can be represented by an attorney (an attorney-in-fact and not necessarily by an attorney-at-law).

f) Skal der være vidner til stede ved vielsen? Hvis ja, hvem kan/skal være vidner? Er den kvindelige parts forældres/værges samtykke en forudsætning for at ægteskab kan indgås? Er der tilfælde, hvor ægteskab kan indgås uden tilstedeværelse af vidner og/eller samtykke fra den kvindelige parts forældre/værges?

Unlike long-term marriage for which the presence of both witnesses and references is a must, many Shia jurisprudential scholars (or at least those who presently wield political power in Iran) tend not to insist on the presence of witnesses apparently because short term marriage creates basically little, if none, legal relations.

And in case of the presence of witnesses, witnesses can be anybody who is sui juris (having the legal capacity i.e. even a male aged over 15 or a female aged over 9 years of age can act as a witness).

It is to be noted that both parties can be evenly represented by one single attorney who can solemnize the marriage by proxy (in representation of both). As to other questions, consent by the wife is obviously a must (a marriage, be it long-term or short-term, is a contract) while approval by the father (or the paternal grandfather in case the father is dead) is also required if the wife has no previously consummated marriage or has otherwise lost her virginity (by say extra conjugal sex, physical exercise).

g) Kan ægteskab indgås, hvis den kvindelige part ved vielsen udtrykker modvilje mod at indgå ægteskab?

No.

2. Hvor lang tid skal der gå fra et midlertidigt ægteskabs ophør, før den kvindelige part kan gifte sig igen?

The abstention period before remarrying is two menstrual cycles for short term marriage while it is three for a long term marriage.

A woman who is at the post-menopausal age, however, is not subject to observance of such conditions and can remarry i.e. both in a short term marriage and a long term marriage.

If the wife is pregnant and carries a baby by her former husband, she must wait until delivery before being able to remarry.

And in case, she is a widow, she must wait 130 days (four months and 10 days) after the death of her husband to be legally qualified to remarry regardless and irrespective of whether she can have a baby or not (because of her age).

3. Kan et midlertidigt ægteskab afbrydes inden gyldighedsperiodens udløb? Hvis ja, under hvilke omstændigheder? Kan den kvindelige part træde ud af et midlertidigt ægteskab uden den mandlige parts samtykke? Kan den mandlige part træde ud af et midlertidigt ægteskab uden den kvindelige parts samtykke?

Yes.

Concerning the husband no specific circumstances are required. He can leave by "waiver of enjoyment" for the remaining period.

As to the wife, there are two options available:

- To stipulate in the "marriage contract" a condition in her favour, whereby she can be relieved of the matrimonial bond whenever she wants and get this condition signed by the husband.
- In the event of severe hardship making her life intolerable (such as extreme physical violence or affliction of the husband with infectious diseases) she can approach a family court, and then the court will act in place and lieu of the husband to release her from the conjugal life.

4. Kan en kvinde, der er midlertidigt gift med en mand, forlade ham før gyldighedsperiodens udløb og gifte sig straks med en anden mand, uden at det kommer til myndighedernes kendskab?

Yes.

She can leave before expiry of the validity by notifying and receiving the husband's consent, unless she is otherwise bound by other obligations not to leave the marriage. However, she cannot

remarry.

At least two menstrual cycles must have elapsed since the dissolution of the marriage to ensure that she does not carry a baby by her former husband.

A woman who is at the post-menopausal age, however, is not subject to observance of such conditions and can remarry by a short term contract (and even in this case by a long term) right after the date of dissolution.

If the wife is pregnant and carries a baby by her former husband, she must wait until delivery before being able to remarry.

5. Hvad er straffen for en kvinde, der forlader sin mand, som hun er midlertidigt gift med, og straks gifter sig med en anden mand?

There is no punishment. In theory, if she is still at the procreation age, she must wait till completion of two menstrual cycles or menstrual discharge to ensure that she does not carry any foetus or, more precisely, any embryo by her husband in her womb (the condition would not exist if she is menopausal or has delivered a baby by her former husband before expiry of the two menses i.e. even the day after).

Failure to comply with the above could result in theory in annulment and permanent interdiction of a marriage between the woman and the new husband, i.e. in case the marriage with the new husband was consummated or the parties were aware of the above impediment.

However, in practice, such hassle usually does not happen as there is no proper recording of events and the parties (i.e. the wife) act by a lot of "pragmatism" or "functionalism" not to disclose their real date of dissolution or even deny outright even any previous marriage.

Udenrigsministeriet, den 30. september 2014