

The problems of marriage under traditional and tribal rules in the Republic of Azerbaijan

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As known, there are three forms of marriage in the Moslem law: permanent marriage (daimi nikah), temporary marriage (or sigha) and marriage with jariyah (female slave, kaniz). For permanent marriage, the men choose virgin women with pure and good origin, and able to give birth and observing the rules of Moslem religion. Temporary marriages are consummated only between the Moslem men and women, on their mutual consent. The temporary marriage lasts only for certain period of time by paying women's dowry (Mehr). Marriage with jariyah (female slave, kaniz) may be permanent and temporary.

In Azerbaijan, under the influence of local customs, the temporary marriages (sigha) are almost not spread. This kind of marriage is mainly spread in Arab countries, in Iran, Syria, Egypt and other eastern countries.

Until 1917, in Azerbaijan, the marriage was consummated on the basis of the rules of Shariah and was registered by mullah or ghazi. In consummation of such marriages, usually, had to take part only the elderly, or, at least the man to marry. In soviet period and in the years of independence, the family-marriage relationship has been and is regulated by civil law.

On Article 1.4 of the Family Code of the Republic of Azerbaijan, legal regulation of family-marriage relationship is implemented by state and only the marriages registered by relevant executive body, are recognized. Marriage settlement (kabin) on religious rules is not of legal importance, and dissolution of it has no legal aspects.

Accordingly, the religious marriage has no any ethic importance (it is mainly based on the concept of halal (permissible) and has not been formed as a custom in Azerbaijan, and thus, does not need to be formally regulated.

The Article 12 of the Family Code provides for register of the persons who are not allowed to consummate marriage between them. We think that this register should include norms to ban marriage between the persons (the cousins, both first and second), who are considered close relatives in Azerbaijan, in a number of Moslem countries, as well as in Israel which has close friendly relations with Azerbaijan. And in general, the relatives should be allowed to consummate marriage only after fourth generation. In this case, as the modern medicine has proved, the risk of marriage consummated between the relatives reduces, and number of newborn children with numerous defects will minimize and healthy families increase. It has been approved that number of the children infected with schizophrenia in the families of close relatives, as well as the relatives of second and third generation, is ten times more than the children in the families of normal marriage.

We think, regulation of the aforementioned questions in legislation will be useful both for the citizens of Azerbaijan and Israel, and prevent possible family tragedies in future.