

THE PROBLEMS OF MARRIAGE CONSUMMATED 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. Marriage with jariyah (female slave, kaniz) may be permanent and temporary.

In Azerbaijan, under the influence of local customs, the temporary marriages (sigha) are not spread at all. 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 Shariah rules and was registered by mullah or ghazi. In consummation of such marriages, usually, had to take part only the elderly, or, only 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.

In Azerbaijan, and also in a number of eastern countries, including Israel, the marriage consummation between close relatives (the cousins, both first and second) is widely spread. This is admitted on one hand, from the point of view of making the family affairs sincerer to bring the relatives closer and on another, here, the economic questions prevail over others. Rich and influential families don't want the "aliens" possessed their wealth and thus wish their kin had superiority in society. Just due to this, opinion of the youth or the newly-married is not taken into account and their marriage becomes intolerable as pangs of hell. Looking at each other as their natives and growing together in childhood, the native youth cannot go with each other in family, and finally the family relationship dissolves, the relations between the natives become strained and ends in open hostility.

The modern science of genetics has proved that marriages between close relatives cause hereditary diseases in future. And their treatment becomes impossible. The hereditary blood diseases (hemoglobinopathy that is hemolytic of new-born), the disorder in endocrine system (adrenogenital syndrome, pancreatic diabetes), the diseases of conjunctive tissue (disease in Marfan's syndrome, mucopolysaccharidoses), nerve-muscle system are rather untreatable illnesses.

K.O. Berdishev (1979), N.P. Bochkov (1978), J.M. Gershenson (1983), B.V. Konukhov, Y.V. Pashin (1971), V. Lens (1984) and others have proved in their researches that hypertension, atherosclerosis, stomach ulcer, schizophrenia, bronchial asthma and other widespread polygenetic diseases are heritable diseases. Carriers of such diseases have certain risk for their future descendants. The medical term "heritable diseases" is very often identified with the term of "family diseases". We think it is erroneous. The family diseases are not only caused by the hereditary factors, but also by the lifestyle manners, the national or professional

traditions of the family. It is just therefore that some children born in the families with close relationship are normal, while one can see and here the impact of hereditary factor. That is, such children seem to be healthy at first sight and at the same time are born with some defect from the viewpoint of medical genetics. To tell the truth, such children have the signs of heredity in recessive (secret) form and they appear in the coming generations.

As the hereditary diseases occur in result of disorder of the genetic apparatus - carrier of hereditary symptoms of the cell, the number of ill boys and girls born from marriages of close relatives are very often equal. Probability of future development of disease in generation makes up 50 percent. Repeat mutation in gamete in of one of the parents can lead to domination of pathology. Probability of the birth of ill boy-child of the mother-carrier of mutant gene is about 50 percent. Meanwhile the girl children are practically healthy and half of them become mutant gene carriers. Very often this illness appears in cousins (on mother's side) and seldom in first cousins. Disease of ill father does not pass to his sons, that is, during breed this symptom is not dominant.

Taking into account that the dominant mutant can appear in any sex chromosome (XX, XY, X, etc.), the hereditary disease is hard in the boy-children. Ill father's boy children are healthy in spinal type hereditary, while the girls become carriers of the illness. Ill women pass the changed gene to her boys and girls equally.

In case of doubt for the hereditary diseases, the genetic tests should begin with collection of data on health of the patient's close and distant relatives, the detailed analysis of clinical-genealogical data and special examination of the family members.

Of the most serious inherited diseases, albinism, lamellar ichthyosis and the Dauna syndrome (inherited diseases as psoriasis, atopic dermatitis) have widely spread in Uzbekistan and Azerbaijan where marriage among the close relatives prevail.

The abovementioned facts indicate from the medical viewpoint the problems arising during the marriage of the close relatives. In fact, one can see hundred of such unhappy families around. The children of close relatives married on insistence of their parents in many cases become abnormal. It has been approved that number of the children infected with schizophrenia, anemia, dystrophy of lower extremities, bronchial asthma and atherosclerosis in the families of close relatives, as well as the relatives of second and third generation, is 5-10 times more than the children in the families of normal marriage.

Genealogy of everybody can be imagined as in the scheme below:

Grandfather – father – son – grandson - grand-grandson - grand-grand-grandson - grand-grand-grand-grandson;

Grandmother – mother- daughter –granddaughter – grand-granddaughter, grand-grand-granddaughter, grand-grand-grand-granddaughter.

As the first four relative generations usually live and grow together and belong to one family, they should not be allowed to marry, or, have intimate relations with each other. This is a norm adopted in the Christian countries. It is seriously needed to be adopted and in the East.

Application of this norm is both of legal and medical and moral importance. Thanks to application of the mentioned norm, the crimes connected with profligacy will reduce, the number of the new-born children with numerous defects will minimize and this will increase number of the healthy families to play important role in development of society.

We would also bring to your notice the Article 13 of the Family Code of the Republic of Azerbaijan – it is called “medical examination of those to consummate marriage”. Though it has been institutionalized as a norm, it is not a duty for citizens. We consider that medical examination of those who consummate marriage is of serious attention and it must become a duty for each. Everybody should have medical-genetic card and he (she) must be sure in his (her) health and ability to breed future generation. Persons deviating from such medical

examination should bear response. Relevant executive bodies have not to register the marriage of the persons who don't have such health certificate.

The family is the core cell of every society and its problems are always in focus of the Azerbaijani State. Last years, the government has increased its attention and care for family. Not casually that in the referendum on amendments in the Constitution of the Republic of Azerbaijan held on March 18, 2009, the Article 17 regulating family and state affairs was also amended. In addition, 2009 was declared the Year of Child in the Azerbaijan Republic.

With a view of the aforementioned, we consider necessary to amend the below given clauses of the Family Code of Azerbaijan Republic:

1. The Article 12.0.5 of the Family Code of Azerbaijan Republic is to be amended with such an item: **marriage between the persons until the fourth generation on right lineage (both first and second cousins);**

2. The Article 13.1 shall be amended with the second paragraph: **Medical examination of the persons to marry is obligatory. Persons deviating from such medical examination should bear response stipulated in legislation.**

3. The Family Code is supplemented with such Article 13.4: **Marriage of those who don't present health certificate and medical-genetic card shall not be registered by the relevant executive bodies.**

In our opinion, provision of the abovementioned questions in legislature will be useful for citizens of both Azerbaijan and Israel and would prevent future family tragedies.