

# **IRANIAN BAR ASSOCIATION**

## **LAW REVIEW**

**NO. 109 22 JUNE-21 September 1968 Vol. 20**

**26**

## **PERSIAN CIVIL CODE**

**BOOK 7**

### **ON MARRIAGE AND DIVORCE**

**SECTION I**

**ON MARRIAGE**

## **Chapter 1**

### **ON ASKING FOR THE HAND IN MARRIAGE**

Article 1034. It is lawful to ask for the hand of a woman to whose marriage there is no obstacle.

**Article 1035.** A promise of marriage does not create the matrimonial relation even though the whole or some of the dowry fixed for payment at the time of marriage between the two parties may have been paid.

Either the man or the woman, therefore, can, so long as the ceremonial act of marriage has not been pronounced, refuse the marriage and the other party cannot oblige her or him to contract the marriage or claim compensation for losses merely owing to the refusal.

**Article 1036.** If one of the betrothed parties cancels the proposed marriage without justifiable reason while the other party or his or her parents or other persons, being confident that the marriage would take place, may have incurred expense and spent money, the party who has cancelled the marriage must pay compensation for the losses incurred; but the losses in question mean only expenses of a reasonable scale.

**Article 1037.** Every one of the betrothed parties, can, if the proposed marriage is cancelled, claim the restitution of the presents given to the other party or to the parents for the marriage in question.

If the presents do not exist in original, the claimant is entitled to ask for their value of the presents which are ordinarily preserved unless the same presents have been destroyed without any fault of the party who was in their possession.

**Article 1038.** The stipulation of the foregoing article does not apply as far as it concerns the payment of equivalent value in a case where the proposed marriage does

not take place in consequence of the death of one of the betrothed persons.

Article 1039. The period of prescription for the filling of suits arising out of the breaking up of a proposed marriage is two years which must be reckoned from the time when the marriage was actually broken up.

Article 1040. Each one of the parties concerned can, with a view to contracting marriage, ask the other party to produce a certificate of a doctor showing the freedom of the person concerned from serious contagious diseases such as syphilis, gonorrhoea and consumption.

## Chapter 2

### **MEDICAL FITNESS FOR MARRIAGE**

Article 1041. Marriage of female before reaching the full age of 15 and that of males before reaching the full age of 18 is forbidden. Nevertheless, in cases where proper reasons justify it, on the proposal of the public prosecutor and by sanction of the Court, exemption from age restriction can be accorded, but in any case the exemption cannot be granted to females below the full age of 13 and to males below the full age of 15.

Article 1042. After reaching the full age of 15 even, females cannot marry without the permission of their guardian so long as they have not reached the full age of 18.

Article 1043. The marriage of a girl who has not married previously is dependent on the permission of her father

or grandfather on her father's side even if she has reached the full age of 18. If, however, the father or the grandfather on the father's side withhold the permission without justifiable reason, the girl can refer to the marriage registry, giving full particulars of the man whom she wants to marry and also the terms of the marriage and the dowry money agreed upon and notify her father or her grandfather on the father's side through that registry of the foregoing particulars. The registry in question can perform the ceremonies of the marriage act after 15 days from the date of the notification. The information could be conveyed to the father or the grandfather through means other than the marriage Registry but it must be established that the information was actually conveyed.

Article 1044. In the case of the foregoing article, it is to be noted that the permission must be given by the person of the father or the grandfather on the father's side, and if they are under restraint for some reason, there is no need for permission from the guardian.

## Chapter 3

### **ON IMPEDIMENTS TO MARRIAGE**

Article 1045. Marriage with the following relations by blood is forbidden, even if the relationship is based on doubt or adultery :

1. Marriage with father or grandfather, mother

or grandmothers, or to their ancestors to whatever generation.

2. Marriage with children, or descendants to whatever generation.
3. Marriage with the brother and sister and their children, or their descendants to whatever generation.
4. Marriag with one's own paternal aunts and maternal aunts and those of one's father, mother, grandfathers and grandmothers.

Article 1046. Foster-relationship is the same as relationship by blood as far as impediments to marriage are concerned, provided that:

Firstly : The milk of the woman takes its source from a legitimate conception;

Seconoly: The milk is sucked directly from the breast;

Thirdly : The child has at least had full milk for 24 hours (one night and one day) or for fifteen consecutives times without taking in between any other food or the milk of another woman;

Fourthly : The child has taken the milk before it has reached the full age of two years (from its birth); and

Fifthly : The milk taken by the child is from the same woman with the same husband. If therefore a child takes during twentyfour hours some milk from one woman and some from another, this

fact does not debar marriage even if the two women have a common husband.

In the same way, if a woman has a foster-daughter and a foster-son whom she has milked each from the milk belonging to a separate husband, that son and daughter cannot be considered as foster brother and sister and their marriage is not prohibited for this reason.

**Article 1047.** Marriage between the following persons is permanently forbidden because of relationship by marriage:

1. Marriage between a man and his mother-in-law or his grandmother-in-law of any degree, whether the relationship is by blood or foster-relationship;
2. Marriage between a man and woman who has formerly been the wife of his father or of one of his grandfathers, or of his son or of one of his grandchildren even though the relationship may be of the foster kind;
3. Between a man with females of descent from his wife, no matter of what degree, no exception being made even if the woman is a foster-relation, provided that the husband and wife have already consummated the marriage.

**Article 1048.** Marriage of two sisters by one man is forbidden even if the marriage of each one of them is of the 'Mungati' kind (i.e.a. temporary marriage).

**Article 1049.** No one can marry the daughter of his brother-

in-law or the daughter of his sister-in-law unless his wife permits him to do so.

- Article 1050.** Every person who marries a woman knowing of the existence of marriage ties binding the wife and of the prohibition of his own marriage with that woman, or who marries a woman who has not yet passed the period of 'Uddeh' of divorce or of death (i.e. period during which a woman is not allowed to marry after a divorce or after the death of her husband) with knowledge of the existence of the 'Uddeh' and the prohibition of the marriage, his marriage will be null and void and the woman in question will definitely and permanently be incapable of becoming the wife of that man.
- Article 1051.** The stipulation of the foregoing article will also be applicable in the case where the marriage was solemnised with ignorance of all or some of the facts mentioned in the foregoing Article, and the marriage has been consummated. In the case of ignorance, but where matrimonial relations have not taken place, the marriage will be null and void but marriage between the two does not become permanently prohibited.
- Article 1052.** Separation caused by a solemn imprecation (*li'an*) involved a permanent bar to the marriage of the parties concerned.
- Article 1053.** A marriage contract will not be valid while the party concerned is performing the Mecca pilgrimage ceremonies (*Ihrám*). If the party concerned marries with knowledge of the fact that such a marriage is prohibited, the marriage will be barred for ever.

- Article 1054.** Adultery with a married woman or with a woman who has not yet passed the period of 'raj-yee Uddeh' (i. e. the period during which the husband can re-marry his wife after the first or second divorce; during which period the wife is debarred from re-marrying) will entail a permanent bar to the marriage of the parties concerned.
- Article 1055.** Sexual intercourse of doubtful nature or by adultery if preceding marriage is tantamount to the existence of marrige as far as prohibition of marriage is concerned but cannot cause cancellation of the former marriage (sic).
- Article 1056.** One who perpetrates a shameful act on a boy cannot marry his mother, his sister, or daughter.
- Article 1057.** A woman who has been the wife of a man for three consecutive times and has been divorced each time will become unlawful as wife to that man unless she is married by permanent marriage to another man and, after matrimonial relations with that man, separation occurs between them by divorce or cancellation of the marriage or death.
- Article 1058.** The wife of a person who has been divorced from him nine times, six of which were 'Uddi divorce' (divorce after which the wife must not marry another man for a number of months) will be illegal as wife to that man for ever.
- Article 1059.** Marriage of a female Moslem with a non-Moslem is not allowed.
- Article 1060.** Marriage of an Iranian woman with a foreign national is dependent, even in cases where there is no legal impediment, upon special permission of the government.

Article 1061 .The government can make the marriage of certain government servants and officials and students supported by the government with a female foreign national dependent upon special permission.

## **Chapter 4**

### **CIRCUMSTANCES NECESSARY FOR LEGALITY OF MARRIAGE**

- Article 1062. Marriage takes place by proposal and acceptance (form of an Islamic marriage contract by which a Mullah representing one party makes the proposal and another Mullah representing the other accepts it) in words which explicitly convey the intention of marriage.
- Article 1063. The proposal and acceptance may be uttered by the man and woman themselves or by persons who are legally entitled to perform the act.
- Article 1064. The person who performs the act must be sane in mind, of legal age, and capable of forming a decision.
- Article 1065. It is a necessary condition for the validity of a marriage that acceptance should follow close upon proposal, in accordance with custom.
- Article 1066. If one or both of the parties to the marriage are dumb, the ceremony can be conducted by signs made by the dumb person or persons provided that the signs clearly convey the intention of entering upon the contract of marriage.
- Article 1067. It is a necessary condition for the validity of a mar-

riage that the wife and husband should be so declared that neither party is in doubt as to the identity of the other.

**Article 1068.** Making conditions in the marriage contract will render it void.

**Article 1069.** A provision in the marriage contract reserving the right of cancellation of the contract, if made, will be null and void. But in a permanent marriage, a provision entitling one of the parties to withhold the dowry (sudāq) is permissible provided that duration of this right is definitely mentioned. After cancellation of the grant of dowry (sudāq) the situation will be as if no dowry is mentioned in the contract of marriage.

**Article 1070.** Consent of the marring parties is the condition upon which depends the enforcement (nufuz) of the marriage contract, and if a party showing at first reluctance authorises the making of the contract subsequently, the contract will be binding unless the relutance is so acute that the reluctant person cannot be considered as having been in possession of any intention.

## Chapter 5

### **DEPUTING A THIRD PARTY FOR GIVING CONSENT TO MARRIAGE**

**Article 1071.** Either the man or woman can depute a third party with power to contract the marriage.

Article 1072. If power is given without conditions as to the identity of the husband, the attorney cannot himself marry his principal under that power unless this permission is explicitly given to him in the power of attorney.

Article 1073. If the attorney does not observe what his principal has laid down in connection with the person or the dowry or other particulars, the authenticity of the marriage will depend upon corroboration from the principal.

Article 1074. The provisions of the preceding Article will also be binding where the power was without any reservation and the attorney did not act according to the best interests of his principal.

## **Chapter 6**

### **ON TEMPORARY MARRIAGE**

Article 1075. Marriage is called « mungati », (liable to be terminated) when it is for a limited period of time.

Article 1076. The duration of the temporary marriage must be definitely determined.

Article 1077. In the case of temporary marriage, provisions concerning inheritance of the wife and her dowry are the same as fixed in the chapter on 'Inheritance' and in the following chapter.

## **Chapter 7**

### **ON THE DOWRY (Mahr)**

Article 1078. Anything which can be called property and which

can be owned and possessed can be designated as a marriage portion.

**Article 1079.** The marriage portion must be known to the marrying parties to the extent that their ignorance is removed.

**Article 1080.** Fixing of the amount of marriage portion depends upon the mutual consent of the marrying parties.

**Article 1081.** If a condition is laid in the marriage act that if the marriage portion is not paid within a fixed period the marriage will be cancelled, the marriage and the marriage portion will remain binding and authentic but the condition will be null and void.

**Article 1082.** Immediately after the performance of the marriage ceremony the wife becomes the owner of the marriage portion and can dispose of it in any way and manner that she may like.

**Article 1083.** A duration of time or instalments can be fixed for the payment of the marriage portion, as a whole or in parts.

**Article 1084.** If the marriage portion consist of a designated property and it is found out that before the celebration of the marriage that property was defective, or that after the marriage celebration and before the delivery of the property it became defective or it was destroyed, the husband is liable to compensation for the defective part or the value of the property if destroyed.

**Article 1085.** So long as the marriage portion is not delivered to her, the wife can refuse to fulfil the duties which she has to her husband, provided however that the marriage portion is payable at once.

This refusal does not debar her from right to maintenance expenses.

- Article 1086. If the wife proceeds to fulfil the duties that she has towards her husband by her own free will, she cannot subsequently avail herself of the provisions of the foregoing Article, but nevertheless she will not forfeit the right that she has for demanding the payment of the marriage money due to her.
- Article 1087. If a marriage portion is not mentioned, or if the absence of marriage portion is stipulated, in a permanent marriage, that marriage will be authentic and the parties to it can fix the marriage portion subsequently by mutual consent. If previous to this mutual consent matrimonial intercourse takes place between them, the wife will be entitled to the marriage portion ordinarily due.
- Article 1088. In the case of the foregoing Article, if one of the marrying parties dies before the fixing of the marriage portion and before the consummation of marriage, the wife will not be entitled to any marriage portion.
- Article 1089. Authority for fixing the marriage portion can be entrusted to the husband or a third party, in which case both of them can fix it at any amount they may wish.
- Article 1090. If the authority for fixing the marriage portion is vested in the wife, she cannot fix an amount which exceeds 'Mahr-ul-Misl' (marriage portion ordinarily paid taking view of all circumstances of the particular case).
- Article 1091. In fixing of the 'Mahr-ul-Misl', the status of the wife in respect of her family's station and other

circumstances and peculiarities concerning her in comparison with her equals and relatives and also the customs of the locality, etcetera, must be considered.

- Article 1092. If the husband divorces his wife before the consummation of marriage, the wife will be entitled to half of the marriage portion and if the husband has already paid more than half of the marriage portion he has the right to demand the return of the surplus, in original, in the equivalent, or in value.
- Article 1093. If no marriage portion is mentioned in the act of marriage and the husband divorces his wife before the consummation of marriage and the fixing of the marriage portion, the wife is entitled to "Mahr-ul-Mut'eh" (marriage portion due to the wife in respect of the social station of the husband) and if she is divorced after the consummation of marriage, she will be entitled to a "Mahr-ul-Misl".
- Article 1094. The status of the man in respect of wealth or poverty will be considered in fixing "Mahr-ul-Mut'eh".
- Article 1095. Absence of marriage portion in the act of a temporary marriage will render the contract void.
- Article 1096. The death of the wife in a temporary marriage during the period of marriage will not cause the forfeiture of the marriage portion; the same will be true if the husband did not have any relations with her up to the end of the period of the marriage.
- Article 1097. If the husband resigns his rights to the whole

period of marriage in a temporary marriage before having any relations with the wife, he must pay half of the marriage portion.

Article 1098. If the marriage, whether temporary or permanent, was void, and there has not been any matrimonial relations, the wife will not be entitled to any marriage money and the husband can demand the refund of the marriage money if it has been paid.

Article 1099. If the wife was ignorant of the fact that the marriage was unauthentic, and if in such case matrimonial relations have occurred, the wife will be entitled to «Mahr-ul-Misl» .

Article 1100. If the specified marriage portion is unknown or if it is not of such a nature that it can be owned or if it belongs to someone else, the wife will be entitled in the first two cases to "Mahr-ul-Misl" and in the third case to the equivalent of the value of the property which proved to be that of a third party, unless the latter authorises the transfer.

Article 1101. If the marriage is cancelled before matrimonial relation for any reason, the wife is not entitled to any marriage portion. If the reason of cancellation is impotency, the wife will be entitled to half of the marriage money notwithstanding the cancellation of the marriage.