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# The Nature of Long-term Temporary Marriage in Imamah Jurisprudence and Legal System

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## Abstract

The study aims to investigate the nature of long-term temporary marriage in Imamah jurisprudence and the legal system via a comparative qualitative research method. As a result, the famous saying of jurisprudence is also that the marriage is temporary, and that adultery is famously known to be less bug-free than in the non-celebrated, while in the jurisprudence it is doubly and irrevocable. In conclusion, after the marriage contract is concluded, the principle of its validity is valid, secondly, with the void of this contract, many corrupt sequences, including the raising of illegitimate children, will be inevitable.

**Keywords:** Etymology, Legislature, Long-Term, Temporary, Marriage.

## La naturaleza del matrimonio temporal a largo plazo en la jurisprudencia y el sistema legal de Imamah

### Resumen

El estudio tiene como objetivo investigar la naturaleza del matrimonio temporal a largo plazo en la jurisprudencia de Imamah y

el sistema legal a través de un método de investigación cualitativa comparativa. Como resultado, el famoso dicho de la jurisprudencia también es que el matrimonio es temporal, y se sabe que el adulterio es menos libre de errores que en los no celebrados, mientras que en la jurisprudencia es doble e irrevocable. En conclusión, una vez concluido el contrato matrimonial, el principio de su validez es válido; en segundo lugar, sin el contrato, muchas secuencias corruptas, incluida la crianza de hijos ilegítimos, serán inevitables.

**Palabras clave:** Etimología, Legislatura, Largo plazo, Temporal, Matrimonio.

## 1. INTRODUCTION

The family as the main unit of society and its creator has been one of the most important social realities, and it has a very important place in any legal system. All legal systems seek to create a healthy society free of deviations and problems by focusing on family rights and issues. On the other hand, lack of entry into the ontology and actual functioning of some concepts, despite its complexity, and only through apparent illusions, is one of the current problems of the scientific community. Law as a science that is linked directly and following social fact plays an important role in addressing these apparent illusions (AL-HIBRI, 2009).

A lawyer is obliged to obtain a thorough knowledge of the subject in every social phenomenon. Second, he/she has sufficient mastery over the extractive resources, and thirdly he has sufficient practical power to execute the judgment on the subject. Looking

closely at the country's legal doctrine, despite the repeated efforts of the authors, it must be acknowledged that there are gaps and deficiencies in the first instance, which requires their mastery of the former state of affairs and historical developments, as well as the present situation and the right factors involved in the matter and in the context of history, social events that meet the needs of human beings occur in which evolution requires the penetration of many factors including time and place and customs. On this occasion, there is sometimes a tendency for these social events to appear on the social scene. The long-term temporary marriage in recent years in the Iranian legal system has certainly enjoyed such a characteristic that such a large number of individuals have been contracted. Based on the material mentioned above, the possibility or impossibility to arrange the effects of permanent marriage on a long-term temporary contract. Indeed, permanent marriage, regardless of the adoption of any basis in it, whether contractual or institutional, has effects including alimony, inheritance, husband's presidency, etc. that this works as soon as the contract is concluded.

Now the question is: regarding long-term temporary marriage contracts, do these works return to the contract, and does the contract entail a permanent contract or is the order in which the temporary contract can be discarded and does the validity of the disclaimer apply to the order of the works? In other words, what is the nature of long-term temporary marriage, and what should the legal and social procedure do for this legal and social entity? In order to answer these questions, after discussing the concept of the concept, the nature of

long-term temporary marriage in Imamah jurisprudence has been discussed. Then, the nature of the entity in the Iranian legal system has been explained, and finally, a conclusive opinion has been presented.

Marriage is a legal-emotional relationship that results from a marriage between men and women and gives them the right to live together, and this is an obvious manifestation of the right to sexual intercourse. In fact, this marriage entails an intimate relationship between a man and a woman as a couple. Temporary marriage as part of marriage under Article 1075 of the Civil Code is a marriage for a fixed period. Therefore, the distinction between permanent and temporary marriage is the mention of a fixed term. This period can be divided into three types: short term, mid-term, and long term temporary marriage. Accordingly, if the temporary marriage is concluded for a long time, the temporary marriage for a long time is concluded that in legal and customary language, it is referred to as the temporary marriage of 99 years (HAERI, 1986).

In Iranian law, three articles in the chapter on temporary marriage are assigned to temporary marriage, two articles on the conditions of co-marriage, and the other on the provisions on inheritance and dowry. The Iranian legislator has justly recognized this religious body on the one hand and, on the other hand, has dismissed many of its disagreements with its overwhelming legitimacy. In addition to Article 1075, the legislature has also stated in Article 1076: "The term of the termination of marriage shall be fully specified (DEEB, 2010: 18)". Now the fundamental question is: What is the nature of long-term temporary marriage, as it is the essential difference

between temporary and permanent marriage effects, such as the need to set a term and dowry, non-inheritance of couples in abortion, dissolution of marriage, non-payment of temporary oath, right of abstinence, Divorce from divorced couples to permanent marriage as opposed to temporary marriage and so on (ROMANO, 2015).

## **2. METHODOLOGY**

The nature of long-term temporary marriage in Imamiah jurisprudence:

In the light of the Imam's jurisprudence, there are four theories for the nature of temporary marriage. Each of the above is based on specific jurisprudential principles that will be examined in its place. To this end, the ontology mentioned above will be presented in four sections.

According to this view, temporary contracts, although longer than a person's standard of living, are still temporary. It is said in this regard: "In the marriage contract, if the term is mentioned, even if it is long, the marriage contract shall be counted (MARGALIT, 2018: 10)". The same opinion has been expressed by some other contemporary authorities: Question: One person has committed a woman for eighty years and stated the same amount of time at the time of the execution of the marriage contract on the assumption that the woman is a permanent or temporary woman?

Ayatollah Hossein Nouri Hamedani: "According to the above explanation, it is a temporary marriage issue (DEEB, 2010: 17)".

Question: What if a temporary marriage had a long marriage, like 99 years? Is this marriage, right? If true, is it temporary or permanent?

Ayatollah Seyyed Ali Khamenei: "It is okay, and it is temporary (ROMANO, 2015: 18)".

Documentary view of this, two categories of evidence, such as the evidence and the narratives on and also a claim of consensus, which are discussed below.

### **3. RESULTS**

Muhammad ibn Muslim says: To the extent that the parties have requested. Or, as stated in the narration of Umar ibn Hanzalah: So, both narratives show that there is no limit to the termination of temporary marriage.

As to the title, it can be said to be the principle of permitting the determination of the length of time by the parties, but the narrative is not about the extent to which a person can live longer (SHIRPAK, CHINICHIAN, MATICKA-TYNDALE, ARDEBILI, POURREZA & RAMENZANKHANI, 2008). The explanation that the word, in and of itself, is incapable of spreading and serialization, and becomes applicable if the three are fulfilled. The first is that the speaker is



expressing all his intentions, the second that there is no persuasion or symmetry, and third, that the word lacks the prestige of the addressee.

Thus, it may be well-known that the infant, although expressing the principle of the legitimacy of the agreement on the quantity of the contract, was not in the position of expressing a contract longer than the normal life of a human being. Precisely in this respect and in the forms, it is stated:

The overwhelming majority have daily narratives and times and cities, and the nature of the marriage contract is limited for life if it is even known, it is forbidden, so if, for example, they have been married for 99 years, the waiver is permanent (INHORN, 2006). As is clear, the principle of denial has been firstly denied, and secondly, if any, it has been relinquished to short-term cases. The same discrepancy is sufficient in claiming non-citation for this reason (SWIETOCHOWSKI, 2002).

Some jurists, citing the unanimity of the scholars, believe that the temporary nature of temporary marriage is temporary. However, it seems that the reason is also beyond the scope of proof. The explanation that a consensus can be invoked as a reason, the evidence of which is not known and at this time is a transcendental consensus, but if the evidence is known, such a consensus is called a documented consensus, and since the consensus of the discoverer is not infallible, the Shia scholars have no credibility. Therefore, recourse to consensus also cannot be regarded as an independent reason when considering such a contract (CHARSLEY & LIVERSAGE, 2013). It is because of these drawbacks that some jurists, bypassing this

theory, have tended to regard the long-term temporary contract as permanent.

In spite of the efforts made by this theory, it seems that the acceptance of this theory is fundamentally neglected. Appealing to this view leads to the non-fulfillment of the contract of intent, which is a given. The explanation that contracts are dependent on intent, the contract of being and being is subject to intent, and the current rational transactions between the people, if prescribed by the law-maker, will be concluded only with the intention of the followers. So how can it be claimed that the contract that the successors have made temporarily becomes permanent? In terms of customer understanding, it is important to refer to customary times when the parties have no will to the contrary. Therefore, assuming custom is considered to be permanent, but that the parties consider it temporary, such a contract would be temporary. The same priority applies to interpretive rules. Therefore, it cannot be guaranteed that the narrative should be relinquished and that its brief appearance should be abandoned.

This theory, which has been put forward by one of the contemporary jurists, is explicitly in vain. This jurist believes that long-term marriages are void if they are more than the probable lifetime of the couple. As stated in the former theory, the basis for this nullity may be the mismatch of the intentions that govern the parties if proven and because the famous rule of Contracts is dependent on intent is applied to the jurists according to their apparent intention; therefore, when the parties intend to make the marriage temporary in a manner that is more conventional than their

age, the intention to mate with the contract actually occurs and such a contract will be void. However, it is not acceptable to invalidate this argument in the annulment of temporary marriage, since the intention was to conform to the contract, and as a joint intent, it should not be overlooked that, first, the principle is the conformity of the external will with the esoteric will. Thus the terms of the emerging contract are in the real intention of the parties, and the contract must be taken into account as a whole.

In Iranian law, the termination of a marriage is interrupted, first of all, the term of the marriage; secondly, the term is definite, and thirdly, the science is not long enough, but detailed science is needed. Therefore, despite Article 1075 of the Civil Code, there is the talk of defining a term in Article 1076 of that Civil Code, the phrase be fully specified is also given. Therefore, one of the basic requirements for a termination contract is to specify the term of the contract. A fixed-term is also called the beginning and the end of a term, so that it is unlikely to be short or long, whether short or long. In fact, from the legal point of view of Article 1076 of the Civil Code, mentioning the term in the contract makes it permanent, and there is no difference between the short or long term. For this legal appearance, what is known from the famous Iranian legal doctrine is the tendency to regard the contract as temporary (HAERI & TURNER, 2003). The same tendency is evident in some judgments, despite the disagreement. The Court of Appeal, for example, has ruled that the lower court terminated the 99-year temporary marriage.

It should be noted that some disagreements over the termination of the marriage are due to possible abuses such as the need for permission from the virgin girl. To this end, the Legal Department of the Judiciary has explicitly stated in the Theory of 1902/7/7 dated 1392/1/10: According to the annex to Article 1044 of Civil Code in 1991, the registration of marriage of an adult and virgin girl is subject to the conditions set forth in Articles 1043 and 1044 of the said law. This includes both a permanent contract and a temporary contract. Attention to the consequences of non-registration has already been the subject of legislative attention in the Family Protection Act of 2012. Article 21 of the Family Protection Act of 2012 has the following poems:

The legal system of the Islamic Republic of Iran supports permanent marriage, which is the basis of family formation, in order to centralize and maintain family relations. Temporary marriage is also governed by Shari'a law and civil law, and registration is required in the following cases: 1- Getting pregnant 2- The agreement of the parties 3- Betting on condition. The need to register in three cases indicates that the legislature has abstained from doing so, and precisely in this regard in the proposed new amendments to the Family Protection Act of 2012, the requirement of temporary marriage registration for more than five years is envisaged. On the other hand, and despite authorship, in the original legal texts, although jurists have not tended to perceive such a doctrine in the Iranian legal system, it can still be argued based on a family-centered approach to family law.

This approach implies that the overview and orientation and policymaking should be in line with the family base.

The most obvious family-centered approach is found in the constitution of the Islamic Republic of Iran. The law was named the family in various respects and has made it the fundamental unit of Islamic society. Mandated the government to establish a competent court for the preservation of the family's livelihood and to provide housing for persons in need, as well as to provide for basic family needs; One of the economic principles governs. It is inferred from these principles that the constitution places the family-centered approach at the heart of its principles. It can be argued that the central family is certainly more attainable in permanent marriage than temporary marriage, and based on this, long-term temporary marriage can be termed permanent marriage. If the contract is considered permanent, the rights of the woman in the marriage contract are as follows: A- The right to imprisonment for obtaining honesty. B- The right to work in a business unless there is an occupation contrary to the interests of which the couple is entitled. C- The right to own and own property.

D- Alimony (ration and subsistence) except for non-food. E- The right to be prohibited from dismissal. F- The right to reside. G- The right to travel to the obligatory Hajj. It is because of the jurisprudential arguments and the tendency that Branch 8 of the Supreme Court has explicitly considered such marriage to be permanent. In a case where each couple was about thirty-seven years old and engaged in temporary marriage for 99 years, the Branch

considered such a place permanent, arguing that the term was more than usual beyond human life and has written the acts and decrees of the permanent marriage upon it. However, this theory cannot be defended in two ways.

First, it contradicts the rule of Contracts are dependent on intent, so while the parties intend to marry temporarily, such positions cannot be considered permanent. Secondly, the writers of civil law have made every effort not to depart from the framework of religious law and, in many cases, from the well-known jurisprudential framework, not only in terms of personal status or contracts but also in areas that appear It is very similar to French civil law, not violating this principle, but fundamentally the changes or modifications made to the articles of French civil law have no purpose other than observance of Shari'a standards and compliance with jurisprudential principles. Accordingly, the famous saying of jurisprudence is also that the marriage is temporary, and that adultery is famously known to be less bug-free than in the non-celebrated, while in the jurisprudence it is doubly and irrevocable. For this reason, however, it cannot be said that the provisional authenticity of such sites is temporary, but as argued in jurisprudential criticism, long-term temporary marriage should be considered temporary, in the absence of purpose. Therefore, such an opinion should be regarded as a legal promise in the Iranian legal system, which can serve as a genuine jurisprudential opinion on legal cases.

#### **4. CONCLUSION**

As detailed, there are four views on the nature of long-term temporary marriage in jurisprudence. The first theory is the belief that the institution is temporary, although it is longer than the standard life of believers. However, this theory has some drawbacks, such as the lack of narrative expression and the existence of documented consensus that has been examined in detail. The second theory was the belief in the perpetuation of such points, which also suffered from the fact that the parties did not conform to the actual intention of the parties.

For this reason, the third theory generally holds that such a doctrine is invalid, even though this view cannot be an appropriate justification, because after the marriage contract is concluded, the principle of its validity is valid, secondly, with the void of this contract, many corrupt sequences, including the raising of illegitimate children, will be inevitable. It has been because of these drawbacks that the Fourth Theory, eschewing individualism and paying attention to traditions, believes that traditions are the expression of areas that are agreed upon by the parties and, on the other hand, to be regarded as inappropriate in custom.

Therefore, this theory considers the nature of such a doctrine to be temporary and believes that it is temporary in purpose. Legislator of the Iranian legal system has been silent on this issue. However, the doctrine has also been reluctant to comment, and so the judicial process is scattered. Some judgments have followed the theory of

provisionally, and some, including the Eighth Branch of the Supreme Court, have endured the theory of durability. However, as detailed, however, given the drawbacks of the two theories, it seems likely that the rulings based on the provisional non-objective theory of custom may be capable of addressing current weaknesses.

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