321678 - If a woman gives up her right to maintenance and does not want to have children, can she get married without documenting the marriage contract?

the question

I have researched on your website the topic of ‘urfi marriage, and I found that if the essential conditions of marriage are met – namely the presence of the woman’s wali (guardian), the proposal and acceptance, the presence of two witnesses of good character and the mahr – and before that there is the intention of a permanent marriage, not a temporary marriage, then in that case the ‘urfi marriage is valid according to Islamic teachings. But I have read that other scholars say that even though the ‘urfi marriage in this case is valid according to Islamic teachings, it is still haraam, because it is detrimental to the rights of the wife and of any children who may be born later on.

My question is, is that view correct? And how can an action be valid according to Islamic teachings and yet be haraam at the same time? My second question is: if the ‘urfi marriage is haraam for the two reasons mentioned above, then what is the case if the woman gives up the right to maintenance, including food, drink, clothing and housing, and she only wants a little, and she does not want any inheritance, and she also does not want to have children, because she has a boy and a girl from her previous marriage? Is the ruling different in this case, and does the ‘urfi marriage become valid according to Islamic teachings, and can it be said that there is no element of it that is haraam?

Detailed answer

Praise be to Allah.

If the conditions and essential parts of marriage are fulfilled – namely the proposal and acceptance, and the consent of both spouses – and the marriage contract is done by the wali

(guardian) or his proxy in the presence of two witnesses, then this is a valid marriage, even if it is not documented. This is one of the forms of ‘urfi marriage. But documenting the marriage in our times is obligatory, so as to protect the rights of all concerned, namely the husband, the wife and the children. If it is not documented, then it is haraam because this obligation has been neglected. So the marriage is valid, although the one who did it without documenting it is sinning.

This is what is meant by something being both valid and haraam. This is in contrast to getting married without a wali, which is haraam and is not valid.

If the wife is not concerned about her rights and does not want to have children, this does not waive the obligation of documenting the marriage. She may deny that this man is her husband, in which case the husband’s rights will be affected. She may die, and her husband will not be able to inherit from her, so his rights will be affected. She may have a child even though she does not want to have children, and the husband will be unable to register the child’s birth, so the child’s rights will be affected. He may marry her and stay with her for a while, and then leave her but refuse to divorce her, so she will be left hanging, unable to marry someone else or take him to court to resolve the matter.

The view that it is obligatory to document the marriage is clearly sound, and the interests served by that are many and obvious. The negative consequences of neglecting to document the marriage are very well known, especially in these times in which there is a great deal of denial of duties and rights, and causing people’s rights to be lost, especially as some regulations governing family law make it binding on the courts not to listen to the claims of spouses or to issue rulings concerning them without submission of official documentation. This is how the courts have been operating in Egypt since 1931, as stated in Article 99 of a list of instructions to sharia courts, which was amended by Law no. 78 in 1951. … Another such legal example is Kuwaiti family law, where it states in Article 92, paragraph (a): The court will not consider any case in the event of denial of marriage by either spouse, unless the marriage is proven by official documentation, or the denial is preceded by admission of marriage in official papers.

End quote from *Mustajiddaat Fiqhiyyah fi Qadaayaa al-Zawaaj wa’t-Talaaq*. Usaamah ‘Umar al-

Ashqar, p. 145.

See also the answer to question no. 129851 .

In the past, people did not need documentation, because there was less dishonesty and mischief.

Shaykh al-Islam Ibn Taymiyyah (may Allah have mercy on him) said: The Sahaabah (may Allah be pleased with him) did not need to write down mahrs (dowries), because they did not delay part of the mahr; rather they paid it in full immediately, and if they did delay some of it, it would be well known. But when people started to marry with a delayed portion of the mahr, to be paid after a long time, and it would be forgotten, they began to write down the delayed portion, and that became proof of the mahr and that the woman was indeed his wife.

End quote from *Majmoo' Fataawa Shaykh al-Islam* (32/131).

And Allah knows best.