

RE: Marriage

A marriage contract has in fact been in existence since 1293 (1914) in Afghanistan. Records do in fact exist that couples have registered their marriage in the past despite this not being a legal requirement. In 2005 was started the marriage contract amendment process by medica mondiale Afghanistan with close cooperation of MoWA (Ministry of Women's Affairs), R&D (Rights and Democracy), AIHRC (Afghan Independent Human Rights Commission) and other stakeholders and finally after several meeting the certificate has been amended for the benefit of women's right in 2007. As result of advocacy and 2/6 lobby Supreme Court established document registration centres in different zones of Kabul in 2008 and marriage certificate was implementable in late of 2008.

1. In accordance with the Afghan law, when is a marriage in Afghanistan valid?

According to Afghanistan Civil Code, a marriage is a legal agreement, and it's valid when it's duly executed and all legal elements exist during its execution. As defined by Afghanistan Civil Code in article 60: "Marriage is a contract which legalizes relationship between man and woman for purpose of establishment a family, and constitutes rights and obligations for both parties".

A marriage is valid when it contains all legal terms or elements, which are: (1) expression of will of both parties (Man and woman) in person or through attorneys and guardians, (2) presence of two adult witnesses, and (3) no legal ban on the marriage of parties.

As article 77 of Civil Code states: "For the proper contract of marriage the observance of the following terms is required:

- a. Offer and acceptance should be affected correctly by the parties to the contract or by their guardians or representatives.
- b. Presence of two witnesses
- c. Non-existence of permanent or temporary legal prohibition between the man and the woman who intends to get marry".

1.1. Would that concern unregistered Islamic marriages as well?

Yes, above three elements shall be observed in all marriages, whether registered or not registered.

1.2. What documents are necessary to register the marriage?

From the applicant, the Court of Deeds would require: (1) a written petition requesting registration of marriage, (2) Identification documents (Tazkiras) of husband, wife and witnesses, (3) photos of husband, wife and witnesses, (4) presence of both husband and wife, and witnesses for testimony in the court of deeds, (5) payment of official fee, (6) duly legalized power of attorney, if any of the parties are represented by attorney. Further proceedings are done through official letters.

1.3. Where is it possible to register marriages? In Kabul only? In other provinces?

Marriages are registered in Court of Deed, and it's possible to register in Kabul and other provinces as well.

2. Is it necessary to register every marriage in Afghanistan? Even if the Nikah was signed before a Mullah/or not before a Mullah?

It's not mandatory to register a marriage in Afghanistan in all cases. Most marriages are not registered, and they are only executed before a religious clergy (Mullah). Only those couples, who need to demonstrate their marriage for official purposes, apply for registration of marriage. Even new marriages aren't registered, unless it's requested by any department, consulate, and organization for official purposes, such as immigration, heritage etc...

2.1. What documents are necessary in order for a marriage to be valid before a Mullah?

No document is necessary for execution of marriage before a Mullah. However, other legal requirements remain the same which are:

- a. Presence of both parties (husband and wife) or their representatives, in almost all cases wife is represented by a representative,
- b. Expression of will and intention of parties for exaction of marriage,
- c. Agreement of parties or their representatives on amount of dowry from husband to wife,
- d. Presence of witnesses for testimony,
- e. Execution of religious formalities,
- f. Writing of a traditional (unofficial) marriage certificate.

3. What happens if a marriage was not registered?

In most cases nothing happens, even most marriages are not registered (by court), but when relationship of husband and wife concerns official related proceedings, it's mandatory to register the marriage and later proceed as husband and wife.

And most people don't register unless it's required for any official administrative work.

4. Are there differences concerning Shia and Sunna? What about other religious minorities like Baha'ia or Sikh and Hindus?

All religious minorities are free to execute their marriage through their traditional or religious formalities, but when it comes to official registration in Courts, all above mentioned terms and requirements shall be observed. So, for official registration of marriages of all sects, the same Civil Code requirements apply.

5. What if happens in cases of mixed marriages between Shia and Sunnis?

In cases of mixed marriages between Shia and Sunnis, legal requirements for official registration of marriage remain the same which are according to Afghanistan Civil Code.

And there are no fundamental religious formalities between these two sects, only traditional and few religious formalities are different, and it's agreed between parties in advance.

6. Are there cases in which a marriage does not necessarily have to be registered?

Registration of marriage is not any legal requirement for validity of a marriage, all unregistered marriages are valid, and there is no mandatory legal obligation for registration of marriages in normal situations. Although is encouraged in the law to register a marriage as article 48 of Civil Law states: “Documents pertaining to marriage, divorce and the proof of parentage and succession, which may be prepared by the respective offices, shall be registered in the books provided under Article 46 of this law. The said offices are bound to inform in writing the departments concerned of any changes in the civil status so that they may be registered thereof”. So, currently in practice, no marriage necessarily has to be registered, unless required for administrative process of marriage related obligations.

7. Are there certain times in which a registration of a marriage was not necessary/required by law?

The first Afghan Law for regulation of marriages (Marriage Law) enacted on August 8, 1971. Now, above law is revoked and a new draft is under legislation. Since then, until now, there is a legal mechanism for registration of marriages, but no requirements to register all marriages.

8. Is it possible to postpone the registration of a marriage?

Yes, when a traditional/religious marriage is done, it has its full force, and parties can register it at any time they wish. There are cases which parties register their marriages after many decades. But whenever a marriage certificate is requested by a department for any official purpose, such official process won't take place before registration of marriage and issuance of a marriage certificate.

9. If two Afghan citizens married in a country other than Afghanistan, would their marriage be valid in Afghanistan?

If the marriage's fundamental legal requirements are not contrary to Afghanistan Laws, and marriage is registered under a foreign country law, it is still valid in Afghanistan. As article 19 of

Civil Code states:

“With respect to subjective conditions of the validity of marriage, laws of the state of each spouse are applicable; and as regards to conditions pertaining to the form of marriage, the law of the country shall be abided in which the marriage takes place”.

9.1. If it was an Islamic marriage?

If the marriage was done out of Afghanistan through Islamic Sharia formalities, it's valid in Afghanistan, whether registered or not. Still, for official correspondences registration is required, weather it is done inside the country of outside.

9.2. If it was a civil marriage?

The marriage execution formalities in Afghan society is strict religious rules, and registration is only for official purposes and all duly executed marriages with religious formalities are deemed legitimate.

If the civil marriage which is done out of country has any element contrary to Civil Law or Islamic Sharia (both of them has same elements), is considered invalid, but if the elements are according to Afghan Civil Code and civil marriage is done only for formal registration, it's valid in Afghanistan.

10. Should an Afghan citizen marry a person with a different citizenship (other than Afghan) would the person be allowed to live and work in Afghanistan?

Yes, any Afghan citizen can marry a non-Afghan, and he/she can life and work with its Afghan spouse in Afghanistan. There is no legal ban on such marriage. And even such non afghan spouse can apply for afghan citizenship.

But the social aspect of such marriage has some problems, especially when the non-Afghan spouse is male.

10.1. What are necessary steps to obtain a legal residency and work permit in Afghanistan – when married to an Afghan citizen?

Having a duly registered marriage certificate and identification documents are necessary to obtain a visa for a non-afghan spouse of an afghan citizen. However, the procedure is long and in different departments including Ministry of Foreign Affairs, Ministry of Interior Affairs and finally visa is issued by Passport Department.

And for work permit, the non-afghan spouse can obtain it from Human Resources department of Ministry of Labor, through following some administrative procedures.

11. Is it possible to marry in absentia and have the marriage registered at a later time? Is this possible as a Shia, as well as Sunni? Who would be the appropriate registration agency in Afghanistan? Or would this be possible for any Mullah?

Yes, it is possible to execute a marriage before a Mullah in absence of any or both of spouses, but they shall have authorized representatives and two witnesses shall certify the grant of such authorization to the representatives by principals.

Yes, it is possible for both Shia and Sunni.

Court of Deeds is appropriate registration agency for registration of marriages in Afghanistan.

It's possible to register a marriage in absentia as well, but parties shall appoint legal attorneys through duly legalized power of attorney.