

Islamic Republic Civil Rights and Women's Rights in Iran

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One of the positive signs of the new era in human history has been the improvement in social, economic and legal rights for women. Through their struggles in European countries, women have been able to bring about political changes in male-dominated societies that have enabled them to access equal rights. Starting in 1848, the United States also saw a number of women's freedom movements. One of their most important demands was that of gender equality. During the next century, the founding of the National Organization for Women in 1966 by Betty Freedman had a positive impact on women's economic, social and political advancements.

While Iran was in the process of bringing about equal rights for women and men<sup>1</sup> and making an effort to legislate laws to protect women, the change in the governing system in 1979 barred any progress by approving laws to oppress women, including the law of mandatory hejab. As a result of the Islamification of the ruling system, new legislation affected the judiciary in such a manner that after three decades of an Islamic Republic there have been increasing objections and new social movements spearheaded by women. It is in this context that we may examine such laws and their effects on the society, as well as the increasing levels of violence against women and girls.

It is without a doubt that Iran's laws are derived from Islamic jurisprudence and in this vein Islamic interpretations of civil rights and criminal law have resulted in widespread discrimination against women.<sup>2</sup> Although many experts, scholars and even jurists believe that Islamic laws honour and elevate women, there are those who believe that such laws not only fail to honour or elevate women, but in a discriminatory manner, deprive them of their most basic rights.

**The extent of discrimination in civil rights**

Article 105<sup>3</sup> of the civil code clearly recognises men as the head of the family. The use of the word 'master' in the law, particularly with regard to family relationships, leads to one conclusion, the complete and total obedience and adherence to the 'master'. Naturally, in each case of master and subordinate, whether among governmental or non-governmental organisations and authorities, obedience and adherence to the master is part of such relationships. In return, the subordinate is guaranteed protection in certain respects ranging from warnings to expulsions. Certainly such social or professional relationships differ from familial relationships but the nature of the dynamics governing the absolute power of the master is identical.

The foundation and basic tenets of a relationship based on feelings and shared values in a couple's life is reversed by the male dominant structure set out in Article 105. It encourages a self-centred perspective amongst men, and reframes a potentially loving relationship between a couple into one tested by unrestrained male dominance. In case of resistance, there are a number of legal repercussions, such as non-payment of alimony, that women can be subjected to.

Article 1108 of the Civil Code<sup>4</sup> states: 'Should a woman fail to perform her duties as a wife, she will not be entitled to receive alimony.' Men have used this legal justification against women and in cases where women have chosen otherwise, they have been subjected to force and violence. Such legal grounds provide strong support for men who consider rape and sexual violence as their legal right against their wives. However, it does not end there. In many cases a woman's refusal to perform her wifely duties exposes her to other forms of violence including physical violence and bodily harm at the hands of her husband. It is in this light that women pressure lawmakers in order to regain economic power. However, they face other legal impediments and manifestations of male dominance.

<sup>1</sup> One of the distinguishing features of women's rights during the Pahlavi era compared to the Islamic Republic is the Family Protection Law and the difficult conditions for polygamy. In this law if a man intends to remarry he must seek permission from court. In case of marriage without permission the man can be sentenced to imprisonment while during the Islamic Republic this condition was no longer in place and only the first wife's permission is required.

<sup>2</sup> Islam has set the legal age for marriage of a girl at 9. For years Islamic Republic laws also recognised the same age but have recently changed to 13. Marriage for a girl at the age of 9 or even 13 can result in physical damage. Girls' bodies are not yet fully developed by this stage and are not conducive to sexual relations so child marriage at this age is beyond their physical strength. Other instances of violence that are inspired by Islamic Sharia and Islamic Republic laws is from verse 34 of Nisa Chapter of the Koran: Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. This is reflected in Article 1105 of the Civic Code, see: Quran.com, Surat An-Nisā', <http://quran.com/4/34> & UNHCR, The Civil Code of the Islamic Republic of Iran, <http://www.refworld.org/pdfid/49997adb27.pdf>

<sup>3</sup> UNHCR ibid

<sup>4</sup> Ibid

Article 1117 of the Islamic Republic Civil Code<sup>5</sup> states: 'The husband is able to deny his wife her choice of profession which in his estimation is against his, her or the family's interest'. A question that arises from this Article is the definition of 'family interest' and what it may entail. The ambiguity and vagueness of this Article allows the judiciary to use personal interpretation<sup>6</sup> and possibly include a range of justifications to define 'family interest' as a means of limiting women's professional choices. A lack of proper care for children or the failure to adequately perform domestic responsibilities as a result of employment are among other reasons that can be defined as 'family interest'. Since family court judges consider men as the master and breadwinner of the family and do not consider a woman's profession as essential, they replace objective analysis with the husband's interest and deny women the right to engage in work that does not meet her husband's approval.

When a woman has been subjected to her husband's dominance, justified in the name of law, and her freedom to engage in her profession has been placed in the hands of her husband by the same law, she is deprived of economic independence and she must turn to her husband so that through obedience she gains her sustenance. Put simply, in order to access the most basic rights of food, clothing, housing and health care, many Iranian women must become obedient slaves so they place their bodies, even against their own will, at their husband's disposal.

At the same time they must worry about their future given the possibility of sharing their husband with another wife. Article 1075<sup>7</sup> legally recognises temporary marriages. It states: 'Marriage is temporary when it is for a predetermined period'. Although unlike temporary marriage, permanent marriage is not explicitly recognised but in reference to some laws such as the inheritance laws, both permanent and multiple marriages are implied and accepted. In accordance with Islamic Republic laws, polygamy is not illegal. However, it is conditional on the first wife's permission. However, temporary marriage differs in that it is not conditional on the first wife's permission. At any given point in time, and with no legal impediment, a man can marry any number of women. Islamic laws and provisions set no limitations on such marriages; the law makes no pronouncements but Islamic jurists agree that there are no limits. So although polygamy is not explicit in Islamic Republic laws, temporary marriages are legally recognised. From a woman's perspective, essentially and psychologically, temporary and permanent marriages are one and the same. A woman suffers the same consequences from a permanent marriage as she does from her husband's temporary marriage. In addition, given the unlimited number of temporary marriages<sup>8</sup>, it may cause greater harm to the stability of family life and psychological welfare. Each of these laws imposes a new and deep-rooted form of inferiority on women. Are there any Muslim women who are happy with their husbands sharing their bed with other women under the guise of temporary marriage?

Iranian law is based on Sharia and Sharia is formed from rules developed 15 centuries ago. Imposing such laws on society results in religious and legal forms of prostitution which leaves men free to enjoy relationships that damage the family unit and cause social and psychological damage to women. It is under such conditions that women continue to survive solely for the sake of their children or decide to end their marriage. However, can a woman file for a divorce due to her husband's temporary marriage? Not according to the law. Women can only divorce their husbands when certain legal justifications are proven in the court of law, including: addiction, failure to pay alimony, disappearance, incurable disease, sterility or a prison sentence, among others. Proving any of the above in a court is a challenging task for women.

However, Article 1133 of the Civil Code<sup>9</sup> simply states: 'A man can divorce his wife whenever he chooses to do so'. Such excessive and unrestricted freedom for men, while conditioning divorce for women on proof of certain circumstances and conditions, is a clear example of discrimination between women and men. Imposition of a man on his wife, even if continuing to share their life results in physical and psychological

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<sup>5</sup> Ibid

<sup>6</sup> With regard to certain cases of discrimination at the hands of some judges, I must emphasise that judges act based the laws of the land. For instance, in child custody cases, it is the law that deprives mothers from this right upon her remarriage. The judge follows this law. However, if the father remarries this right is not transferred to the mother and he maintains custody. Another example involves applying for passports where married women must seek the permission of their husbands and unmarried women the permission of their fathers while men and boys do not have to seek the permission of their female counterparts. According to Article 1233 women do not have the right of guardianship while men without their wife's permission can act as a guardian. Other cases involving divorce, custody, right to work and unequal inheritance laws are discussed in the body of the article.

<sup>7</sup> UNHCR ibid

<sup>8</sup> Since this is an informal arrangement it is impossible to provide an exact figure but a statement by Ahmad Touyserkani, the Deputy Chief of Justice and Head of the National Registration Office indicates that during the first 6 months of the year 2013 142,000 temporary marriages were registered, which according to him is 10% higher than the same time last year. Unregistered cases must be added to this. In 2013 for every 10 marriages, 2 temporary marriages are registered according to Mashreq News, Officials and Temporary Marriage, November 2013, <http://www.mashreghnews.ir/fa/news/261239/#####-#####-#####-#-#####-##-#####>

<sup>9</sup> UNHCR ibid

damage to women and constitutes a form of systematic violence. How can laws that determine the age of 13 as the legal age for a girl to marry, while others can choose to marry her at a younger age, convey a correct understanding of marital relationships? How can her underdeveloped body be subjected to a man's sexual needs in order to access her right to livelihood? Can she file for a divorce after she reaches the age of maturity and decides to object to her legal guardian's choice for her marriage? Do laws validate such a request? Certainly not, as few of the laws protect women and their rights.

Article 1170 of the Civil Code<sup>10</sup> imposes a different set of legal extortions on women granted full custody, rooted in male dominance within the family. When a mother who is in charge of her child's care remarries, custody is transferred to the father. Article 1105<sup>11</sup> explicitly recognises dominance as a right of the man, and therefore a woman is subjected to his authority including the most minute aspects of her relationships. This provides the grounds for transfer of custody to the father upon a mother's remarriage and the reason why mothers avoid remarriage so long as they care for their children. However, the same does not apply in the case of fathers.

Among other laws that clearly discriminate against women are inheritance laws that entitle women to only half of what men are entitled to. In this regard Islamic jurists have once again tried to justify such discrimination by referring to grounds such as the impact of a woman's dowry in offsetting the inequality, or men's role in managing the economic affairs of the family, as a means of his right to a larger portion of inheritance, portraying Islamic laws as just without addressing the realities. Although such explanations might have applied to women who lived during the early years of Islam as they were paid their dowry at the time of entering into matrimony. But in today's Iran are there any men who pay the dowry at the time of marriage? In most cases, a woman's request to receive her dowry results in friction or even the end of a marital relationship and once again lawmakers have instituted laws that make it difficult for a woman to receive her dowry. In addition, for most women, a dowry is the only way out of a relationship which they have no interest in. In light of these impractical factors a smaller share of inheritance<sup>12</sup> for women compared to men is unacceptable.

With regard to the men's role in managing economic affairs, which Islamic jurists use as a reason to justify men's higher share of inheritance, it should be noted that during the early days of Islam, women's participation in economic affairs was not possible. Women's roles were confined to household and domestic affairs. However, in today's Iran, women are now shouldering part of the economic responsibilities<sup>13</sup> that Islamic law has given to men, working alongside men to meet the family's financial needs. Their only demand is that of equal rights with men.

The issues explored in this article represent but a few instances of discrimination against women as outlined in Iran's Civil Code. The Islamic Criminal Code dehumanises women on both sexual and physical grounds. Certainly, conflicts arising from differences between traditional and inefficient laws, and the tangible realities of today's society, cause dissatisfaction among most Iranian women; and rather than heeding the call of the masses, the ruling elite continues to utilise terror, threats and detention against women activists in order to repress the freedom movement.<sup>14</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> With regards to justifications offered by Islamic Republic authorities as to the reason for the discrepancy between inheritance shares of women and men in light of women's dowry Morteza Motahhari's statements may be of note where he states because Islam recognizes men's duty to pay dowry and alimony then it has doubled men's share of inheritance. A member of the Expediency Council, Hashem Hashemzadeh Harisi has commented on this issue by saying since the husband bears the obligation of covering the expenses of the household and family, then he has a higher share of inheritance and likewise, because of his higher share he must pay for a woman's dowry, because woman has a lesser share of inheritance and paying her dowry makes up for the smaller share of inheritance.

<sup>13</sup> 1 out of every 12 households in Iran are headed by a woman: Princeton University Iran Data Portal, Female Heads of Household, 1996 data, <http://www.princeton.edu/irandataportal/socioecon/topics/female/>

<sup>14</sup> Violence is part and parcel of state policies under the Islamic Republic leading to societal practices that continuously hinder women's progress. See: Stop state violence against women in Iran!, Violence is not our culture, 2011, <http://www.violenceisnotourculture.org/partners/stop-state-violence-against-women-iran>

