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# REPORT ON CITIZENSHIP LAW: IRAN

AUTHORED BY  
ELIYEH DELAVARI

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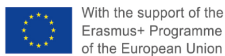
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# Report on Citizenship Law

## Iran

*Eliyeh Delavari*<sup>1</sup>

### 1. Introduction

In Middle Eastern countries, gender inequality has long been an issue. Gender discrimination has persisted in status, power, and access to resources and opportunities<sup>2</sup>. It has also persisted in various fields of law including nationality law. Borrowing from the words of Suad Joseph, gender citizenship issues in Middle East have originated from the emphasis on the family as a unit, politically, and privileging men over women within families, legally. Joseph also argues that the establishment of religious communities and the legal power and authority of “religious leaders over their members”<sup>3</sup> is one cause behind the emergence of gender discrimination in the region. The influence of Islamic law or Sharia on the legal codes such as personal status laws (the codes that regulate matters related to personal affairs of individuals such as marriage, divorce, inheritance and child custody) in most countries in the region is the result of the formal incorporation of religious communities into judiciary communities<sup>4</sup>. Additionally, gender disparity in the region is not only limited to the laws but also the manner in which the laws are implemented. What the law provides in principle and what women undergo is different<sup>5</sup>.

Iran as one of the countries in the region is no exception. The 1979 Iranian Constitution provides for the equality between men and women in enjoying all rights<sup>6</sup>. Besides, it stresses that “Iranian citizenship is the indisputable right of every Iranian.”<sup>7</sup> Yet, the terms and conditions under Iranian nationality law privilege men. Iranian nationality law<sup>8</sup> confers nationality through both principles of *ius soli* and *ius sanguinis*, and they both put women at a disadvantage. Children born to Iranian fathers always are granted Iranian nationality regardless of whether they are born inside or outside the country; but for decades the Iranian nationality law prevented women from passing on their nationality to their children. This was, however, changed in 2019. After a great deal of global pressure from women’s advocates and both Iranian

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<sup>1</sup> PhD Candidate | *Citizenship and Statelessness in Iran*. Department of Private Law, Maastricht University  
Email: [eliyeh.delavari@maastrichtuniversity.nl](mailto:eliyeh.delavari@maastrichtuniversity.nl)

<sup>2</sup> Suad Joseph, ‘Gendering Citizenship in the Middle East’, in: *Gender and Citizenship in the Middle East*, ed. Suad Joseph, 2000, 3-30, page 3.

<sup>3</sup> Suad Joseph, Gender and Citizenship in the Middle East || Gender and Citizenship in Middle Eastern States, Middle East Report Journal, 1996 / 04-03 Iss. 198, page 6.

<sup>4</sup> Suad Joseph, Gender and Citizenship in the Middle East || Gender and Citizenship in Middle Eastern States, Middle East Report Journal, 1996 / 04-03 Iss. 198, page 7.

<sup>5</sup> Suad Joseph, Gender and Citizenship in the Middle East || Gender and Citizenship in Middle Eastern States, Middle East Report Journal, 1996 / 04-03 Iss. 198, page 6. See also: Suad Joseph, ‘Gendering Citizenship in the Middle East’, in: *Gender and Citizenship in the Middle East*, ed. Suad Joseph, 2000, 3-30, page 18. Organisation for Economic Co-operation and Development, *Women in Public Life; Middle East*, 2017, 292-278, page 248.

<sup>6</sup> Constitution of the Islamic Republic of Iran, 24 October 1979, Art.20; Available at: <https://www.refworld.org/docid/3ae6b56710.html>.

<sup>7</sup> Constitution of the Islamic Republic of Iran, 24 October 1979, Art.41.

<sup>8</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, articles 976-991.

and international human rights organisations and activists, a substantial reform to the law was approved. The amendment which allows children born to Iranian women and foreign men to acquire nationality regardless of whether they are born inside the country or abroad<sup>9</sup>. Nonetheless, certain gaps are still remaining and more reforms are needed to ensure that Iranian nationality law is in line with international human rights standards.

The following sections of this report take a close look at the historical process of regulating citizenship in Iran and also focuses on the current modes of acquisition and loss of Iranian nationality along with the issue of gender discrimination. Moreover, a number of reform options in accordance with international norms, in particular with regard to the elimination of gender inequality in law, are discussed.

## 2. An Historical Overview of Citizenship Regulations in Iran

### 2.1. Some Terminological Remarks: Nationality vs Citizenship

In Farsi, the term *tabeiāt* [تابعیت] is the corresponding term to nationality which literally means allegiance. However, in legal literature the term is used to describe the political relationship between an individual and the State which results in both rights and obligations<sup>10</sup>. Some scholars, nevertheless, have suggested a more comprehensive definition of the term<sup>11</sup>. They claim that the term *tabeiāt* indicates a political and intellectual relationship between an individual and a State. Their argumentation is that nationality is not something that is dependent on one's habitual residence but it is rather an intellectual relationship that one is always preserving with their country of nationality regardless of where they live<sup>12</sup>.

This is while others believe that the relationship is purely a legal one and should be defined as the legal belonging of an individual to a nation or State<sup>13</sup>. *Meliāt* [ملیت] is another term with a similar meaning for the term nationality in Farsi which is slightly different than the term *tabeiāt*. In Iranian legal literature, the former has more of a sociological value while the latter possesses a legal and political value. In other words, the term *meliāt* mostly implies an individual's membership of a nation or State in a sociological context. However, the term *tabeiāt* indicates the existence of a political and legal bond between an individual and a State<sup>14</sup>.

<sup>9</sup> Guardian Council Ratifies Bill Granting Citizenship to Children of Iranian Mothers, Foreign Fathers, Islamic Republic News Agency, 2019, available at:

<https://en.irna.ir/news/83500806/Guardian-Council-ratifies-bill-granting-citizenship-to-children>.

<sup>10</sup> محمد جعفر جعفری لنگرودی, ترمینولوژی حقوق, تهران: گنج دانش, ۱۳۸۱, ص ۱۳۵. (Mohamad-Jafar Jafari Langroudi, *the Legal Terminology*, Tehran: *Ganje Danesh*, 2002, page 135).

<sup>11</sup> نصیری محمد, حقوق بین الملل خصوصی, تهران: آگه, ۱۳۹۰, ص ۱۳۶. (Mohammad Nasiri, *Private International Law*, Tehran: *Agah*, 2011, page 36).

<sup>12</sup> نصیری محمد, حقوق بین الملل خصوصی, تهران: آگه, ۱۳۹۰, ص ۲۶-۲۷. (Mohammad Nasiri, *Private International Law*, Tehran: *Agah*, 2011, pages 26-27).

<sup>13</sup> سلجوقی محمود, حقوق بین الملل خصوصی, تهران: میزان, ۱۳۹۰, ص ۱۳۷. (Mahmoud Saljoughi, *Private International Law*, Tehran: *Mizan*, 2011, page 137).

<sup>14</sup> نصیری محمد, حقوق بین الملل خصوصی, تهران: آگه, ۱۳۹۰, ص ۱۳۲. (Mohammad Nasiri, *Private International Law*, Tehran: *Agah*, 2011, page 132).

Although it has been said that the two terms have almost the same meaning in practice, it is interesting to know that it is the term *tabeiati* that is used in the entire Nationality law<sup>15</sup>.

Up to 1764, Iranian people were referred to as subjects of Iran, both domestically and in foreign relations. The word (*tabeiati*) or citizenship was mentioned for the first time in 1764, in a treaty between *Nader Shah Afshar* and the Ottoman king, *Sultan Mahmud Khan I*: “If the citizens of Iran and the Ottomans flee to each other's territory and seek to renounce their citizenship, the States will not accept this new citizenship and hand them over to the other government<sup>16</sup>.”

## 2.2. Prior to 1906

Regarding the historical background of the rules on citizenship in Iran, experts believe that up until 1906, there was no comprehensive set of regulations of which textual evidence can be found today. This implies that prior to this date, citizenship regulations were mentioned merely in treaties individually and separately<sup>17</sup>. For example, in the Treaty of Turkmenchay in 1828, and in the treaty concluded in four terms between the government of Iran and Tsarist Russia in 1844<sup>18</sup>, an agreement was made on the protection of Russian citizens in Iran as well as the rules regarding the treatment of Russian citizens by Iranian government officials. In fact, these treaties recognised the establishment of capitulation. In other words, they had unilaterally granted concessions to Russian citizens without any indication on Iranian citizens or citizenship per se<sup>19</sup>. Another example of these treaties is the Ottoman-Persian Convention of 1875, signed in Istanbul between Iran and the Ottomans, which discussed the issue of citizenship and its impacts on citizens<sup>20</sup>. Furthermore, a decree dating back to 1890 by *Naser al-Din Shah*, a Qajar ruler, mentions that all Iranian women married to foreigners shall revert to being Iranian national after dissolution of their marriage resulting from the death of their husband<sup>21</sup>. It should be mentioned that, the predominant law prior to the 1906 Iranian Constitution was the Islamic law developed by Shi'a jurists.

<sup>15</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, available at: <http://www.refworld.org/docid/49997adb27.html>.

<sup>16</sup> سيدجلال الدين مدني، الملل خصوصي حقوق بين، تهران: گنج دانش، ۱۳۷۵، ص ۹۳ (Seyed Jalaledin Madani, *International Private Law*, Tehran: *Ganje Danesh*, 1996, page 93). See also: National Library and Archives of I.R.IRAN. Available at:

[http://www.nlai.ir/exhibition?p\\_p\\_id=exhibitionview\\_WAR\\_nlaiportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=2&exhibitionview\\_WAR\\_nlaiportlet\\_exid=299527](http://www.nlai.ir/exhibition?p_p_id=exhibitionview_WAR_nlaiportlet&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_pos=1&p_p_col_count=2&exhibitionview_WAR_nlaiportlet_exid=299527).

<sup>17</sup> ۱۰۰ صفحه، ۱۳۷۵، محمد نصیری، ملل خصوصی، (Mohamad Nasiri, *International Private Law*, Tehran: *Agaah* publication, 1996, page 100). See also: National Library and Archives of I.R.IRAN. Available at: [http://www.nlai.ir/exhibition?p\\_p\\_id=exhibitionview\\_WAR\\_nlaiportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=2&exhibitionview\\_WAR\\_nlaiportlet\\_exid=299527](http://www.nlai.ir/exhibition?p_p_id=exhibitionview_WAR_nlaiportlet&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_pos=1&p_p_col_count=2&exhibitionview_WAR_nlaiportlet_exid=299527).

<sup>18</sup> The agreement was also made to “end the disorder...of the inhabitants of the frontier regions of Russia and Persia who engaged in frequent migration.” Entering each country by the citizens of another country was restricted as stipulated by Article 1 of the treaty. Citizens of each country were required to possess a passport and obtain the permission of their government. Firoozeh Kashani-Sabet, *Frontier Fictions: Shaping the Iranian nation, 1804-1946*, the US: *Princeton University Press*, 1999, page 53.

<sup>19</sup> Joseph J. St.Marie and Shahdad Naghshpour, *Revolutionary Iran and the United States: Low-intensity Conflict in the Persian Gulf*, 2011, page 30. محمد نصیری، ملل خصوصی، ۱۳۷۵، ص ۱۰۱. (Mohamad Nasiri, *International Private Law*, Tehran: *Agaah* publication, 1996, page 101).

<sup>20</sup> Karen Kern, *Imperial Citizen: Marriage and Citizenship in the Ottoman Frontier Provinces of Iraq*, 2011, pages 99-103.

<sup>21</sup> سيدجلال الدين مدني، الملل خصوصي حقوق بين، تهران: گنج دانش، ۱۳۷۵، ص ۹۴ (Seyed Jalaledin Madani, *International Private Law*, Tehran: *Ganje Danesh*, 1996, page 94).

### 2.3 From 1906 until the 1979 Islamic Revolution

In 1906, during the Constitutional Revolution<sup>22</sup> of Iran, the first Iranian Constitution was signed by the monarch *Mozaffar ad-Din Shah Qajar*. With the adoption of the first Constitution, legislation in Iran began. In order to ensure the imposition of Islamic rules in the legislation, Article 2 of the Constitution provided for a committee of at least five Islamic jurists to approve the bills passed by Parliament<sup>23</sup>. In the Supplementary Fundamental Laws of the Constitution, the issue of citizenship was raised and the rights of the citizens from non-citizens were distinguished<sup>24</sup>. Drafting rules and legal provisions for the Iranian society, in general, was one of the objectives of the Constitutionalist (supporters of the establishment of a Constitution). Some actions as well, such as establishment of a court system, were taken before the Revolution. After the political and security turmoil resulted from the 1921 Persian coup ‘d’état’ which led to the regime change from Qajar to Pahlavi, drafting the necessary laws and, most importantly, a Civil Code became also one of the subjects on the new government's agenda. Moreover, the government at that time planned to abolish capitulation for which the existence of a well-defined and advanced Civil Code was a prerequisite<sup>25</sup>.

The first Iranian Civil Code, therefore, was drafted and enacted between 1928 and 1935<sup>26</sup> during the monarchy of Reza Shah Pahlavi and in the context of modernising its policies. Modernisation succeeded in some areas of law such as Commercial codes but the codification of the Civil Code was extensively based on Islamic law and the prevailing culture. Personal status law, in particular, retained classical Shia<sup>27</sup> legal concepts and has not changed significantly ever since. However, the provisions on nationality and domicile are among those which are influenced by European concepts and codes. In the first phase of the drafting process of the Civil Code, issues such as property ownership, contract law and etc., were of great importance. As a result, the first volume of the Civil Code, which included 955 articles, was assigned to these issues and was approved on 6 May 1928, which was a day before the capitulation was officially abolished.

On 7 September 1929, Parliament passed the citizenship Law containing 16 articles<sup>28</sup>. In this law, both the principles of *ius sanguinis* and *ius soli* for the attribution of nationality were accepted. On 21 October 1930, with the approval of two other articles, called the Supplementary Law, the Citizenship Law was completed. The law was valid and complied with until 1935, when the second volume of the Iranian Civil Code was ratified. As a result, articles

<sup>22</sup> The Persian Constitutional Revolution took place between 1905 and 1911, during *Qajar* dynasty.

<sup>23</sup> Persian Constitution of 1906, 7 October 1906, Art.2, available at: <https://fis-iran.org/en/resources/legaldoc/iranconstitution>.

<sup>24</sup> Articles 8-25 provided for a range of fundamental rights to which citizens of Iran were entitled, available at : <https://fis-iran.org/en/resources/legaldoc/iranconstitution>.

<sup>25</sup> Parvis Owsia, ‘Sources of Law under English, French, Islamic and Iranian Law: A Comparative Review of Legal Techniques’, *Arab Law quarterly*, Vol 6; Issue 1, 1991, page 44.

<sup>26</sup> First Volume: 8th May 1928; Second and Third Volume: From 26th January 1935 till 24th October 1935.

<sup>27</sup> The Twelve Shia as the main Shia school is the official faith in Iran which shares common features - despite its differences as to certain details or some methodological principles- with the four main Sunni schools. In other words, their common pattern and structure make it possible to refer to them as a system called Islamic law; See: Parvis Owsia, ‘Sources of Law under English, French, Islamic and Iranian Law: A Comparative Review of Legal Techniques’, *Arab Law quarterly*, Vol 6; Issue 1, 1991, page 33.

<sup>28</sup> ۹۵ ص ۱۳۷۵، گنج دانش، تهران: سیدجلال الدین مدنی، الملل خصوصی حقوق بین، تهران: گنج دانش، ۱۳۷۵، ص ۹۵. (Seyed Jalaledin Madani, *International Private law*, Tehran: *Ganje Danesh*, 1996, page 95).

976-991 of the Civil Code were assigned to the issue of nationality. The 1979 Constitution allocated two principles (41 and 42) to the issue of nationality as well<sup>29</sup>.

## 2.4. Sources of law

Since 1906, Iranian law has consisted of mixed elements from Islamic, Shia and European legal concepts in particular the 1804 French Civil Code<sup>30</sup>. Yet, there are still differences in the sources of law before and after the 1979 Islamic Revolution. During the Monarchical regime (before the Islamic Revolution), the sources of law were categorised into two groups of 1) Binding sources such as statutory laws, judicial decisions of the plenary session of the Supreme Court and *urf* [custom and usage] at a certain level; and 2) Persuasive sources such as doctrinal writings, Islamic, Shia and French law, and judicial decisions in general<sup>31</sup>.

Following the 1979 Islamic Revolution, sources of law became a fusion of pre-revolutionary sources and adopted rules and regulations by the State's new organs along with more concepts of Shia law<sup>32</sup>. A new Constitution was adopted on 2 and 3 December 1979 and went into force replacing the Constitution of 1906. The areas of law that were considered as un-Islamic were substantially revised<sup>33</sup>. The new Constitution stressed this matter under Article 4<sup>34</sup> by stating that all laws and regulations must comply with "Islamic criteria" in particular with its primary source<sup>35</sup> which resulted in an explicit predominance of the rule of *Sharia*<sup>36</sup>.

The pattern of the sources of law after the 1979 Revolution can be described as follows: Mandatory sources which consist of a. Commands and views of the Juris-leader (*velāyat-e faqih*)<sup>37</sup> which was established as a principle under Article 5 of the Constitution; b. Existing laws and legal provisions from the pre-Revolutionary laws as well as laws passed by the Islamic

<sup>29</sup> National Library and Archives of I.R.IRAN, available at: [http://www.nlai.ir/exhibition?p\\_p\\_id=exhibitionview\\_WAR\\_nlaiportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=2&exhibitionview\\_WAR\\_nlaiportlet\\_exid=299527](http://www.nlai.ir/exhibition?p_p_id=exhibitionview_WAR_nlaiportlet&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_pos=1&p_p_col_count=2&exhibitionview_WAR_nlaiportlet_exid=299527). English version: <https://www.wipo.int/edocs/lexdocs/laws/en/ir/ir001en.pdf>.

<sup>30</sup> Parvis Owsia, 'Sources of Law under English, French, Islamic and Iranian Law: A Comparative Review of Legal Techniques', *Arab Law quarterly*, Vol 6; Issue 1, 1991, page 33.

<sup>31</sup> Parvis Owsia, 'Sources of Law under English, French, Islamic and Iranian Law: A Comparative Review of Legal Techniques', *Arab Law quarterly*, Vol 6; Issue 1, 1991, page 38.

<sup>32</sup> Parvis Owsia, 'Sources of Law under English, French, Islamic and Iranian Law: A Comparative Review of Legal Techniques', *Arab Law quarterly*, Vol 6; Issue 1, 1991, page 37.

<sup>33</sup> Reza Banker and Keyvan Ziaee, *The Life of the Law in the Islamic Republic of Iran*, 2018, page 719, available at:

<https://www.tandfonline.com/doi/full/10.1080/00210862.2018.1467266#aHR0cHM6Ly93d3cudGFuZGZvbmxpbmUuY29tL2RvaS9wZGYvMTAuMTA4MC8wMDIxMDg2Mi4yMDE4LjE0NjcyNjY/bmVlZEFjY2Vzc210cnVlQEBAMA==>.

<sup>34</sup> Article 4: "All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle is absolutely and generally binding to all articles of the Constitution as well as to all other laws and regulations and the *foqhoḥā* of the Guardian Council are judges in this matter."

<sup>35</sup> Primary sources of Shari'a are the *Quran* and *Sunnah* [traditions] which include the words, deeds and acknowledgments of the Prophet, and under Shi'a law also of twelve Imams. Parvis Owsia, 'Sources of Law under English, French, Islamic and Iranian Law: A Comparative Review of Legal Techniques', *Arab Law quarterly*, Vol 6; Issue 1, 1991, page 36.

<sup>36</sup> Ramin Moschtaghi 2010: 'Rule of Law in Iran', in: *Understandings of the Rule of Law in various Legal orders of the World*, Rule of Law Working Paper, Series Nr. 11, page 1.

<sup>37</sup> Keyvan Tabari, 'The Rule of Law and the Politics of Reform in Post-Revolutionary Iran', *International Sociology*, Volume 18; Issue 1, 2003, page 100.



Parliament and approved by the Guardian Council<sup>38</sup>; c. The parts of Shia law that have not been encompassed in laws yet have been presented in *fatwas* [Islamic jurisprudence], as prescribed by Article 167 of the Constitution, which states that courts are required to base the verdict of cases on the basis of the codified laws, however, where the law is silent, courts may decide cases by referring to Islamic sources or *fatwas*; d. Judicial decisions of the plenary session of the Supreme Court; and e. Custom and usage on a relatively smaller scale<sup>39</sup>.

Besides, the post-revolutionary sources include a category of persuasive sources consisting of a. Doctrinal writings, on both laws adopted before and after the Revolution<sup>40</sup>; b. French and, to a much lesser extent, other Western laws, as they constitute the origin of some areas in law which have remained in force and arising from the country's engagement in international litigations<sup>41</sup>.

It is to be noted that legislation has always had a political necessity and course (orientation) in the country. As mentioned above, one political motivation behind the drawing of the 1928 Civil Code was to pave the way to abolish the Capitulatory System. The second and third volumes of the Civil Code were, however, codified and passed later in 1935, when the political situation was rather controlled and stabilised. The law was imported through legal scholarship in the process of the law-making, rather than being constructed in an innovative manner. This is exactly why external origins (influences) such as French law and Islamic law shaped the Iranian law during its codification course<sup>42</sup>.

### 3. The Main Modes of Acquisition of Nationality

The principle under Iranian nationality law is that, every person residing in Iran is considered as an Iranian citizen except those whose foreign nationality is established<sup>43</sup>. The foreign nationality of an individual is considered to be established if their documents of nationality are not objected to by the Iranian government<sup>44</sup>. This is mentioned under sub-para of Article 976 of the Civil Code. A number of Iranian legal scholars have argued that this provision implies the application of *pure ius soli* principle<sup>45</sup>. This, however, cannot be the case as such an

<sup>38</sup> The Council of Guardians (Showrā-ye-Negahbān), which is established by Article 91 of the Constitution, consists of six Islamic jurists appointed by the Supreme Leader, and six lawyers selected by the head of judiciary (who is appointed by the Supreme Leader) and confirmed by Parliament (Majles). Each member serves a six-year term, staggered such that half the body turns over every three years. According to Article 96 of the Constitution, the main responsibility of the Council is to review all legislation passed by the parliament to ensure they are in accordance with Sharia and Constitution.

<sup>39</sup> Parvis Owsia, 'Sources of Law under English, French, Islamic and Iranian Law: A Comparative Review of Legal Techniques', *Arab Law quarterly*, Vol 6; Issue 1, 1991, page 38.

<sup>40</sup> Before the 1979 Revolution, doctrinal writings shaped the main body of the law next to legislation. There is not, however, an extensive legal literature from that period as the legal system was rather too young. Judicial decisions have replaced the role of doctrinal writings since the 1979 Revolution.

<sup>41</sup> Parvis Owsia, 'Sources of Law under English, French, Islamic and Iranian Law: A Comparative Review of Legal Techniques', *Arab Law quarterly*, Vol 6; Issue 1, 1991, page 38.

<sup>42</sup> Parvis Owsia, 'Sources of Law under English, French, Islamic and Iranian Law: A Comparative Review of Legal Techniques', *Arab Law quarterly*, Vol 6; Issue 1, 1991, page 38.

<sup>43</sup> محمد نصیری، حقوق بین الملل خصوصی، ص ۶۲، ۱۳۸۱، (Mohamad Nasiri, *International Private Law*, Tehran: *Agah* publication, 2002, page 62).

<sup>44</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 976(1).

<sup>45</sup> سید نصر اله ابراهیمی، حقوق بین الملل خصوصی، ص ۱۱۰، ۱۳۸۳، (Seyed Nasrolah Ebrahimi, *International Private Law*, Tehran: *Semat* publication, 2004, page 110).

interpretation would make the rest of the articles on nationality, in particular the essence of articles 979, 980, 983, worthless. Reading this sub-para in conjunction with other relevant articles on nationality, indicates that the sub-para as a legal presumption, only confirms the usual existing link between nationality and residency of the individuals in a country. In other words, while drafting the law on nationality, it was the most suitable solution to consider all people residing in the country as Iranians unless the contrary was proved<sup>46</sup>. However, this assumption must be applied only in exceptional cases today due to the fact that by invoking this paragraph, everyone would be entitled to be granted the nationality by virtue of residence in the country.

### 3.1. *Ius sanguinis*

The Iranian citizenship law confers Iranian nationality to every child born to an Iranian father in Iran or outside of the country. It is not relevant here whether the father is a natural born or a naturalised Iranian<sup>47</sup>. It is, however, essential to determine whether the child is born to a valid and legitimate marriage as Article 1167 states that the child born of adultery shall not belong to the adulterer<sup>48</sup> (The position of children born out of wedlock and those born to unregistered marriages will be looked into separately in this report). As mentioned briefly above, Iranian women cannot transfer their nationality to their children on an equal basis to Iranian men. This will be discussed as well in more detail in the next part of this report.

### 3.2. Foundlings

The third sub-para of Article 976 is based on the *ius soli* principle according to which Iranian nationality is granted to those born in Iran to unknown parents<sup>49</sup>. The rationale behind this sub-para is to prevent cases of statelessness. However, for the application of this Article it is essential that the conditions as set out are met<sup>50</sup>. 'Unknown' here implies that it is not possible under any circumstances to establish that the child belongs to someone<sup>51</sup>. Some scholars argue that this Article is also applicable in cases where the law does not allow for such a belonging, namely, where a child is born out of wedlock since, as it was mentioned above, the child born of adultery does not belong to the adulterer<sup>52</sup>.

### 3.3. Double *ius soli*

<sup>46</sup> ۱۳۸۵، بایسته های حقوق بین الملل خصوصی، محمود سلجوقی ص ۸۶ (Mahmood Saljouqi, *The Rules of International Private Law*, Tehran: Mizan, Vol 4, 2006, page 86).

<sup>47</sup> ص ۷۹، ۱۳۷۰، حقوق بین الملل خصوصی، محمود سلجوقی (Mahmood Saljouqi, *International Private Law*, Tehran: Office of International Legal Services of the Islamic Republic of Iran, 1991, page 79).

<sup>48</sup> Jason Tucker, *Exploring Statelessness and Nationality In Iran*, 2014, page 17.

<sup>49</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 976(3).

<sup>50</sup> In practice, where the conditions set forth in the article are met, the unknown child is always granted Iranian nationality.

<sup>51</sup> ص ۶۳، ۱۳۸۳، حقوق بین الملل خصوصی، محمد نصیری (Mohamad Nasiri, *International Private Law*, Tehran: Agah, 2004, page 63).

<sup>52</sup> کنونی، ناصر کاتوزیان ص ۵۹۰، ۱۳۸۱، قانون مدنی در نظام حقوقی (Nasser Katouzian, *The Civil Code in the current legal system*, Tehran: Mizan publication, 2002, page 590).

Children born in Iran to foreign parents, one of whom was also born in Iran, are granted Iranian nationality automatically. The application of this paragraph is subject to the following conditions being fulfilled: a. the child must be born in Iran; b. At least one of the parents was also born in Iran; c. the parents have not acquired Iranian nationality<sup>53</sup>; d. Children born to foreign diplomatic and consular representatives are not affected by this paragraph<sup>54</sup>. If the children concerned wish to acquire the nationality of their fathers after reaching the age of 18, they must submit a written request within one year to the Ministry of Foreign Affairs to which they should attach a proof issued by their father's country that they will be recognised as their nationals<sup>55</sup>. This paragraph has been significantly subject to discussion as far as its codification. The reason is that the law grants Iranian nationality to the child of a foreign woman if she is merely born in the country but not to the child who is born to an Iranian mother<sup>56</sup>.

### 3.4. Ius soli After Birth

Under Iranian law, those who are born in Iran to a non-Iranian father and have resided at least one more year in Iran immediately after reaching the full age of 18, are granted Iranian nationality automatically. The application of the sub-para is subject to three conditions: a. The child must be born in Iran; b. The father is a foreign national (it is not relevant here whether the mother is an Iranian national or a foreigner); c. The person shall reside in Iran for at least one more year after reaching the age of 18<sup>57</sup>.

It is to be noted that, for the application of this sub-para, the absolute residency in the country from birth is not required. Reason for this is that the required residency period for naturalisation under Article 979 of the Civil Code is five years. Therefore, also in this case, four years of residency before reaching the age of 18 is considered sufficient. If the conditions mentioned above are not met, the child will be subject to the conditions laid down by the law for naturalisation<sup>58</sup>.

### 3.5. Spousal Transfer

Foreign women married to Iranian men are granted Iranian nationality automatically. This is the wording of sub-para 6 of Article 976. Iranian nationality is granted regardless of whether the country of her nationality recognises such an attribution or considers the woman still as a national. If the latter occurs, the woman becomes a dual national as the Iranian law allows her to maintain her original nationality<sup>59</sup>. In the event that the husband renounces his Iranian nationality during the marriage, she still remains as an Iranian national unless according to

<sup>53</sup> محمد نصیری، حقوق بین الملل خصوصی، ص ۶۳، ۱۳۸۳، (Mohamad Nasiri, *International Private Law*, Tehran: Agah, 2004, page 63).

<sup>54</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 976 (Note).

<sup>55</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 976(1).

<sup>56</sup> ۸۲ ص ۸۲، بابسته های حقوق بین الملل خصوصی، محمود سلجوقی ص ۸۲، (Mahmood Saljouqi, *The Rules of International Private Law*, Tehran: Mizan, 2001, page 82).

<sup>57</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 976(5).

<sup>58</sup> ۸۳ ص ۸۳، بابسته های حقوق بین الملل خصوصی، محمود سلجوقی ص ۸۳، (Mahmood Saljouqi, *The Rules of International Private Law*, Tehran: Mizan, 2001, page 83).

<sup>59</sup> ۹۱ ص ۹۱، بابسته های حقوق بین الملل خصوصی، محمود سلجوقی ص ۹۱، (Mahmood Saljouqi, *The Rules of International Private Law Requirements*, Tehran: Mizan, Vol 4, 2006, page 91).

Article 988, the application of renunciation includes her as well<sup>60</sup>. Dissolution of marriage whether by death or divorce does not affect the acquired Iranian nationality<sup>61</sup>, however, according to Article 986, the woman can revert to her former nationality, provided that she inform the Ministry of Foreign Affairs of such a decision in writing. In circumstances where the woman has children from her former husband, she is not allowed to exercise this right so long as her children have not attained the full age of 18<sup>62</sup>. It is interesting to note that although the law grants Iranian nationality to a foreign woman automatically after marriage, it does not provide the same where a foreign national marries an Iranian woman. The law provides, however, facilitated naturalisation for those who have Iranian wives by whom they have children<sup>63</sup>.

### 3.6. Establishment of Paternity

Parentage is defined under Iranian law as the blood and legal relationship that connects the wedded parents to the child. As Article 1158 of the Civil Code states, a child conceived during a marriage will be linked to the mother's husband on the condition that the child is born at least six months and not longer than 10 months after the first intercourse<sup>64</sup>. This Article is based on the principle of the 'child of the marital bed' which is called under Iranian law *amareye farash* [sign of marriage].<sup>65</sup> The legal presumption in this Article is based on four facts: (a) existence of marriage, (b) the conception of the child by the incident of intercourse, (c) occurrence of the intercourse and conception of the child after conclusion of marriage and (d) birth of the child during a specified period after intercourse<sup>66</sup>.

#### 3.6.1. Establishment of Parentage in Cases of Unregistered Marriage

As explained above, there is usually no question about parentage if parents are married and their marriage is registered. The law assumes that the wife is the mother and the husband is the father of the child and paternity is established automatically [*Amareye Farash*]<sup>67</sup>. Most marriages are celebrated before a mullah or a religious leader. They must also be reported to the Iranian National Organisation for Civil Registration where they are recorded and entered on the identity cards of the partners.

Failing to register the marriage is punishable by imprisonment from three to six months<sup>68</sup>. But non-compliance with this rule does not invalidate the marriage itself. In

<sup>60</sup> محمد نصیری، حقوق بین الملل خصوصی، ص ۶۷، ۱۳۸۳. (Mohamad Nasiri, *International Private Law*, Tehran: Agah, 2004, page 67).

<sup>61</sup> محمد نصیری، حقوق بین الملل خصوصی، ص ۶۷، ۱۳۸۳. (Mohamad Nasiri, *International Private Law*, Tehran: Agah publication, 2004, page 67).

<sup>62</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 986.

<sup>63</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 980.

<sup>64</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 1058.

<sup>65</sup> ناصر کاتوزیان، ص ۵۵، ۱۳۹۳، دوره حقوق مدنی خانواده، جلد ۲. (Naser Katouzian, *Civil Law Course: Family*, Vol.2, 2014, page 55).

<sup>66</sup> ناصر کاتوزیان، ص ۱۵-۲۴، ۱۳۹۳، دوره حقوق مدنی خانواده، جلد ۲. (Naser Katouzian, *Civil Law Course: Family*, Vol.2, 2014, pages 15-24).

<sup>67</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Articles 1158 and 1159. See also:

ناصر کاتوزیان، ص ۵۵، ۱۳۹۳، دوره حقوق مدنی خانواده، جلد ۲. (Naser Katouzian, *Civil Law Course: Family*, Vol.2, 2014, page 55).

<sup>68</sup> The 2013 Iranian Family Protection Act, Art.49, available at <https://www.refworld.org/cgi-bin/txis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5565b5c84>.

traditional *fiqh*, there is the principle that a marriage exists when both parties claim that it does. Following this principle, Article 1062 of the Civil Code states that “marriage takes place by proposal and acceptance in words which explicitly convey the intention of marriage”. An unregistered marriage is legal where the parties concerned claim that such marriage exists and can be registered later by declaration. In this case they are only required to have their marriage registered<sup>69</sup>.

### 3.6.2. Establishment of Parentage in Cases of No Marriage: Position of Children Born Out of Wedlock

A child born from a non-marital relationship [*zina*] will not be legally connected to the parent. These are the words of Article 1167 Civil Code. *Zina* is defined under Article 222 of the Iranian Criminal Code as the following: the intercourse between a man and a woman who are not married to each other and who have not had intercourse based on a false assumption of an existing marriage between them. There is no method under traditional Shi’a *fiqh*, to establish a legal connection between a child born out of wedlock and his/her biological parents. Article 1167 Civil Code is founded on the same rule<sup>70</sup>. However, this issue has always been subject to large legal debates in Iran. The issue was raised first by *Ayatollah Khomeini* in his book *tahrir al-vasilih* in which he argued that a child born out of wedlock must be granted certain rights towards his/her biological parents, while parentage could never be established. From that point, the debates in academic writing were divided.

Some argued that the children are at no fault and therefore should enjoy all the rights and protection stipulated for children born in wedlock. The dominant view was, however, that such children have no rights towards their parents and it is for the society to take care of them. The argument was that, illicit non-marital relationships will be encouraged by granting legal protection to such children<sup>71</sup>. Eventually, in a desperate need for clarification, in 1997, the Plenary Assembly of the Iranian Supreme Court issued a plenary judgment declaring that in this scenario the biological parents are considered as legal parents with all the rights and responsibilities attached to it except for inheritance<sup>72</sup>.

This ruling was mainly based on *Khomeini*’s statement as well as Article 884 of the Civil Code. According to this Article, a child born from *zina* will not inherit from his/her biological parents, nor from their relatives. The court further ruled that the biological father is obliged to register the child and apply for an identity card for the child. Although the child will be provided with a name and an identity card following the registration, it was stressed that this does not lead to the establishment of parentage between the biological parents and the child. It

<sup>69</sup> According to Article 32 of the Iranian Civil Registration Law, an unregistered marriage can be registered at the Civil Registry Offices by an official declaration in which both parties have acknowledged the existence of marriage between them. Iranian Civil Registration law, 7 July 1976, available at: <https://rc.majlis.ir/fa/law/show/97466>.

<sup>70</sup> ناصر کاتوزیان، ص ۱۵، ۱۳۹۳، دوره حقوق مدنی خانواده، جلد ۲، ناصر کاتوزیان، *Civil Law Course: Family*, Vol.2, 2014, page 15).

<sup>71</sup> ۱۳۸۶، ص ۶۵، نجاد علی الماسی حقوق بین الملل خصوصی، (Nejad Ali Almasi, *International Private Law*, 2007, page 65). ناصر کاتوزیان، ص ۱۶، ۱۳۹۳، دوره حقوق مدنی خانواده، جلد ۲، ناصر کاتوزیان، *Civil Law Course: Family*, Vol.2, 2014, page 16).

<sup>72</sup> Islamic Parliament Research Centre Of The Islamic Republic Of IRAN, *the Plenary Judgment of the Supreme Court on the Establishment of Parentage and Obtaining an Identity Card*, 1997, available at: <https://rc.majlis.ir/fa/law/show/101524>.

is also worthy to note that, the non-marital nature of the parents' relationship will not be affected by the rights conferred to the child<sup>73</sup>.

### 3.7. Ordinary Naturalisation

There are certain requirements with respect to the possibility to acquire Iranian citizenship by naturalisation. These conditions are laid down under Article 979 and 980 of the Civil Code. The first requirement is that the applicant must be at least 18 years of age. This is notable as the age of majority (9 and 15 years for girls and boys respectively) is not the criterion here. The second requirement in order to naturalise as an Iranian citizen is residency of 5 years prior to the application whether interrupted or uninterrupted<sup>74</sup>. The residency condition for the naturalisation procedure is for the applicant to gain adequate and sufficient knowledge of the Iranian society. In other words, residing in Iran would be considered as an indication of the interest of the applicant in the culture, people and the society as a whole.

Despite that, Article 980 provides that those who have rendered substantial services or assistance to public interest such as physicians, scientists and highly skilled individuals, or those who have Iranian wives by whom they have children, may be accepted as Iranian nationals without the fulfilment of the residency requirement. This is, however, subject to the approval of the Council of Ministers and provided that their naturalisation is advisable<sup>75</sup>. The third requirement for a naturalisation application is that the applicant shall not be a deserter<sup>76</sup>. That is to say, the applicant must have either performed the military service in his country or he must have been legally exempted from it. The reason behind including such a condition for naturalisation was the importance of military power during the Pahlavi dynasty. That was the time when performing military service in Iran became mandatory as the military power of countries was dependent on the physical readiness of their soldiers.

Lastly, an applicant is only able to apply if she/he has not committed any major misdemeanours or non-political felonies<sup>77</sup>. It is common that countries do not grant nationality to those with criminal records even if they have resided in the country for a considerable time. Under former Iranian Criminal Law, a misdemeanour was defined as a minor crime which was punishable with imprisonment from 15 days to 3 years<sup>78</sup>. A felony was defined as a crime with the punishments including death penalty, life sentence, imprisonment level 1 which is from 3 years to 15 years, and imprisonment level 2 which is from 2 years to 10 years<sup>79</sup>. This classification does not exist in the current Criminal Law and as a result it is not clear what is considered as a misdemeanour or a felony<sup>80</sup>. It is also unclear what falls under the term 'non-political' as it may have different nature under different legal and political structures. States do

<sup>73</sup> سید حسین صفایی و اسد الله امامی، ص ۱۲۹، ۱۳۹۰، حقوق خانواده (Hosein Safai and Asadolah Imami, *Family Law*, vol 2, Tehran: *Tehran university publication*, 2011, page 129).

<sup>74</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 979 (2).

<sup>75</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 980.

<sup>76</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 979 (3).

<sup>77</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 979 (4).

<sup>78</sup> Iranian General Penal Code, 22 December 1925, Art. 9, available at: <http://www.qavanin.ir/Law/TreeText/83695>.

<sup>79</sup> Iranian General Penal Code, 22 December 1925, Art. 8, available at: <http://www.qavanin.ir/Law/TreeText/83695>.

<sup>80</sup> Iran: Islamic Penal Code of Islamic Republic of Iran, 20 November 1991. Art. 1, available at: <https://www.refworld.org/docid/518a19404.html>.

not have a similar definition for it and therefore more clarity is needed to determine what felonies are considered ‘non-political’.

In addition, Article 983 of the Civil Code lays out one more requirement that an applicant need to fulfil in order to be eligible to naturalise, and that is providing a proof of sufficient financial means. Sub-para 2 of the Article states that applicants are required to submit such a proof to the Ministry of Foreign Affairs with all other required documents. It is not clear again what is considered as sufficient financial means under this sub-para. The second part of the sub-para implies the discretionary nature of naturalisation in Iranian law. It states that, once the Ministry of Foreign Affairs has received all the documents in good order, they will be sent to the Council of Ministers for the final decision. The application may be rejected even if the applicant meets all the conditions<sup>81</sup>. If the application is approved, a document of nationality will be granted to the applicant.

### 3.7.1 Impacts of Acquisition of Iranian Citizenship

The wives and minor children (under 18 years of age)<sup>82</sup> of those who have been granted Iranian nationality in accordance to this Act, will be recognised as Iranian nationals automatically, which is a positive element of the law. However, it is provided that, the wife within one year, and children after reaching the age of 18, can renounce (reject) the Iranian nationality by submitting a written request to the Ministry of Foreign Affairs<sup>83</sup>. It is important to note that the law is silent about the impacts of naturalisation of a foreign wife on her husband or children. It is argued that this is an indication that the law does not allow a foreign married woman to acquire Iranian nationality. This argument is rather cogent as even Iranian women are not in an equal position with men in passing on their nationality to their children under the nationality law<sup>84</sup>.

It is stipulated in law that those who are granted Iranian nationality will enjoy all the rights guaranteed for all Iranians<sup>85</sup>. There are, however, a number of positions that are not attainable for those who have acquired Iranian nationality by naturalisation: a. Presidency and vice-presidency; b. Membership in the Council of Guardians and chief of the Judiciary; c. Ministry, deputy ministry and governorship; d) Membership of the Islamic Consultative Assembly; e. Membership of provincial, district and municipal councils; f. Entry into the service of the Ministry of Foreign Affairs and attaining any diplomatic position or delegations; g. To be a judge; h. The highest-rank in the Army, the Revolutionary Guard and the police; and i. Holding important intelligence and security positions<sup>86</sup>.

It is not yet clear whether this list is exhaustive or not, but in either case, such extensive list may be contrary to the idea of integration of naturalised citizens in the society. Some of the positions in this list are not dealing with political or sensitive issues which raises the question as to why naturalised citizens are forbidden to attain the above-mentioned positions. Besides,

<sup>81</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 983 (2).

<sup>82</sup> Art. 985 of the Civil Code explicitly mentions that children who have reached the full age of 18 are not granted the nationality by their father’s naturalisation application. Some scholars have argued that those children should be granted some basic rights and protection.

<sup>83</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 984.

<sup>84</sup> الملل خصوصي، محمود سلجوقي هاي حقوق بين ص ۹۱، ۱۳۸۰، بايستته (Mahmoud Saljooghi, *The Rules of International Private Law* 1st. ed, Tehran: Mizan publication, 2001, page 91).

<sup>85</sup> الملل خصوصي، سيد نصرالله ابراهيمي ص ۱۳۱، ۱۳۸۳، حقوق بين (Seyed Nasrollah Ebrahimi, *International Private Law* 1st. ed, 2004, page 122). الملل خصوصي، ارسلان خلعتبري ص ۳۶، ۱۳۱۶، حقوق بين (Ardalan Khalatbari, *International Private Law* 1st. ed, 1937, page 36).

<sup>86</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 982.

the term ‘any diplomatic position or delegation’ is rather ambiguous as it does not specify whether the positions concerned are only limited to those related to the Ministry of Foreign Affairs or it refers to a broader range of positions.

## 4. Loss and Renunciation of Iranian Nationality

### 4.1. Renunciation of Citizenship

The renunciation of Iranian nationality is subject to the fulfilment of several conditions<sup>87</sup>. Despite the fact that the age of majority in Iran is under 18<sup>88</sup>, 25 years of age is the minimum for renunciation of citizenship. Under Article 13 of Citizenship Act of 1929, the legal age for renouncing Iranian citizenship was 18 years<sup>89</sup> but this age was not considered sufficient by the new legislature<sup>90</sup>. It has been argued that performing military service in Iran was one of the factors taken into account for stipulating this age<sup>91</sup>.

The second requirement for a renunciation application is the permission of the Council of Ministers. It should be noted that, according to the law, this Council is the sole authorised body on this matter and no other authority can interfere in its decisions. However, in order to facilitate this procedure, the 1967 Cabinet's Resolution gave the Ministry of Foreign Affairs the authority to review the documents and to decide on the applications<sup>92</sup>. The decision is discretionary and, therefore, the authorised body has the discretion to reject an application<sup>93</sup>.

The third requirement for a renunciation application is having performed military service in Iran. Paragraph 4 of Article 988 of the Civil Code stipulates that those who wish to renounce their Iranian citizenship must have performed or completed their military service. It should be noted that women and holders of exemption cards are exempted from this condition by law<sup>94</sup>.

Additionally, a person applying for renunciation of citizenship must relinquish all their rights to immovable property that they possess in Iran or may possess through inheritance, to an Iranian national, within one year from the date of renunciation. It is particularly interesting as in this case the person renouncing their Iranian nationality is required to hand over all their rights even on those assets and properties that are legally allowed to be owned by foreigners. It

<sup>87</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 988.

<sup>88</sup> نياص ۱۱۰، ۱۳۷۴، حقوق بين الملل خصوصى ، بهشيد ارفع (Behshid Arfania, *International Private Law*, 5th. ed, Tehran: *Aqiq* publication, 1995, page 110).

<sup>89</sup> ص ۷۶، ۱۳۷۲، حقوق بين الملل خصوصى ، محمد نصيرى (Mohamad Nasiri, *International Private Law*, 1st. ed, Tehran: *Agah* publication, 1993, page 76).

<sup>90</sup> نياص ۱۱۰، ۱۳۷۴، حقوق بين الملل خصوصى ، بهشيد ارفع (Behshid Arfania, *International Private Law*, 5th. ed, Tehran: *Aqiq* publication, 1995, page 110).

<sup>91</sup> الملل خصوصى ، محمود سلجوقى هاي حقوق بين ص ۹۵، ۱۳۸۰، بايستى (Mahmoud Saljooghi, *The Rules of International Private Law* 1st. ed, Tehran: *Mizan* publication, 2001, page 95).

<sup>92</sup> نياص ۱۱۰، ۱۳۷۴، حقوق بين الملل خصوصى ، بهشيد ارفع (Behshid Arfania, *International Private Law*, 5th ed, Tehran: *Aqiq* publication, 1995, page 110).

<sup>93</sup> الملل خصوصى ، سيد محسن شيخ الاسلامى ص ۶۴، ۱۳۸۴، حقوق بين (Seyed Mohsen Sheykholslami, *International Private Law* 1st. ed, 2004, page 64).

<sup>94</sup> ص ۶۳، ۱۳۶۲، حقوق بين الملل خصوصى ، جواد عامري (Javad Ameri, *International Private Law*, 2nd. ed, Tehran: *Agah* publication, 1983, page 63).



has been argued that a person who is not interested in their homeland is more foreign to a country than a foreigner<sup>95</sup>.

Based on this paragraph, it seems that such assignment of the properties must be legal, formal and notarised so that it can be prosecuted. It should be noted that the transfer of ownership of immovable property (agricultural, commercial and residential) can be conducted in the form of buying and selling, compromise, gift and other legal contracts to other Iranians<sup>96</sup>. There are no specific guidelines or mechanisms to control whether the immovable properties or the right to them have been surrendered. However, practically, the Ministry of Foreign Affairs sends a copy of renunciation document to the State Property and Documents Registration Organisation, and that organisation directs the contents of the document to all Provincial Property and Document Registration offices and finally to the notary public offices throughout the country<sup>97</sup>.

Accordingly, all the immovable transactions of the person whose foreign citizenship is recognised (who is not an Iranian national any longer) will be prevented by the notary offices<sup>98</sup>. This one year period can be reduced to a 3 months period if the person concerned does not leave the country within 3 months<sup>99</sup>. Note A of Article 988 of the Civil Code stipulates that “those who have renounced their Iranian nationality must leave Iran within 3 months from the date of issuance of the renunciation document, otherwise the competent authorities will issue Deportation Orders for their expulsion and the sale of their property”. With the approval of the Ministry of Foreign Affairs this period can be extended up to a maximum period of one year<sup>100</sup>.

#### 4.1.1. Impacts of Renouncing Iranian Citizenship

Individuals who have legally renounced their Iranian citizenship are no longer Iranians and are considered foreigners. As a result, they will be deprived and exempted from all the citizenship rights and obligations<sup>101</sup>. In determining the impact of the renunciation of Iranian citizenship on the citizenship of wives and children, the legislator has chosen a different approach than of the acquisition of the Iranian citizenship. In simple terms, while the acquisition of Iranian citizenship leads to the automatic acquisition of nationality for the wives and children of the person who has acquired the Iranian nationality, the renunciation of nationality of the husband does not alter that of his wife or children<sup>102</sup>. This is a positive aspect of the law.

<sup>95</sup> الملل خصوصي ، سيد محسن شيخ الاسلامي ص ٦٣ ، ١٣٨٤ ، حقوق بين الملل (Seyed Mohsen Sheykholeslami, *International Private Law* 1st. ed, 2004, page 63).

<sup>96</sup> الملل خصوصي ، سيد محسن شيخ الاسلامي ص ٦٣ ، ١٣٨٤ ، حقوق بين الملل (Seyed Mohsen Sheykholeslami, *International Private Law* 1st. ed, 2004, page 63).

<sup>97</sup> الملل خصوصي ، سيد محسن شيخ الاسلامي ص ٦٣ ، ١٣٨٤ ، حقوق بين الملل (Seyed Mohsin Sheykholeslami, *International Private Law* 1st. ed, 2004, page 63).

<sup>98</sup> الملل خصوصي ، سيد محسن شيخ الاسلامي ص ٦٣ ، ١٣٨٤ ، حقوق بين الملل (Seyed Mohsin Sheykholeslami, *International Private Law* 1st. ed, 2004, page 63).

<sup>99</sup> الملل خصوصي ، محمود سلجوقي هاي حقوق بين ص ٩٥ ، ١٣٨٠ ، بايستنه الملل (Mahmoud Saljooghi, *The Rules of International Private Law* 1st. ed, Tehran: Mizan publication, 2001, page 95).

<sup>100</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 988 (Note1).

<sup>101</sup> الملل خصوصي ، سيد نصر الله ابراهيمي ص ١٣١ ، ١٣٨٣ ، حقوق بين الملل (Seyed Nasrollah Ebrahimi, *International Private Law* 1st. ed, 2004, page 131).

<sup>102</sup> Renunciation of the wife or children is dependant on the permission of the Council of Ministers. Article 988 of the Civil Code, sub-para's 3 & 4: The wife and children of the person who renounces his nationality according to this Article do not lose their Iranian nationality, whether the children are minors of age, unless the permission of the Council of Ministers allows them to renounce their nationality, and that they have completed their national military service.

There is no difference between men and women in renouncing Iranian nationality. However, it is not clear as to whether an Iranian married woman is able to renounce her Iranian nationality. The doubt stems from the fact that, on the one hand, Iranian rules on nationality reflect the principle of unity of citizenship, and on the other hand, the rules set out for determining the impact of renunciation on family members does not indicate for such an impact on the husband where the wife renounces her nationality<sup>103</sup>.

Note B of Article 988 is only regarding renunciation of citizenship for unmarried women and its impact on their children. It states that, the Council of Minister may in the course of approving a renunciation application by an unmarried Iranian woman, approve the renunciation application of her children who are under 18 years of age only if the father or paternal grandfather are not reachable. Children above 18 and under 25 years of age are able also to apply separately on account of their mother's renunciation application. It should be recalled that this exemption applies only to the age requirement and does not apply to other conditions relating to the renunciation of citizenship, which are required by law, such as military service<sup>104</sup>.

The negative aspect of the Article is, however, that it does not require the applicant to prove that the applicant will be recognised as a citizen in the other country. In other words, the law allows for the renunciation of Iranian nationality before another nationality is acquired. The law, nonetheless, provides for such a safeguard against statelessness under a different article by stating that those who wish to renounce their Iranian nationality and acquire that of their father (in the case of children born in Iran of two foreign parents, one of whom has been born in Iran) need to submit an evidence to the Ministry of Foreign Affairs along with their application, indicating that their father's country will recognise them as a citizen.

In response to this gap in the law, it has been claimed that a broader interpretation of Article 990 of the Civil Code can prevent cases of statelessness<sup>105</sup>. Given the possibility of reinstatement of Iranian citizenship laid down under this Article, it can be said that such an interpretation is essential if we believe that the rules and regulations of citizenship in Iran are moving towards the prevention and elimination of statelessness.

#### 4.1.2. Renunciation of the Iranian Citizenship Due to Marriage

An Iranian woman married to a foreign national retains her Iranian nationality, unless the nationality of the husband's country imposes its nationality on the wife as a result of marriage<sup>106</sup>. It is provided that she can always reacquire her Iranian nationality in the case of dissolution of their marriage either by divorce or death of the husband<sup>107</sup>. Where, according to the nationality law of the country of the husband, the Iranian woman is granted the right to choose between retaining her own nationality or acquiring the one of her husband, and if she

<sup>103</sup> Article 988 of the Civil Code does not provide for an answer regarding this matter.

<sup>104</sup> الملل خصوصی، محمود سلجوقی‌های حقوق بین‌ص ۹۷، ۱۳۸۰، بایسته (Mahmoud Saljooghi, *The Rules of International Private Law* 1st. ed, Tehran: Mizan publication, 2001, page 97).

<sup>105</sup> ص ۳۷، ۱۳۸۳، حقوق بین الملل خصوصی، محمد نصیری (Mohamad Nasiri, *International Private Law*, Tehran: Aqaah publication, 2004, page 37).

<sup>106</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 987.

<sup>107</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 987. It is important to understand that in this case the woman reacquires her Iranian nationality by the mere submission of an application to the Ministry of Foreign Affairs, to which a certificate of the death of her husband or the divorce decree must be attached.

opts for the latter, she would need to apply for renunciation in writing to the Ministry of Foreign Affairs<sup>108</sup>.

Women who lose their Iranian citizenship in order to acquire their husband's foreign citizenship, are considered foreigners to Iranian society and, therefore, according to Note 2 of Article 987, there will be restrictions in their rights to immovable properties in Iran. This Article was amended in 1982. Before this Amendment, women were able to enjoy the rights to their immovable properties which they owned prior to their marriage. The Amendment, however, restricted this right in a way that it may not lead to the foreign economic domination<sup>109</sup>. Having said that, this restriction has never been as restrictive for the women concerned as for the others although it is in the same context. In addition, they are exempted from the obligation to leave the country<sup>110</sup>.

## 4.2. Involuntary Loss of Citizenship

As mentioned earlier, according to Article 41 of the Constitution of the Islamic Republic of Iran, the citizenship of Iran is the inalienable right of every Iranian and the government cannot revoke the citizenship of any Iranian unless at their own request or if they become a citizen of another country<sup>111</sup>.

### 4.2.1. Acquisition of Foreign Citizenship

Acquisition of a foreign nationality does not lead to automatic loss of Iranian nationality. According to Iranian law, if an Iranian national acquires foreign citizenship without renouncing their Iranian citizenship, their foreign nationality will not be recognised by the Iranian government and they will be regarded as Iranian citizens<sup>112</sup>.

### 4.2.2. Committing Criminal Offences

Generally, under most legal systems, different rules for the loss of nationality are applied to nationals by birth and naturalised citizens. Iranian law makers have reacted to this issue differently before and after the 1979 Islamic Revolution. It is interesting to note that there have never been provisions in place for the loss of nationality for a national by birth, neither before

<sup>108</sup> ۱۳۸۶، ۶۹، نجاد علی الماسی حقوق بین، ص ۶۹، الملل خصوصي، (Nejad Ali Almasi, *International Private Law*, 2007, page 69).

<sup>109</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 987(Note 2).

<sup>110</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 987.

<sup>111</sup> Constitution of the Islamic Republic of Iran, 24 October 1979, Art. 41.

<sup>112</sup> Article 989: "In case any Iranian subject acquired foreign nationality after the solar year 1280 (1901-1902) without the observance of the provisions of law, his foreign nationality will be considered null and he will be regarded as an Iranian subject. Nevertheless, all his landed properties will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to him after the deduction of the expenses of sale. In addition, he will be disqualified to attain the position of Cabinet Minister or Assistant Minister or of membership of the Legislative Assemblies, Provincial and District Councils and Municipal Councils, or any other governmental positions".

nor after the Iranian revolution. In other words, under both systems, a native born citizen could not be stripped of his/her nationality under any circumstance<sup>113</sup>.

However, in pre-revolution Iran, there was the possibility of involuntary loss of nationality under certain conditions for those who had naturalised as Iranian citizens. Article 981 of the Civil Code (which was repealed in 1982) stated that “If within a period of five years from the date of issuance of the document of nationality, it becomes known that the person naturalised as an Iranian national has been a deserter from military service and also if, before the expiry of the period fixed by Iranian laws for the prescription of prosecution in the case of offences or of imposition of consequent punishments, it is uncovered that the person accepted as an Iranian national was previously convicted of important offences or public crimes, the Council of Ministers will issue a decision revoking Iranian nationality from that person”<sup>114</sup>.

After the Revolution, nevertheless, involuntary loss of citizenship that could lead to statelessness was explicitly abolished by Articles 41 and 42 of new Iranian Constitution. Article 42 states that “Foreign nationals can become Iranian citizens within the limits set by the law. Their nationality may be revoked if another nation offers them citizenship or that person demands such a revocation”.

#### 4.2.3. *Fraudulent Acquisition of Nationality*

As mentioned above, an Iranian convicted of the highest criminal charges may not under any circumstances be deprived of Iranian nationality. This leads to the following question: what if a person is found to have acquired Iranian citizenship fraudulently? Legal scholars have answered this question in two different ways; Some believe that despite the repealing of Article 981 of the Civil Code, the Iranian government should be able to revoke the acquired citizenship of such a person. However, referring to the repeal of Article 981 of the Civil Code, some argue that the government has no right to revoke an individual’s citizenship<sup>115</sup>. It seems that according to the provisions of Articles 41 and 42 of the Constitution as well as intentional omission of Article 981 of the Civil Code -which was in contradiction with the above-mentioned principles- there should be no longer any question on this matter.

## 5. Gender Discrimination

### 5.1 Transferring Citizenship to Children

Gender discrimination has always been one of the most challenging issues under Iranian nationality law. The Iranian Constitution states that “All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social,

<sup>113</sup> Jalal V. 44، 1375، حقوق بين (Jalaledin Madani, *International Private Law*, Tehran: Ganje Danesh publication, 1996, page 44). Based on existing literature and case law, it seems like this has always been the case in practice.

<sup>114</sup> ص 39، 1383، حقوق بين الملل خصوصي، محمد نصيري (Mohamad Nasiri, *International Private Law*, Tehran: Agah publication, 2004, page 39).

<sup>115</sup> Jalal V. 44، 1375، حقوق بين (Jalaledin Madani, *International Private Law*, Tehran: Ganje Danesh publication, 1996, page 44); بهشيد ارفع، 1374، 110، نياص (Behshid Arfania, *International Private Law*, 5th ed, Tehran: Aqiq publication, 1995, page 110).

and cultural rights, in conformity with Islamic criteria”<sup>116</sup>. As mentioned above, Iranian law grants nationality *iure sanguinis* but only by paternal line which means that Iranian mothers do not possess the same rights as Iranian fathers to confer nationality onto their children. This could be very problematic, in particular, in cases where the father is non-Iranian, unknown or stateless. For this reason, women’s rights organisations, human rights advocates and even some members of the Iranian Parliament have lobbied the Iranian government to establish gender justice in the law<sup>117</sup>.

The issue was also raised by the Bureau of Legal Studies of the Iranian Parliament in 2005. The Bureau stated that “Without any doubt Iranian citizenship laws which were enacted more than 70 years ago, need revision as they do not reflect the change in women’s roles and their presence in society. Thus, the change in laws is necessary.”<sup>118</sup> However, this was not a straightforward matter as there were political and socio-cultural concerns about changing the law to grant women equal citizenship rights<sup>119</sup>. Iranian authorities believed that such a change in law would lead to more cases of marriages between Iranian women and foreign men in particular Afghans. That, consequently, would increase the population of Afghans in the country which was considered as a security issue for the government<sup>120</sup>.

Eventually, in the same year, among a number of amendments which were proposed to Parliament on women’s citizenship rights, an amendment to Article 976 was approved by Parliament. This led to a Constitutional Amendment by adding a single Article and two Notes to Article 1060 of the Civil Code in 2006, allowing children born to Iranian mothers and foreign fathers in Iran to apply for Iranian nationality after reaching the full age of 18<sup>121</sup>. The Amendment was ratified during the open meeting of the Islamic Consultative Assembly (Parliament), and approved by the Guardian Council on 21 September 2006. The text of the Amendment is as the following:

“Children who are the result of marriage between foreign men and Iranian women, who have been born in Iran, or are born in Iran within one year from the date of the ratification of this law, will be able to apply for Iranian citizenship when they reach the full age of 18. These persons will be accepted as Iranian citizens if they lack criminal records or security violation backgrounds and renounce their non-Iranian citizenship. The Interior Ministry obtains evidence of the birth of the child in Iran as well as the issuing of marriage permit as stipulated in Article 1060 of the Civil Law, and the Law Enforcement Forces after being informed by the Interior Ministry issue the

<sup>116</sup> Constitution of the Islamic Republic of Iran, 24 October 1979, Art. 20.

<sup>117</sup> Ashraf Zahedi, ‘Transnational Marriages, Gendered Citizenship, and the Dilemma of Iranian Women Married to Afghan Men’, *Iranian Studies*, Vol. 40; Iss. 2, 2007, page 235.

<sup>118</sup> Ashraf Zahedi, ‘Transnational Marriages, Gendered Citizenship, and the Dilemma of Iranian Women Married to Afghan Men’, *Iranian Studies*, Vol. 40; Iss. 2, 2007, page 236.

<sup>119</sup> Ashraf Zahedi, ‘Transnational Marriages, Gendered Citizenship, and the Dilemma of Iranian Women Married to Afghan Men’, *Iranian Studies*, Vol. 40; Iss. 2, 2007, page 236.

<sup>120</sup> One of the concerns of the government was that, Afghans might be used by external forces to disturb the political situation in Iran. Ashraf Zahedi, ‘Transnational Marriages, Gendered Citizenship, and the Dilemma of Iranian Women Married to Afghan Men’, *Iranian Studies*, Vol. 40; Iss. 2, 2007, page 236.

<sup>121</sup> **Note 1**– If persons to whom this Articles applies, are older than 18 years of age at the time of the approval of this article, they must, within a period of one year, apply for Iranian citizenship.

**Note 2** – Persons who after the date of the ratification of this law are born in Iran, are the result of marriage between a foreign man and an Iranian woman, and the marriage of their parents has been registered from the inception of the marriage in compliance with Article 1060 of the Civil Law, will be accepted as Iranian citizens within one year after reaching the full age of 18 and without meeting the residence requirement stipulated in Article 979 of the Civil Law. Available at: <http://irandataportal.syr.edu/nationality-law>.

residence permit of the foreign father stipulated in this article. Children concerned with this article are permitted to reside in Iran prior to obtaining citizenship<sup>122</sup>.”

Despite the positive aspect of the law, it was still difficult -if not impossible- for women to pass on their nationality to their children. Providing documents such as proof of the child’s birth in Iran, proof of renouncement of the child’s foreign nationality, marriage certificate, and proof of legal residency of the foreign father in the country, presented difficult eligibility requirements which excluded children born to stateless/illegal fathers or those born out of wedlock from this law. Finally, and above all, naturalisation under this law was only possible upon reaching the full age of 18 and, therefore, could not tackle the issue of childhood statelessness<sup>123</sup>. In other words, this would put the children concerned at risk of deprivation of their rights to education, health care, etc., prior to being recognised as Iranian citizens at the age of 18.

In addition, this Amendment created some level of confusion for the Family Courts. In order to discuss this, it is first necessary to examine the situation of children born to Iranian women and non-Iranian men before the ratification of the Amendment. Two articles are of great importance for this examination; Art 1059 of the Civil Code which states that marriage of a female Muslim with a non-Muslim is not allowed and Article 1060 upon which the validity of the marriage of an Iranian woman with a foreign man is conditional on the prior permission from the government<sup>124</sup>. With the assumption that the conditions laid down under both Articles had been met, there would have been two possible scenarios: The nationality of the foreign husband was imposed on the Iranian woman by marriage; Or the nationality of the foreign husband was not imposed<sup>125</sup>. The child born in the former scenario, was granted Iranian nationality based on sub-para 4 of Art 976 as he was a child born to foreign parents, one of whom was also born in Iran<sup>126</sup>. In the latter scenario in which the mother retained her Iranian nationality, sub-para 4 was no longer applicable and, therefore, the only means for the child to acquire Iranian nationality was sub-para 5 of the Art 976. Hence, as long as the conditions under articles 1059 and 1060 were met, the child born to an Iranian mother and a foreign father could be granted the nationality by either sub-para 4 or 5<sup>127</sup>.

The ratification of the 2006 Amendment resulted in confusion regarding the applicability of the appropriate law. It could be said with certainty that, in cases where an Iranian woman had acquired the foreign nationality of the husband by marriage, application of sub-para 4 of Article 976 would have been still in the best interest of the child. It was crucial, however, to determine which law was applicable in cases where an Iranian woman retained her nationality after marriage. Through the Amendment, the child could naturalise as an Iranian national, contrary to sub-para 5 which provides that the child acquires the Iranian nationality automatically. In addition, having a clean criminal record was one of the conditions under the Amendment which was not the case under sub-para 5 of Article 976. Therefore, there was still the need for a new law to clarify the ambiguity of the issue, reflected by a governmental survey

<sup>122</sup> Princeton University, Iran Data Portal, *Nationality Law*, 2013, <https://irandataportal.syr.edu/nationality-law>.

<sup>123</sup> UN Committee on the Rights of the Child (CRC), UN Committee on the Rights of the Child: Concluding Observations: Islamic Republic of Iran, 2016, para 46.

<sup>124</sup> 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. Civil Code of the Islamic Republic of Iran, 23 May 1928.

<sup>125</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 987.

<sup>126</sup> ۸۲ص، محمود سلجوقی، «محمود سلجوقی، بایسته های حقوق بین الملل خصوصی»، (Mahmood Saljouqi, *The Rules of International Private Law*, Tehran: Mizan, 2001, page 82).

<sup>127</sup> ۸۲ص، محمود سلجوقی، «محمود سلجوقی، بایسته های حقوق بین الملل خصوصی»، (Mahmood Saljouqi, *The Rules of International Private Law*, Tehran: Mizan, 2001, page 82).

indicating that in 2017 alone, almost 50,000 children born to Iranian mothers and foreign fathers failed to obtain an official identity document<sup>128</sup>.

Finally, in 2019, Parliament signed a new law which allows Iranian mothers to file an application for their children from the moment of birth, regardless of whether they are born in Iran or abroad. Those who are 18 or above are also able to apply for Iranian nationality independently. A security check by the Intelligence Ministry and the Intelligence Organisation of the Islamic Revolutionary Guard Corps is required in both cases<sup>129</sup>. It may well be argued that the 2019 law takes a fundamental step towards eliminating the gap between men and women in the law. The most significant advantage of the new law is that it includes children born to Iranian mothers abroad- a crucial matter which was neglected by the 2006 Amendment. Although the new law is implemented fully and retroactively, the gap is still remaining. The Civil Code grants nationality to children born to Iranian fathers automatically but that is not the same for Iranian mothers as they are still required to file an application for their children. Moreover, it still puts children of those Iranian women who are married to undocumented migrants or refugees at risk of statelessness<sup>130</sup>.

The Administrative Action issued by the Cabinet on 2 June 2020 on this new law, clarifies that the law applies to every Iranian woman who is married to a non-Iranian man and has a child under the age of 18. Under this regulation, an Iranian woman is a woman who has been an Iranian citizen, according to Iranian laws and regulations, before the birth of her child. Article 3 of the Action states that the criterion for an Iranian mother's legal marriage with the foreign father of the child covered by this law is an official marriage contract or any valid legal document demonstrating the occurrence of marriage or the issuance of a judicial decision (domestic or foreign) indicating marriage and the existence of a marital relationship. The issuance and enforcement of a final divorce decree or the annulment of a marriage does not preclude the consideration of an application for the declaration of Iranian citizenship for the children of a marriage resulting in a divorce decree<sup>131</sup>.

## 5.2. Gender Disparities Regarding Spousal Transfer of Nationality

Under both Islamic law and Iranian Civil Law, marriages of Muslim women and non-Muslim men is forbidden except in cases where a non-Muslim man converts to Islam formally<sup>132</sup>. Only conversion to Islam will enable the marriage to take place which alone does not grant the foreign husband Iranian nationality. In general, an Iranian woman must undergo a very lengthy and laborious procedure to apply and obtain citizenship for her foreign husband. In the initial phase, her father's or grandfather's permission is required prior to her marriage if she has never been

<sup>128</sup> The United Nations High Commissioner for Refugees, *UNHCR Welcomes Iran's New Nationality Law Addressing Statelessness*, 8 October 2019, available at: <http://unhcr.org/en/news/50796/UNHCR-welcomes-Iran's-new-nationality-law-addressing-statelessness>.

<sup>129</sup> The Official Website of the Iranian Cabinet, 23 September 2019, available at: <http://cabinetoffice.ir/fa/news/5952/-جا-مر-دان-ایرانی-با-مر-دان-از-دواج-زنان-ایرانی-با-مر-دان-خارجی>.

<sup>130</sup> UNHCR does not hold any statistics on stateless persons in Iran: <https://www.unhcr.org/5ee200e37.pdf>. However, by referring to government statistics, a news media article mentions that there are 49,000 children lacking proof of nationality: <https://english.alarabiya.net/en/News/gulf/2019/09/09/Iran-offers-citizenship-to-stateless-people-with-Iranian-roots-in-Kuwait>.

<sup>131</sup> Administrative Action referring to the approval of new regulations in the Cabinet, regarding the granting of Iranian citizenship to children born of Iranian women to foreign men, 2 June 2020; Available at: <http://www.rk.ir/Laws/ShowLaw.aspx?Code=22043>.

<sup>132</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 1059.

married before<sup>133</sup>. Moreover, the foreign husband needs to provide a certificate from his consulate concerning his marital status along with his passport and a valid visa. In addition, a specific permission for such a marriage must be obtained from the Iranian Ministry of Interior<sup>134</sup>. The Ministry will decide to grant or deny permission upon receipt and examination of required legal documents. Yet again, there is no such requirement for Iranian men unless in cases where they are studying abroad with government scholarships or where they have special positions in foreign affairs<sup>135</sup>.

Traditionally, there has not been significant immigration to Iran with the exception of Iraqi and Afghani refugees. In 1979, the civil war and the political events in Afghanistan resulted in a series of waves of movements of Afghans to Iran as refugees<sup>136</sup>. The Iraqi refugee population are those Iraqi Shia'a Muslims and Faili Kurds who escaped persecution from the regime of Saddam Hussein in 1980<sup>137</sup>. According to the Bureau for Aliens and Foreign Immigrants Affairs, in 2016, 12,000 Iranian women in Khorasan- the border city- were married to non-Iranian men, mostly Afghans. There was also an estimate of 20,000 children from these marriages. As mentioned above, only legal residents can marry Iranian women with a prior permission from the government. The Bureau also states that, about 3 million Afghans reside in the country, of whom about 1.5 to 2 million are undocumented. That means, they cannot marry Iranian women legally as there will be no permission granted by the State for such marriages<sup>138</sup>. In reality, a large number of these marriages take place only religiously and without registration which will be a problem for obtaining birth certificate for their children<sup>139</sup>. The official figures indicate that, the majority of the 32,000 children without a birth certificate are those who are born to Iranian mothers and foreign fathers<sup>140</sup>.

## 6. Dual Nationality

The letter of the Iranian law does not recognise dual nationality. According to Article 989, if an Iranian national acquires a foreign nationality without the observance of the provisions of law (those related to the renunciation of Iranian nationality), their foreign nationality will be considered null and they will be regarded as an Iranian citizen. Nevertheless, all their immovable properties will be confiscated and sold under the supervision of the local Public Prosecutor and the proceeds will be paid to them after the deduction of the expenses of sale.

Some legal scholars believe that Article 989 is an abandoned law; An abandoned law is defined as a law that is formally enacted and enforceable, but has not been used during its

<sup>133</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 1043.

<sup>134</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 1060.

<sup>135</sup> Civil Code of the Islamic Republic of Iran, 23 May 1928, Art. 1061.

<sup>136</sup> Fariba Adelkhah., Zuzanna Olszewska, 'The Iranian Afghans', *Iranian Studies*, Vol. 40; Iss.2, p137-165, page 138.

<sup>137</sup> Minorities at Risk Project, *Chronology for Sunnis in Iraq*, 2004, available at: <https://www.refworld.org/docid/469f38a7c.html>.

<sup>138</sup> Ashraf Zahedi, 'Transnational Marriages, Gendered Citizenship, and the Dilemma of Iranian Women', *Iranian Studies*, Vol. 40, No. 2, Afghan Refugees (Apr., 2007), pp. 225-239, page 232.

<sup>139</sup> Ashraf Zahedi, 'Transnational Marriages, Gendered Citizenship, and the Dilemma of Iranian Women', *Iranian Studies*, Vol. 40, No. 2, Afghan Refugees (Apr., 2007), pp. 225-239, page 232-323.

<sup>140</sup> Bureau for Aliens and Foreign Immigrants Affairs (BAFIA), *Afghan refugees in Iran*, Khorasan Razavi, 2016, available at: <https://theiranproject.com/blog/2016/02/16/4000-afghans-seek-citizenship/>.



validity period<sup>141</sup>. They base their argument on the current situation of Iranians who have either naturalised as citizens of another country or those Iranians who, in accordance with Article 976 (2) are born abroad to Iranian fathers, and in accordance with the law of the country in which they are born, they are also considered as citizens of those countries. Another case that supports their argument is the situation of a foreign woman who is automatically granted Iranian nationality once she is married to an Iranian man, whether it is requested or not<sup>142</sup>.

In 2008, the Judiciary Legal Department in an advisory opinion stated that “As long as the Iranians in question do not request the government of the Islamic Republic of Iran to renounce their citizenship they will remain Iranian citizens and the mere acquisition of Canadian citizenship alone does not preclude the implementation of Iranian law on its citizens.”

In another advisory opinion, in 2017, the same Department stated that “renunciation of citizenship in order to acquire another citizenship mentioned in the Civil Code, are different from having dual citizenship. Therefore, the rules on renunciation of nationality for those Iranians who have acquired the citizenship of another country cannot be extended to dual nationals who have acquired the citizenship of another country while retaining their original citizenship, and thus have dual citizenship. Therefore, they cannot be deprived of their rights as citizens.”<sup>143</sup>

## 7. Conclusion

From the examination of Iranian nationality law, it appears that there are still provisions that need to be amended in order to bring the law in line with international standards as well as social necessities. The most important remaining gap in the law is the issue of gender discrimination. This is particularly of great importance as Iran is a party to certain conventions that prohibit discrimination on the ground of gender such as the *1989 Convention on the Rights of the Child*<sup>144</sup> (Article 2(1&2)), the *1966 International Covenant on Civil and Political Rights*<sup>145</sup> (Article 26), the *1966 International Covenant on Economic, Social and Cultural Rights*<sup>146</sup> (Article 2(2)) and the *1979 Convention of the Elimination of Discrimination against Women* (Article 5). Furthermore, Iran is a signatory to the *Cairo Declaration on Human Rights in Islam* which prohibits gender discrimination under Article 6(a) & 19(a).

Although the Iranian government has attempted to address the issue of gender discrimination, certain gaps still persist which can lead to cases of statelessness. The 2019 Amendment, while a positive step in the right direction for women’s and children’s rights, is still considered inadequate as it continues to place children of those Iranian women who are

<sup>141</sup> ۱۳۸۶، ۶۵ص، نجاد علی الماسی حقوق بین، الملل خصوصی، (Nejad Ali Almasi, *International Private Law*, 2007, pages 240-242).

<sup>142</sup> The United States Office of Personnel Management Investigations Service, *Citizenship laws of the world*, 2001, page 97, available at: [http://www.parstimes.com/law/citizenship\\_laws\\_of\\_the\\_world.pdf](http://www.parstimes.com/law/citizenship_laws_of_the_world.pdf).

<sup>143</sup> Bahman Keshavarz, *Dual Citizenship in the Law of the Islamic Republic of Iran*, 2016, available at: <https://www.zeitoons.com/24721>.

<sup>144</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>145</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations Treaty Series, vol. 999, page. 171.

<sup>146</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

married to undocumented migrants or refugees at risk of statelessness. Moreover, children born to Iranian mothers and unknown or stateless fathers are not covered by the Amendment. Besides, the position of those born out of wedlock to Iranian mothers and foreign fathers are not addressed neither by the Amendment nor the Supreme Court ruling of 1997. It is also important to note that the nationality of the mother will not be conferred to the child automatically even in cases where according to the Amendment she is able to transfer her nationality.

It seems that the Iranian legislature in general, and the government in particular, have been sensitive to the issue of granting Iranian citizenship to children from Afghani and Iraqi men who have married Iranian women. The ongoing and decades-long instability in these countries has discouraged the Iranian government from granting citizenship to the children concerned, as doing so is considered likely to increase immigration to the country. In the eyes of Iranian officials, this could result in a stronger foothold for Iraqi and Afghan men in the country. A number of economic and social problems, some of which are due to the presence of foreign immigrants, have led to social sensitivities along with political and security considerations, which have steered the government's action in restricting the grant of citizenship to these children. This certainly puts the children born to such marriages at risk of statelessness as their fathers are often not able to access services from their own governments. As a result, their children are not granted birth certificates neither in Iran nor elsewhere and, therefore, become stateless. This is in violation of Article 7 of *CRC*.

Moreover, as described above, the law puts women at an unfair disadvantage with respect to their right to transfer their nationality to their spouses (spousal transfer). While the law provides for automatic acquisition of nationality for foreign women married to Iranian men, foreign men married to Iranian women are not even provided with facilitated naturalisation.

Ultimately, the findings of this report indicate that the law does not provide for facilitated access to citizenship for stateless children and recognised refugees. Facilitated naturalisation is seen as a tool which can tackle the issue of statelessness when it has already occurred. Similarly, children born in Iran to a foreign parent who resides in the country legally and habitually, are only able to naturalise as Iranian national one year after age of majority which is seen as a deficiency. As Para 17 of the *Recommendation 2009/2013*<sup>147</sup> states, countries should facilitate acquisition of their nationality, before the age of majority, for the children concerned.

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<sup>147</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children, 9 May 2009, CM/Rec(2009)13.

