

THE PRINCIPLES OF THE DEPENDENT AND INDEPENDENT NATIONALITY OF SPOUSES: ADVANTAGES AND DISADVANTAGES

LOS PRINCIPIOS DE LA NACIONALIDAD DEPENDIENTE E INDEPENDIENTE DE LOS CÓNYUGES:
VENTAJAS Y DESVENTAJAS

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Abstract: On marriage issues, many countries have espoused the independence of nationality policy, that is, they accept neutral effects of marriage on nationality. We don't see the point of bestowing nationality on an alien woman who has married a national man but lives abroad. The ratio of countries in favor of dependent nationality to those in favor of independent nationality is one to three. So, there are only a few countries left still pursuing a policy of forcing husbands' nationality upon alien women on an unconditional basis. The main question in this paper is: Should the nationality of one spouse be imposed on the other one, making them both subjects of one State? After an introduction (chapter I), we analyze the theory of the unity of nationality and the theory of independent nationality (chapter II). In chapter III we see international documents on the theories of dependent and independent nationality. Finally, we take care of the present situation of the world in respect to nationality laws and then we resume some conclusions; the main one is that some political approaches seems to discriminates between national and foreign women.

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Resumen: *En materia matrimonial, muchos países han defendido la independencia de la política de nacionalidad, es decir, aceptan los efectos neutros del matrimonio en la nacionalidad. No vemos el sentido que puede tener otorgar la nacionalidad a una mujer extranjera que se ha casado con un hombre nacional pero vive en el extranjero. La proporción de países a favor de la nacionalidad dependiente, frente a los que están a favor de la nacionalidad independiente, es de uno a tres. Por lo tanto, solo pocos países siguen aplicando una política de forzar la nacionalidad de los maridos sobre las mujeres extranjeras de manera incondicional. La pregunta principal en este documento es: ¿Debería imponerse la nacionalidad de un cónyuge a otro, convirtiéndolos a ambos en ciudadanos de un Estado? Después de una introducción (capítulo I), analizamos la teoría de la unidad de la nacionalidad y la teoría de la nacionalidad independiente (capítulo II). En el capítulo III vemos documentos internacionales sobre las teorías de la nacionalidad dependiente e independiente. Finalmente, nos ocupamos de la situación actual del mundo respecto a las leyes de nacionalidad y para luego hacer algunas conclusiones; la principal es que algunos enfoques normativos parecen discriminar entre mujeres nacionales y extranjeras.*

Palabras clave: *Matrimonio, nacionalidad, principio de independencia, principio de unidad, convenciones internacionales*

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I. INTRODUCTION

Due to the expansion of relations between nations of the world, Iran included, marriage between Iranian nationals and foreigners can well be a probability. In these cases, the first issue coming to mind is the couples' different nationalities. Having examined the laws of Iran and other countries, scholars believe that differing nationalities should be turned into a unified one where one spouse loses his/her nationality and acquires that of the spouse.

Taking a look at records in various countries, it becomes clear that nationality of the husband is always bestowed upon wife upon marriage while the reverse is seldom observed: a result of a policy which aims to keep the unity of nationality in the family. At this point, even the most ardent champions of equality of rights between men and women admit that women ought to acquire their husbands' nationality upon marriage (Madani, 2009, p. 76). Thus, according to such interpretations, the husband always retains his nationality. As a result, men are free to marry women from any country and keep their autonomy while retaining their nationality and the rights it entails. Also nationality laws and rules give them the privilege of changing their nationality at will. So, the marriage of a national man to a foreign woman bears no considerable consequence for the husband to be worth examining in this paper. On the other hand, this is just the woman who, by acquiring her husband's nationality and renouncing her own, receives the effects of marriage because it compromises her free will, transforming and limiting her rights. Although the rationale behind the unity of nationality and the imposition of husband's nationality on wife is to observe the political and social interests of the State, it is not reasonable to neglect and/or violate the human and social rights of women. Therefore, the principle of independent nationality of spouses was introduced to protect the rights of married women.

This paper examines the difference between nationality of spouses, the reasons behind the imposition of husband's nationality, or retention of woman's nationality, and also the international instruments pertaining to the subject.

II. THE EXAMINATION OF DIFFERENT NATIONALITIES OF SPOUSES

Marriage between individuals from different countries always raises questions such as "Should the nationality of one spouse be imposed on the

other one, making them both subjects of one State?"; "Should spouses be free to keep on living as a couple while each one of them maintains a different nationality?"; or "If living conditions necessitate unity of nationality, should there be some legal procedures to facilitate the act of granting the nationality of one spouse to the other spouse upon application?" Therefore, this is a sociologically and legally controversial issue which has been the subject of various comments; one the rules of which has been reflected in different legal systems with varying degrees. These rules are of two categories only: they either follow the principle of unity of nationality in family, with the belief that one of the spouses' nationality (usually the woman's) must change upon marriage, or they pursue the principle of independent nationality, emphasizing that marriage *per se* should not affect both spouses' nationality (Saljooghi, 2002, p. 205). It is worth mentioning that both systems have experienced small changes in some countries, but all countries as a whole choose one or the other. Both theories have some advantages and disadvantages which are discussed below:

II.1. The Theory of the Unity of Nationality

According to the theory of the unity of nationality of spouses, also called the classic theory, the scholars in the 1900s held that, regarding women nationality, «marriage affects nationality, and women take their husbands' nationality upon marriage» (Nasiri, 2006, p. 6). According to this theory, family is to be a unitary entity and, to offer this entity its unity, it must enjoy a unified nationality, hence forcing the nationality of one spouse upon the other, should their nationalities differ. However, as in some legal regimes, such as that of Iran, husband is the decision-maker and head of the family, and nationality by descent is transferred through father to his children, the nationality of the husband is imposed on the wife. Consequently, it is better for families to have one unified nationality, and this nationality should preferably be that of the husband (Bodaghi, 2003, p. 125). Referring to the integrity of family, Art. 10 of the Islamic Republic of Iran's Constitution may well be the representation of the principle of the unity of nationality within the family.

II.1.1. Arguments for the theory of the unity of nationality

The advocates of the unity of nationality bring forward several reasons for their defense of this theory, including:

a) Scientific justification

In cases where the laws pertaining to marriage conflict, scholars of international law in the 19th century held that the respective laws of spouses' countries should apply. In other words, national laws determine the effects of marriage on men and women. And since, practically speaking, more than one national legal regime cannot govern the relations of husbands and wives, naturally the unity of nationality in family ensues. On the other hand, to subject men to women's national laws is hard to envisage, hence the acceptance of husband's nationality by wife (Nasiri, 2006, p. 51). It is noteworthy, however, that such justification only holds true in countries where the spouses' national law is applied to the status of persons while in countries where the laws of the spouses' place of residence determine the status (marriage included) such a reason bears no practical benefit (Madani, 2009, p. 75).

b) Theoretical justification

This justification is constructed on the concept of marriage's nature. It is said that marriage is a "life-long cooperation which necessitates the spiritual unity of husband and wife". The concept of this spiritual unity contradicts the differences of nationalities which implicates the governance of different legal regime on the effects of marriage. So, as different nationalities contradict the essence of marriage, it is imperative that both spouses must hold one nationality to meet the spiritual unity of the family. Actually, it is necessary that one spouse, especially the wife, should take the other spouse's nationality so that one single legal regime would govern the (personal or financial) effects of marriage (Nasiri, 2006, p. 51). It should be noted that according to the principle of the unity of nationality in a country, if a husband changes his nationality during marriage, the wife's nationality will change automatically.

II.1.2. The legal foundation of women's change of nationality due to marriage

There have been various answers to the question "why should women acquire men's nationality upon marriage and why not the vice versa?" In what follows we discuss the answers:

a) The will theory

The wife acquires her husband's nationality because she wants and wills to acquire it. Having a full knowledge of her husband's different nationality, the wife knowingly takes the husband's nationality (Nasiri,

2006, p. 52). This theory has been subject to criticism because, first, it is argued that there is a huge difference between a woman's will to marry and her will to change her nationality. As a matter of fact, a woman's will to marry is not the same as her consent to change her nationality. Second, if a woman willingly takes her husband's nationality, she should be free to renounce it at will. This, however, is unacceptable according to the principle of the unity of nationality (Arfa'-Nia, 2009, p. 88). Third, according to this theory, a woman only acquires her husband's primary nationality—that is, his nationality at the time of marriage— and the probable change(s) of nationality by the husband during marriage should not affect the wife. This also negates the principle of the unity of nationality. As a result, it seems that the rationale behind this theory lacks sufficient reasoning.

The advocates of the will theory also add that when a woman takes a husband she also takes his nationality, hence the existence of presumptive will (Nasiri, 2006, p. 52). In response to this argument it should be said that the new doctrine of law rejects the idea of the presumptive will. The experts of the new law hold that a will exists only when it can be explicitly, or practically, expressed. In this sense, conferring a hypothetical or presumptive nature to the notion of will is not possible.

b) The automatic theory

According to this theory, women automatically acquire their husbands' nationality upon marriage. This theory is criticized effectively: accepting this theory requires that all changes of nationality by the husband should automatically be accorded to the wife; this, however, is contrary to statutes in many countries where these changes bear no consequence for the wife (Nasiri, 2006, p. 52). Second, this argument negates the principle of the unity of nationality. Therefore, this theory too fails to stand as a whole and reasonable justification.

c) The theory of women's change of nationality due to patriarchal domination

This theory holds that husbands' domination plays a significant role in marital relations. Since in some legal regimes such as Iran it is the husband who heads the family, in the field of nationality, too, husband's nationality is forced on the wife. In other words, as any country needs a person at the top, it is just natural that each family should have a person to represent the family; of course, this is not necessarily tantamount to domination and/or oppression. It is important to note that this theory only articulates the effects of men's nationality on women's. However this theory, too, is not a whole

one. For one, husband domination is a matter of private law and relates to the civil capacity of wife while nationality is a matter of public law, excluding the application of husband domination provisions (Nasiri, 2006, p. 53); second, adopting such a theory requires that subsequent change(s) of nationality by the husband during marriage would affect the wife's nationality as well which is something in contrast with the principle of the unity of nationality.

d) The theory of women's change of nationality due to the celebration of marriage

According to this theory, women's change of nationality upon marriage is neither by will nor automatic, nor a matter of husband's domination, but a result of the conclusion of marriage contract. This is because what a woman wants is just the marriage itself, and it is the law that forces the husband's nationality on her. Thereby, when a woman gets married she accepts the legal provisions of marriage as they exist in the husband's State of nationality (or the place where the marriage contract is concluded). For marriage, the advocates of this theory argue, the woman's consent is essential, but once she gives her consent the husband's nationality will be forced on her. Consequently, the woman's change of nationality is as much a mandatory effect of marriage as husband's domination or the immutability of marriage terms and conditions are (Nasiri, 2006, p. 35). This is why that after the death of the husband, or dissolution of the marriage, the wife can easily (and of course by observing due procedures) take back her former nationality.

e) The theory of women's change of nationality due to the legislator's mandate

Basically, this theory suggests that it is the law which should provide for the good of spouses. It is politically correct for the family to be unified in terms of nationality. Therefore, the Legislator, absent any intention to humiliate either spouse or establish unequal legal rights, decides to recognize the husband's nationality as the determining factor of the family's nationality (Madani, 2009, p. 78). Seemingly, in Iran, this theory has led to the acceptance of the principle of unity of nationality in the marriage of an Iranian man with an alien woman whereas the very foundation of patriarchal domination is also a mandate prescribed by the Legislator.

Generally, these theories, it seems, are formulated without paying attention to the women's status in different countries because, while nationality is a matter of public law and outside the domain of private law,

looking deeper at the situation reveals that, first, the effects of nationality and the change thereof on the status of women must not escape our notice and, second, although being a political concept, nationality in every respect affects the life of an individual whose life is based upon citizenship.

All in all, these ideas and beliefs, one should admit, have left their mark on the laws pertaining to the change of nationality upon marriage whereas States have considered the political and expedient aspects of nationality in their legal regimes.

II.2. The Theory of Independent Nationality

With the advent of the 20th century, the question of marriage effects on women's nationality transformed in its entirety. This transformation was grounded on the modern idea of equal rights of men and women and the campaign to eliminate discrimination concerning women rights. At the time of marriage, the advocates of independent nationality argue, a woman's interest lies in the person of her husband only, not his nationality nor his place of residence, nor the marriage regime or other issues related to his status (Nasiri, 2006, p. 53). As a result, in their numerous petitions, pro-women communities and movements trying to advance women rights emphasized that the imposition of husbands' nationality upon women must be revoked (Sheikh-al-Eslami, 2005, p. 42). Thereafter, some lawyers rose to their defense which led some States to place women on equal grounds with men (Bodaghi, 2003, p. 126). Also, nationality laws experienced some amendments leading to the ratification of independent nationality principle within family. Thus the division between husband and wife nationalities is in line with actions to uphold and respect women's rights and their individual freedom.

II.2.1. The arguments for the theory of independent nationality

In an attempt to defend their position, the proponents of the theory of independence refer to the interests of women and the State; a position which is explained below.

a) Women's interests

According to the advocates of the independence of nationality, in a case where a woman marries an alien man and, thereby, is forced to acquire her husband's nationality, she has to relinquish a series of rights, her status included. Violating women's rights and interests, this scenario does not seem to be correct.

On the other hand, the advocates of the unity of nationality posit that, in cases when a woman marries an alien man, it is inferred that she willingly renounces her nationality in favor of taking her husband's nationality; if otherwise, why should she marry him in the first place? In response, the former group claim that should a woman genuinely desire to change her nationality she would willingly and freely express her intention to do so (Arfa'-Nia, 2009, p. 88). This is because there is a huge gap between a woman's expression of her will for marriage and the expression of her will to change nationality; therefore, care must be taken not to misinterpret a woman's will to marry.

b) The state's interests

b') The principle of the unity of nationality and its disadvantages regarding national population

Economists believe that the increase in population may be a foundation of economic growth in every country. Economically speaking, low population leads to the reduction of strong-willed individuals and also workers, farmers, merchants, etc. which can pose an enormous danger to a country's industry, agriculture and trade. Consequently, less population means less power in terms of production. This forces insufficiently-populated countries to ask for alien workforce in order to exploit their natural resources and run the economy. While this is an economic setback, it also poses considerable political and racial threats, for a country with a small population is welcoming alien workers who are going to make up a large portion of the population and mix up with local population through breeding, thus diluting the pure-blooded indigenous populace (Aryan, 1997, p. 70).

b'') The unity of nationality of spouses and its disadvantages regarding national security

The increase in population is beneficial to countries in terms of economy, military affairs and politics. States tend to make foreign elements residing in their territory assimilated into the local population, making up a homogeneous populace. This, however, may prove to be detrimental to the security of any given country, as losing a large number of patriotic women and taking in their stead a large number of alien women who have no interest in their husbands' country may endanger public law and order. This is one of the reasons why some countries, which had formerly incorporated the principle of the unity of nationality, now favor the principle of independent nationality (Aryan, 1997, p. 71).

II.2.2. The arguments against the theory independent nationality

Although there have been much debates about women independence and full equality of men and women from the early 1900s, buying into the principle of the independence of nationality of spouses has consequences: first, the legal regime governing the family will not be a unified one, posing a threat to the family discipline, and, second, if the nationality of children is decided by the nationality of either of the parents or both, the possibility of dual nationality of children multiplies while, thirdly, this may have adverse effects on the upbringing of children. Fourth, at times when a crisis arises between the respective States of spouses, this may put in danger the unity of family (Bodaghi, 2003, p. 126); fifth, the existence of multiple nationality within a family not only may end up to the detriment of the family and society's interests, it can also result in legal complexities, as countries develop their legal provisions according to their own specific economic, political and social requirements. So cases of legal events in the life of spouses require enquiry as to which country—the wife or the husband's—the respective event may apply. Also, in such cases the two countries may reach contradicting decisions. As long as the spouses are of two countries which have similar civilizations, customs and traditions these legal differences might be of little consequence, but problems, especially financial ones, may occur between spouses if the differences are considerable; for instance, in cases when spouses wish to separate, the right to divorce may be subject to totally different legal regimes where, for example, a legal system may sanction the divorce while the other might prevent it or allow it under certain circumstances. This leads to a situation that can be harmful to society, men and women since, while the marriage is dissolved according to the legal system of one State, the other State recognizes the marriage to be in full effect. These problems have made some lawmakers and lawyers in the 20th century to prescribe the unity of nationality of spouses, introducing it as the more suitable choice for societies (Aryan, 1997, p. 64). The unity of nationality, they believe, is an essential element of a strong foundation for societies and family relations.

Finally, regarding marriage to alien nationals, Iran espouses different systems based on the gender of the alien spouse. If an alien woman marries an Iranian man, they will be subject to the dependent nationality policy, but if the woman is an Iranian national, Iran pursues a policy of relative independent nationality—the woman will retain her nationality until forced otherwise by the State of her husband (Nasiri, 2006, p. 55). Though reducing the threat of statelessness or dual nationality, this sort of legislation fails to entirely eliminate such threats. This is because a woman will be rendered

stateless if, on one hand, her husband's State does not bestow upon her the husband's nationality (the principle of independent nationality is in effect) and, on the other hand, her own State pursues the policy of unified nationality within family (Kar, 1999, p. 187). Also, a woman will attain dual nationality if her own State observes the principle of multiple nationality (freedom in choosing one's nationality) which allows the woman to retain her nationality upon marriage with a foreign national while the husband's State pursues a policy of forcing men's nationality to alien women.

III. INTERNATIONAL DOCUMENTS ON THE THEORIES OF DEPENDENT AND INDEPENDENT NATIONALITY: AN EXAMINATION

III.1. Investigating conventions on the theory of dependent nationality

In 1932, the Congress of International Law was convened in Oslo. In its Proclamations on advancing women rights, the members stated: «The nationality of either spouse shall not be applied to the other spouse without his/her consent».

Alongside this orientation, there exists another approach within the Congress which is in contrast with the first one. According to this approach, States should take all measures within their competence to facilitate the unity of nationality within family. As mentioned, despite the Congress' obvious inclination towards equality of men and women, it also believes that families ought to have one single nationality (Nasiri, 2006, p. 54).

In 1928, when the Institute of International Law held its session in Stockholm, the lawyers and scholars of law present at the session were, more or less, in favor of the unified nationality within family (Arfa'-Nia, 1977, p. 17).

III.2. International documents on the theory of independence of nationality: An examination

Pursuant to the theory of independent nationality some conventions have been formulated on the subject. While some of these conventions are formulated to address general topics, marginally referring to the issue of women nationality, there are conventions which exclusively focus on the nationality of women to which we have referred below:

III.2.1. The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws

Not intending to assert a certain regime regarding women nationality, this Convention merely attempts to offer a unified solution for conflicting nationality laws in different States by establishing general rules.

Accordingly, Art. 8 of the Convention states: «If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband».

As observed, this rule aims to prevent the issue of women statelessness caused by their marriage to foreigners. In fact, this convention does not seek to establish a specific regime for women nationality after marriage. Articles 10 and 11 state that, first, a change of nationality by the husband shall not affect the wife's nationality except with her consent, and, second, after the dissolution of the marriage, the wife who has lost her nationality on marriage shall not recover it except with her application, prohibiting the imposition of nationality on the wife. Also, when a woman recovers her primary nationality she shall lose the nationality acquired upon marriage. This provision aims to preclude women acquiring dual nationality during the process (Raisi, 2007, p. 112).

III.2.2. Montevideo Convention on Nationality of Women

This Convention was signed by most of the American countries in the Seventh International Conference of American States in 1933 (Vakil, Shamad-Din, 1960, p. 115). Not going into details, this Convention is a very brief draft in five articles. Art. 1 declares the general rule in respect to the nationality of spouses in the following words: «There shall be no distinction based on sex as regards nationality, in their legislation or in their practice». It should be noted that this Convention, though not specific, has been instrumental in the amendment of nationality laws in the American States especially in regard to women nationality (Raisi, 2007, p. 114).

III.2.3. The Universal Declaration of Human Rights (UDHR)

The UDHR consists of one Preamble and 30 articles (Mehrpoor, 1995, p. 329). Emphasized in the articles are human freedom, prohibition of slavery and servitude, equality and fraternity of all human beings, elimination of all forms of discrimination especially with respect to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

III.2.4. Convention on the Nationality of Married Women

A brief survey of this Convention makes it clear that, according to its articles, marriage is of no consequence for the nationality of women. Accordingly, Art. 1 of the Convention states: «Each Contracting State agrees that neither the celebration nor the dissolution of marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage shall automatically affect the nationality of the wife». Also, Art. 2 stipulates that neither the voluntary acquisition of the nationality of another State nor the renunciation of the nationality of the contracting State by one of its nationals shall prevent the retention of its nationality by the wife of such a national. Thus, all articles of the Convention seek to negate any effect that marriage, or the change of nationality by the husband during marriage, may have on a woman's nationality (Raisi, 2007, p. 115). As a result, the Convention sanctions the independence of nationality regime, conferring no distinction on native and alien women.

III.2.5. International Covenant on Civil and Political Rights

Following the ratification of the UDHR in 1948, there were ongoing attempts to ratify an instrument which would legally guarantee the observation of the articles stipulated in the Declaration. Finally, through a resolution on December 16, 1966, the General Assembly of the United Nations ratified the International Covenant on Civil and Political Rights, with the Covenant entering into force on March 23, 1976. Contrary to the UDHR which, being a declaration, lacks legal force, the Covenant obliges Member States to observe, by all legal and operational means, the major and important rights stipulated in the Covenant (Raisi, 2007, p. 116).

According to Art. 26 of the Covenant,

«All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status».

III.2.6. Convention on the Elimination of all forms of Discrimination against Women

Ratified by General Assembly resolution 34/180 of December 18, 1979, the Convention entered into force on September 3, 1981. It consists of a relatively detailed Preamble and 30 articles in six parts. The Convention is one of the most comprehensive instruments defending the rights of women (Naserzadeh, 1993, p. 66).

With respect to equal rights of spouses in terms of nationality:

«States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. States Parties shall grant women equal rights with men with respect to the nationality of their children» (Raisi, 2007, p. 116).

Included in this article is the essence of all issues and problems in respect to women nationality.

III.2.7. European Convention on Nationality

Ratified on November 6, 1997 by Member States of the Council of Europe and other European States, the Convention, in its Preamble, addresses nationality while taking into account numerous documents already existing on nationality, multiple nationality and statelessness. Also, regarding nationality, the Convention asserts that the interests of both States and individuals must be respected. Additionally, the Convention's Preamble reaffirms the right to respect for family life previously mentioned in Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Several articles of the Convention particularly point to issues of women nationality:

Section (d) of Art. 4 declares: «[N]either marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse».

And Art. 5 stipulates:

«1- The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.

2- Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently».

Also, in addition to the principle of full independence of nationality recognized by the Convention, Art. 6(4-a) of Chapter III obliges each State Party to facilitate the acquisition of nationality for the «spouses of its nationals».

Though tersely sentenced, these articles offer a very comprehensive and significant model in respect to women nationality. Therefore, as this

regime is vastly accepted and used by most European States, our legal system can also minimize the problems aroused due to change of nationality upon marriage by accepting and pursuing the aforementioned regime.

IV. THE PRESENT SITUATION OF THE WORLD IN RESPECT TO NATIONALITY LAWS

As for now, many countries have espoused the independence of nationality policy, that is, they accept neutral effects of marriage on nationality. According to the legislator in these countries, it is not reasonable to identify a national woman an alien for the mere reason of her marriage to a foreign man. On the other hand, there is no point in bestowing nationality on an alien woman who has married a national man but lives abroad. The *ratio* of countries in favor of dependent nationality to those in favor of independent nationality is 1 to 3. Furthermore, about one third of the former group force the husband's nationality on a woman contingent on her own application, thus having predicted her intention not to acquire her husband's nationality upon marriage. So there are only a few countries left still pursuing a policy of forcing husbands' nationality upon alien women on an unconditional basis (Arfa'-Nia, 1998, p. 57).

Seemingly, this approach —i.e., forcing nationality based on women's application— observes equal rights between men and women while preventing the outbreak of dual nationality which is a problem of the latter century. Also, since nationality is not automatically forced on women, the "force aspect" of nationality is eliminated and women acquire their husbands' nationality willingly and through their own application, embracing the legal provisions of husband's country as a national. This condition would positively affect other family affairs.

V. CONCLUSIONS

1. As everyone must have a nationality, there are numerous factors determining an individual's nationality. One of the most important and controversial factors which can determine, or change, the nationality of an individual and/or his/her spouse and children is marriage with a foreign national. Each State essentially decides its nationality laws proportionate to its social, political and economic conditions.

2. Due to the expansion of relations between nations of the world, Iran included, marriage between Iranian nationals and foreigners can well be a

probability. In these cases, the first issue coming to mind is the couples' different nationalities. In order to address the issue of dual nationality, when this is the case, and turn it into unified nationality, the Iranian legal regime should be compared, and modified according, to other legal systems across the world. Additionally, recognized principles of private international law identify the unity of the nationality of spouses as a prerequisite for meeting unity within family.

3. Against the theory of the unity of nationality, there is the theory of independence of nationality which does have some shortcomings. For instance, at times when crisis or war—which normally engender some limitations for the alien nationals residing in the belligerent countries—breaks out between the respective States of spouses, the conflicting issues in respect to laws and effects of matrimony may increase.

4. On the other hand, some countries, such as Iran, take different approaches based on the gender of the foreign spouse. They espouse the dependent nationality approach if the wife is a foreigner while they stick to the independent nationality in cases where the husband is a foreign national. Meaning, if the State to which the alien husband is a national forces its nationality on the wife, the Iranian Law accepts the principle of the unity of nationality, otherwise it follows the principle of independent nationality. Such approach does not appear to be appropriate because it discriminates between Iranian and foreign women.

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