

THE EFFECTS OF MARRIAGE AND DIVORCE ON WOMEN'S NATIONALITY IN IRANIAN LAW

LOS EFECTOS DEL MATRIMONIO Y EL DIVORCIO EN LA NACIONALIDAD DE LAS MUJERES EN EL DERECHO IRANÍ

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Abstract: Family as the first and foremost social institution greatly impacts its immediate larger society. Also, the importance of family as a key figure in a healthy society, and the necessity of strong relations between spouses make it imperative to devise required legal devices. As women are prone to suffer and receive more damage in cases of family breakdown, the legislator should develop and establish more protective statutes in respect to the rights of women. In order to protect the rights of Iranian women, the legislator makes a distinction between the cases where an Iranian woman marries a foreign man, and those where Iranian men marry foreign women. In the former case, wife's change, or retention, of nationality is subject to the laws of the husband's State while in the latter case the legislator enforces the unity of nationality principle. Marriage between Iranian women and foreign men causes women to experience a number of changes and limitations in terms of their national and inheritance rights. Also, they may lose their Iranian nationality as a consequence of their marriage—in cases when the husband's nationality, due to the law of the husband's State, is forced upon wife. On the other hand, foreign women married to Iranian men, though being forced to accept Iranian nationality, encounter less limitations resulting from marriage. Upon divorce, they are neither forced to accept a nationality, in contrast to the time when marriage is celebrated, nor denied

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their Iranian nationality. Thereby, they can choose whether to remain an Iranian national or recover their original nationality.

Keywords: Marriage, Iranian women, Foreign Women, Iranian Men, Foreign Men, Nationality

Resumen: *Este artículo presenta el papel de algunas fuentes intrínsecas en la interpretación jurídica. Algunas de las ayudas lingüísticas se derivan de las disposiciones de la ley y otras de la práctica normativa comúnmente aceptada o de las opiniones expresadas en la literatura. La posición de esas ayudas se verificó mediante el análisis de la jurisprudencia, la literatura y las disposiciones legales. La primera y la segunda sección se centran en la prioridad de la regla de sentido llano y las fuentes intrínsecas en la interpretación, lo que se enfatiza fuertemente en la literatura jurídica, la jurisprudencia y las disposiciones interpretativas de muchos países. A continuación, presenta cómo funcionan determinadas herramientas lingüísticas en la práctica de la jurisprudencia, qué problemas pueden causar y resolver. El tercer punto aborda el uso de diccionarios como herramientas de interpretación lingüística. La cuarta sección explora el papel de los cánones interpretativos seleccionados que a menudo se encuentran en las regulaciones legales y la práctica de la jurisprudencia: canon de significado ordinario, canon de género/número, canon ejusdem generis, presunción de uso consistente y canon de materiales preliminares. Se concluye que la prioridad de una interpretación lingüística no es absoluta y nunca puede entenderse como su exclusividad. Las herramientas lingüísticas no son en sí mismas determinantes del significado correcto. Para hacer una interpretación correcta, es necesario no guiarse por indicaciones etiquetadas como objetivas, a veces impuestas artificialmente, sino por la intención del legislador, que tales herramientas puedan descubrir y sólo deben ser utilizadas para tal fin.*

Palabras clave: *Diccionarios, Recursos interpretativos, Ayudas intrínsecas, Ley de interpretación, Cánones lingüísticos*

Summary. *I. Introduction. II. Effects of marriage between iranian women and foreign men. II.1 Two statuary periods.. II.1.1. The First Period (Imposition of Nationality Period). II.1.2. The Second Period (Period of Relative Independence of Nationality). II.1.3. Current State Affairs. II.1.3.1. Effects of Marriage between Iranian Women and Foreign Men in the Current Situation. III. Effects of marriage between foreign women and iranian men. IV. Conclusions. References*

I. INTRODUCTION

Since Iranian women are, and have been, more vulnerable than their male counterparts, the Iranian legislator has set out some conditions in order to protect the interests of Iranian women married to foreign men. For this reason, in case of marriage between Iranian women and foreign men, acquiring a marriage permit issued by Iranian officials is absolutely compulsory. Apart from safeguarding the interests of women, the necessity of issuing a marriage permit by Iranian officials in case of such marriages apparently has a political aspect too. Because, firstly, such a marriage, according to the laws of the husband's State, may lead to the nationality of the husband being forced upon his wife. As a result, the woman will lose her Iranian nationality. And secondly, nationality, politically speaking, should be monitored and controlled by States (Imani, M. Sadeqi, M Abdi, F. 2011).

Such an absolute restriction is applied as a means (ii) to protect Iranian women; (ii) ensure a secure future for them; (iii) enable the State understand the nature and details of foreign presence in Iranian households; (iv) prevent serious complications resulting from marriage to foreign nationals enable the legislator to make women become more prudent in respect to their marriage with foreign nationals. This way, a marriage permit is issued only when some of the conditions, laid down to guarantee women's interests, are met. Notwithstanding, Iranian men face very few obstacles in the process of marrying foreign women except in cases where Article 106 of the Civil Code applies —this Article covers civil servants, especially the employees of the Iranian Foreign Ministry (Ebrahimi, M. 2008). The reason behind such limitations lies in the fact that marriages of such nature may present political threats.

II. EFFECTS OF MARRIAGE BETWEEN IRANIAN WOMEN AND FOREIGN MEN

The Iranian legislator makes a distinction between the cases where an Iranian woman marries a foreign man, and those where Iranian men marry foreign women. In the former case, wife's change, or retention, of nationality is subject to the law of the husband's State while in the latter case the legislator enforces the unity of nationality principle (Arfa'-Nia, B. 2009).

Also when such marriages are dissolved several effects ensue. As a whole, in cases of marriage between Iranian women with foreign men two distinct periods could be observed in the Iranian legislation. The first period dates back to the time when Iranian women definitely lost their nationality upon their marriage with foreign men, acquiring their husbands' nationality.

In the second period, however, the principle of relative independence of nationality is pursued in which case marriage per se does not affect a woman's nationality unless the husband's State dictates otherwise. The latter procedure is maintained in Article 987 of the Iranian Civil Code. In what follows these two periods are examined before taking over an examination and discussion of the current state of affairs.

II.1 Two statutory periods.

II.1.1. The first period (imposition of nationality period)

In this period, marriage with foreign men caused Iranian women lose their Iranian nationality on an unconditional basis and acquire the nationality of their husbands' States. In other words, once a marriage was celebrated the wife acquired her husband's nationality even if the marriage, according to the laws of the husband's State, was not consequential in changing the wife's Iranian nationality. In this regard an extant of Naser al-Din Shah's decree, dating 1890, tells that all Iranian women can, upon the death of their husband, recover their Iranian nationality. The content of this manuscript, though referring to Iranian women whose husbands were passed away, clearly implies that, at the time, Iranian women upon marriage with foreign nationals definitely lost their Iranian nationality, having had to acquire their husbands' nationality. Later, in August 15, 1906, a statute was passed in 15 articles known as Qanoon-nameh (literally, letter of law).

In Qanoon-nameh, too, marriage of Iranian nationals with foreigners (irrespective of gender) left the female party with no choice but to acquire the nationality of her husband (Madani, J. 2009). In other words, according to Qanoon-nameh, marriage between Iranian men with foreign women made these women lose their nationality, and acquire the Iranian nationality of their husbands in the same manner that Iranian women married to foreign men had to acquire their husbands' nationality, abandoning their own Iranian nationality.

II.1.2. The second period (period of relative independence of nationality)

During this period, marriage between Iranian women with foreign men was basically of no import to women's nationality, not forcing her to change her nationality, and not making her acquire her husband's. As a result, Iranian women could retain their Iranian nationality after marriage. Retaining Iranian nationality, however, was contingent on the law of the husband's State: whether it forced its nationality on her or not. If it did — i.e., the husband's nationality was forced on the wife— she lost her Iranian

nationality, and acquired the foreign nationality of her husband (Ma'soomi Akhai, Q). Referring to this issue is Article 12 of the Nationality Act, ratified on 7 September 1929, which specifies: "Iranian women married to foreign nationals shall retain their Iranian nationality unless the husband's State forces the nationality thereof on women upon marriage".

II.1.3. Current state affairs

In this section we will go on the current state of Iranian laws in respect to marriages taken place between Iranian women and foreign men, and vice versa. Furthermore, the effects which the termination of each type of these marriages would result in will be investigated.

II.1.3.1. Effects of marriage between Iranian women and foreign men in the current situation

In our current situation the provisions laid down in Article 12 of September 1929 Nationality Act regarding marriage to foreign men is precisely replicated in Article 987 of the Iranian Civil Code. Article 987 specifies: "Iranian women married to foreign nationals shall retain their Iranian nationality unless the husband's State forces the nationality thereof on women upon marriage." Thus, in the current laws of Iran, the principle of relative independence of nationality governs marriages between Iranian women with men of alien nationality. Employing this system, the Iranian legislator implies its concern over dual nationality, or statelessness, of Iranian women. That being so, two different modes are predicted in regard with the Iranian women's independence of nationality system.

The first mode occurs when the State to which the foreign husband is a subject forces its nationality on women upon marriage. In such cases a woman who has already acquired a marriage permit from the government will lose her Iranian nationality, acquiring the nationality of her husband. Therefore, in cases where the wife is forced to acquire her husband's nationality due to the laws of the husband's State, the Iranian nationality laws follow the principle of the unity of nationality within the family (Tavassoli Na'eeni, M. 2004). The second mode happens when the laws of the husband's country do not force nationality on women upon marriage, and the Iranian wife can opt for her Iranian nationality or her husband's (Arfa'-Nia, B. 1998).

This way the husband's nationality does not affect the wife's, and her Iranian nationality remains intact. It is noteworthy that the Iranian legislator, one way or another, attempts to take into consideration the requirements and interests related to marital life in such marriages as it acknowledges, in

Article 987(1), the wife's right to choose, or reject, her husband's nationality. This way the wife changes her nationality with her full knowledge [of probable consequences]. The procedure is devised both to prevent Iranian women becoming stateless, and to protect their citizenship rights (Tavassoli Na'eeni, M). The 987th Article's Clause is utilized in this way: women submit their application along with their reason(s) to the Iranian Ministry of Foreign Affairs, and then, following an official approval, they will acquire their husbands' foreign nationality.

The statute does not elaborate on which authority is to issue the approval. Considering the cases where applications for nationality renunciation are processed, some lawyers believe, it is the Cabinet which should decide on the subject (Saljooqi, M. 2010). It is important to note that the provisions set out in the Clause of Article 987 specifying the conditions for removal from the country of those Iranians who have renounced their nationality do not apply to these women. Meaning, women forced to acquire their husbands' nationality or those who have applied to acquire their husbands' foreign nationality and their application is granted by the Ministry of Foreign Affairs in accordance with Article 987(1), are not required to leave the country (in the same manner that the individuals who have renounced their Iranian nationality are required to leave the Iranian soil).

Therefore, in respect to Iranian women married to foreign nationals, the Iranian legislator accepts the principle of spouses' relative independence of nationality, offering Iranian women different options. As mentioned, with regard to women who marry foreign men, an option is to apply the principle of nationality unity in cases where the laws of the husband's State impose nationality upon the wife.

Given the current situation and the large number of marriages taken place between Iranian women and Afghan men, a case can be made that (i) buying into this principle will result in a number of adverse consequences, stateless children included—as a result of family abandonment on the part of the father (Tavassoli Na'eeni, M. 2004.); (ii) as for today, this principle is not competent enough to address the needs and requirements of Iranian women; (iii) this system simply leaves the fate of Iranian women at the mercy of foreign laws; (iv) it can lead to a considerable number of Iranians having their nationalities transferred to other countries without taking into consideration the interests of the Iranian society; and (v) such an approach is in contrast with Article 41 of the Iranian Constitution which specifies: "Iranian nationality is an inalienable right of every Iranian which cannot be denied of him/her by the State unless required otherwise by the person in question, or in cases where the individual acquires the nationality of another State." This principle rejects practice of nationality stripping on basis of

forced nationality. Therefore, forcing the nationality of another country upon an Iranian cannot become the basis upon which to strip Iranians of their nationality. This is why some countries, including France, accept women's French nationality, even after their marriage to foreigners, in order to protect the rights of their female subjects (Nasiri, M. 2006). Accordingly, this Article should be rectified to become in line with the Constitution, especially taking into consideration that the Constitution —ratified and enacted 1979— was passed years later than the Iranian Civil Code which was ratified in 1921.

It should be noted that many of the problems which may inflict Iranian families are the result of unfamiliarity with laws and regulations of the country on the part of Iranian women. For this reason, the Iranian legislator has devised a special permit for marriage with foreign nationals issuable by the government. Also consulting Iran's consulates, and acquiring a permit issued by them can enormously reduce the problems of Iranian women whose marriage has taken place abroad. Iranian women inside or outside the country must note that once marriage is celebrated and the nationality of their husbands is forced upon them, they will be deprived of any political support by the Iranian government.

Consequently, their children will also be denied of Iranian birth certificates as, according to the Iranian nationality laws, nationality is transmitted by paternity (paternal *jus sanguinis*). Although nationality is a matter of public law, currently subject to political interests and social necessities in determining its criteria, it should not escape our notice that, on a closer examination, nationality and the change of it may bring about some effects and consequences for a woman and, accordingly, for her family and marital life (Imani, M. Sadeqi, M. Abdi, F. 2011). This being so, a case can be made in favor of keeping Iranian women's nationality and arguing for the principle of multiple nationality within family in order to protect Iranian women, unless these women renounce their Iranian nationality, and acquire their husbands' nationality out of their own volition.

Here, a question may be raised: "What happens to the foreign nationality of an Iranian woman married to a foreign husband who then becomes a naturalized Iranian?" Simply put, can an Iranian woman who has lost her nationality due to her marriage to a foreign man recover her Iranian nationality? In response to this question a case can be made that, by extension, according to Article 984 of the Civil Code, Iranian nationality will be forced upon the wife except in cases where she has submitted the written application, stipulated in Article 984, to the Ministry of Foreign Affairs within a one-year period. To elaborate Article 984, it is noteworthy that this Article, first of all, employs the principle of unity of nationality in

family in respect to the wife and children of a naturalized Iranian man. Asserting this principle is the first part of the Article which states: “The wife and minor children of a man who, according to the act hereof, have acquired Iranian nationality will be recognized as Iranian nationals” (Saljooqi, M. 2010).

Second, although the first part of the Article imposes the husband’s nationality on his wife and children, the second part incorporates a way out to alleviate the effects of nationality unity within family, stating: “Women may submit, within one year following the official naturalization of their husbands, their application to the Ministry of Foreign Affairs to acquire the former nationality of their husbands. This period for minor children is one year after they reach the full age of 18. Moreover, a certificate stipulated in Article 977 shall be attached to the application form of children, irrespective of their sex.”

Another question to be raised here is: “Which would be the nationality of an Iranian woman married to a man with dual nationality one of which is Iranian nationality, or both are the nationalities of foreign countries?” In cases where the husband is of dual nationality one of which Iranian, the Iranian nationality is accorded higher priority in determining his Iranian wife’s nationality. Therefore, Iranian laws do not acknowledge the foreign nationality of husband as having any effect on this matter (Nasehi, A. 2006). This is because, first, the legislator's aim is to protect the rights of Iranian women married to foreign nationals and, second, according to Article 989 of the Civil Code, all States have a right to determine their own nationals and decide on to whether accept their subjects' second nationality (Aryan, K. 1997). Also, in cases of marriage between an Iranian woman and a man with two foreign nationalities, the dominant and effective nationality of the husband is considered as to be forced upon his wife. It should be noted that in this case the rights and liabilities of the wife will be determined based on the dominant and effective nationality of her husband.

II.2. Effects of losing Iranian nationality on the rights of Iranian women

As discussed below, Iranian women who lose their Iranian nationality as a consequence of marriage to foreign nationals will experience a number of changes and limitations in respect to their rights.

II.2.1. Financial and inheritance rights

Iranian women who, willingly or forcefully, lose their nationality as an outcome of their marriage to foreign men are no longer entitled to the

rights and privileges accorded to Iranians, as they are considered alien individuals residing in the Iranian society. Thus, they encounter some changes concerning their immovable property in Iran (Saljooqi, M. 2010). Regarding the rights of Iranian women to immovable property, Article 987(2) of the 1924 Civil Code was extremely severe (Katouzian, N. 2011).

Iranian women who acquire foreign nationality by virtue of marriage are not entitled to have immovable property except what is in their possession at the time when marriage is celebrated. These properties cannot be transferred to their heirs.

After the 1982 Amendment, this Clause took the following form: “Iranian women who acquire foreign nationality by virtue of marriage are not entitled to immovable property if such possession leads to foreign economic domination.” The entity to decide on the subject is a committee comprised of representatives from Ministries of Foreign Affairs and Security. Provisions stipulated in Article 988 and the clause thereof on removal out of the country of the Iranians who have renounced their nationality are not applicable to women mentioned here.”

This Clause (i) is based on what has come to be known as the principle of “no means of overcoming” (*nafy-e-sabil*, meaning that disbelievers shall not be given means of overcoming the believers) [in Islamic jurisdiction] which is also asserted in the Iranian Constitution; (ii) the phrase “foreign economic domination” quoted in the 1982 Amendment, some lawyers hold, is ambiguous, requires interpretation, may potentially lead to discrimination, and is problematic in terms of determining its instances (Saljooqi, M. 2010); (iii) the 1982 Amendment, though keeping some limitations in respect to the immovable property of women who lose their Iranian nationality because of marriage, removes the provision which stipulated that immovable property cannot be transferred to foreign heirs; and 4) the Amendment leaves out these Iranian women from the provision which stipulated the removal out of the country of those individuals who renounce Iranian nationality (Saljooqi, M. 2010).

In addition to these limitations, some believe, Iranian laws seriously restrict the inheritance rights of Iranian women married to foreign nationals, even going as far as depriving them of their rights to take their inherited property as defined according to the Iranian law (Imani, M. Sadeqi, M. Abdi, F. 2011). These commentators, however, do not seem to be right in their general decree as, according to Article 967, inheritance is subject to the laws of the State to which the decedent is a national. Therefore, in cases where the deceased husband is a foreigner, the wife may claim her share of inheritance according to the law of her husband’s State which may well exceed her share as determined according to the Iranian law.

II.2.2. Limitations in maternal rights and the freedom to choose marriage partner

Article 964 of the Iranian Civil Code stipulates: “Relations between parents and their children are subject to the law of the country of the father unless the only certain parentage of the child is that of its mother, in which case the relations between the two follow the laws of the country of the mother.” This, in some cases, leads to the violation of the maternal rights of Iranian women married to foreign nationals. This violation, however, is not all encompassing —i.e., it does not adversely affect the rights of Iranian women in each and all cases— because, first, the fact that relations between parents and children become subject to the law of the country of the father does not necessarily mean that the maternal rights of Iranian women are compromised; and secondly, according to the legal regimes in many countries, fathers are afforded with less prerogatives than is accorded to fathers in Iran, thereby mothers enjoy a wider range of provisions and authority in reference to their children’s affairs.

Moreover, it should be noted that according to Article 961(2) of the Iranian Civil Code, foreign nationals are subject to the law of their own country in respect to the “rights concerning personal status which are not accepted by the law of the Government of the foreign national.” As a result, Iranian courts will not grant a right to a foreign national to which he/she is not entitled in his/her own country. For instance, custody is a personal status. In case of foreign fathers, personal status is subject to the laws of the country of the father. Consequently, Iranian courts will not accord custody in a case where the laws of the country of the father refuse to grant custody (Imani, M. Sadeqi, M. Abdi, F. 2011), leading to complications in terms of child custody. Put together, these laws indicate that since the relations between parents and children are subject to the laws of the country of the father, the relation between women married to foreign men and their children is determined according to the laws of the husband's country.

Iranian women are also restrained by limitations in terms of choosing their marriage partner. For instance, an Iranian woman has no option but to take an Iranian man as husband if she intends for her children to be Iranian (Imani, M. Sadeqi, M. Abdi, F. 2011). This is because, on one hand, marriage to a foreign man may cause the mother lose her Iranian nationality and, on the other hand, children born out of such marriages are subject to the laws of the country of the foreign father as their mother, by virtue of her marriage, has lost her Iranian nationality (in cases where the laws of the

country of the husband is forced upon the wife). As a result, these women are unable to transfer their Iranian nationality to their children, for they are no longer considered as Iranian nationals unless their case becomes subject to the provision laid down in Article 976(4) which stipulates: “Persons born in Iran of foreign parents, one of whom was also born in Iran, are considered to be Iranian subjects.”

Therefore, in cases where either of the parents (whether the mother or father) and their child are born in Iran, the child can acquire Iranian nationality provided that both parents are non-Iranian. However, the child is subject to the law of the country of the husband anyway in accordance with Article 963 of the Iranian Civil Code which specifies: “If husband and wife are not nationals of the same country, their personal and financial relations with one another will be subject to the laws of the country of the husband. Additionally, even if the child, by virtue of Article 976(4), acquires Iranian nationality, this is of no consequence to his/her relations with the parents. Thus, such a child, though Iranian, is still subject to the laws of the country of the husband in respect to the rules governing parents relations to the child's affairs, custody included.

As an ultimate solution it is suggested that Iranian women who marry foreign husbands and can opt for a nationality choose not to renounce their Iranian nationality so as to receive, albeit on a basic and minimum level, protections from the Iranian laws.

II.3 Dissolution of marriage between Iranian women and foreign men

Not being a perpetual contract, marriage may, for varying reasons, terminate. This is why Article 987 of the Civil Code asserts:

But in any case, an Iranian woman marrying a foreign national, after the death of the husband or after divorce or separation, will recover her original nationality together with all rights and privileges appertaining to it by the mere submission of an application to the Ministry of Foreign Affairs, to which should be annexed a certificate of the death of her husband or the document establishing the separation.

As a matter of fact, the legislator is vesting women with the option to recover [their nationality] if they so desire. It is noteworthy that in such cases there is no limitation and/or prerequisite as to women's recovering their Iranian nationality (Ra'eesi, P. 2007). Also, once they recover their Iranian nationality, these women will re-acquire their rights and privileges whereas the limitations with respect to their immovable property will be lifted (Alhoee Nazari, H. Koraki-Nezhad Qaraee, M. 2016). Furthermore, the children born to these women may, upon reaching 18 years of age, apply for

Iranian nationality in compliance with the Act on the Determination of the Nationality of the Children by Iranian Women and Foreign Men. Granting Iranian nationality to these children, it should be noted, is not the result of applying *jus sanguinis* existing between the mother and the child, but it is a means, set out by the Act, to protect the children of Iranian mothers who, for whatever reasons, are devoid of an identity.

III. EFFECTS OF MARRIAGE BETWEEN FOREIGN WOMEN AND IRANIAN MEN

Referring to foreign women married to Iranian men and their change of nationality is Article 976(6) which specifies: “Every woman of foreign nationality who marries an Iranian man is considered to be an Iranian subject.” Accordingly, upon the celebration of marriage between a foreign woman and an Iranian man, her nationality will change into the Iranian nationality of her husband. In other words, the foreign woman is considered an Iranian before the Iranian legislator as a result of her marriage. Important to note, this change of nationality is carried out irrespective of the laws of the wife’s country. So, whether the wife’s country sanctions the change of nationality or refuses to acknowledge her marriage to an alien man as to be effective in her nationality, still continuing to recognize her as its national, the wife is considered an Iranian subject by the laws of Iran. In the former case, the wife has only one nationality, namely the Iranian one (Saljooqi, M. 2010, p. 91) while in the latter case both the wife's country and Iran recognize her as their national irrespective of the other country's method of handling the case. Also, international laws recognize the dual nationality of such women.

Dual nationality, however, may lead to some complications for spouses. For instance, in case a dispute is arisen in Iranian courts as to the effects of marriage, the Iranian judge may deem the case subject to the Iranian law, and rule accordingly on the basis that the wife is an Iranian national²⁸ (Tavassoli Na’eeni, 2004, p. 113). On the other hand, a judge in the wife's country may, based on the rules holding in the country in question, have a different opinion.

Additionally, relations of the wife with her Iranian husband concerning their children is subject to Iranian laws as relations of this nature, according to the Iranian law, is subject to the laws of the husband's country.

Therefore, the Iranian Civil Code explicitly recognizes the principle of the unity of nationality in regard to Iranian men married to foreign women. Also, the [Iranian] nationality imposed on foreign women is final and compulsory, not dependent on other conditions. Therefore, considering

the current situation where the unity of nationality is applied, the Iran government is responsible to provide political support for these women. Regarding the imposition of Iranian nationality on these women a case can be made as follows: (i) it is not clear whether these women are eligible for Iranian nationality; (ii) imposing Iranian nationality without observing the requisites of such a process may result in some undeniably adverse effects; (iii) forcing Iranian nationality is, one way or another, in contrast to Article 42 of the Iranian Constitution on the optional aspect of the Iranian nationality acquisition; and (iv) it may be the case that foreign women are not willing for Iranian nationality to be imposed upon them.

For Iranian nationality to be accorded to foreign women married to Iranian men on the Iranian soil it is not necessary for the marriage to have been celebrated on the Iranian soil, because the sheer fact that the husband is Iranian, and the wife is a foreign national suffices for the bestowal of Iranian nationality to the wife even if their marriage is taken place outside the country. For the acquisition of Iranian nationality, however, the existence of a "legal" marriage is a prerequisite. Thus, marriage must be legally taken place and the wife's documents of identity must be verified and registered in an Iranian consulate in compliance with Article 993 of the Iranian Civil Code (Almasi, N. 2006).

In cases where a husband abandons his Iranian nationality during marriage, some lawyers believe, this change of nationality does not affect his wife, allowing her to retain her Iranian nationality unless the leave for renouncing the Iranian nationality given to the husband by the government includes the wife as well by virtue of Article 988 of the Civil Code (Madani, J. 2009). Apparently, as a result of the husband's abandonment of his Iranian nationality, his wife should be stripped of her Iranian nationality because, firstly, she has acquired her Iranian nationality by virtue of the principle of the unity of nationality and, secondly, she has become an Iranian national through naturalization as a result of her marriage to an Iranian man.

And ultimately, some lawyers argue, the unity of nationality system can be interpreted in a way so as not to impact the nationality of either spouse. In the meantime, it can be declared that the spouses' unity of nationality means that both spouses are subjects of one single State whose laws govern the relations between the couple (Tavassoli Na'eeni, M. 2004). Such an argument does not seem to be in harmony with the principle of the unity of nationality and related articles of the Iranian Civil Code.

All in all, the numerous problems resulting from the application of the principle of the unity of nationality in respect to marriages between foreign women and Iranian men make it reasonable to apply the principle of multiple

nationality—considering that the financial and personal relations of spouses are already governed by the laws of the husband’s country, namely Iran.

3.1. Marriage to Iranian men: effects on the rights of foreign (naturalized Iranian) Women

Apparently, according to Article 982 of the Civil Code foreign women who have become Iranian nationals as a result of their marriage to Iranian men may, as is the case with naturalization, enjoy all the civil and political rights vested to Iranians except for the rights reserved for the following individuals stipulated in Article 982:

- 1 - Presidency or vice-presidency
- 2 - Membership in the Council of Guardians and chief of the Judiciary
- 3- Ministry, deputy ministry, position of governor-general and governorship
- 4- Membership of the Islamic consultative Assembly (the Iranian Parliament)
- 5 - Membership of provincial, or district councils, or municipal councils
- 6 - Entry into the service of the Ministry of Foreign Affairs, or attaining any diplomatic position or being appointed on diplomatic delegations
- 7 - Judgeship
- 8 - The highest rank in the Army, the Revolutionary Guard and the police
- 9- Holding important information and security positions

Therefore, in cases where a foreign woman, by virtue of her marriage to an Iranian man, remains an “Iranian” for the rest of her life, she will be always deprived of a portion of the political rights existing in her country; a fact which is against the Constitution and human rights. Concerning other civil and political rights available for Iranians, these women are entitled to them as well for they have become Iranian nationals(Saljooqi, M. 2010). Of these rights are the right to movable and immovable property (ownership and acquisition), the right to inheritance and the right to reside in Iran, to name but a few.

3.2. Termination of marriage: effects on the nationality of foreign (naturalized Iranian) women

Foreign women who have acquired Iranian nationality may encounter some changes regarding their Iranian nationality as a result of the dissolution of their marriage—due to divorce or death of the husband. Contrary to the time when marriage is celebrated, however, this time the law does not force Iranian nationality upon the wife, giving her the option to choose between remaining an Iranian or recovering her original nationality. Therefore, a

foreign (naturalized Iranian) woman may, following the dissolution of her marriage, apply to recover her original nationality by notifying the Ministry of Foreign Affairs. Petition for recovery of nationality can be filed once the divorce comes through, or following the death of the husband (Saljooqi, M. 2010). However, in case where the husband has passed away leaving minor children —i.e., children under 18— the legislator prevents the wife to recover her original nationality until the children come of age. The legislator aims to protect minor Iranian children who are, according to Article 1171 of the Civil Code, under the custody of their mother

The rationale is that once the mother recovers her original nationality she may leave the country taking her Iranian children with her, or leave the children uncared for in Iran, both of which detrimental to the interests of children and society³⁴ (Arfa'-Nia, 2009, p. 89).

Accordingly, Article 986 of the Civil Code states:

A non-Iranian wife who may have acquired Iranian nationality by marriage, can revert to her former nationality after divorce or the death of her husband, provided that she informs the Ministry of Foreign Affairs in writing of the facts. But a widow who has children from her former husband cannot take advantage of this right so long as her children have not attained the full age of 18.

This being so, if the woman recovers her original nationality she will lose her Iranian nationality. As a result, her rights to her immovable property in Iran, whether purchased by herself or inherited, experience a number of changes (Saljooqi, M. 2010). On this issue, Article 986 of the Civil Code adds:

In any case, a woman who may acquire foreign nationality according to the article hereof cannot possess properties except within the limits fixed for foreign nationals. If she possesses landed properties more than those allowed in the case of foreign nationals, or if subsequently she comes into possession by inheritance of landed properties exceeding that limit, she must, one way or another, transfer to Iranian nationals the surplus amount of landed properties within one year from the date of her renunciation of Iranian nationality or within one year from the date of her acquiring the inherited property. In case of failure, the properties in question will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to her after the deduction of the expenses of sale.

Eventually, one can argue that as a whole change of nationality as a result of marriage is mandatory according to the Iranian law. Also, the Iranian legislator recognizes this change of nationality as an effect of marriage. Therefore, following a divorce or death of husband, foreign

women in most cases may simply recover their original nationality and, consequently, their forfeited rights.

IV. CONCLUSIONS

The existence of a unified nationality for spouses, according to known principles of private international law aimed to promulgate the unity of households, is desirable. This being said, the presence of a great number of foreign nationals in Iran, on one hand, and a large number of Iranian expatriates, on the other hand, resulting in marriages between Iranian and foreign nationals all have severely challenged the principle of spouses' unity of nationality in the Iranian law. Therefore, it seems that the legislator ought to, in some cases, acknowledge the principle of multiple nationality.

In dealing with the principle of spouses' unity of nationality, the Iranian legislator employs a dichotomous approach. Article 976(6) of the Civil Code specifies: "Every woman of foreign nationality who marries an Iranian husband is considered an Iranian" irrespective of her will. Therefore, foreign women will automatically acquire Iranian nationality upon marriage to Iranian men. In such cases, by according the Iranian nationality to foreign women on a categorical basis, the legislator definitely employs the principle of the unity of nationality.

As the Iranian nationality is forced upon foreign women, such provision can lead to some complications for these women. On the other hand, Article 987 of the Civil Code takes a different approach in regard with marriages between Iranian women and foreign men: "Iranian women married to foreign nationals shall retain their Iranian nationality unless the husband's State forces the nationality thereof on women upon marriage." Thus, an Iranian woman will lose her Iranian nationality if the law of her husband's State forces the husband's nationality on the wife upon marriage. As a result, these women will be treated as aliens in Iran. However, all the matters discussed above will occur if legal procedure for marriage is taken place according to the Iranian law; otherwise, such marriages are not recognized by the Iranian government, not affecting the nationalities of foreign and Iranian men and women.

It is noteworthy that the Iranian legislator ought to set out new laws in order to protect and support Iranian women, as women are more vulnerable and suffer greater damage than men in cases of family breakdown. While steps have been taken to address these problems in Iran, the laws are yet to be perfect especially with respect to marriage between Iranian women and foreign men.

REFERENCES

- Almasi, N. (2006). *Conflicts of law* (13th ed.). Tehran: Markaz Nashr Daneshgahi.
- Alhooe Nazari, H. & Koraki-Nezhad Qaraee, M. (2016). *Legal domestic and international necessity of some amendments in the civil code in respect to the rights of women*. *Public Law Studies Quarterly* 46(2).
- Arfa'-Nia, B. (2009). *Private international law* (Vol. 1). Kamali Press, Behtab Publishing House□
- Arfa'-Nia, B. (1998). *Marriage and nationality*. *Journal of Women Rights*.
- Aryan, K. (1997). *Marriage between Iranian nationals and foreigners: The effects on nationality* (Master's thesis on private law). Qom University.
- Ebrahimi, M. (2008). *Marriage with foreigners in the civil codes of Iran and some other Islamic countries*. Retrieved from <http://www.hawzah.net>.
- Imani, M., Sadeghi, M. & Abdi, F. (2011). *The potential for the expansion of legal protection for the Iranian women married to alien nationals: an examination*. *Journal of Women Strategic Research*, 14(54).
- Katouzian, N. (2011). *The civil code in the current legal order* (28th ed.). Mizan Press.
- Madani, J. (2009). *Private international law* (5th ed.). Jangal Press.
- Ma'soomi Akahi, Q. (2003). *Marriage between Iranian women and foreign men in the Iranian law: An examination* (Master's thesis).
- Mehrpoor, H. (1995). *Human rights in international instruments and the stance of the Islamic Republic of Iran* (1st ed.). Tehran: Ettela'at.
- Nasehi, A. (2006). *Nationality: Rules and principles*. *Peyk-e-Noor*, 1 (3).
- Nasiri, M. (2006). *Private international law* (15th ed.). Teyf-e-Negareh Press, Agah Publishing House.
- Raisi, P. (2007). *A comparative study of women nationality in the Iranian, French and British legal systems* (Master's thesis on international law). Department of Law, University of Tehran.
- Saljooqi, M. (2010). *The requirements of private international law* (12th ed.). Tehran: Mizan Press.
- Tavassoli Na'eeni, M. (2004). *The principle of spouses' unity of nationality in the Iranian law*. *Legal Thoughts*, (7).