

**IRAN**  
**OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES**  
(Updated as at 3 June 2020)<sup>1</sup>

Family Law Matters	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and the family codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If</i></p>	<p>Per Article 4 of the 1979 Constitution:<sup>2</sup> “All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations. The determination of such compatibility is left to the <i>fuqahah</i> (Islamic jurists) of</p>		<p>Iran has not yet joined CEDAW, but proposals to ratify it have been debated at three distinct moments in post-revolutionary politics. The first was during the last years of the presidency of Hashemi Rafsanjani (1989-1997), as part of the drive for economic ‘Reconstruction’;</p>	<p>Registering a permanent marriage is mandatory; any man who fails to register his marriage contract in a Register Office shall be sentenced to up to one year of imprisonment (Article 645, Islamic Penal Code). Registering a temporary marriage is optional.</p>	<p>According to the 2016 UNDP Human Development Report, Iran ranked 69 on the UNDP Human Development Index, and 118 on the UNDP Gender Inequality Index.<sup>10</sup></p> <p>According to a study conducted by Tehran University for UNFPA, 12% of households were</p>

<sup>1</sup> Musawah’s project to map Muslim Family Laws globally began in 2016 and was led by Zainah Anwar. We would like to thank Ziba Mir-Hosseini for preparing this Iran overview table. More information on the mapping can be found on our website <https://www.musawah.org/mapping-muslim-family-laws/>.


<sup>2</sup> The English text of the 1979 Constitution as Amended in 1989 is available online at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=332330](http://www.wipo.int/wipolex/en/text.jsp?file_id=332330), Persian text at <https://rc.majlis.ir/fa/law/show/132239>

<sup>10</sup> UNDP, “Human Development Report 2016”, Table 5, pp. 214-217, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)


<p><i>uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(a) General Recommendation 21</p>	<p>the Guardian Council.”<sup>3</sup></p> <p>The following provision of the Constitution provides equality for women “in conformity with Islamic criteria” (The Preamble and Articles 3 (14), 10, 20, and 21).</p> <ul style="list-style-type: none"> <li>• The Preamble promises to provide more rights to women to restore justice and to make up for the injustice women suffered under the previous regime. Protection of the family and the role of women as mothers are the main reasons to provide more protection to women</li> <li>• Article 3 (14) requires the government to provide resources for “securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as</li> </ul>		<p>the High Council of Cultural Revolution, in charge of the Islamic Republic’s cultural policies, opposed ratification. The second moment was in April 2003, during the presidency (1997-2005) of reformist Mohammad Khatami, whose government proposed joining CEDAW. The Parliament, in which reformists had a majority, ratified the proposal, but the unelected Guardian Council rejected it on grounds of the incompatibility of CEDAW with ‘Shari’a’, and asked parliament to modify it. Parliament refused to do so, and the bill was referred to the unelected</p>	<p>Any husband who fails to pay his wife’s <i>nafaqa</i> (maintenance), while he has the financial ability, subject to the wife’s <i>tamkin</i> (obedience), shall be sentenced by court to from three months and one day to five months’ imprisonment (Article 642, Islamic Penal Code).</p>	<p>female-headed in 2011; female-headed households in 1966 comprised 6.5%.<sup>11</sup></p> <p>Two concomitant and contradictory legal developments can be detected in the area of family law: the reinstatement of men’s unilateral rights to divorce and polygamy, and attempts to protect and compensate women. The first began with the dismantling of the 1975 Family Protection Law (FPL) and the abolition of its courts. This law, first enacted in 1967 and amended in 1975, created courts by the same name empowered to deal with all types of family disputes, and</p>
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<sup>3</sup> Established by the Constitution, the Guardian Council’s role is to ensure that laws passed by the parliament (*majiles*) are in line with Islamic criteria. It is composed of six Islamic jurists (*faqih*) appointed by the Supreme Leader and six lay jurists elected by parliament from among those nominated by the Head of the Judiciary (himself appointed by the Leader), for a period of five years (Articles 72, 91, 94 of the Constitution).

<sup>11</sup> University of Tehran, Female-Headed Households Report, UNFPA Islamic Republic of Iran, 2017. <https://iran.unfpa.org/en/publications/female-headed-households-report>

	<p>well as the equality of all before the law.”</p> <ul style="list-style-type: none"> <li>• Article 10 provides for the protection of the family as “the fundamental unit of Islamic society”, and requires all laws, regulations, and pertinent programs to facilitate the formation of a family, and to safeguard its sanctity and the stability of family relations on the basis of the law and the ethics of Islam.”</li> <li>• Article 20 entitles “all citizens of the country, both men and women, equally to enjoy the protection of the law and to enjoy all human, political, economic, and cultural rights in conformity with Islamic criteria.”</li> <li>• Article 21 requires the government to provide social welfare and protect women albeit “in conformity with Islamic criteria”, with the aim of</li> </ul>		<p>Expediency Council,<sup>8</sup> whose duty is to adjudicate in such cases; but in this case they failed to act. The third moment was in April 2009, in the run-up to the disputed election that would return President Mahmoud Ahmadinejad for a second term. Forty-two women’s groups and 700 individuals, including both secularist feminists and religious women from the reformist parties, came together to form a ‘Women’s Convergence’. Without supporting any individual candidate, the Convergence posed pointed questions to the field. They raised two specific demands: first, ratification of CEDAW; and</p>	<p>introduced procedural reforms that placed men and women on equal terms with respect to access to divorce and child custody. In February 1979, barely two weeks after the collapse of the Pahlavi regime, a directive from Ayatollah Khomeini’s office declared the FPL to be ‘non-Islamic’ and announced a return to the ‘Shari’a’ provisions of marriage and divorce as reflected in the Civil Code articles.</p> <p>The second development, which began in 1982, is still unfolding. Its latest manifestation is the 2013 Family Protection Law (FPL), which establishes Family Courts authorized to deal with all types of family</p>
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<sup>8</sup> Its full name in Persian is *Majma'-e Taškhīs-e Maslahat-e Nezām*, which is translated as the Council of Discernment of the Interests of the System; formed in 1988 at the time of amendment of the Constitution, its members are appointed by the Supreme Leader for five years.

	<p>accomplishing the following goals: “1. create a favorable environment for the growth of woman’s personality and the restoration of her rights, both material and intellectual; 2. the protection of mothers, particularly during pregnancy and childbearing, the protection of children without guardians; 3. establishing competent courts to protect and preserve the family; 4. the protection of special insurance for widows, and aged women and women without support; 5. the awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian.”</p> <p>Matters relating to family and personal status were first codified between 1928 and</p>		<p>second, revision of Articles 19, 20, 21 and 115 of the Iranian constitution, which enshrine gender discrimination. They put the candidates on the spot to respond, using the press and new media. Women’s demand for legal equality became a central issue in the campaign season.<sup>9</sup></p>		<p>disputes (Article 2). Each Family Court consists of a male principal judge and two advisory legal experts, one of whom must be a woman: her presence is required in all hearings, and she submits her written opinion on the case to the court. The principal judge should take her opinion into consideration in issuing the court judgement. If he chooses not to do so, he is required to state his reasons in the judgement. (Article 2. Note)</p>
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<sup>9</sup> Leila Alikarami, CEDAW and the Quest of Iranian Women for Equality, *OpenDemocracy*, December 18, 2004 <https://www.opendemocracy.net/5050/leila-alikarami/cedaw-and-quest-of-iranian-women-for-gender-equality>; Ziba Mir-Hosseini, ‘Broken Taboos in Post-Election Iran’, *Middle East Report Online*, December 17, 2009, <http://www.merip.org/mero/mero121709>

	<p>1935 in the Civil Code, as part of the reforms of the judiciary during the reign of Reza Shah (1925-41), the first Pahlavi monarch.<sup>4</sup> Articles 1034 to 1206 dealing with marriage, its dissolution and family relations are in accordance with the majority opinion in the <i>Shi'a Ja'fari</i> school. Substantial reforms were introduced in the provisions of the 1967 Family Protection Law (amended in 1975) that established courts authorized to deal with all forms of family cases.<sup>5</sup> After the 1979 Revolution and the creation of an Islamic Republic, the 1975 Family Protection law was suspended and its courts were abolished and declared non-Islamic; but some of its reforms were retained, and were gradually brought back, culminating in the enactment of the Family Protection Law of 2013.<sup>6</sup></p> <p>In the 1935 Civil Code (as amended since 1982) regulates marriage on the basis of hierarchical gender</p>				
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<sup>4</sup> The 1935 Civil Code as later modified is available in Farsi at <http://rc.majlis.ir/fa/law/show/97937>; and in English at [https://iranhrdc.org/wp-content/uploads/reports\\_en/TheCivilCode\\_756245399.pdf](https://iranhrdc.org/wp-content/uploads/reports_en/TheCivilCode_756245399.pdf)

<sup>5</sup> After 1979, the 1975 Family Protection Law was not repealed, although the Guardian Council declared certain provisions of this law 'non-Islamic'.

<sup>6</sup> The 1975 Family Protection Law is available online in Farsi at <http://rc.majlis.ir/fa/law/show/97187>. The 2013 Family Protection Law is available online in Farsi at <http://rc.majlis.ir/fa/law/show/840814>.

	<p>roles between spouses. Two forms of marriage are recognized: Permanent and Temporary. A marriage becomes temporary when it is contracted for a clearly stated duration (Articles 1075-1076). The husband is the head of the household (Article 1105). In a permanent marriage, the husband has a legal obligation to provide maintenance (<i>nafaqa</i>) for the wife (Article 1106). The wife may request maids as part of her cost of maintenance if she is used to it or if she needs help due to disability or sickness (Article 1107). She loses her entitlement to maintenance if she refuses, without a <i>shar'i</i> reason, to comply with her husband's sexual and other wishes (Article 1108). The wife must reside in her husband's house unless stipulations in her marriage contract give her the right to choose her place of residence, or a court rules that she would be liable to bodily, financial, or reputational harm (Articles 1114-15). The wife can refer to the court if the husband refuses to provide her maintenance (Article 1111) but she must prove that she has fulfilled her marital duties. Her refusal to engage</p>				
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	<p>in sexual activity with the husband constitutes disobedience (<i>nushuz</i>), that may disqualify her from her right to maintenance. In temporary marriage, the wife is not entitled to the cost of maintenance, unless it has been stipulated as a condition to marriage (1113). The wife has a full right to her property (Article 1118).</p> <p>The family law of minorities is not codified, and the rules as stated by the muftis, priests, or rabbis must be recognized and enforced by the courts without any procedure. In cases of marriage and divorce, the religious sect of the man determines the applicable law and the personal jurisdiction of the court.<sup>7</sup></p> <p>The 1979 Constitution recognizes the exemption of Sunni Muslims and the recognized religious minorities (Zoroastrians, Jews, and Christians) from the personal status laws of the Islamic Republic of Iran (Articles 12 &amp; 13). Other relevant legislations: The 1933 Non-Shi'i Iranians</p>				
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<sup>7</sup> The 1933 Non-Shi'i Iranians Personal Status Act is available in Farsi at <http://rc.majlis.ir/fa/law/show/90476>. The same law is applicable to non-Muslim minorities pursuant to the 1993 Non-Muslim Personal Status Act adopted by the Expediency Council following a 1990 Supreme Court decision available online in Farsi at <http://rc.majlis.ir/fa/law/show/90476>

	<p>Personal Status Act and the 1993 Non-Muslim Personal Status Act, respectively, apply to disputes between non-Shi'i Muslims and non-Muslims. The 2013 Family Protection Law, Article 4 (Note) exempts non-Shi'i Muslims and non-Muslims from the jurisdiction of family courts.</p>				
<p><b>Minimum and equal age of marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) General Recommendation 21</p>	<p>The legal age of marriage is 13 for girls and 15 for boys (Article 1041 of the Civil Code, as amended in 2002). There are exceptions to this minimum age. "Marriage before the minimum age requires the guardian's permission, but on condition of suitability as determined by the court based on the best interest (<i>maslahat</i>) of the child. Marriage before puberty (<i>bulugh</i>) is not permitted.</p> <p>According to Shi'i <i>fiqh</i>, the age of puberty for girls is 9 lunar years, for boys 15 lunar years. Any man who, in violation of Article 1041 of the Civil Code and its note, marries a girl before she reaches the age of puberty, is sentenced to two years of</p>		<p>Iran ratified the UN Convention on the Rights of the Child in 1994, with a broad reservation: "If the text of the Convention is or becomes incompatible with the domestic laws and Islamic Standards at any time or in any case, the government of the Islamic Republic of Iran shall not abide by it." No legal steps have yet been taken for implementation of</p>	<p>Registration of marriage below the age of 13 for girls and 15 for boys is prohibited without the permission of the Family Court. Article 464 of the Islamic Penal Code sets a penalty of between six months and two years of imprisonment for a man who marries a girl before she reaches the age of puberty as defined by Article 1041 of the Civil Code.</p>	<p>According to UNICEF's State of the Child Report (2016), 3% of girls in Iran are married by the age of 15, 17% by the age of 18.<sup>13</sup></p> <p>The existence of a double rule in the Civil Code with respect to the minimum age of marriage for girls (13 years according to Article 1041 and 9 lunar years according to Article 1210), has created a loophole for child marriage. This is reflected in media reports and studies on the</p>

<sup>13</sup> UNICEF's State of the Worlds' Children 2017, Statistical Tables <https://data.unicef.org/resources/state-worlds-children-2017-statistical-tables/>



	imprisonment (Article 646, 2013 Islamic Penal Code).		the Convention. <sup>12</sup> One reason is the Guardian Council's <i>fiqhi</i> position that marriage after the age of puberty (i.e. 9 lunar years for girls and 15 for boys) is permissible ( <i>halal</i> ).		occurrence of marriage of girls below of age of 13. <sup>14</sup>
<p><b>Consent to marriage / Forced marriage</b></p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is it mandatory to register a marriage? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise?</i></p> <p>Applicable CEDAW Provision Articles 16(1)(a), 16(1)(b) General Recommendation 21</p>	Marriage is not valid without the explicit consent of both parties. If a woman is forced to marry against her will, the marriage contract will be void. The woman may approve of the marriage after the force is lifted, but only if the force did not make her completely incompetent at the time of the conclusion of the contract (as set out by Articles 1062-1070 of Civil Code on Conditions for Validity of Marriage).				
<b>Women's capacity to enter into</b>	According to Article 1119				

<sup>12</sup> The Law Library of Congress, Children's Rights: Iran <https://www.loc.gov/law/help/child-rights/iran.php#International>

<sup>14</sup> Girls not Brides, <https://www.girlsnotbrides.org/child-marriage/iran/>; Centre for Human Rights in Iran, Human Rights for All Iran, <https://www.iranhumanrights.org/2015/09/child-marriage/>; child bride: 11-year-old Iranian Girl Marriage was Annulled after Public Outcry <http://www.iranhrc.org/?p=1203;https://www.rferl.org/a/iran-child-bride-marriage-annulled-outcry-11-year-old/30146652.htm>

<p><b>marriage</b></p> <p><i>Is consent of a guardian (wali) required? Can the woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marriage rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) General Recommendation 21</p>	<p>“The parties to the marriage can stipulate any condition to the marriage which is not incompatible with the nature of the contract of marriage, either as part of the marriage contract or in another binding contract: for example, it can be stipulated that if the husband marries another wife or absents himself during a certain period, or discontinues the payment of cost of maintenance, or attempts the life of his wife or treats her so harshly that their life together becomes unbearable, the wife has the power, which she can also transfer to a third party by power of attorney, to obtain a divorce herself after establishing in the court the fact that one of the foregoing alternatives has occurred and after the issue of a final judgment to that effect.”</p>				
<p><b>Polygamous marriage</b></p> <p><i>Does the law or marriage contract prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Are temporary marriages recognised? Is it necessary to register a</i></p>	<p>Polygamy is allowed in Iranian law. With respect to permanent marriages, the provisions of the 1975 Family Protection Law seem to be still in force, which permits taking second wife only by the permission of the court upon establishing one or more of the following conditions: (1) the first wife's permission, (2) her inability to</p>				<p>The situation of polygamy is complicated by a man's ability to enter as many (unregistered) temporary marriages as he wishes, and by the existence of a dual notion of legality: <i>qanuni/rasmi</i></p>

<p><i>polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 5(a) General Recommendation 21</p>	<p>fulfill her marital duties, and (3) her refusal to have intercourse with her husband (<i>tamkin</i>), (4) her affliction by insanity or an incurable disease that may endanger the continuation of marriage, (5) her conviction to five years' or more imprisonment for a crime, (6) her addiction to any type of harmful drugs, (7) her desertion of the marital home, (8) her infertility, and (9) her prolonged absence. The court will invite the first wife for investigation if possible, and will investigate the husband's financial status and his ability to deal justly with both wives. Even if the first wife gives her permission, she still has the right to seek divorce (Article 16 of 1975 Family Protection Law).</p> <p>In 1984 the Guardian Council declared the penalty of six months' to one year's imprisonment for all parties that was set by Article 17 of the 1975 Family Protection Law to be inconsistent with 'Islamic criteria' (Guardian Council, opinion 1488).</p> <p>In 2013, once again, men are required to register all their permanent marriages (Article 49, 2013 Family Protection</p>				<p>(legal/official) as opposed to <i>shari</i> (religious). This means that, while registration is required for permanent polygamous marriages, failure to register such a marriage does not invalidate its religious legitimacy. However, it entails loss of legal recognition and the wife's inability to seek legal remedy.</p>
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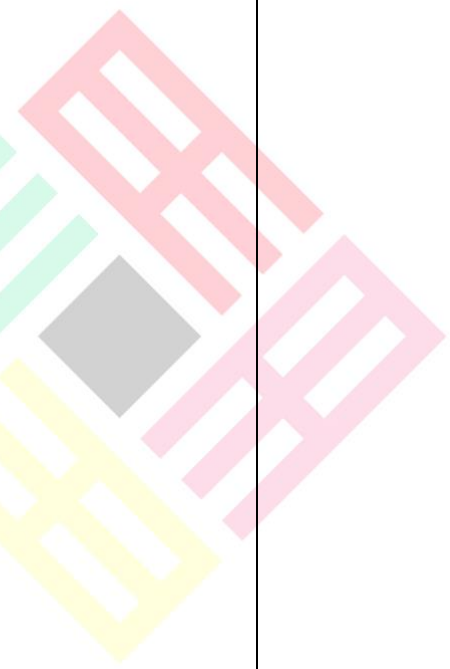
	<p>Law), and the 2013 Islamic Criminal Law makes the failure to do so punishable by up to one year of imprisonment (Article 645).</p> <p>Likewise, the 2013 Family Protection Law requires men to register a temporary marriage in the following conditions: (1) the wife gets pregnant, (2) there is a mutual agreement between the spouses, and (3) there is a stipulation in the marriage contract requiring it (Articles 20 and 21).</p>				
<p><b>Divorce</b></p> <p><i>Is there equal right to divorce? Can the husband divorce at will and without grounds? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce prohibited? If unilateral divorce is not prohibited, what is the procedure e.g. are witnesses required or does the spouse need to go to court? Is the right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision Article 16(1)(c)</u></p>	<p>Spouses do not have equal rights to divorce. The husband has the right to unilateral divorce; to exercise it he must go to court but he does not need to provide grounds (Civil Code Article 1133). The wife can obtain a divorce after establishing one of the following grounds:</p> <ol style="list-style-type: none"> <li>1) if her husband is unable or refuses to pay maintenance, and the court fails to compel [him] to do so (Article 1129);</li> <li>2) if the continuation of marriage causes her 'harm and hardship' ('<i>usr wa haraj</i>') as defined by Article 1130 of the Civil Code (amended in 1982 and 2002), such as: <ul style="list-style-type: none"> <li>• Husband's desertion of the marital home for at</li> </ul> </li> </ol>			<p>Divorce can take place only with a court certificate, 'Impossibility of Reconciliation'. It is mandatory to register the court divorce within a month after the certificate is issued.</p> <p>The penalty for refusal to register it is up to one year's imprisonment (Article 49 of the 2013 Family Protection Law, Article 645, Islamic Penal Code).</p> <p>In 1982, as part of an attempt to</p>	

	<p>least six months without reasonable cause</p> <ul style="list-style-type: none"> <li>● His addiction to any type of harmful drugs</li> <li>● His being sentenced to five years or more of imprisonment</li> <li>● His affliction by an incurable disease or any other affliction that may endanger the continuation of marriage and the wife's health.</li> <li>● His violence and maltreatment of the wife, considering custom and the wife's social position</li> </ul> <p>The court has a free hand in deciding other possible conditions as instances of 'harm and hardship' in marriage.</p> <p>All divorce cases, whether requested by the husband or by the wife, are referred to mediation. Each spouse has a week to introduce to the court as her/his mediator a married family member who is older than 30 and is familiar with Shari'a, family life, and social issues; the mediators will present their recommendations to the court and the court will decide the case taking their recommendations into account. (Articles 26-28 of the 2013 Family Protection</p>			<p>protect women in the face of the dismantling of the 1975 Family Protection Law, the Judiciary drafted a standard marriage contract, distributed among marriage notaries, that carries a stipulation to facilitate women's access to divorce. The stipulation sets 12 conditions; if any of them occurs, the wife acquires the delegated right to divorce after establishing the case in the court.</p> <p>These conditions are in effect the same as those specified in Article 8 of the 1975 Family Protection Law. Since the 1979 Revolution, to be legally valid, each of these conditions needs to carry the signature of both parties; but the husband has the right to refrain</p>	
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	<p>Law)</p> <p>Uncontested divorce cases (when the parties have already agreed on all arrangements) are referred to Family Counselling Centres, established by the 2013 Family Protection Law. These centres are composed of experts in various fields such as psychology, social work, law and <i>fiqh</i>, to provide the courts with recommendations that the judge is required to take into consideration when issuing a judgment (Articles 16-19, Article 25).</p> <p>Women who have the right to divorce (delegated by the husband at the time of marriage or later) can exercise it by recourse to the court.</p>			from signing. <sup>15</sup>	
<p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property during marriage and at its dissolution? Is the woman's role as wife and mother recognised as contribution to acquisition of</i></p>	<p>There is no legal concept of matrimonial assets. The woman's role as wife and mother is not recognized as contributing to the acquisition of property.</p> <p>The wife's financial rights upon divorce include:</p> <ol style="list-style-type: none"> <li>1. Her <i>mahr</i> (dower) as</li> </ol>				<p>The practice of dower (<i>mahr</i>) in Iran provides women with a negotiating card that they can use to obtain a divorce or negotiate its terms. The amount of the <i>mahr</i> agreed and</p>

<sup>15</sup> Ziba Mir-Hosseini, The Politics of Divorce Laws in Iran: Ideology versus Practice, in Rubya Mehdi, Werner Menski, and Jørgen Nielsen (eds), *Interpreting Divorce Laws in Islam*. Copenhagen: DJØF Publishing, 2012, pp. 65-83.

<p>assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (<i>iddah</i>)? Is she entitled to a 'gift' upon divorce (<i>muta'a</i>)?</p> <p>Applicable CEDAW Provision Articles 16(1)(c), 16(1)(h), 15(2) General Recommendations 21, 29</p>	<p>stipulated in the marriage contract, unless she forgoes all or part of it to the husband in return for his consent to divorce (Article 1146, and 1147 of the Civil Code).</p> <p>2. Maintenance during the waiting period (<i>'idda</i>) after the divorce, in three conditions: (a) in case of revocable divorce (<i>talaq ruj'i</i>), (b) if the divorce did not happen during the unjustifiable disobedience of wife (<i>nushuz</i>), and (c) if the wife is pregnant (Article 1109 of the Civil Code).</p> <p>3. Wages in kind (<i>ujrat al-mithl</i>), the monetary value that the court puts on the wife's caregiving, housekeeping and other work during marriage, that were not defined in Shar'ia as her marital duties (principally, complying with her husband's sexual demands). The court must ensure that the wife performed these tasks at the</p>				<p>stipulated in the contract is customarily high – much higher than a man can easily afford – and no payment takes place at the time of marriage; but the <i>mahr</i> is payable at any time upon on the wife's demand. Since the husband retains the unconditional right to divorce, in practice a wife seeking divorce will customarily forgo her <i>mahr</i> in order to get his consent, as reflected in the well-known Persian saying: "My <i>mahr</i> is forfeited and my life is free" (<i>mahram halal, junam azad</i>). In other words, such women tend to demand (and then forgo) their <i>mahr</i> as a leverage to induce the husband to consent to divorce, or to get the custody of the children.</p> <p>In the marriage contracts of women married after 1982,</p>
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	<p>husband's request, and that she did not intend them to be gratis; if this not possible, the wife is entitled to a consolatory gift (<i>nihla</i>) as compensation upon divorce, the amount to be decided by the court on the basis of the husband's financial circumstances, the duration of the marriage, and the tasks she performed (Article 6(b) of the 1992 Divorce Law Reform Act—this provision is not repealed by the 2013 Family Protection Law (Article 39 of the 2013 Family Protection Law).<sup>16</sup></p> <p>4. The wife is entitled to any overdue payment of her maintenance (Article 1206 of the Civil Code.)</p> <p>5. The wife may receive compensation for her contribution to the living expenses that are legally the</p>				<p>there is a stipulation that, if signed by the husband, entitles them to receive half of the property accumulated during marriage, in the event of the husband's unilateral repudiation of her, provided it was not initiated by her or caused by any fault of hers.</p>
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<sup>16</sup> The 1992 Divorce Law Reform Act is available online in Farsi at <http://rc.majlis.ir/fa/law/show/99628>.



	<p>husband's duty. The wife has to prove that she paid the amount upon the husband's request or consent; the husband may prove that the wife did not have any intention to recover her contribution, i.e., she paid it for free (Article 30 of the 2013 Family Protection Law)</p> <p>Article 29 of the 2013 Family Protection Law requires the court to decide on the financial rights of the wife during the divorce hearing and to have this decision entered in the court judgement.</p>				
<p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority rights over the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody</i></p>	<p>In 1993, an amendment to Article 1169 of the Civil Code gave a mother after divorce the custody of her child up to the age of seven.<sup>17</sup> After that age, custody goes to the father. In the event of the parents' failure to reach an agreement, the decision rests with court on the basis of the best interest of the child (Article 41 of the 2013</p>				

<sup>17</sup> Before that, reflecting the Shi'a *fiqh* position, a mother had custody of a son for the first two years, and a daughter for the first seven years (Amendment to Article 1169 of 1935 Civil Code, <https://rc.majlis.ir/fa/law/show/99691>).

<p><i>goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) General Recommendation 21</p>	<p>Family Protection Law). Upon reaching the age of puberty (9 for girls and 13 for boys), the child can choose which parent to stay with.</p> <p>Any parent who has custody will lose it in any of the following circumstances: The parent's (1) addiction to any drug, alcohol, or gambling, (2) engaging in deviant behavior or immoral activities, (3) mental sickness medically diagnosed, (4) taking advantage of the child or forcing her/him into immoral activities, prostitution, begging, or smuggling, (5) repetitive physical harm (Article 1173 of the Civil Code as modified in 1997).</p> <p>Even if the mother has custody, the father is responsible for providing the cost of maintenance of the children (Article 1199 of Civil Code). Regardless of the age of the child, if the father dies, custody will pass to the mother (Article 42 of the 2013 Family Protection Law). If the mother becomes insane or remarries, she will lose her priority right to custody (Article 1170 of the Civil Code).</p>				
<p><b>Guardianship of Children</b></p>	<p>Mothers do not have</p>				

<p><i>Is there equal right to guardianship? If no who has priority rights over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p>Applicable CEDAW Provision Articles 16(1)(d), 16(1)(f) General Recommendation 21</p>	<p>guardianship rights over their children. The children are under the mandatory guardianship (<i>vilayat-e qahri</i>) of the father. In his absence, the paternal grandfather automatically has guardianship of the child (Article 1180 of the Civil Code). The father and, in his absence, the paternal grandfather, is responsible for the maintenance of the children following a divorce. If neither of them is available or has available assets, the mother will be responsible. (Article 1199 of the 1935 Civil Code)</p> <p>The rule on guardianship is not decided based on the best interest of the child. However, if the guardian is incompetent or does not take the best interest of the child into account in managing his property, the court may appoint a trustee (<i>amin</i>) to work independently or with the guardian if he does not function well due to old age or illness (Article 1184 of the Civil Code as modified in 2000).</p>				
<p><b>Family Planning</b></p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and</i></p>	<p>Abortion is a crime and is prohibited. If a mother is responsible for an abortion, she must pay blood money (<i>diya</i>): there is a detailed</p>				

<p><i>sterilization in the law, procedure or practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 General Recommendation 21</p>	<p>legal regime for the blood money of the fetus at each stage of its development (Articles 716 and 718 of the 2013 Criminal Code).</p> <p>Only medical abortion before the fourth month is allowed. Medical abortion can be performed, with the approval of three doctors and forensics for mongolism or disability. It is also allowed in case the pregnancy threatens the mother's life.<sup>18</sup> The law does not require the father's consent. In practice, hospitals ask for the husband's consent in order to prevent a future lawsuit.</p> <p>If a wife wishes to be sterilized, there is no legal requirement for the husband's consent. In practice, the husband's consent is required for any surgery performed on his wife, to save the doctors from being sued for medical malpractice.</p>				
<p><b>Personal rights of spouses</b></p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive</i></p>	<p>There is no legal requirement for a woman to demonstrate her husband's consent in order to study, work, leave the house, or drive a car. However, the husband has</p>				<p>Most hospitals would ask for the husband's consent before performing major surgery, to prevent a future</p>

<sup>18</sup> The 2005 Medical Abortion Law, <http://rc.majlis.ir/fa/law/show/97756>, and Note to Article 718 of the 2013 Criminal Code.

<p><i>various health services, study, etc. on her own behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) General Recommendation 21</p>	<p>the right to ban his wife from working in professions that are considered against the interest of family or his or his wife's reputation (Article 1117 of the Civil Code).</p> <p>A married woman needs her husband's consent to apply for a passport, and his permission to leave the country.</p> <p>The wife is *free to do what she wants with her own assets (Article 118). Women may protect their personal rights through stipulations in the marriage contract, such as, right to work, study, travel and choose the place of residence after marriage (Article 1119).</p> <p>There is neither a legal requirement, nor is it a normal cultural practice, for a woman to take her husband's name upon marriage.</p>				lawsuit.
<p><b>Inheritance</b></p> <p><i>Are men and women in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(h), 15(2) General Recommendation 21</p>	<p>Women and men are not entitled to equal rights to inheritance. According to article 907 of the Civil Code, a son is entitled to twice as much inheritance as a daughter.</p> <p>In the absence of any son, daughters are entitled to inherit the full estate.</p>				

	<p>In the event of a man's death with no children or grandchildren, his wife may claim one-quarter of his estate, but if she dies he can claim one-half of hers (Article 913, Civil Code).</p> <p>In temporary marriage, the spouses do not inherit from each other (Article 904, Civil Code). Children born into a temporary marriage enjoy the same inheritance rights as those born into permanent marriage.</p>				
<p><b>Violence against women in the family</b></p> <p><i>Are there laws and practices that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault, mental and other forms of violence that affects a women's mental health, which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Are there support services for</i></p>	<p>There are no laws defining domestic violence. The husband's battery of his wife, like any other battery, is a crime. The wife is entitled to claim the relevant blood money (<i>dija</i>) and the husband would be punished accordingly.</p> <p>Marital rape or any other sexual assault between couples is not legally banned.</p> <p>There is no legal provision to</p>				<p>Studies suggest the prevalence of domestic violence, and that 66% of women of Iranian women have experienced some form of domestic violence.<sup>19</sup></p> <p>There are no safe houses for victims of domestic violence. A Social Emergency service (<i>Urjans Ejtima'i</i>) is</p>

<sup>19</sup> Adineh HA, Almasi Z, Rad ME, Zareban I, Moghaddam AA (2016) Prevalence of Domestic Violence against Women in Iran: A Systematic Review. *Epidemiology (Sunnyvale)* 6:276. doi:10.4172/2161-1165.1000276; Payvand Iran News, "Warning on rise in domestic violence" (Payvand News, 30 August 2009), available at: <http://www.payvand.com/news/09/aug/1264.html>

<p>women who are the victims of aggression or abuses?</p> <p>Applicable CEDAW Provision Articles 2, 5, 11, 12 and 16 General Recommendations 12, 19, 21</p>	<p>require a rapist to marry his victim, thereby absolving him of his crime. However, there has been anecdotal evidence that it is practiced in some rape cases.</p>				<p>available for the victims of severe domestic violence, managed by the State Welfare Organization of Iran (<i>Sazman Behzisti Keshvar</i>).<sup>20</sup> They dispatch social services and refer the couples to counseling.</p> <p>Female circumcision is not practiced widely in Iran. There are studies and reports that suggest its practice in a few provinces.<sup>21</sup></p> <p>Theoretically, it could be punished by criminal law as intentional physical harm. But it goes unreported, as it is mostly practised on children with the consent of the father.</p>
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<sup>20</sup> Stop FGM Middle East, Iran, Social Emergency Service, <https://www.yasa.co/blog/social-emergency-123-phone-ready-to-receive-reports-of-violence-against-wife/>

<sup>21</sup> Stop FGM Middle East, Iran, <http://www.stopfgmmideast.org/countries/iran/>

<p><b>Nationality</b></p> <p><i>Does a wife have the right to confer citizenship on foreign born husbands and children? Can the nationality of the adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p>Applicable CEDAW Provision Article 9 General Recommendation 21</p>	<p>A wife does not have the right to pass her citizenship on to a foreign husband and children. Her children will be granted citizenship under some conditions: (1) her marriage with her non-Iranian husband was registered by the permission issued by the government according to Article 1060 of the Civil Code, (2) the child was born in Iran, and (3) a request to obtain citizenship is filed within a year after she/he reaches 18.<sup>22</sup></p> <p>A woman does not automatically lose her nationality because of marriage or her husband's change of nationality (Article 987 of the 1925 Civil Code). If her husband's country of citizenship imposes his citizenship on her, she will have the right to revert back to her Iranian citizenship after the dissolution of marriage or her husband's death. If her husband's country of citizenship allows her to choose between</p>				
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<sup>22</sup> The 2006 Act on Nationality of Children Born from Iranian Mothers Married to Non-Iranians is available online at <http://rc.majlis.ir/fa/law/show/97918?keyword=ماده%20واحدده%20تابعیت%20فرزندان%20متولد%20از%20مادران%20ایرانی>; Reforms Will Grant Nationality to Children of Iranian Women, Human Rights Watch, <https://www.hrw.org/news/2019/10/03/reforms-will-grant-nationality-children-iranian-women>



	<p>adopting his husband's citizenship or remaining an Iranian and she decides to change her citizenship, she will be allowed to request the renunciation of her citizenship from the Ministry of Foreign Affairs by providing information about her reasons (Note 1 to Article 987 of the 1925 Civil Code).</p> <p>If the woman decides to obtain foreign citizenship because of her marriage, with regard to her non-movable property prior to marriage, a special committee—with representatives from the Foreign Ministry, the Ministry of Internal Affairs, and the Ministry of Intelligence—will, upon her marriage, review her entitlement to keep her ownership to avert any possibility of foreign interference in the internal affairs of Iran (Note 2 to Article 987 of the 1925 Civil Code as modified in 1991).</p> <p>The change of nationality of the father does not change the nationality of her 18-year-old or older daughters.</p>				
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