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*Mission Permanente
de la République Islamique d'Iran
auprès des Nations Unies
et des autres Organisations Internationales à Genève*

In the name of God, the Compassionate, the Merciful

N°2050/7496

The Permanent Mission of the Islamic Republic of Iran to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, and with reference to the note: IRAN 15/2015, dated 24 August 2015, has the honor to submit herewith the replies of I.R of Iran with regard to the issue of communication from special procedures.

The permanent Mission of the Islamic Republic of Iran to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights, the assurances of its highest consideration.



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IN the Name of God

**Responses to the communication from
“working group on discrimination against women in law and in practice”**

Dated 24 August

Islamic Republic of Iran

September 2015

Introduction

With reference to the letter dated 24th August 2015, the Permanent Mission of the Islamic Republic of Iran to the United Nations, Geneva, has the honor to communicate some clarifications on the concerned viewpoints to be considered by the working group on discrimination against women in law and in practice.

The Islamic Republic of Iran has consistently demonstrated its sincere commitment to the promotion and protection of women's rights and addressing the discrimination against them, for which the national achievements of advancement of women are the best reason.

The Islamic Republic of Iran has brought significant changes in both legislative and practical domains to improve the status of women in the cadre of marital right during the past years. Among them, it is the amendments in the Civil Code, articles 946 and 948, and the omission of the article 947, to improve the inheritance of wife from his husband. The other considerable achievement has been the ratification of the new law of "Protection of the Family" and its commitment to create special courts for family affairs, the obligation of the family courts to employ women judges in order to facilitate the access of women to justice, make amendments in the child custody, and improve the financial status of widows.

Believing in cooperation and interaction with the Human Right Council and its mechanisms and procedure, the Islamic Republic of Iran expects its responses to be included in the report of working group to be presented to the Human Right Council.

It is also worth noting that the constructive international cooperation cannot be fully realized unless the difference in national particularities and their legal systems is taken into consideration. The respect for cultural diversity is fundamental in the fulfillment of the enjoyment of nations of their right to self-determination.

1- The age of marriage

Article 1041 of the Civil Code: *"Marriage of girls before the age of 13 and boys before the age of 15 in Solar Calendar is contingent upon the permission of the guardian and upon the condition of the child's best interests as determined by a competent court."*

It is worth to point out that generally in practice; girls marry at ages above 18. Compared to the country young population, the marriage under the legal age in the framework of regulation of the marriage registration is not common. However, the age of the maturity depends to different criteria among them the individual, social and climate circumstances should be taken into consideration.

2. The marriage permission for women and girls

Article 1043 of the Civil Code: *"The marriage of a virgin is dependent on the permission of her father or her paternal grandfather even if she has reached the full age of majority. If, however, the father or the paternal grandfather withholds the permission without justifiable reason, his permission is considered as null and void and the girl can give full particulars of the man whom she wants to marry to the Special Civil Court and also the terms of the marriage and the dowry money agreed upon, and following the permission of the Special Civil Court, she can refer to Marriage Registry and register the marriage."*

Article 1044 of the Civil Code: *"If the father or the paternal grandfather is not present in the place and obtaining their permission is customarily impossible and the girl is in need of marriage, she can marry."*

The aim of obtaining the permission of the father for the marriage is for the purpose that marriages without considering the family condition [of the man] are more likely to end into divorce. This has been proved in studies. However, despite this fact, the court permission and recognition of the girl's maturity to start a family thereby ensure the marriage in the society.

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In today society, considering the familiarity between girls and boys and their freedom in choosing, normally families announce their consent during the ceremony of marriage proposal or at the time of stating the marriage wish by the girl or the boy.

3. The Right to Divorce

In Iranian law, man can request to divorce his wife as well as woman who can request for divorce to the court and announce her reasons for separation. The followings are the legal documentations based on laws on divorce requests by the couple.

- **The divorce by man**

Article 1133 of the Civil Code: *"A man can request to divorce his wife by observing the regulations stated in this Code (payment of dowry money and Ajratolmesl, [the equivalent amount of money as the wage for carrying out house chores during the marriage]) and by referring to the court."*

It is worth notifying that to pay the woman's financial rights is a precondition for the divorce.

- **The divorce by woman**

Article 1129 of the Civil Code: *"If the husband refuses to pay the alimony to his wife, the wife can refer to the judge requesting for divorce and the judge will*

compel the husband to divorce her. The same stipulation will be binding in a case where the husband is unable to pay the alimony to the wife."

Article 1130 of the Civil Code: *"If durability of parity is causing extreme hardship for the wife (Osr o Haraj), she can refer to the Islamic judge and request for divorce. When the extreme hardship is proved to the Court, the Court can compel the husband to divorce his wife. If this cannot be done, then the divorce will be made on the permission of the Islamic judge."*

Note: *"The extreme hardship in this article is an established situation which endures the continuation of the marriage for the wife with hardship and the tolerance shall be difficult. The followings, if proved to the Court, are considered as instances of extreme hardship:*

1- Leaving family life by the husband for at least six consecutive months or nine months in intermittent year without valid reasons.

2- The husband's addiction to any kind of narcotics or his addiction to alcohol in a way that disrupts the family life and his refusal or impossibility of compelling him to withdraw the drug abuse during the time period diagnosed by the physician shall be necessary;

If the husband does not act upon his commitment or subsequent to the drug rehabilitation, he starts abusing drugs again; the divorce shall be conducted upon request of the wife;

3- The husband's definite conviction to imprisonment for five years or more;

4- Beating wife or any continued mal-behavior by the husband which relying the common law and according to the condition of the wife, cannot be tolerated by the wife;

5- If the husband suffers from incurable mental illness or any other incurable issues which impede the marital life."

The "Osr o Haraj" is being interpreted by the judge. That means the circumstances such as the verbal insult, remarriage and infidelity of husband can be referred by the wife in the court as the reasons for appealing divorce.¹

4. The custody of children

The Custody

Article 1169 of the Civil Code: *"For the custody and maintenance of a child whose parents live separately, the mother has preference for the custody over others until the child is seven years old and after this period the custody will be on the father."*

Note: "In case of dispute, considering the best interest of the child the Court will decide on continuation of the custody."

If the mother has objection over the custody of the child by husband, she can submit her request to the Court. In this case the judge considers the justifications of the wife for the second time and if with rely on evidences for proving the claim including the extreme hardship which is a legal and jurisprudential principle, the judge recognizes that the custody by the mother is in best interest of the child, the custody will be devolved on mother. Today the majority of the judges pay attention to the importance of custody by the mother and according to the corollary and the judge's knowledge, the judgments is issued in mother's favor.

5. Polygamy

¹. Katouzian, Naser; *Civil Right of Family*, Tehran, 1375.

There is no explicit statement on "polygamy" in any law articles of Iranian legal rules. The below articles were compiled with purpose of solving the problems of the social realities based on existing evidences and go back to 70 years ago. So with regard to evidences of polygamy in the country, the lawmaker had no choice rather than dealing with the subject.

Article 1048 of the Civil Code: *"Marrying of two sisters by the same time by one man is forbidden even if the marriage of each one of them is of temporary nature."*

Article 1049 of the Civil Code: *"No one can marry the daughter of his brother - in-law or the daughter of his sister-in-law unless his wife permits him to do so."*

Article 900 of the Civil Code: *"Two categories of heirs are entitled to take one - quarter of the estate as their share: the wife or wives provided that the husband has died with no offspring."*

6. Wife Marital Submission

- **Tamkin**

The obligation to Tamkin (sexual relations) is not explicitly asserted in the Civil Code. However, in the reciprocal right and duty of couple as stated in the Civil Code, the right to receive the alimony is dependent on Tamkin.

Article 1108 of the Civil Code: *"If the wife refuses to fulfill duties of a wife without legitimate excuse, she will not be entitled to receive the alimony."*