



## Status of Children Born in The Families of Foreign Men Married to Iranian Women: Focusing on The 1989 Convention on The Rights of the Child

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### ABSTRACT

The 1989 Convention on the Rights of the Child has continuously insisted on the right to identity and nationality of children, and Iranian government has recognized this right by joining this Convention. Children without identities, who are the results of the marriage of foreign men with Iranian women, has been a social problem for many years. In recent years, the marriage of a huge number of foreign nationals with Iranian women has made Iranian society to face with the phenomenon of parentless children without identity cards and papers. These children are legally subject to the respective law of their father's native country, and their birth certificates must be issued according to the laws of the latter country, but they are actually living as stateless individuals in Iran. These children are deprived of their basic rights and are indirectly under oppression. Granting Iranian citizenship to children born from Iranian mothers and on the Iranian soil is not possible and the principles and rules governing the issue of citizenship prevent them from being recognized as Iranians. To tackle this problem, an act entitled "The Law of Determining the Nationality Status of the Children of Iranian Women Married to Foreign Men" was adopted in 2006. But this act cannot be fully effective until they reach the age of 18, and before this age they are not given the required care and supervision. To solve this problem, we can offer different solutions. It seems that it is the legislator who is in charge of solving this problem by making necessary changes in civil law in order to maintain Iranian citizenship for Iranian women upon their marriage with foreign nationals. Applying the principle of blood to Iranian mothers, the legislator can prevent the emergence of a phenomenon of children without identity papers. Such an arrangement appears to be consistent with the articles 41 and 42 of the Constitution of Islamic Republic of Iran.

**Keywords:** Child, Foreigners, Identity, Citizenship, Identity Card, Foreign Men's Marriage with Iranian Women, 1989 Convention

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### INTRODUCTION

Discussing the rights of children, as one of the most basic foundations of human rights in general and the need for protection of children, as one of the most vulnerable and fragile social groups, is of paramount importance. Iranian government joined the Convention on the Rights of the Child in 1993. The convention underlines the child right to identity. In recent decades, legal and illegal entry of foreign nationals to Iran, including refugees and immigrants, and their marriage with Iranian women, in some cases, have led to the denial of Iranian women's citizenship and by returning of these foreign nationals to their countries, children from these marriages become parentless and without identity. These children are deprived of many rights and grappled with numerous problems. This situation is in conflict with Iran's commitment to the 1989 Convention on the Rights of the Child. These children are potentially exposed to social problems and they might make the society face with serious challenges in future by their abnormalities and crimes. Accordingly, the legislator has sought to resolve this problem with the adoption of a law on determining the nationality status of the children of Iranian women married to foreign men in 2006 and insisting on the age 18. However, the chief question of this research is that before turning 18, how should these children's problems be solved?

The universal efforts that have been made in protection of the child as the most vulnerable member of the family have led to the adoption of the Convention on the Rights of the Child. In 1993, Iran joined this convention in the form of a single article provided that it will not be in conflict with religious provisions and domestic legal codes.

In spite of Iran's joining to the International Convention on the Rights of the Child, there are still certain deficiencies and shortcomings in Iran's domestic law. The legal flaws in the field of children from the marriage of foreign men to Iranian women are among these shortcomings. A thorough reflection of Iranian legal system demonstrates that some instances of child rights, including the right to immunity against mental and physical harassment, the right to defense in the criminal justice process, the right to identity, independence and freedom of expression, enjoying a proper opportunity for growth, education and its necessary resources and sufficient opportunity for playing and recreation, are clearly mentioned in the legal codes of the Islamic Republic. But in the area of fundamental and civil rights, the lack of full recognition of the rights of illegitimate children, legal vacuum in prevention of children without nationality, the lack of full support of unprotected children, particularly in the domain of social security, restrictions in providing social and economic facilities for fourth child and the children following her/him and so on and so forth, lead to unjust discrimination and deprivation of their inalienable rights, which are in conflict with the

provisions stipulated in the Convention. Then, the current study is to investigate the status of children from foreign men married to Iranian women focusing on the 1989 Convention, in order to address these discriminations and legal challenges. Among the challenges that can be addressed one can refer to the legal status of these children in terms of custody, the right to education, the right to identity, the opportunity to a full-blown growth. Thus, this research seeks to answer these challenges according to lawyers and the Convention on the Rights of the Child in order to explain the points of difference and similarity and examine its legal issues.

Today, certain codes have been laid down in the area of children's rights within domestic law and international law and one of the most vulnerable groups in this category is children from the illegal marriages with foreign nationals, particularly immigrants. The newly adopted legal codes in Iran concerning this issue are of political bent, and the legal analysis of these codes based on international conventions that are innovative, can be effective in protection of the rights of these children.

### Marriage

Marriage in jurisprudential parlance refers to a legal relation that requires the permission for sexual intercourse between man and woman. However, in Arabic there are two words that both denote marriage one is *Izdivaj* (coming together) that literally means the unification of two people and *Nikah* (copulation) that implies sexual intercourse within wedlock (Ismaili, 2010). "Then, marriage can be defined as a legal relation between man and woman that gives them the right to live together and the obvious manifestation of this relation is the right to sexual intercourse (Mohaqqeq Damad, 1989).

Marital relationship can be either permanent or temporary according to the intent and purpose of married couples. Each marriage type is of special effects. In temporary marriage, man and woman decide to temporarily marry each other and, after the end, if they are willing to continue, they can extend their marriage contract, otherwise they will be separated upon the expiration. While the permanent marriage essentially requires to be steady and continuative. "Permanent and temporary marriages are only different from few points of view, and in many respects, they share common grounds.

Iranian Civil Code has discussed both legal and political implications of the marriage of Iranian nationals with foreigners and its 7 articles outline the rules for marrying foreign nationals. Article 1059 of the Civil Code, which is based on a jurisprudential law, prohibits the marriage of a Muslim woman with a non-Muslim man. And articles 1060 and 1061 of the Civil Code delineate the government's role and supervision over marrying Iranian women and men's marriage with foreigners. Or in article 984 it is argued that the government is obliged to give citizenship to the spouse and underage children of a man who has become Iranian national.

### Foreigner

The notion of foreigner in law is somewhat different from that of Islamic jurisprudence. From a legal point of view, anyone who does not have Iranian nationality is a foreigner, whether he is a citizen of another country, or s/he is out of citizenship. To put it otherwise, regional geography is the criterion for distinguishing between the native and foreigner. But foreigner as conceived by Islamic religion refers to anyone who does not have Islamic beliefs, such as Christians, Jews and Zoroastrians, or those who believe in polytheism and are not monotheistic, or the people who do not have any belief at all. Accordingly, personal religious belief is the basis for identification.

### Child and His Right to Identity

According to the 1989 Convention, people under the age of 18 are considered a child. In this definition, the end of childhood is determined but no word has been said as to its beginning. It may be argued that this is far too clear, and childhood begins when a child is born. (Habibi, 2010) A child is an underage immature person who has not reached puberty (Moein, 2002). Childhood covers a time span from the very inception of one's birth to the age of 12-13. Childhood is divided into pre-primary school and post-primary school periods, and the person is of certain mental and physical conditions in each of these periods and based on these conditions s/he is subject to specific rights and obligations (Mousavi, 2006).

Child in legal parlance: Child is a title for someone who has not reached physical and mental growth that is needed for social life (Soroush, 2012).

The first definition of child in international documents is seen in the 1989 Convention on the Rights of the Child. This Convention introduces the age 18 as the boundary between childhood and adulthood, although the convention allows the member states to consider lower ages in defining childhood.

The word *huwyah* is the Arabic equivalent for identity, and it denotes an individual's name, identity, entity, entity, and a set of attitudes, attributes and morals that distinguish one from others. Identity represents what makes a person distinct. It is evident that "identity" refers to "truth", "being" and "being". Then, the identity of any phenomenon represents existential essence of an entity (Muharrami, 2004).

Among the rights that in some way contains all rights of children is the right to identity. To explain this right, we begin with the definitions that have been offered of identity. The author believes that identity is in fact the identifier and indicator of an individual in individual and collective dimensions that helps one to come out of anonymity, confusion, emptiness and immobility. It also empowers him to live individually and socially, and this ability is an integral part of the personality and the sense of usefulness in life depends on it.

In the encyclopedic dictionary of Dehkhoda, the definition that has been suggested of identity is consistent with the definition of theologians and theosophers. In this definition, identity refers once to the existence of an external entity, and some other time it refers to the nature of the individual, which is tantamount to particular identity or something that helps us to identify the person.

In Moein's Dictionary, identity depicts the external existence, and it is deemed to be the basis of identification and this identification could be essential or accidental (Moein, 2002).

To achieve a terminological definition of identity, we have to examine this notion from the perspective of psychology, sociology and politics. The concept of identity in psychological discussions is more about individual identity and the crises resulting from it. It is indeed the he-ness or it-ness of a person or object, which represents the individuality or objectivity of an individual or object (Azad Armaki, 2007).

In sociology, it refers to the problems caused by social identity. Thus conceived, identity embodies a set of basic social, cultural, psychological, philosophical, biological, and historical characteristics that expressively represent the nature or essence of the group, and specifies them and makes them recognizable among other groups and individuals belonging to them within a temporal and spatial context.

### Child Rights in International Documents and Treaties

The first right of the child is the right to life and this right has been clearly stipulated in article 6 of the Convention. Besides the first clause of article 24 of the International Covenant on Civil and Political Rights and article 12 of the International

Covenant on Economic, Social and Cultural Rights, this right has also been taken into account in Iranian law in articles 487 and 622 to 624 of the Civil Code in the form of punishment of abortion.

Article 7 of the Convention on the Rights of the Child is concerned with the preservation of the child's identity and birth registration and the like. Article 8 of the Convention also protects the child's identity.

The right to have parents has been stipulated in articles 7 and 9 of the Convention on the Rights of the Child. Accordingly, after the identification of the child's parents, the priority is with the custodianship of parents and helping the child to live with the parents, except those cases where his interests requires the opposite. Moreover, this article has also discussed the citizenship of children and their lack of nationality.

Articles 23 to 27 and 39 of the Convention on the Child insists on the necessity of the establishment of minimum health facilities for children, the provision of insurance and other social security benefits and other necessary measures (Abbasi, 2010).

Principle 4 of the Universal Declaration of Children's Rights stipulates: "The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health".

Article 18 of the Convention on the Rights of the Child states: "States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern."

Article 24 of the Convention also states:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures.

Article 27 of the Convention states:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. (Badaqi, 2009).

In the preamble to the Convention on the Rights of the Child we read: a family full of love, joy, understanding and respect. Or the right to peaceful coexistence with parents referred to in Article 9.

Furthermore, in those cases where parents are separated for any reason, governments are committed to respect the right of the child to visit the parent.

### International Treaties on the Rights of the Child

To promote the rights of the child, besides religious advices, certain internal relevant legal codes have been adopted, along with the activities of non-governmental organizations, and in the international arena, countries have signed treaties in this regard.

Among the documents that has regarded nationality as one of the basic rights of human beings is the Universal Declaration of Human Rights (UDHR). According to article 15 of this document, everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. According to the part 1 of article 24 of

the law of permission of Iranian government's joining to international treaty of civil and political rights of 1975, every child without any discrimination based on race, color, sex, language, religion, nationality or social class, blood or ethnic considerations, has the right to enjoy the supportive measures, including having nationality in accordance with part 3 of this article (Bierwirth, 2005).

Due to the paramount importance of the rights of the child, the scholars of various disciplines began to study the subject and established the foundations of the Convention on the Rights of the Child. The Convention on the Rights of the Child has emphasized the children's right to identity and nationality. It was adopted by the United Nations General Assembly on November 20, 1989, and entered into force on September 2. So far, 193 countries (all members of the United Nations except the United States and Somalia) have signed this document and it is implemented in 140 countries. Thus it can be described as the most popular human rights document in history. Islamic Republic of joined this convention in 1993. Article 1 of the Convention on the Rights of the Child states: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." The four basic principles set out below are to be found in the Convention:

1. No child should suffer from discrimination.
2. When decisions are made regarding children, their superior interests must be at the top.
3. Children have the right to live and must grow.
4. Children have the right to express their opinions freely and, in all matters related to them, these views should be considered

In Iranian legal codes the measures are different as to the age of the child both from the legal and the criminal points of view, and in different areas, they have different age limits for being entitled to exercise their rights, or responsibilities, including: age of legal maturity, age of participation in elections, age for getting a driver's license or passport, the age of marriage, work age, the age of criminal liability, which is associated with different penalties, that range from the parents' obligation to being introduced to the correction centers. However, all these matters regarding the child indicate that he must be at the center of the family and under parental support, and more importantly under the support of the government of the land where s/he was born.

According to Article 7 of the Convention on the Rights of the Child:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

In those cases where the child is illegally deprived of the whole or parts of his or her right to identity, the member states shall provide the support and assistance necessary for the prompt adjudication of the above rights. The Convention on the Rights of the Child has also paid earnest attention to the guarantees of the identity of the child including in article 7 of the Convention. Accordingly, in the introductory discussions that have been made on the drafting of the Convention on the Rights of the Child, the implementation of the two 1954 and 1961 conventions on reducing the number of stateless people has been underlined. The 1961 Convention stipulates: "a child born

in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless." To preserve the family ties of the child, the first clause of article 9 of the Convention on the Rights of the Child states that "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence ". Article 21 of the Convention on the Rights of the Child has stated that the States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration. They also have to ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.

#### **Conditions of marriage with foreign nationals**

People are free to choose their spouses within the framework of their beliefs and laws. To regulate the relations between individuals with each other and with the state, both in the domain of private law and international law, governments have sought to adopt certain laws and regulations in order to take care of the rights of their nationals in relation to marriage with foreigners. Furthermore, international organizations that regard themselves responsible towards the regional and global order, and their decisions are binding for the member states, have adopted particular measures regarding the marriage of the citizens of the countries, which have led to the emergence of international treaties and memorandums. "But most of the laws that immediately declare the foreign women who marry a citizen from the respective country as the citizen without any further conditions, contain a totally different stance as to a woman from this very country who marries a foreigner.

There are a number of differences in marriage with foreigners according to civil law, i.e:

- 1-Imposition of the husband's nationality in an arbitrary fashion, as well as imposing nationality change following the husband's nationality change; (Part 2 of Article 987 of Civil Code).
  2. The wife and minor children of those who obtain Iranian nationality in accordance with this Act will be recognized as Iranian nationals but the wife can submit. (Article 984 of Civil Code).
  3. Persons born in Iran of foreign parents, one of whom was also born in Iran. Persons born in Iran of a father of foreign nationality who have resided at least one more year in Iran immediately after reaching the full age of 18; in other cases their naturalization as Iranian subjects will be subject to the stipulations for Iranian nationality laid down by the law (Section 5.4 of Article 976 of the Criminal Code).
- The marriage of Iranian women with foreign men does not always occur in the same form, but the foreign men may enter Iran legally or illegally, and if the entry is legal, the marriage could have been arranged with or without government permission.

Iranian legislator has adopted the principle of unity of nationality as regards the marriage with foreigners, but due to lack of information on the behalf of Iranian women, particularly the residents of rural and border regions of the country, they are grappling with legal issues that they did not expect them. To protect its citizens, the Iranian government has made the marriage contingent upon the permission from the respective authorities and has basically adopted the principle of the unity of nationality in order to avoid the problems associated with the dual nationality and, if a foreign government announces that it has given citizenship to the Iranian women, the Iranian nationality is annulled fast.

Besides its being related to the field of private international law, the issue of the marriage of Iranian women with foreign men is also of other dimensions and psychological, sociological, and demographic problems. From the point of view of human rights, both the woman and her child should be supported. The issue of marriage of Iranian women with Afghan nationals is one of the most current complicated problems of the country, as to which, unfortunately, no viable solution has been offered by the existing body of relevant laws yet and, in some cases, these problems seem to be really dangerous. Article 1, Article 976 of the Civil Code, defines Iranian citizens: "All persons residing in Iran except those whose foreign nationality is established; the foreign nationality of such persons is considered to be established if their documents of nationality have not been objected to by the Iranian Government".

Though the inclusion of this clause upon the enactment of the Civil Code (first volume in 1928 and the second volume in 1934) and after the abolition of the 100-year regime of Capitulation Treaty (which, due to giving certain pointless prerogatives to foreigners paved the way for the unlimited presence of foreigners in Iran), was necessary for separating Iranians from foreigners. But now and particularly due to the presence of Afghan and Iraqi citizens from the East and West in Iran, first clause of article 976, is really dangerous because since the majority of the above-mentioned refugees lack credible papers regarding their foreign nationality and accordingly they can be known as Iranian residents based on the aforementioned clause. These are just few examples of the potential threats.

#### **Effects of marriage with foreigners on the rights of the child**

The key concern regarding the adjudication of the rights of the child, which has always haunted the public, is the inability of children as compared to the adults in defending their rights. Physical and mental immaturity and, as a result, the lack of physical and mental power to deal with the threats, as well as the right for independent reference to legal authorities for a lawsuit, have made children entirely dependent on adults for adjudication of their rights. Family has been traditionally the best place for children to grow and their parents or step parents have continuously protected their rights. The point that has been clearly stipulated in the Convention on the Rights of the Child, particularly in the preamble. Children are among the most vulnerable and fragile social groups. The Convention on the Right to Child has insisted on the right to identity and nationality. In contemporary world, foreign nationals immigrate to other countries as a result of problems like war. In such cases, marriages are made with nationals of the host country. Children from this kind of marriage face unexpected conditions and are deprived of their many rights. The disputable point here is the non-compliance of the respective legal codes of the countries with the 1989 Convention on the Rights of the Child. For example, the marriage of Iranian women to foreign nationals on the one hand causes the annulment of nationality of Iranian women. On the other hand,

when these citizens return to their native countries, children from this type of marriage turn wretched and usually lack guardianship, nationality and birth certificates.

The 1989 Child Rights Convention contains a preamble, three parts, and 54 articles. The preamble briefly discusses the issues that have led to the adoption of the Convention on the Rights of the Child. In the first part of the convention, which contains material provisions of the treaty and which covers articles 1 to 42, the rights of the child that have been recognized by the Convention are expressed. It also refers to the duties of the member states in order to secure these rights and objectives of the treaty.

The rights that have been recognized in these articles are as follows:

- 1- Right to life;
2. Right to existence and progress;
- 3- Right to have a name,
4. Right to nationality;
- 5- Right to family relationships;
6. Right to freedom of thought, belief and religion;
7. Right to freedom of searching, receiving, and transferring any information and ideas without taking the borders into consideration and in various forms;
8. Right to freedom of forming assemblies and peaceful associations;
9. Right to the highest health standards;
10. Right to enjoy the necessary facilities for treating illness and rehabilitation;
11. Right to have access to health services;
12. Right to social security;
13. Right to enjoy the appropriate living standards for physical, mental, moral, and social development;
14. Right to education;
15. Right to recreation and joy;
16. Right to play and engaging in creative activities proper for his/her age;
17. Right to not being exploited economically;
18. Right to not being sexually abused;
19. Right to protect children from the illicit use of narcotic drugs and psychotropic substances;
20. Right to prevent the use of children in the illicit production and trafficking of such substances;
21. Right to have access to legal advice and other legal assistance;
22. Right to object to the legitimacy of their imprisonment;
23. Right to immunity against military strikes in armed conflicts;
24. Right to a fair hearing in cases of charges;
- 25 - Right to use the translator freely during the trial;
26. Right to the prohibition of death penalty and life imprisonment for children under the age of 18;
27. Right to calling the family for a child imprisoned by letter and visit, except in exceptional circumstances;
28. The right not being subjected to torture or other cruel, inhuman or degrading treatment or punishment;
29. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
30. Right to being kept in a special facility away from the adult criminals;
31. Right to a minimum age for violating the criminal law and some other rights that can be outlined via discussing the details of the above rights. (Tavassoli ,2011)

As to the children from marriages with foreigners if their nationality is not identified and their identities are not recognized, they will be deprived of the rights delineated in the Convention. In the 1989 Convention, all rights of the child are clearly stated from his/her birth.

In Iran, the main problem of children arising from marriage with foreigners is the question of the nationality and identity of the child. Naturally, the child who lacks identity will not be able to exercise his/her rights, and this is a point that has been already underlined in the Convention.

#### CONCLUSION

What is the legal status of children from the marriages of foreign men with Iranian women in Iranian law and international law? This is the question that we have sought to answer in the current research. The results of our studies showed that the innocent victims of such marriages are sorely deprived of their basic rights that have been stipulated in domestic laws and international treaties as follows:

1- Identity as the most fundamental right of a human being in a society is vital for recognition of a citizen that is the necessary condition for entitling him to their other rights. The right to have a name is not implemented in national and international laws only by the name that is determined by the parents, but rather it should be clearly mentioned in valid identity documents. Then, as a result of having a legal identity, the child will be benefited from authentic identity documents.

2- Nationality defines one's individual obligations and duties towards the community, in return of which the citizen enjoys certain rights.

3. Family support; since these children are the results of the arrival, residence, and marriage of foreign men with Iranian women, so in most cases the father, due to his illegal presence in Iran and secret life, will not be present in the family in a continuous and active way, therefore the child resulting from such marriages will be deprived of family support.

4. Education; to enjoy this universal right every child throughout the world needs to have identity documents so as to be financially supported by the state. This deprives them of their education due to lack of birth certificates. This deprivation of family and state support for proper education will lead the child to delinquency, wrongdoing and crime, which are now visible in cities and have heavy financial burden for the government.

5. In healthcare domain, governments sponsor their nationals by providing health care, helping them with insurance and subsidiaries. The right to use health services or public health services and vaccinations is also one of the rights that these children are deprived of.

6. These children, who usually live in the border areas, particularly in villages, enter the work market while they are under aged in order to help the family. This study is focused on the individuals over 15. The studied teenagers do not have the right to work after the age of fifteen at Iranian companies and shops due to the lack of identity documents. This vocational status leads them to fake jobs and illegal activities. These stateless teenagers are easily exploited and abused in workplace. Accordingly, they gradually enter the centers of corruption and fall into the trap of addiction and turn to begging and robbing.

After the Revolution, the arrival of foreign nationals to Iran, particularly from neighboring countries such as Iraq and Afghanistan, has been growing rapidly. This process has occurred sometimes by license, and often without permission. One of the negative outcomes of the presence of these people within Iranian territory is illegal marriage with Iranian women and consequently the birth of children without identity papers. The legal status of these children is in conflict with the obligations that Iran has accepted under the 1989 Convention of the Rights of the Child. Authorized immigrants may have married an Iranian girl and woman with or without official license. Anyway, some children are born in such families who are not of Iranian nationality and are deprived of basic and

human rights. In practice, legislators do not make a distinction between legal and illegal marriages, and the only difference is the possibility of obtaining citizenship after reaching the age of 18 for the children of couples who have married with legal permission. But no decision has been made regarding the status of these children before the age of 18.

Civil law is also silent on the nationality of children from illicit marriages. The bill adopted in the Parliament in 2012 as to the foreign nationals was rejected by the Guardian Council due the ambiguities that existed regarding the financial sources. It still remains the same now. Perhaps it's time to think hard about solving this issue seriously. In this regard, we can invoke the Clause 4 of Article 976 of the Civil Code and clauses 2 and 6 of this article. According to this article and its clauses, the children from such marriages can be considered Iranian. According to clause 4, if the parental status of the mother changes as a result of marriage and the nationality is preserved. In the first case, explicitly based on the abovementioned clause, and in the latter case, with reference to an analogy, we should consider the children as Iranian. Or, we would keep with the amendment to Article 976 and grant Iranian nationality through the paternal origin. Even by revising clause 6 of the article we can change the foreigner's nationality as a result of marriage with Iran. Whether the marriage is with an Iranian man or with an Iranian woman. In this case, upon the occurrence of marriage between the Iranian woman and the foreign man, the nationality of the man will also be changed to Iranian, and consequently the child who is born from an Iranian man will also be Iranian.

To tackle the problem of nationality of children from marriage with foreigners, a law was adopted by the Parliament as to determining the nationality of the children of Iranian women married to foreign men 2006. In this law the child is considered eligible to obtain an Iranian identity card when s/he turns 18. But these 18 years deprive them from numerous brilliant opportunities like education and many of their citizenship rights, and the Iranian legislator has also provided limited protection measures for them until the age. Since such children are not considered displaced persons or refugees, they are not even protected by the United Nations Children's Fund's programs. Cross-sectional solutions can be used to solve these children's problems.

However, it seems that the main solution should be asked from the legislator who can make certain revisions in the Civil Code in order to support Iranian women, who are married to foreign nationals, by extending the blood system to Iranian mothers, and prevent the emergence of stateless children. In conclusion, we have to say that since most stateless children in Iran are still at an early age, there is a chance to deal with their issue and come up with a solution before getting late; because we do not take this important point into earnest consideration, the same children when reach the age of maturity, would impose heavy financial burdens to the government by committing crimes, unemployment and illegal marriages and continuing this vicious circle.

Accordingly, we can briefly argue:

1- Iran is one of those countries where nationality is not passed on to the child by mother. And according to Article 976 of Iranian Civil Code, nationality by blood relation is possible only through the father. Therefore, the child from the marriage of an Iranian woman with Iranian foreign man is stateless in practice.

2. Before 2006, based on the legal opinions of lawyers and the judiciary, a child born from an Iranian mother in Iran, according to the priority analogy, was considered an Iranian national referring to Clause 4 of Article 976 of the Iranian Civil Code.

Of course, since nationality is directly related with public order and government, this solution was not a good solution, and the problem was that Article 4, Article 976 of the Civil Code concerned foreign parents, while in our case there was an Iranian mother. Of course, the legal logic does not tolerate such an interpretation, and the priority analogy is not applicable here. We can never justify an interpretation by referring to a judgment that does not have any legal basis. It is for sure that the philosophy of the codification of this clause of the law has been a special conditions of the time.

3. The objections levelled against the interpretation of clause 4 of Article 976 of the Civil Code and the excessive increase of the children of Iranian women married to foreign men who, because of the lack of strict control of the borders particularly in eastern borders, as well as illegal marriages with Iranian girls, and consequently the pressure of women with children without identity papers resulted in the adoption of a single article called the determination of the nationality of the children of Iranian women married to foreigners in Iranian Parliament. By the adoption of this single article, it is no longer possible to interpret Article 4, Article 976 of the Civil Code, in a way that as if the legislator has considered the birth of a child on Iranian soil as the criterion of having an Iranian nationality, whether the parents are both foreigners or a foreigner and an Iranian national. Therefore, a single article was adopted as to the nationality and identity issues of the children from the marriages of Iranian women with the foreign nationals.

4. On the other hand, the procedure that is used by the Register Office to issue birth certificate for foreign nationals is in accordance with the provisions of clause 5 of Article 976 of the Civil Code, and this certificate can be changed to identity cards at age 19. The clause 5 stipulates the father's status and remains silent as to the mother and this makes the situation hard. Then this procedure is not working.

(C) International treaties on children and women are sensitive as to the issue of stateless women and children in and the world and international and national organizations and support these vulnerable groups by approving specific provisions, including the international treaties and regulations that Iran has also accepted including:

- Adoption of the women's political covenant;
- Declaration on the Elimination of Discrimination against Women;
- Convention on the Elimination of All Forms of Discrimination against Women;
- Montevideo Convention on the Status of Women;
- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Rights of the Child.

In these treaties, the rights of women and children are underlined in terms of identity, citizenship, occupation, education, health, etc. Concerning the subject of this thesis we can refer to the following cases that support the stateless children born from the women married to foreign men.

- Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women states that States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
- Clause 2 of this article obliges States Parties to grant women equal rights with men with respect to the nationality of their children.
- Article 15 of the Universal Declaration of Human Rights states: "Everyone has the right to a nationality. No one shall be

arbitrarily deprived of his nationality nor denied the right to change his nationality."

• According to Article 7 of the Convention on the Rights of the Child reads, the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, and the right to know and be cared for by his or her parents. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Then, Islamic Republic of Iran is also responsible before the problems of children from the marriage of the foreign men with Iranian women and it should support these children based on the law. If there is a legal gap or vacuum in this regard the legislator has to fill them by revising the existing legislations or enacting new laws.

#### Suggestions

Considering the general 14 policies of population that were announced by the Supreme Leader on April 23, 2014, Iran, like the countries from where the immigrants come, must support its citizens in nationality issues, including the women married to foreign men who, due to the current law, would lose their nationality following the imposition of a foreign nationality, and their children will also be foreigners. Accordingly we will lose both the mother and her children, and this is in contradiction with the announced population policies. Security considerations should also be adjusted and the potential threats of these individuals should be controlled in other ways. Strict control of the entry of foreign nationals from the borders of the country, particularly from the land borders according to the law enacted on May 10, 1931 in National Parliament as to the entry and residence of foreign nationals in Iran. If foreigners see the full sense of tolerance upon their entering the country, they will surely decide to marry Iranian women and use the existing legal codes in their own interests.

Revising the basic codes of nationality based on contemporary conditions and the ruling legal principles in an independent form.

Public education for people, particularly for the residents of border areas, especially women, to prevent the occurrence of such marriages.

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