

Legal Status of Illegitimate Children in Iran: Historical and Contemporary Insights

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Abstract

This research article examines legal discrimination against children born out of wedlock in Iran. Despite laws promoting equality, societal attitudes influenced by beliefs continue to result in discrimination.

The study explores the reconciliation of religious beliefs with legal frameworks and the changes made to the Iranian legal system in response to positive human rights developments. The Article seeks to bridge the research gaps by comparing the experiences of Iranian children with those in other countries affected by Islamic law.



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The study employs library sources and descriptive and historical research methods to examine the legal status of children born outside of marriage, both nationally and internationally, and the discrimination they face. The Article is structured into four distinct sections: an analysis of Islamic Law, a review of the Iranian legal system, an assessment of Iran's compliance with international conventions, and a discourse on the necessity of substantial positive change.

The Article ultimately recommends the eradication of discrimination through heightened awareness and the advancement of inclusivity for all children, irrespective of their lineage. In summary, this research Article aims to shed light on legal challenges faced by children born outside of marriage in Iran, with the goal of promoting positive changes in their treatment.

Keywords: Discrimination, Human rights, Illegitimate Children, Iranian legal system, Islamic Law

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Introduction

Inequality¹ is a pervasive phenomenon that transcends geographical boundaries. Discrimination against children born outside of marriage represents a salient aspect of this global issue. This is due to the fact that society as a whole considers only those children born within the bounds of matrimony to be legitimate. Studies indicate that societal attitudes toward children born out of wedlock are still influenced by beliefs or traditional customs in many countries (Belali, 2005). However, it is evident that law plays a pivotal role in advancing equality among individuals. Therefore, it is imperative to conduct a comprehensive investigation of the legal status of extra-marital offspring in each country to combat this prejudice and strengthen the foundations of equality.

In recent years, official statistics indicate a considerable number of illegal abortions (approximately 350.000 to 550.000 cases in 2024²) in Iran, suggesting an increase in the number of children born out of wedlock (Yazdani & Dousti, 2015 : 90). Iran is confronted with the issue of reconciling its religious beliefs with its legal framework. A pervasive religious tenet posits that children born outside of wedlock are deprived of certain rights, including inheritance and parental responsibilities, as well as certain rights within society. *Imāmiyya* jurisprudence³ (*Ja'fari* School⁴), the primary source of Iran's legal system, recognizes two categories of relationship between children and their parents:

¹. Inequality includes social and legal disparities where certain groups are discriminated against, excluded, or have inadequate access to fair treatment. Inequality: Oxford Advanced Learner's Dictionary. (2024). Retrieved 12 Aug. 2024 from <https://www.oxfordlearnersdictionaries.com/definition/english/inequality>

². Hamshari Online. (2024). Who will benefit from 500,000 illegal abortions? | Why do families decide to have an abortion? Retrieved 12 Aug. 2024 from <https://www.hamshahronline.ir/news/858704>

³. Jurisprudence, in this article, means *Fiqh*. It is frequently characterized as the manner in which humans comprehend and engage with the tenets of Sharia. This encompasses the human interpretation of divine Islamic law, as elucidated in the Quran and the Sunnah (Vogel, 2000).

⁴. *Imamiyyah* jurisprudence, also known as the *Ja'fari* school, is one of the Islamic schools of thought. Its followers believe in the Twelve Imams, and it is based primarily on the doctrines of the sixth Imam, *Jā far al- Sādiq* (Corrigan et al, 2011).

legitimate and illegitimate lineage (Mahdizadeh et al., 2020 : 4). Historically, illegitimate children have faced discrimination under the law. However, recent developments in human rights have prompted changes in the legal system in Iran.

The elevation of awareness concerning disparities has the potential to serve as an impetus for social transformation. It is evident that research plays a pivotal role in the mitigation and eventual elimination of inequalities between children born to married and unmarried parents. Previous studies have either exclusively concentrated on the Islamic perspective on this matter (Mahdavi Ardakani & Rashidi, 2016 : 291) or have been unable to adequately examine the discriminatory legal status and its consequences for Iranian children born out of wedlock at both the national and international levels (Aziz et al., 2021 : 87). In light of the nature of the investigation in Iran, it is essential to consider Islamic, local, and international law in a comparative and simultaneous manner. This study aims to address the inequalities experienced by Iranian children born out of wedlock in the context of international studies, taking into account the foundations and developments of the Iranian legal system, with a combination of library sources. This study compares the experiences of Turkey, Morocco, Indonesia, and Malaysia to investigate discrimination against children born outside of marriage. These countries were selected for analysis due to their distinct legal and cultural contexts, including the influence of Islamic law, their ratification of international conventions and documents related to children's rights, and their geographic proximity, which fosters cultural solidarity.

The present research employs a combination of various research methods to comprehensively examine the topic under investigation. These methods include descriptive research to elucidate the legal discrimination against illegitimate children in the Iranian legal system and also historical research to analyse the evolution and development of legal doctrines and practices over time, which provides a deeper understanding of the topic. The paper is structured into four principal sections. It commences with an overview of the Islamic legal system, followed by a comparative analysis of the Iranian legal system's approach. Thereafter, it assesses Iran's compliance

with international conventions, and finally, it discusses the advent of a substantial transformation within the country.

An Overview of the Islamic Legal System

In order to gain a comprehensive understanding of the Iranian legal system, it is essential to evaluate the Islamic legal system, from which many of Iran's legal regulations have been adapted. An examination of this system, which is divided into various jurisprudences of thought, the *Imāmiyya* jurisprudence is of particular significance in this context, as the Iranian legal system is founded upon it, as evidenced by Articles 4 and 12 of the Constitution of Iran.

In the context of parent-child relationships, Islamic law offers the legal concept of *Nasab* (*Nasaba* or *Nisab*) to determine a person's lineage through blood relationships (Jafari Langroudi, 2013 : 3631). Being legitimate *Nasab* is of paramount importance in Islamic cultures, as it serves to uphold the integrity of lineage and prevent the occurrence of immoral behaviour. Adultery is regarded as a grave sin in Islamic law, as it contravenes the legitimate lineage (Welchmann, 2017: 143; Tavakkoli Kiya, 2021: 41). This is analogous to the situation in Europe during the 15th to 18th centuries¹ (Dabhoiwala, 2012 : 24, 49, 78).

The issue of lineage has become a matter of significant societal importance, to the extent that Islamic jurists (*fuqahā*) have been compelled to disregard certain foundational tenets of Islamic law. Specifically, at least two rules in Islam have been contravened in order to prevent the increasing number of illegitimate lineages. The first rule is no-harm (*Lā Ḍarar*), which prohibits any kind of harm, whether material or moral, in Islam (Mustafawi, 1998 : 214). This principle constitutes one of the five fundamental Islamic rules that have been adopted from the teachings of the Prophet Mohammad (A group of scholars, 2010: 622). It is therefore incumbent upon jurists to refrain from offering

¹. In Europe during the 15th to 17th centuries, infanticide was sometimes committed by the father and sometimes by the mother in order to avoid the discovery of an illegitimate relationship. This act was considered an even greater sin—at least from the perspective of the Church (Gutmann & Khodadadi, 2014 : 15-16)

discriminatory interpretations of religious orders pertaining to lineage, as such commentary has the potential to cause financial and moral harm to certain individuals. Furthermore, the principle of dignity (*Karāma*) asserts that the intrinsic value and competence of each human being is derived from their identity and nature as a human being (A group of authors, 2008 : 64). In accordance with this tenet, no individual may be deprived of their inherent dignity on the basis of their skin colour, race, religion, or lineage (Waziri & Abedi, 2016 : 158).

In Islamic law, two types of lineage are recognized: legitimate and illegitimate (Mahdizadeh et al., 2020 : 4). Legitimate lineage is attributed to children born to married parents. Conversely, those born out of wedlock are not legally recognized, due to the prohibition of extramarital sexual intercourse. It is assumed that the legalization of children born out of wedlock would result in an increase in extramarital affairs, which are regarded as sinful in Islamic law (Fazel Lankarani, 2016 : 98). The distinction between a legitimate child and a child born out of wedlock has significant legal implications for the relationship between the child and their parents and the wider community in the Islamic legal system (Najafi, 2017 : 4). These implications are for both families and society as follows :

1) In regard to the relationship between nonmarital children and their parents, it is essential to acknowledge that these children are not legally recognized as belonging to their biological parents or their parents' families (Kaviyani Fard & Sahlabadi, 2016 : 129). This leads to the following considerations : In the view of *Imāmiyya* jurists, a child born outside of wedlock is not entitled to receive maintenance from their father. This is because the establishment of alimony requires a legitimate kinship between the child and their father. This perspective was widely accepted among early jurists (Mohaghegh Hali, 2, 1988 : 176; Al-Amili, 1989 : 120), but has undergone a change in recent times. Contemporary jurists espouse the view that a child born to unmarried parents is entitled to receive alimony from their natural father. This is because the father-child relationship is established through custom (Makarem Shirazi, 1996 : 236; Golpayegani, 1988 : 13).

The second point pertains to the matter of guardianship. In accordance with Islamic law, fathers and paternal ancestors are granted exclusive rights of guardianship over legitimate children. In the early periods of Islamic jurisprudence, the right to guardianship was not extended to natural fathers and paternal ancestors, as the law did not recognize their relationship with their children born to unmarried couples or grandchildren (Tabatabaei Yazdi, 1988 : 864). In the past, some jurists held the view that mothers and maternal ancestors did not have rights over love children. In contrast, the leader of society was regarded as having guardianship over such children (Golpayegani, 1988 : 13). Nevertheless, contemporary Islamic jurists espouse the view that children born out of wedlock are under the guardianship of their natural fathers (Fazel Lankarani, 1996 : 1699).

The third point concerns the matter of custody. The right to custody and the responsibility associated with it are two fundamental aspects of parental rights. Nevertheless, early Islamic jurists typically held the view that fathers and mothers of children born outside of wedlock were not liable for custody on account of the absence of a legally recognized relationship with their biological offspring (Golpayegani, 1988 : 236). Currently, there has been a shift in perspective among Islamic jurists, who now believe that the proper upbringing of children is vital for the benefit of society as a whole and for the welfare of the children themselves. Consequently, natural parents are entitled to seek custody of their children, regardless of their marital status (Sadr, 2006 : 141).

The final point for consideration is the disparity in inheritance between legitimate and illegitimate children. Inheritance is restricted to family members who hold a legally recognized blood relationship with the deceased (Al-Amili, 1989 : 25; Afshar Quchani, 2021 : 13). Consequently, inheritance may only be transferred between individuals who possess a legitimate bloodline within a family. In light of the aforementioned legal framework, it is unsurprising that nonmarital children are precluded from inheriting from their biological father, as the status of illegitimacy results in a comprehensive exclusion from inheritance rights. This lack of inheritance rights is reciprocal, as the father and his family are also prohibited from inheriting from the children of unmarried

parents (Al-Tusi, 1984 : 44; Mohaghegh Hali, 1988 : 842). Nevertheless, there is a divergence of opinion regarding the inheritance rights of nonmarital children from their mother. Some jurists posit that nonmarital children do not inherit from their mothers, while others argue that the mother's parentage is established through birth and therefore cannot be denied (Sadogh, 1994 : 137).

2) The *Imāmiyya* jurisprudence believes that children who do not have a legitimate lineage are not permitted to assume positions of religious authority, such as Judge, *Imām Jamā'a*, or *Mujtāhid*. Indeed, the legitimacy of birth is considered a crucial factor in determining eligibility for these sacred and divine positions (Hashemiyani, 2000 : 1; Mughniyeh, 2004 : 62). In the view of *Imāmiyya* jurists, credibility and respect within the community are prerequisites for holding certain positions, and nonmarital children are deemed to lack these qualities (Tabrizi, 2005 : 6). This view is consistent across both classical and contemporary interpretations of Islamic law and is widely held among all Islamic jurists (Mohammadi Gilani, 2006 : 23).

The admissibility of offspring born outside of legitimate marital unions as witnesses in a court of law represents a pivotal aspect of the intricate interrelationship between such offspring and society. The *Imāmiyya* jurisprudence of thought asserts that children born out of wedlock are not qualified to testify (Kaviyani Fard & Sahlabadi, 2016 : 139). This perspective is predicated on the widely held belief that children born out of wedlock lack the inherent veracity and reliability necessary for the effective discharge of this pivotal function. However, some scholars posit that these individuals can only testify for trivial matters that have little impact on people's lives (Mohaghegh Hali, 1988 : 911).

In light of the aforementioned points, two conclusions may be drawn. Firstly, the scope of deprivation of children born out of wedlock in the early legal system of Islam is considerable. This deprivation is not limited to the father and child; it also affects the wider community. Secondly, as time has passed, discrimination related to the relationship between nonmarital children and their parents in Islamic law has diminished. The discrepancy in perspective may be attributed to the recent advancements in human rights. Conversely, with regard to the relationship of non-legitimate children with

society, both primitive and contemporary Islamic jurisprudence adhere to a consistent stance. In other words, social inequalities for children of unmarried parents persist.

The Iranian Legal System's Approach

This section presents an analysis of the relevant provisions and doctrines concerning children born outside of wedlock in Iran. Furthermore, a comparative analysis is conducted to evaluate the legal situation of nonmarital children in Iran in comparison to some countries. The countries selected for analysis are Turkey, Morocco, Indonesia, and Malaysia. These countries were chosen for their distinct legal and cultural contexts, including the influence of Islamic law, their ratification of international conventions and documents related to children's rights, and their geographic proximity to Iran, which fosters cultural solidarity.

Within the Framework of the Family

While there is no explicit definition of legitimate or illegitimate lineage, the Civil Law of 1935 indicates that a child's lineage will be regarded as legitimate if specific conditions are met. The following conditions must be met for a child's lineage to be considered legitimate: 1) The parents were legally married (Article 1158), believed themselves to be married (Article 1166), or the mother did not remarry after a divorce; 2) The parents engaged in sexual intercourse after marriage, or during the erroneous belief of marriage (Article 1158); and 3) The child was born as a result of this sexual intercourse within 6 to 10 months of the sexual intercourse or divorce (Articles 1158 and 1159). In the absence of any of the aforementioned conditions, the lineage between a child and its parents is considered illegitimate. Consequently, children born of adultery (Articles 1166 and 1167) or outside of the aforementioned timeframes (Articles 1158 and 1159) are not considered legitimate and are not attributed to their parents (Imami, 2012: 211). This lack of attribution results in legal discrimination against children born out of wedlock compared to those born within a marriage. The Iranian legislative body sought to deter extramarital affairs by eliciting emotional responses from parents, given the inadequacy of legal penalties (Katouzian, 2005: 8). The following examples illustrate the aforementioned discrimination.

Inheritance

In accordance with Article 861 of the Civil Law of Iran, inheritance is transmitted exclusively through either legitimate lineage or marriage. It is widely acknowledged that the inheritance provisions in Iran are rooted in Islamic law (Jafari Langroudi, 2015 : 591). The primary objective of this legal entity is the equitable distribution of wealth across generations (Powers, 1993 : 131). Nevertheless, children born out of wedlock are not entitled to inherit from their natural parents or respective family members because of the lack of their legitimate lineage. It should be noted that exceptions to this general rule do exist. For example, a child born out of wedlock may be considered legitimate and thus eligible to inherit from one of their parents. This is provided that the parent was unaware that the sexual intercourse in question constituted adultery, or if the act of adultery was committed under duress (Article 884).

Recent studies have shown that the current policy of using incentives and punishments was not effective enough in light of the increase in the number of natural children (Yazdani & Dousti, 2015: 90). Additionally, many children experience financial difficulties due to rejection from their families and lack of inheritance rights, resulting in a persistent cycle of poverty. It is also unjust to exclude children born to unmarried parents from inheritance when they possess the same traits and characteristics as legitimate children, including the possibility of hereditary diseases, as the properties in question have no inherent superiority over other matters. Punishing a child for circumstances beyond their control—such as the marital status of their parents—perpetuates inequality and injustice. It disregards the child's inherent dignity and right to equal treatment, effectively penalizing them for something they had no part in. This not only exacerbates their financial difficulties but also reinforces social stigmas, perpetuating a cycle of discrimination and disadvantage¹. Therefore, it is crucial that the regulations related to this bias be reformed in the near future. Islamic Law supports the

¹. Surah Al-An'am, Ayah 164; Surah Al-Isra, Ayah 15; Surah Fatir, Ayah 18; Surah Az-Zumar, Ayah 7; Surah An-Najm, Ayah 38 of Quran; The Principle of Individual Responsibility

notion that extramarital children should inherit from their natural parents, but not the other way around (Godarzi et al., 2020: 96).

In the Malaysian legal framework, nonmarital progeny are only entitled to inherit from their maternal lineage. This is due to the absence of a legal connection between the biological father and the offspring, which precludes the automatic assertion of inheritance rights (Deiwi Raja Gopal, 2015: 109). Nonmarital offspring are only eligible for inheritance from their natural mothers if they meet two conditions. Firstly, it is necessary that there be no testamentary disposition of the mother that contravenes the inheritance rights of the non-marital progeny. Secondly, in the event that there are legitimate children within the maternal lineage, the nonmarital offspring are effectively precluded from asserting their inheritance entitlement. Nevertheless, within this legal framework, there are methods by which the status and rights of nonmarital offspring can be altered, resulting in a change in their legal status from that of an illegitimate child to that of a legitimate one. In accordance with the provisions set forth in the Legitimacy Act of 1961 (Section 3(1)) and the Adoption Act of 1952 (Section 6(1), 7, 8, and 9), the most significant of these avenues is the legal marriage of the biological father to the mother of the nonmarital child, which effectively confers upon the child the status of legitimacy. Furthermore, should the biological father opt to pursue legal adoption of the nonmarital child, the child will be accorded the same rights and entitlements as a legitimate child.

Moroccan legislation prohibits nonmarital progeny from asserting any claim to their father's estate (Khan, 2012: 171). However, a significant proportion of Moroccans adhere to the *Mālikiya* and *Ḥanafī* schools of Islamic jurisprudence, which offer divergent perspectives on inheritance. These schools legally recognize inheritance entitlements for non-marital offspring through their maternal lineage, specifically conferring the right to inherit from their mothers and maternal ancestry (Schlumpf, 2016: 19).

Surname

In many countries, the use of the father's surname presents a challenge for children born out of wedlock who are unable to claim their father's family name as their own. In order

to address this issue, the Iranian legislature enacted Article 16 of the Civil Registration Law of 1976. This was done in accordance with Islamic law, as well as in consideration of the evolving needs of society. This stipulation permits parents who are not married to procure an identity certificate for their child. The wording of the legislation has given rise to a variety of interpretations among Iranian lawyers. Some argue that obtaining an identity certificate is not possible for natural children (Safaei & Qasemzade, 2009: 98) because there is a distinction between a child whose parents' marriage was not registered and a child born out of wedlock. The former is based on an unregistered marriage, whereas the latter is based on the absence of a marriage. In any case, if the father of a child born out of wedlock is unknown, a hypothetical name will be recorded in place of the father's surname on the birth certificate, according to this provision¹.

This award is intended for biological fathers who have engaged in extramarital relationships. In other words, such individuals will not be subjected to social disgrace if they elect not to bestow their surname upon their natural child. Nevertheless, this policy is flawed in that children of unmarried parents will suffer from the lack of a real family name. While lawyers are permitted to provide their own interpretations of statutes, these interpretations must adhere to a set of principles, including the principle of avoiding harm and hardship to individuals (Bahrami, 2016: 116). For example, a lawyer is prohibited from issuing a commentary that denies biological children the right to bear their father's surname in cases where no relevant legislation exists. Such a situation would result in a number of difficulties for the children in question, including the lack of a surname or the adoption of an unrealistic one. In light of these considerations, it can be concluded that the doctrine in question lacks legal validity, as confirmed by the Iranian Supreme Court in Unanimity Decision 617.

¹. Before the current legislation was implemented, Article 19 of the 1940 Approved Civil Registration Law of Iran required that the word 'unknown' be recorded in the father's surname field on a child's identity certificate if the father was unknown. This provision was widely criticized for its potential to have devastating and damaging effects on the psychological and social status of the child in question.

The Turkish legal system does not afford nonmarital offspring the privilege of sharing a surname with their biological father. In lieu of this, a distinctive legal mandate requires these children to adopt and use their mother's maiden surname. The legal system's emphasis on the use of the maternal surname for illegitimate children underscores the significance of maternal lineage as the primary marker of familial affiliation (Ustek & Alyanak, 2016 : 266). In Malaysia, children born out of wedlock are unable to claim their father's family name due to the absence of a legal connection between them and their biological father (Nadhras Roslan et al., 2021 : 19).

Until 2012, the Indonesian government did not require the inclusion of the natural father's name on the identity cards of children born outside of marriage. However, a transformative juncture emerged in 2012 with a ground-breaking judicial pronouncement from the Indonesian Constitutional Court. The rationale behind this judicial decision was the notion that children born outside of marriage should have a legally recognized relationship with their biological fathers. This recognition underscores the importance of biological lineage, irrespective of the marital status of the parents. This pronouncement permitted the utilisation of medical technologies to ascertain paternity, thereby aligning the legal framework with scientific advancements. As a result of this shift in legislation, children born outside of marriage are now able to use their biological father's name (Hori, 2021 : 33).

Other Discrimination Related to Family

Iranian legislation is deficient in establishing clear and definitive guidelines that would limit the rights and legal status of illegitimate children in matters pertaining to custody, alimony, and guardianship. Nevertheless, some Iranian lawyers maintain that these legal matters have only been established in the relationship between legitimate children and their parents (Haeri Shahbagh, 2008 : 1029). In the Iranian Civil Code, the term "child" is used in Articles 1181, 1168, and 1199 to refer exclusively to children born within wedlock. In the eyes of the law, illegitimate children have no legal relationship with their parents (Najafi, 2017 : 4; Katouzian, 2013 : 423). The authors posit that the acceptance of inequality among children may result in a preference for extramarital affairs over

marriage (Safaei & Imami, 2015 : 371). Nevertheless, there is a doctrine that imposes a duty on parents to provide guardianship and custody of their biological offspring, as well as to fulfil the obligation of paying child support (Imami, 2012 : 215). Furthermore, while it is true that all children should follow their parents' legal status regarding citizenship (as stated in Article 976) and residence (as stated in Article 1006), some Iranian jurists argue or suggest that illegitimate children may not be subject to these laws (Safaei & Qasemzade, 2009 : 98). It is important to note that the use of absolute language by lawmakers cannot be limited in meaning. Doing so would compromise the enforceability of the provisions (Sobhani, 1999 : 28). Agree with the presented definition in Article 1 of the Convention on the Rights of the Child, the term 'child' includes every human being below the age of eighteen years, regardless of legitimacy, in the provisions mentioned above. Therefore, it is not accurate to assume that regulations concerning custody, alimony, guardianship, citizenship, and residency are exclusively applicable to legitimate children and legally recognized relationships.

Within the Framework of the Society

Following the Islamic Revolution in Iran in 1979, the country experienced a profound transformation in its social, political, legal, and cultural landscape, as outlined in Article 2 of the Constitution of Iran. In the following year, the newly established government enacted the Constitutional Law, which aimed to promote equality among the people (Katouzian, 2015 : 469). This was in accordance with Articles 3 (9 & 14), 19, 20, and 28 of the Constitution of Iran. As a foundational legal document, the Constitutional Law establishes the standards for other laws and regulations, with the objective of promoting equality. It was thus imperative that any legislation or regulatory framework that discriminates against children born outside of wedlock be reformed or, where necessary, prevented from being established. In essence, the relationship between children born out of wedlock and Iranian society can be broadly divided into two key areas of focus.

Testimony

Prior to 1982, the Iranian legal system did not include any provisions that prohibited natural children from serving as witnesses. After that year, the legitimacy of lineage was

established as a prerequisite for serving as a witness, as articulated in Article 1313 of the Civil Law and subsequently in the Islamic Penal Law of 2011 (Article 177). As a result, children born out of wedlock were precluded from acting as witnesses. In accordance with Islamic law, a deficiency in moral competence is the underlying cause. Nevertheless, there is no logical connection between the legitimacy of lineage and the presence of moral competence in children. Moreover, such differentiation presents a threat to social harmony and contravenes principles of morality and public order (Katouzian, 2005 : 8).

In the Indonesian legal system, the Civil Code (Articles 1895 to 1912) provides a comprehensive overview of the criteria for a qualified witness. It is noteworthy that this framework does not consider one's lineage when determining a witness's legal competency. In evaluating the competence of a witness, Indonesia's Civil Code considers criteria that extend beyond their familial origins. Similarly, Malaysia's legal framework for witness competence is codified within the Evidence Act 1950, which was revised in 1971 to reflect evolving sociolinguistic contexts. The Act delineates the prerequisites for a competent witness, diverging from the practice of basing witness competence on the legitimacy of one's lineage. The recognition of witness competency based on attributes beyond lineage indicates a legal landscape that prioritizes objectivity, reliability, and the truthfulness of testimony, which are inextricably linked to principles of justice and impartiality.

Judgment

Prior to 1982, the Iranian legal system did not impose any restrictions on the selection of judges based on their lineage. After that year, a new law was enacted, namely the Conditions for Selecting Judges Law. The aforementioned legislation stipulates that one of the essential prerequisites for the selection of judges is the legitimacy of their lineage (Jafarpour, 2006 : 28). Consequently, the Iranian legal system has accepted this issue in order to comply with the tenets of Islam (Mehrpoor, 2018 : 15). Recent research indicates that there is no substantial evidence to substantiate the personal beliefs of certain Islamic

jurists who adhere to the view that children born out of wedlock are regarded as socially disreputable and devoid of worth (Mohamadian, 2021 : 320).

In Indonesia, the criteria for appointing judges are outlined in the General Judiciary System Law, which was enacted in 1986 and amended in 2009. In contrast to the requirements set forth in Articles 14(1) and 15(1) of this law, there is no obligation to demonstrate lineage legitimacy as a prerequisite for judicial candidacy. This approach is designed to foster the development of a judiciary that is both diverse and proficient, with an emphasis on the attributes, qualifications, and expertise of prospective candidates. The objective is to guarantee that the judiciary is comprised of individuals whose competence is more important than their lineage. Additionally, Article 123 of the Malaysian Federal Constitution of 1957 outlines the eligibility criteria for potential judges. Malaysia's legal framework promotes judicial eligibility based on competency rather than lineage status, in line with the global trend towards an egalitarian approach.

Evaluation of Iran's Adherence to International Conventions

In light of Articles 3 (9 & 14), 19, 20, and 28 of the Constitution of Iran, it is evident that the legal system is duty-bound to uphold the principle of human equality. However, as previously stated, it falls short of legally recognizing natural children, thereby perpetuating discriminatory attitudes towards them in both familial and societal contexts. It is therefore imperative to examine Iran's stance on international conventions and legal documents related to children.

In 1948, the Universal Declaration of Human Rights (UDHR) was affirmed, thereby establishing a foundation for numerous international conventions and legal instruments. The declaration espouses the principle of equality among all humans in terms of rights and before the law, and it prohibits any form of discrimination or distinction. This is set forth in Articles 1, 2, 6, 7, 15, 22, and 25. Article 25(2) asserts that all children, irrespective of the legitimacy of their lineage, are entitled to equal social protection. This stipulation is primarily concerned with social rights, such as the right to select a profession and serve as a witness (Cooper & Thomas, 2010 : 5). Moreover, the principle of equality among humans, including natural children, extends to private rights such as

inheritance, alimony, and guardianship, as set forth in other articles of the Universal Declaration. It is incumbent upon all countries that played a role in adopting the Universal Declaration of Human Rights to uphold its provisions and align their domestic legal systems accordingly. Despite Iran being one of the first nations to vote in favour of the Declaration, the Iranian legal system has failed to incorporate these principles toward natural children

In May 1975, Iran signed and ratified the International Covenant on Civil and Political Rights (ICCPR). As a state party to the ICCPR, Iran is obliged to uphold the rights set forth in the treaty and its legislators are required to enact and amend legislation accordingly. The treaty prohibits any justification based on legislation, conventions, regulations, or customary practices that would impede its enforcement (Article 5(2)). Article 24(1) of the ICCPR stipulates that children must be afforded protection measures from their family, society, and state, without discrimination. Furthermore, the document specifies that the identity of children must be registered immediately after birth, given a name, and acquired nationality (24(2-3)). The treaty stipulates that discrimination is prohibited by law and guarantees equal and effective protection against discrimination on any grounds, including birth¹. Furthermore, Iran signed and ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966. In accordance with Article 2 of the ICESCR, all parties to the treaty are obliged to guarantee the rights set forth therein without discrimination. Article 10(3) of the ICESCR requires that special measures of protection and assistance be provided for all children, without discrimination on the basis of parentage or other conditions. Nevertheless, the treatment of natural children remains an issue for challenging, despite the existence of international

¹. Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination against Women: Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, Note by the Secretariat, para. 5, U.N. Doc. HRI/GEN/1/Rev.1 (29 July 1994).

treaty provisions. Such actions are in clear contravention of the provisions set forth in the ICCPR and ICESCR, which prohibit discrimination on the basis of birth or parentage. On November 20, 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC), a landmark document that aimed to address the limitations of previous conventions in protecting children's rights (Besson, 2005 : 444). The CRC came into force on September 2, 1990, marking a significant step forward in international efforts to safeguard children's rights. In 1994, Iran ratified the Convention through its Parliament, thereby committing to its provisions. One of the Convention's core objectives is to eliminate all forms of discrimination against children based on their birth or other status, ensuring that every child is entitled to fundamental rights such as a name, nationality, and parental care, as stipulated in Articles 7 and 8. Furthermore, Article 18 of the Convention underscores the shared responsibility of both parents in the upbringing and development of their children. According to Article 2 of the Convention, the CRC extends equal rights to all children, regardless of whether they were born within or outside of marriage (Syed, 2017 : 364). However, despite these robust provisions, all signatories, including Iran, must struggle to fully implement the Convention's requirements. Upon ratification, Iran entered a reservation, asserting that it would not be bound by the CRC if its provisions conflicted with domestic laws or Islamic principles. This reservation reflects a broader trend among several Islamic countries, such as Qatar, Saudi Arabia, Syria, Oman, Malaysia, Tunisia, Pakistan, and Afghanistan, all of which have made similar reservations (Hashemi, 2007: 83). Additionally, countries like Algeria, Morocco, and Iraq have explicitly objected to provisions related to the rights of children born outside of marriage, although they have not placed reservations on Article 2 of the Convention (Syed, 2017: 383). The reservations made by these countries potentially undermining the Convention's effectiveness in addressing discrimination and safeguarding the rights of all children, particularly those born outside traditional marital frameworks. The challenge moving forward is to reconcile these differences and find a balance that upholds the universal principles of the CRC while respecting the cultural and religious contexts in which they are applied.

International conventions and documents related to children's rights emphasize the fundamental principle of equality, urging all governments to recognize the rights of children regardless of their lineage. This principle, widely accepted by the international community, demands that governments avoid any form of discrimination against children, including those born out of wedlock. Thus, governments bear a significant responsibility to ensure equal rights for all children. The failure to recognize parental relationships and the associated rights of illegitimate children not only constitutes a violation of these children's fundamental rights but also directly contradicts international obligations to combat all forms of discrimination.

Initiation of a Significant Transformation

Parents of children born out of wedlock may have committed a sin, but it is unjust to punish the children for a transgression in which they had no agency. In Iranian society, the father's identity is a crucial component of an individual's personal identity, and nonmarital children were not entitled to use their father's surname, according to Iranian legal experts. This stance posed a multitude of problems for such children. It is imperative to know the identity of the child's father, as the father plays a significant role in the family. When a father's identity is unknown, it can negatively impact the child's life. Furthermore, the aforementioned deprivation cannot be justified on the grounds of international conventions¹ and domestic law². This behavior is inherently unjust because it punishes individuals for circumstances beyond their control, thus undermining the principles of fairness and equal treatment. Therefore, birth should not confer any special privileges, and discrimination based on birth is unacceptable.

Legal experts and scholars do not consider it appropriate to assign responsibility only to those who follow the law while exempting those who violate it. For example, a father who engages in an extramarital relationship, which is an unlawful act, cannot be exempt from

¹. Articles 7 and 8 of the CRC; Articles 1, 2, 6, 7, 15, 22, and 25. Article 25(2) of the UDHR; Article 10(3) of the ICESCR

². Articles 3 (9 & 14), 19, 20, and 28 of the Constitution of Iran; Article 16 of the Civil Registration Law 1976

responsibility for the resulting child. Fortunately, the status quo has undergone significant change. Indeed, the growing recognition of human rights principles caused a change in the views of many Iranian courts. Opposing viewpoints increased, leading to a theoretical gap in the use of a biological father's surname for their children among different courts. For instance, there was a difference of opinion between branches 22 and 30 of the Supreme Court. Branch 22 of the Supreme Court had ruled that birth certificates could only be issued for legitimate children according to Article 16 of the Civil Registration Law 1976. This regulation does not cover children born out of wedlock or from unlawful relationships. As a result, illegitimate children are not covered under the Civil Registration Law, and their natural fathers are not obligated to obtain an identity card for them. However, according to ruling no. 617.176.4.3, branch 30 of the Supreme Court had reached a different conclusion, stating that love children are considered the offspring of adulterous men and, with respect to custom, the latter are considered the fathers of such children. Therefore, these fathers have an obligation to fulfil their parental responsibilities, which includes obtaining an identity document for their child.

In accordance with civil procedural law, the Iranian Supreme Court examines diverse perspectives to form a consolidated judicial precedent that provides a novel interpretation of the contested matter. This interpretive ruling does not possess the authority of law, but it carries a level of validity that obliges other courts to comply with its decision. Finally, above disagreements led the Supreme Court to ruling in 1997. According to this ruling¹, "With respect to paragraph (a) of Article 1 of the Civil Registration Law 1976, it is the responsibility of the Civil Registry to record births and issue birth certificates without differentiation between legitimate and illegitimate children. In accordance with this law and custom, an adulterous father is considered the father of an illegitimate child and must undertake all associated responsibilities, including obtaining a birth certificate for the

¹. The Supreme Court's Unanimity Decision 617, issued in 1997, pertains to the establishment of parentage and the procurement of a birth certificate, available at <https://rc.majlis.ir/fa/law/show/101524> (last visited on 08/03/2023)

child unless concerning inheritance. It should be noted that illegitimate children do not have inheritance rights from their natural fathers or vice versa, as to Article 884 of Civil Law. This interpretation of the law is considered binding on all courts in Iran." This judicial decision in Iran is a significant step towards addressing discrimination and inequalities faced by natural children in the Iranian legal system. The Unanimity Decision 617 of the Supreme Court sets an important precedent for future cases related to discrimination against natural children and beyond.

This judicial decision includes three significant points. Firstly, the Supreme Court recognizes the obligation of the Civil Registry to safeguard individual rights related to personal identity and to extend its services to all citizens without discrimination. This means that no citizen, regardless of their lineage status, can be denied access to the services provided by the Civil Registry. The second aspect of the judicial decision pertains to the Supreme Court's use of the customary concept of fatherhood to assign paternal duties towards children. The Court views the father-child relationship as a non-legal concept and therefore seeks to identify such relationships through reference to custom. The Court asserts that a paternal or maternal relationship can be established solely by the occurrence of sexual intercourse resulting in the birth of a child (Jafari Langroudi, 2013: 67). The third aspect of the judicial decision involves the application of the Supreme Court's common-sense approach to extend the implications of the decision to address other forms of discrimination against children born out of wedlock. The court ruled that a biological father is responsible for fulfilling all paternal duties, except for inheritance. This means that nonmarital children have the right to use their father's surname and are entitled to the same treatment as legitimate children in terms of guardianship, custody, alimony, citizenship, and residence.

Although discrimination has been eliminated in many cases related to illegitimate children by this judicial decision in Iran, disparities in inheritance and societal stigma persist. For instance, these children still face limitations in their ability to serve as witnesses in court and be appointed as judges due to their lack of legitimate lineage status. These restrictions serve as reminders of the ongoing challenges that children born out of

wedlock in Iran face, despite the country's commitment to eliminating all forms of discrimination against children as a party to relevant conventions.

Conclusion

This study addresses to the ongoing discourse on human rights and discrimination against children born out of wedlock in the Iranian legal system, based on Islamic law, particularly within the *Imāmiyya* school. The research illuminates several discriminatory regulations that result in the deprivation of essential rights for natural children within the context of the family and society. The objective of these rulings is to discourage extramarital relationships by influencing individuals' emotions and instilling a sense of shame. Despite Iran's status as an early adopter of international human rights conventions, its legal system diverges from global human rights standards with regard to children born out of wedlock.

Prior to the unanimous decision of the Iranian Supreme Court in 1997, discriminatory practices against children born outside of wedlock were pervasive in various aspects of their lives. These children were denied inheritance, were unable to use their father's surname, and did not benefit from guardianship or custody. Furthermore, they encountered obstacles in obtaining alimony, citizenship, and residence permits, as well as testifying in court and becoming a judge. It is notable that while some of these biases were not explicitly stated in regulations, certain Iranian lawyers rationalize these discriminatory practices.

Discriminatory regulations had significant negative effects on the lives of natural children, causing emotional distress, poverty, and educational harm. However, increased awareness of human rights principles and doctrines in Iran had gradually created a gap between judicial opinions, with more judges recognizing the need for serious change. Finally, in 1997, the Iranian Supreme Court made a landmark decision (No. 617) granting natural children the same rights in the family space as other children, with the exception of inheritance rights. This decision marked a significant milestone for the Iranian legal system as it was the first time the Judiciary of Iran considered the principles and rules of human rights. It also set an inspiring precedent for future judicial decisions.

However, the 1997 decision did not mark the end of discriminatory practices against natural children in Iran. Some family and social prejudice continues to disadvantage natural children, leading to further mental and financial harm. The Iranian legal system must continue to work towards eliminating all discriminatory practices and emphasizing the importance of considering international human rights conventions and principles in the development of equality among individuals. In summary, future regulations must ensure that all children have equal rights and opportunities in their families and societies, regardless of their parents' relationship.

Disclosure statement

The authors report there are no competing interests to declare.



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