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ONE STEP FORWARD, TWO STEPS BACK: A BRIEF HISTORY OF LEGAL DISCRIMINATIONS AGAINST WOMEN IN IRAN AND THE VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS

DELARAM FARZANEH*

INTRODUCTION

In recent years Iran has primarily been under international scrutiny because of concerns over its development of a nuclear program. However, there have been other developments in Iran that also raise grave concerns among the international community. Since the 1990s, the Rights of Women have been one of the major categories of the United Nations Special Rapporteur on Iran.¹ The current direction of the Iranian government, with regard to improving women's fundamental rights, seems to be back to the "good old days" rather than towards modernizing and humanizing strict patriarchal law. To best understand these current backward steps, it is useful to briefly examine the historical legal

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1. REZA AFSHARI, *HUMAN RIGHTS IN IRAN: THE ABUSE OF CULTURAL RELATIVISM* xxii (University of Pennsylvania Press, Philadelphia, 2001).

background that constitutes the struggle of Iranian women over the past two or more millennia.

Women's rights in Iran have gone through undeniable evolution throughout the long history of various governmental regimes over the centuries. Since the beginning of the 20th century, Iran has gone through three major changes in government; each of which had direct impact on women's rights. The earliest part of the twentieth century established the birth of a women's movement, with women becoming visible in the public eye. They challenged the existing undermining, humiliating and controlling social norms and laws, which stemmed from Islamic patriarchal traditions. Prior to this time, women were considered mindless and incapable of social and political responsibilities.

The fall of the Ghajar dynasty (1796-1925) and establishment of the Pahlavi dynasty (1925-1979) embraced a period of the most progressive, yet controversial, policies concerning all aspects of women's lives. Then after 50 years of such progress, the progressive legal, social and political steps forward were thwarted when The Islamic Republic was established in 1979. This government forced women two steps back to their status of half a century earlier and imposed a radical Islamic patriarchal system on them. Once more women were discriminated against, yet this time it was the twenty-first century.

A legal analysis of the current status of women in Iran would not be possible without having a historical background about their past lengthy legal battles. A background in the history is also informative in understanding and comparing the most recent progressive transformation women underwent during the Pahlavi as well as the sudden backlash and crackdown on women's rights after the 1979 Islamic Revolution.

To place the critical events concerning the status of Iranian women today in perspective, this paper will first examine the fundamental legal discriminations against women during some key historical periods of change. This will include a review of critical ancient times through the Arab Conquest. Next, the article will examine more modern history beginning with the Ghajar dynasty. Finally, the article shall return to examine more closely the most progressive legal developments for women during the Pahlavi rule and distortion of women's legal rights under Islamic Revolution as well as its relations to violations of international human rights.

I. ANCIENT TIMES

About the pre-history times (periods without written documentation), there is little reliable information with regard to the situation of the people, especially women.² However, based on historical research, it has been speculated that during pre-history time people came from different groups and tribes in Iran, and lived in tribal kingdoms.³ The increasing power of leaders and struggles to control the increasing number of cities were always the reason for disputes, leading to wars and battles. It has been speculated that women had a variety of domestic responsibilities such as being in charge of firehouses, making clay dishes, and gathering fruits.⁴

Before the migration of Aryans⁵ to the Iranian plateau, native Iranians were living in that area and women had good living conditions.⁶ Native Iranians believed in women as the basis for life and birth, and for that reason they respected and worshiped several female gods.⁷ However, the native Iranians were not as sophisticated as Aryans, and Aryans considered them inferior.⁸

After the migration of Aryans, worshiping female gods was no longer accepted; rather the prevailing belief was that of male power.⁹ The head of the Aryan families were fathers who had total control over their families.¹⁰ Even though women were suppressed and underestimated by their husbands, they were considered the lady of their household.¹¹ In general, it appears that women's position in Aryan families were better than in some other groups.¹²

2. HASAN PIRNIA, *TARIKHE IRAN: GHABL AZ ESLAM* [HISTORY OF IRAN: BEFORE ISLAM] 28 (Negah Publications, 8th ed. 2012) (translated by author).

3. *Id.* at 30.

4. HIDAYAT ALLAH ALAVI, *ZAN DAR IRAN E BASTAN* [WOMEN IN ANCIENT IRAN] 11 (Intisharat-I Hirmand, 2001-02) (translated by author).

5. Early in the first millennium B.C., major invasions by Indo-European tribes took place. The reason of the migration of Aryans to the Iranian Plateau is not clear to historians. However, it is speculated that their migration was due to lack of land in their home countries. PIRNIA, *supra* note 2, at 30, 33.

6. HASSAN TOQRANEGAR, *HOGHOGHE SIYASI VA EJTEMAI ZANAN GHABLE VA BAD AZ PIROZIYE ENGHELAB E ESLAMI IRAN* [POLITICAL AND SOCIAL RIGHTS OF WOMEN, BEFORE AND AFTER THE ISLAMIC REVOLUTION OF IRAN] 53-54 (The Center for Islamic Revolution Documents Publication, 2010) (citing MOHAMMAD REZA EFTEKHARZADEH, *IRAN, AYIN, FARHANG* [IRAN, RELIGION, TRADITION] 359).

7. *Id.*

8. PIRNIA, *supra* note 2, at 2.

9. TOQRANEGAR, *supra* note 6.

10. PIRNIA, *supra* note 2, at 32.

11. *Id.*

12. *Id.*

There have been significant differences in the status and treatment of women during different periods in ancient Iran. Some rulers were harder on women, showing less respect; in contrast others were more respectful.¹³ An important problem that historians have been dealing with is the lack of factual and written information from ancient times.¹⁴ However, scholars who have done extensive research regarding women in those periods have clearly noted that most of the information concerned women who belonged to royalty.¹⁵ They have not been able to uncover factual information regarding non-royal women, especially impoverished women.¹⁶

For instance, during the Median Empire,¹⁷ Medes families were based on the absolute control of the father of the family, including multiple wives.¹⁸ There are few documents that enable historians to learn about women during the Parthian Empire¹⁹ which does not permit a detailed discussion of the possible political influence and economic independence of women.²⁰ However, Parthian kings were also polygamous.²¹

During the Achaemenid dynasty,²² sometimes known as the largest Persian Empire that existed at that time, the wives of Kings were cruel powerful women filled with desires for revenge.²³ "The actions of royal women seemed to be determined by their desire for power, and the punishments they stimulate are marked by harshness and cruelty."²⁴ Royal and noble women had an active role in the political life of the

13. TOQRANEGAR, *supra* note 6.

14. *Id.*

15. *Id.*

16. *Id.*

17. Medes were Aryans who established the Median dynasty (728-550 BCE). Historians do not know much about the culture of the Medes nor their dynasty. However, historians predict that Medes had an advanced culture. PIRNIA, *supra* note 2, at 70.

18. *Id.* at 62.

19. The Parthian empire (247 BC – 224 AD) was a major Iranian political and cultural power in Ancient Persia.

20. Encyclopaedia Iranica, *WOMEN i. In Pre-Islamic Persia*, <http://www.iranicaonline.org/articles/women-i> (last updated Mar. 15, 2010).

21. *Id.*

22. The Achaemenid dynasty (550–330 BCE), founded in the 6th century BCE by Cyrus the Great. PIRNIA, *supra* note 2, at 123. The most invaluable source for the discussion of women in the Achaemenid period is the Persepolis Fortification Tablets (PFT). They shed light on the titles for royal women, as well as on their economic position. The PFT also offer unique insight into the position of female laborers who were recipients of food rations at Persepolis. While other Near Eastern sources can complement some of the information provided in the PFT, it is predominantly the Greek historical sources and, occasionally, biblical references, which allow a discussion of the position of women at the Achaemenid court. Encyclopaedia Iranica, *supra* note 20.

23. MARIA BROSIUS, *WOMEN IN ANCIENT PERSIA 559-331 BC* 105 (Oxford University Press, 1998) (Cardascia published selected texts from the Murasu archive in 1951).

24. *Id.*

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Persian court.²⁵ The key motivation for their involvement was the welfare of their family, such as saving a life or maintaining the continuity of their family.²⁶

During this time, based on historians' limited information, judicial matters and verdicts were solely controlled and judged by the King. Yet, royal women were able to express their opinion on the King's verdict to alter the method of punishment, had the power to prevent executions, or even played mediator roles. That said, women did not have a direct role in political or military matters, or in deciding the succession to the throne.²⁷

The economic situation of royal women during the Achaemenid dynasty clearly shows that royal women enjoyed substantial economic independence and freedom; they could travel on their own, as well as accompanying the king.²⁸ Not only could royal women own lands and estates, but they could also employ and administer their own workforce.²⁹ Further, these royal women also had their own seal to authorize transactions and pay their workers.³⁰ Nevertheless, during the Achaemenid dynasty, female relatives of the king were often used to affirm the political marriage alliances or bring peace. According to Greek sources, incestuous marriages were a common practice.³¹

The last powerful dynasty before the invasion of Arabs to Iran was the Sassanid Empire.³² According to evidence from this time, Sasanian kings were polygamous due to a King's need to produce numerous male offspring so that he could choose the best heir to the throne amongst them.³³ In the latter years of this period, there were some legal reforms such as reducing punishments and supporting women's rights, especially in family and inheritance laws.³⁴ For instance, royal Sassanid women

25. *Id.* at 119-120.

26. *Id.*

27. *Id.* at 122.

28. *Id.* at 180. *See also* Encyclopaedia Iranica, *supra* note 20.

29. BROSIUS, *supra* note 23, at 180. For instance, a royal woman of the court of Darius I, had up to 480 laborers.

30. Encyclopaedia Iranica, *supra* note 20.

31. *Id.*

32. The Sassanid empire was another powerful dynasty established in by Ardashir. In the seventh century, Iran proved unable to resist the Muslim invasion, which in 651 put an end to the Sassanid. It was during this time that Zoroastrian became the official religion of the country. Prior to this Iran did not have an official religion and Iranians had freedom of religion. PIRNIA, *supra* note 2, at 289-293, 248.

33. Encyclopaedia Iranica, *supra* note 20.

34. ALAVI, *supra* note 4, at 9-12.

possessed their own seals authorizing them to conduct transactions and official affairs.³⁵

There is some evidence that during the Sassanid, women from higher classes of society even were familiar with laws and were discussing legal issues among themselves.³⁶ It is apparent that some women even studied law.³⁷ By the end of the Sassanid period, women in Persia, at least those of the upper classes, had more rights than in most parts of the world at that time.

II. ISLAMIC CONQUEST

After the Arabs' successful invasion and conquest of Iran in the mid-seventh century, the expansion of Islam beyond the borders of Arabia brought vast social and political changes into all aspects of the people's lives including women.³⁸ Consequently, Islam became the new religion of the ruling class.³⁹

Although little is known about women during this period, it is apparent that after the invasion of Arabs in Iran, the status of women in general declined, and there were more negative attitudes toward women.⁴⁰ Gradually, *Shi'a* Islam was adopted as the official religion of state; yet, for a while it peacefully co-existed with other religions.⁴¹ Enormous harems of wives became the accepted practice for noble families.⁴² Women had little power over their sexual, psychological and emotional lives.⁴³ The system of gender segregation created limited employment opportunities for working women, leaving them only to serve harem women in positions such as maids, hair combers, bakers, and reciters of the *Quran*.⁴⁴ A "woman" meant a purchasable sexual object for a man's sexual desire.⁴⁵ Women's value and social position declined to that of "an

35. Encyclopaedia Iranica, *supra* note 20.

36. ALAVI, *supra* note 4, at 32-34.

37. *Id.*

38. LEILA AHMED, WOMEN AND GENDER IN ISLAM: HISTORICAL ROOTS OF A MODERN DEBATE 79-82 (Yale University Press, 1993).

39. *Id.*

40. *Id.* at 17. See also TOQRANEGAR, *supra* note, at 58-59.

41. HAMIDEH SEDGHI, WOMEN AND POLITICS IN IRAN: VEILING, UNVEILING, AND REVEILING, 34 (Cambridge University Press, 2007).

42. AHMED, *supra* note 38, at 83.

43. *Id.* at 84.

44. *Id.*

45. *Id.* at 84-85.

object,” causing them to lose all their relations to the outside world and intellectually putting them lower than men.⁴⁶

It has been said that women during the Sassanid⁴⁷ were moving forward; improving their rights and independence, and that the consequent victory of the Arabs and the fall of the Sassanid caused women to move backwards over the next centuries, losing the benefit of all their achieved rights and accomplishments.⁴⁸

The *Quran* became the legislative document; over the years local laws were modified by *Quranic* rules.⁴⁹ Absence of authentic Islamic rules on one hand, and promotion and popularity of male control traditions on the other, marginalized women even more. Women could not testify as witnesses; new restrictions were placed on their participation in the legal transactions of their husbands.⁵⁰ Veiling and the confinement of women became a usual social practice.⁵¹

However, women from royalty still had more rights and opportunities in comparison with non-royal women. Despite the existence of possibilities for this group of women to achieve higher positions, governing positions and direct involvement in politics was not attainable. Even so, they had a strong indirect effect on making decisions by having a strong influence on their men. Therefore, matrimonial relationships played a more important role in politics after the arrival of Islam in Iran.⁵²

After the arrival of Turks in Iran, women had more opportunities to appear in the public arena.⁵³ During this time, women were respected by participating in charities such as donating time to mosques and schools, and thus they filled some political roles.⁵⁴ We must consider that even among higher classes of women, there were only a limited number who could become princesses or become a favored one who played a role in political matters.⁵⁵ Other women such as *Kaniz* (slave girls), or *Sigheh* (temporary wives) lived in a King's *Haramsara* (harem). Even though

46. TOQRANEGAR, *supra* note 6, at 65.

47. See *supra* note 32 and accompanying text.

48. TOQRANEGAR, *supra* note 6, at 58-59 (citing Christian Bartholomae, WOMEN IN SASANIAN LAW 39).

49. AHMED, *supra* note 38, at 88-89.

50. *Id.* at 17.

51. *Id.* at 18.

52. TOQRANEGAR, *supra* note 6, at 60. See also ANN LAMBTON, CONTINUITY AND CHANGE IN MEDIEVAL PERSIA 281 (Yaghub Ajand trans., State University of New York Press 1986).

53. TOQRANEGAR, *supra* note 6, at 61.

54. *Id.* at 61-62.

55. *Id.* at 62.

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they were counted as part of the king's royal household, they were more desperate than women from the common class.⁵⁶

With regard to women from the common classes, men had no positive perspective concerning women's participation in public life.⁵⁷ The common expectation for a regular woman was for her to be a good mother and enjoy her role as a housekeeper.⁵⁸ While there were modest modifications in the legal rights of women during the next thousand years, nothing of significance occurred to reverse the pattern initiated after the Arab conquest.

A. GHAJAR DYNASTY (1796-1925)

Ghajar imperial political sovereignty embedded two milestone political uprisings at the turn of the 20th century; first, the *Tahrim Tanbaco* (Banning Tobacco) revolt in 1891 and; second the Constitutional Revolution (1906-11) which ultimately established a parliamentary government for the first time in Iranian political history. It is critical to examine women's status and roles during this time for one important reason: for the first time in history women became visible and played a prominent role. Women not only participated in political uprisings, but also publicly demanded legal, social, and political reforms. Females, who were once seen as mere objects, started to fight back against women's illiteracy, the inability to vote, and male-dominant rules. For the first time they formed women organizations. Women's unprecedented presence in these two historical events was the beginning of a challenge to hundreds of years of patriarchal Islamic rules and customs that had categorized them the same as criminals and the mindless.

Prior to the Constitutional revolution, men were in complete control of every aspect of social and political affairs; women's responsibilities were limited to their traditional family duties.⁵⁹ Even women's official dress (including the veil) identified them as a weaker sex unfit for anything but domestic roles and obedience to men's will.⁶⁰

Women were strictly prevented from entering the public domain and their mobility was strictly controlled.⁶¹ Women could leave their houses

56. *Id.*

57. *Id.* at 63 (citing BERTOLD ESHPOLER, IRANIAN HISTORY IN EARLY ISLAMIC ERA 187).

58. TOQRANEGAR, *supra* note 6, at 63 (citing BERTOLD ESHPOLER, IRANIAN HISTORY IN EARLY ISLAMIC ERA 60).

59. MEHRANGIZ KAR, MUSHAREKAT E SIYASIYE ZANAN [WOMEN'S PARTICIPATION IN POLITICS] 15 (Roshangaran va Motaleat e Zanan Publications, 2001) (translated by author).

60. SEDGHI, *supra* note 41, at 26.

61. *Id.*

only during the daytime and during certain hours, and wearing *Chador*, a loose full body length outer garment.⁶² Women were barred from going to public places such as restaurants and cafes.⁶³ It was common for men coming from royal families to have countless wives; polygamy was a common practice.⁶⁴ Women were kept unaware of the social and political transformation that was taking place all over the world.⁶⁵ According to a few outspoken thinkers⁶⁶ of the time, women were considered as objects who were prohibited from education, training and participation in the social life. They were regarded as mindless, following Islamic custom.⁶⁷

The first important political event that women officially participated was the *Tahrim e Tanbaco* (banning tobacco) in 1891.⁶⁸ Common people, even women who belonged to royal families and had never refused or even questioned the King's orders, broke their pipes and refused to buy tobacco.⁶⁹

The second unprecedented movement was the Constitutional Revolution of 1906.⁷⁰ The Constitutional Revolution began with a protest against monarchical tyranny and a request for justice by religious leaders. The Revolution did not end until a new constitution was granted.⁷¹ It put an end to the imperial governorship in Iran giving the King unlimited legal and political power, almost like God.⁷² Despite the severe restrictions women faced, they still directly or indirectly managed to participate in the movement.⁷³

62. Navid Ghazanfari, *Mostanad Sakhteh Shode Tavasote Shabakeye Manoto1* [Documentary Movie Made by Manoto 1], available at https://www.youtube.com/watch?v=iUZ18A-kGHU&list=FLHIAZQ_N2c1DM6_sOqoKZ3Q.

63. *Id.*

64. SEDGHI, *supra* note 41, at 27.

65. TOQRANEGAR, *supra* note 6, at 66. See also MORTEZA RAVANDI, *TARIKH E EJTEMAI IRAN (IRANIAN SOCIAL HISTORY VOL. 3)* 725 (Roozbehan).

66. Bibi Khanom Astarabadi (1852-1920), Saiyed Jamalzadeh, and Mirza Agha Khan Kermani were all outspoken thinkers during the Ghajar Dynasty. SEDGHI, *supra* note 41, at 25.

67. SEDGHI, *supra* note 41, at 25 (quoting Bibi Khanom Astarabadi).

68. AHMAD KASRAVI, *TARIKH E MASHROTEH IRAN [THE IRANIAN CONSTITUTIONAL REVOLUTION]* 15-17 (Amir Kabir Publications, 2000) (translated by author). While the details of the *Tahrim e Tanbaco* is beyond the scope of this paper, it was a *Shi'a* cleric-led revolt in Iran against a tobacco concession granted by the Shah to Great Britain. The protest climaxed in a wildly-obeyed *fatwa* (an authorized legal opinion or religion ruling that becomes binding) against tobacco use issued by Grand Ayatollah Mirza Hassan Shirazi, which ultimately ended in voiding the privilege.

69. TOQRANEGAR, *supra* note 6, at 66-67.

70. *Id.* at 67.

71. CAMRON MICHAEL AMIN, *THE MAKING OF THE MODERN IRANIAN WOMEN* 37 (University Press of Florida, 1st ed. 2002).

72. TOQRANEGAR, *supra* note 6, at 67.

73. KAR, *supra* note 59, at 16. At this time it was not even common for a woman to leave house even if she wanted to go to *Maktab* (old-fashioned primary school). Even under different

After establishment of the parliamentary system, the primary challenge that women had to deal with during the first Parliament was fighting against the male controlled school of thought which considered women intellectually “mutilated, weak, foolish, and lazy.”⁷⁴ Reformist women supported the constitutional revolution by publishing articles in the newspapers that supported the revolution and tried to confront all political and social discrimination and mistreatment by men.⁷⁵

Women’s restricted private and social status fostered a lack of awareness about the world, and was another hurdle to their growth.⁷⁶ Women’s advocates believed that the connection between the private and social arena was when there were equal rights between women and men in the family.⁷⁷

In order to fight back against the patriarchal system, women decided to establish schools for girls.⁷⁸ There were no educational institutions for Iranian Muslim women in the early 1900’s.⁷⁹ The first girls’ school was established in 1907.⁸⁰ It was also in 1907 that the first women’s right organization was created.⁸¹ By the fall of the Ghajar,⁸² other women’s organizations were established which helped in improving women’s rights and status.⁸³ Women also played a key role by investing their wages and/or jewelry after the creation of a National Bank which was created in order to reduce Iran’s dependence on foreign loans.⁸⁴

Despite strong involvement of women in establishing the parliamentary government, they were barred from voting and being elected. Three election laws were ratified after the Constitutional revolution, yet none granted women the right to vote or be elected in the parliament.⁸⁵

circumstances women leaving home having *hijab* (cover) still were subject for rumors. KAR, *supra* note 59, at 17.

74. MOHAMMAD HOSEIN KHOSRO PANAH, HADAFHA VA MOBAREZE ZAN E IRANI AZ ENGHELAB E MASHROTEH TA SALTANAT E PAHLAVI [IRANIAN WOMAN’S GOALS AND BATTLE (FROM THE CONSTITUTIONAL REVOLUTION TILL PAHLAVI DYNASTY)] 42 (Payam Emrooz Pub., 2002-2003) (translated by author).

75. *Id.* at 44.

76. *Id.* at 75.

77. *Id.*

78. SEDGHI, *supra* note 41, at 53.

79. *Id.*

80. *Id.*

81. KHOSRO PANAH, *supra* note 74, at 22.

82. The end of the Qajar Dynasty came in 1925.

83. KHOSRO PANAH, *supra* note 74, at 147-148.

84. SEDGHI, *supra* note 41, at 44.

85. THE ELECTION LAW OF THE NATIONAL ASSEMBLY COUNCIL OF SEPTEMBER 9, 1906 (Iran), available at http://www.ssup.it/UploadDocs/4518_5_Election_Law_1906_Human_Rights_and_Democracy_Library_07.pdf. Iran Electoral Law of July 1, 1909 and Iran Electoral Law of November 21, 1911. See also THE ELECTION LAW OF THE NATIONAL ASSEMBLY COUNCIL, *infra* note 123, at C

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According to the election laws women were still counted as criminals and retarded individuals.⁸⁶

Opponents of women's rights continued to believe that God did not give women the ability to vote and regarded them as weak and retarded individuals.⁸⁷ These men believed a woman's brain lacks the capacity to deal with serious matters.⁸⁸ Furthermore, according to Islam, the official religion, women are under the guardianship of men.⁸⁹ Therefore, others must protect them and women can never have the right to vote.⁹⁰ Objection by a majority of the members of parliament to women's voting rights was a clear sign of hostility against women's political participation.⁹¹ Islamic religious leader's response to women's protest was that in Islam women do not have lawmaking rights. The position that women should be banned from lawmaking derives directly from Islamic Law.⁹²

The aftermath of WWI created a new perspective for Iranian women. By following the effect of the war on European women, Iranian women became aware of the transformation that was happening around the world. They became aware that European women participated during the war by working in factories, administrations, and other jobs alongside men. European transformation caused Iranian women to analyze their status, and question leaders of the country regarding their potential roles and the animosity that existed against them.⁹³

Groups of Iranian women requested to be deployed to the war zones to take care of injured men, cook, sew, and perform other "worldly" jobs. They asked to remove the religious ban on deploying women to the war zone.⁹⁴ None of their requests were accepted.⁹⁵

Nevertheless the stirring of women's freedom had begun. They were beginning to be educated and participate in public affairs, even if they were denied the legal right to vote and be elected. Despite women's

(translated by author). Under this law, certain persons do not have the right to vote: foreigners, people under the age of 20, infidels, women, bankrupts, beggars, murderers, thieves, those being pursued by the law, and political convicts.

86. KHOSRO PANAHA, *supra* note 74, at 126.

87. *Id.* at 128.

88. KHOSRO PANAHA, *supra* note 74, at 128.

89. *Id.*

90. *Id.*

91. KHOSRO PANAHA, *supra* note 74, at 129.

92. KAR, *supra* note 59, at 21.

93. KHOSRO PANAHA, *supra* note 74, at 181-184.

94. *Id.*

95. *Id.*

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progress in being able to criticize the country's governorship and analyze existing problems, women still lacked political, social and economic knowledge, and expertise.⁹⁶

B. PAHLAVI DYNASTY (1925-1979)

Pahlavi is the most significant period in the modern Iranian history. Nationalism and modernization of Iran was born during the reign of Reza Shah Pahlavi,⁹⁷ the founder of Pahlavi who was crowned in 1925 when Iran was stuck in the Middle Ages.⁹⁸ Reza Shah's rapid policies transformed Iran dramatically in three major areas: infrastructure, independence from foreign occupation and control, and launching socio-cultural reforms.⁹⁹ With regard to women, Reza Shah's unprecedented and innovative, yet controversial policies, were the start of the rapid removal of social taboos and restrictions that had enslaved women for centuries. Half a century of the Pahlavi era reforms ultimately emancipated entrapped women from hundreds of years of backward patriarchal and Islamic customs. However, achieving these goals was not possible without simultaneously weakening the Islamic clerics who had been in charge of every aspect of women's lives.

The 1960s marked the beginning of fundamental social and political changes in much of the world. At the core of these changes was the advancement of women's rights. The 1960s was the peak of constructive women's rights reforms in Iran under the rule of Mohammad Reza Pahlavi¹⁰⁰ through his reformist plan called the "White Revolution."¹⁰¹ In Europe, massive groups of women started to join various fields of work and took on professional leadership roles. Legal and family reforms gave women greater social participation opportunities. This era was the beginning of women asking for political, social, and economic equality with men in the world.¹⁰²

96. *Id.*

97. Reza Shah Pahlavi, father of modern Iran was the founder of the Pahlavi dynasty (1925-1941). *History of Iran: Reza Shah Pahlavi*, IRAN CHAMBER SOCIETY, http://www.iranchamber.com/history/reza_shah/reza_shah.php (last visited May 1, 2014).

98. *Reza Shah the Great*, OFFICIAL SITE OF THE EMPRESS FARAH PAHLAVI-IRAN, www.farahpahlavi.org/rezashah.html (last visited May 1, 2014).

99. *Id.*

100. Mohammad Reza Pahlavi was the son of Reza Shah Pahlavi, who was the last king of Iran. He was overthrown by the Islamic Revolution (1941-1979). *Reza Shah Pahlavi*, *supra* note 97).

101. REZA EYRUMLU, ZAN DAR GHERDABE SHARIAT [THE WOMEN AND THE ISLAMIC FUNDAMENTALISTS IN IRAN] 14 (Invand Publications, 2002) (translated by author).

102. *Id.* at 13-14.

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Although women in the United States were granted the right to vote by Constitutional Amendment in 1920,¹⁰³ prior to 1960 women held very few elected offices at the state or federal level. Women's legal status in the United States improved significantly after the 1960s through laws such as The Equal Pay Act of 1963,¹⁰⁴ Title VII of the 1964 Civil Rights Act,¹⁰⁵ and prohibition of gender discrimination pursuant to the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.¹⁰⁶

In 1925, at the beginning of Reza Shah's rule, women still were treated as criminals and bankrupts by the election law; they were banned from voting or being elected to the parliament. The first drastic reform concerning women Reza Shah introduced was called the Women's Awakening of 1936-41, a state feminism project.¹⁰⁷ The Women's Awakening created new opportunities in employment and education fields for some Iranian women. Nonetheless, it required that all Iranian women unveil in public.¹⁰⁸ This was Reza Shah's first innovative, yet bold, policy called *Kashf e Hijab* (unveiling).¹⁰⁹

Unveiling was a gradual process since wearing traditional women's clothes was not abolished overnight.¹¹⁰ In 1936, Reza Shah officially introduced unveiling at a ceremony held in *Danesh Saraye Moghadamati Daneshgahe Tehran* (Tehran Training College). Unveiling then became an official state policy, thereafter known as Women's Emancipation Day.¹¹¹ All women teachers and wives of government officials were ordered to appear in European clothes and hats; veiled women were strictly banned from appearing in public arenas.¹¹² Nevertheless, women's unveiling policies were not accepted by the clergy; it created much resentment among clergy, with Ayatollah Khomeini being the most important voice against the policy.¹¹³

In 1931, the state ratified the Marriage Law and procedures to regulate marriages and divorces, which were originally controlled by Islamic

103. U.S. CONST. amend XIX.

104. The Equal Pay Act, 29 U.S.C. § 206(d) (1963).

105. The Civil Rights Act, 42 U.S.C. § 2000e et seq. (1964).

106. *Reed v. Reed*, 404 U.S. 71 (1971) (stating there could be no discrimination based on gender unless there was a rational basis (minimum level of scrutiny) for the discrimination); *Craig v. Boren*, 429 U.S. 190 (1976) (raising the level of scrutiny to intermediate).

107. AMIN, *supra* note 71, at 1.

108. *Id.*

109. KAR, *supra* note 59, at 25.

110. SEDGHI, *supra* note 41, at 85-86.

111. *Id.* at 86.

112. *Id.* at 86-87.

113. AMIN, *supra* note 71, at 112-113.

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clerics; it was again revised in 1937.¹¹⁴ According to this law, marriages must be recorded with the government, and the law outlined specific conditions for divorce.¹¹⁵ However, groups of women's rights advocates criticized the Marriage Law for being a mere codification of the gender inequities of traditions of Islamic laws. For instance, husbands still controlled their wives' right to work and travel.¹¹⁶ Notably, this attempt at progressive reform of the Marriage Law did not target polygamy, temporary marriage, male guardianship and stronger male' rights in the event of divorce.¹¹⁷

Reza Shah's rapid moves toward modernization included establishing a secular educational system, which originally had been dominated by religious clerical authorities.¹¹⁸ The most important obstacle for women was overcoming the high percentage of illiteracy among them.¹¹⁹ Reza Shah invested more resources into reform and expansion of secondary and postsecondary education for women. Finally, in 1935, he officially endorsed women to receive higher education.¹²⁰ Later, the parliament also approved funding for women to pursue higher education abroad.¹²¹

Despite Reza Shah's enforcement of unveiling, reform of the Marriage Law, and progressive developments in women's education and employment, women were still discriminated against in their fundamental rights.¹²² Women were still barred from voting or being elected in the parliament as they were considered on the same level as criminals. According to Article 10 of the Election Law of the National Assembly Council 1304 (Khorshidi)

The following are barred from voting: 1. Women; 2. Those who are not legally able and are under guardianship; 3. Foreigners; 4. Infidels; 5. Under the age of twenty; 6. The bankrupts; 7. Those who earn their living by dishonorable means; 8. Murderers, thieves and other wrong-doers who have violated Islamic laws;

114. *Id.* at 13.

119. AMIN, *supra* note 71, at 127.

116. *Id.* at 127.

117. *Id.* at 13.

118. SEDGHI, *supra* note 41, at 70.

119. TOQRANEGAR, *supra* note 6, at 120 (citing MAHMUD TALEGHANI, SOCIAL STUDYING IN TEHRAN Vol. 1, 16-17 (1369)).

120. AMIN, *supra* note 71, at 154-159.

121. *Id.* at 215.

122. *Id.* at 189.

9. Political criminals who raised being elected to the parliament against the foundation and independence of the regime.¹²³

Article 13(2) of this law, under The Qualifications of Candidates, explicitly banned women from being elected in the parliament.¹²⁴ Article 6 of the Qualifications of Candidates for the *Majlis e Sena* Election (Senate of Iran)¹²⁵ also explicitly gave voting rights only to men; the same discrimination against women was applied under the requirements for being elected in the Senate of Iran.¹²⁶

It was not until 1963 that Mohammad Reza Shah, son of Reza Shah, launched his series of reforms under the “White Revolution,” which was directly aimed at women, demanding equal political rights for them.¹²⁷ Principle 5 of the “White Revolution” finally reformed the electoral laws which had banned women from voting and being elected.¹²⁸

Major changes were also introduced in family law with the passage of the Family Protection Law (FPL) of 1967, which was later significantly amended in 1975. According to this law, extra-judicial divorce was abolished.¹²⁹ The law required judicial permission for polygamy, which was granted only in limited circumstances.¹³⁰ Further, both women and men could ask for divorce under specific circumstances.¹³¹ After the meaningful reform of the electoral law and the FPL, the clergy lost much

123. GHANONE ENTEKHABATE MAJLIS SHORAYE MELLI [THE ELECTION LAW OF THE NATIONAL ASSEMBLY COUNCIL] Tehran 12/Mehr/1304 (Korshidi) [Oct. 1925], art. 10 (Iran) (translated by author).

124. *Id.* at art. 13(2).

125. *Dar Sharayet Entekhab Konandegan [The Qualifications of The Candidates]*, GHANONE EJAZE EJAYE NEZAMNAMEH ENTEKHABAT E MAJLIS SENA [THE ELECTION LAW OF THE SENATE OF IRAN] Tehran 1328 [1949], art. 6 (Iran) (translated by author).

126. *Id.* at art. 9.

127. Bayanat Alihazrat Homayon Shahanshah Mohammad Reza Shah Pahlavi Hengame Ghoshayesh Doreh Chaharom Majlis Sena va Doreh 21 Majlis Shoraye Melli [The Remarks of Majesty Imperial King Mohammad Reza Shah During the 4th Session of Senate of Iran and the 21st Session of the National Assembly Council], *Mashrohe Mozakerate Majlis Shoraye Melli [The Detailed Discussion of the National Assembly Council]*, KETABKHANE MOZEH VA MARKAZE ASNADE MJLIS SHORAYE ESLAMI [MUSEUM AND DOCUMENT CENTER OF IRAN PARLIAMENT], available at http://www.ical.ir/index.php?option=com_mashrooh&view=session&id=23732&Itemid=38 (translated by author).

128. MOHAMMAD REZA SHAH PAHLAVI, ANSWER TO HISTORY 101-102 (Stein and Day Pub., 1st ed. 1980).

129. GHANONE HEMAYATE KHANEVADEH [FAMILY PROTECTION LAW] Tehran 1346 [1967], art. 8 (Iran), available at http://mashrutch.org/wiki/index.php?title=%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%AD%D9%85%D8%A7%DB%8C%D8%AA_%D8%AE%D8%A7%D9%86%D9%88%D8%A7%D8%AF%D9%87_%DB%B1%DB%B3%DB%B4%DB%B6 (translated by author).

130. *Id.* at art. 14.

131. *Id.* at arts. 10-11.

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of its previous power. They considered these changes absolute violations of Islamic laws and fought back strongly, insisting that the Shah reverse the changes.¹³²

During the Reza Shah era, women did not hold political positions. However, after the “White Revolution” women were successfully integrated into public roles such as ministers, members of cabinet, ambassadors, and university professors.¹³³ In 1968, Queen Farah¹³⁴ became the official Empress Regent – the highest political position that was ever given to a woman in the Middle East.¹³⁵ In 1969, seven women were selected as judges for the first time.¹³⁶

Despite women being accorded the right to vote, the passage of the FPL, as well as women holding important political offices and presiding as judges, women generally were not accepted as intellectually equal to men. Even the Shah suggested in a 1977 interview, “you can always have some exceptions, and find fantastic women.”¹³⁷

C. AFTER THE ISLAMIC REVOLUTION OF 1979

The Islamic Revolution of 1979 put an end to over half a century of the Pahlavi, and introduced its government as “The Islamic Republic of Iran” (IRI) with the Leadership of Ayatollah Ruohollah Khomeini under the principle of *Velayat e Faqih* (Guardianship of the Islamic Jurisprudence).¹³⁸ *Velayat e Faqih* requires the governance and

132. Eyrumlu, *supra* note 101, at 14-15. See also Humayun Maziyar, *Fall of Shah* [documentary].

133. Shah, *supra* note 127, at 118.

134. Mohammad Reza Shah's last wife. See OFFICIAL SITE OF THE EMPRESS FARAH PAHLAVI-IRAN, *supra* note 98.

135. TOQRANEGAR, *supra* note 6, at 97. See also MARVIN ZONIS, MAJESTIC FAILURE (THE FALL OF THE SHAH) 280 (Esmail Zan & Batol Saidi trans., Noor Publication 1991).

136. Noushin Ahmadi Khorasani, *Iranian Women's Equality Calendar With Chronology of One Million Signatures Campaign Demanding Changes to Discriminatory Laws* (Sahar Mofakham, Mahsa Shekarloo & Leila Tavakoli trans., 2008), available at http://www.feministschool.com/english/IMG/pdf/Iranian_Women_s_equality_calendar-2.pdf.

137. Television interview by Barbara Walters with Shah of Iran (1977), available at https://www.youtube.com/watch?v=UDE4ZUcFR-I&list=FLHIAZQ_N2c1DM6_sOqoKZ3Q.

Barbara Walters: “You think that women are equal to men?”

Shah: “In human rights, sure.”

Barbara Walters: “You have given women in your country human rights, what about in intelligence?”

Shah: “There are cases, you can always have some exceptions, and find fantastic women.”

138. QANUNI ASSASSI JUMHURI ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], Art. 1.

administration of government to conform to Islamic laws, as interpreted by selected group of religious scholars.¹³⁹

An important characteristic of the Islamic Revolution was the prominent role of women in its victory.¹⁴⁰ Millions of women took part in daily demonstrations, in which most of them wore the black *chador*, as an extreme reaction to Shah's regime.¹⁴¹ During the Pahlavi, many young women, from different family backgrounds, had been pressured to imitate western values and styles at work and in the universities while their families continued to insist on the religious values. These women felt lost. Their support for the Islamists was a political act against suppression, reflecting their anger.¹⁴²

The Islamic supporters believed that women's participation in politics should be used in favor of Islam; that women should actively play a role to bring Islam to power.¹⁴³ Ayatollah Ruohollah Khomeini was aware of the potential massive power of women.¹⁴⁴ Therefore, in the beginning, not only did he request women's political participation, but also emphasized the vital obligation that women had even without the approval of their fathers or husbands which was the longstanding tradition.¹⁴⁵ In return, Ayatollah Ruohollah Khomeini promised equality for women in the future of his new Islamic government. Consequently, one of the important characteristics of the revolution was women's unprecedented presence to achieve the victory.¹⁴⁶ However, religious standards were re-imposed, as veiled women were seen as powerful revolutionaries and secular women were degraded as westernized and

139. *Id.* at Art. 4.

140. TOQRANEGAR, *supra* note 6, at 158.

141. REZA AFSHARI, HUMAN RIGHTS IN IRAN: THE ABUSE OF CULTURAL RELATIVISM 261 (University of Pennsylvania Press, Philadelphia, 2001). In his book, Reza Afshari mentions that according to Homa Naeq, who was active among intellectuals during the revolution, expressed: "Women's role in this revolution was extremely reactionary as it has been in all democratic movements of this century. *See also* HAIDEH MOGHISSI, POPULISM AND FEMINISM IN IRAN: WOMEN'S STRUGGLE IN A MALE-DEFINED REVOLUTIONARY MOVEMENT 150 (St. Martin Press, 1996).

142. TARA POVERY & ELAHEH ROSTAMI-POVERY, WOMEN, POWER AND POLITICS IN 21ST CENTURY IRAN 24 (Ashgate Pub. Co., 2012).

143. HAMMED SHAHIDIAN, WOMEN IN IRAN: GENDER POLITICS IN THE ISLAMIC REPUBLIC 109 (Greenwood Press, 2002).

144. TOQRANEGAR, *supra* note 6, at 159.

145. *Id.* *See also* MORTEZA MOTAHHARI, AROUND THE ISLAMIC REVOLUTION 44 (Qom, Islamic Publications Society of Qom Seminary Teachers, 1982).

146. TOQRANEGAR, *supra* note 6, at 158. *See also* Akbar Ghafori, *Payan Name Karshenasai Arshad Daneshgah Emam Sadeqh [Political Participation-Scientific and Theoretic Aspects]* 68 (1990-1991) (Masters degree thesis at Emam Sadeqh University).

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monarchial. This was the beginning of a new chapter in women's history in Iran.¹⁴⁷

Islamic scholars like Shariati used Islamic figures like Fatimah¹⁴⁸ and Zeynab¹⁴⁹ to promote an ideal role model of Muslim womanhood who accomplished all their traditional duties, but were also aware of their social responsibilities.¹⁵⁰ They believed women's participation in politics should be used in favor of Islam by having women play an active role in bringing Islam to power.¹⁵¹

Despite the initial equality promises by Ayatollah Ruhollah Khomeini, women were among the first to sacrifice after the revolution as they experienced their legal status and social positions dramatically decline in the name of religion. Reinstatement of compulsory *hijab* (the proper Islamic dress), a ban on women singers, and a ban on women as judges were among the early attacks on women's rights.¹⁵²

1. Compulsory *Hijab* and Violations of International Human Rights

After the victory of the Islamic Revolution, Iran became the first and only Islamic country that made wearing the *hijab* compulsory and punishable by laws.¹⁵³ Twenty-four days after the victory of the Islamic Revolution right before the approval of a new constitution and one day before International Women's Day, Ayatollah Rouhollah Khomeini referred to unveiled women as "naked" and demanded that they observe Islamic *hijab* at offices and places of work.¹⁵⁴ It was during his speech at the *Refah* School that he stated, "[a]t Islamic ministries women should not appear naked. Women can be present so long as they are with *hijab*. They face no barrier to work as long as they observe Islamic *hijab*."¹⁵⁵

147. SEDGHI, *supra* note 41, at 200.

148. Fatimah was a daughter of the Prophet Mohammad.

149. Zeynab was a daughter of Imam Ali (Prophet Mohammad's successor from *Shi'a* perspective.).

150. SHAHIDIAN, *supra* note 143, at 109.

151. *Id.*

152. Valentine M. Moghadam, *Women in the Islamic Republic of Iran: Legal Status, Social Positions, and Collective Action* 1 (from the Conference "Iran After 25 Years of Revolution, 2004), available at <http://www.wilsoncenter.org/sites/default/files/ValentineMoghadamFinal.pdf>.

153. Justice for Iran, *Siyo Panj Sal Dar Hejab; Naghze Gostardeh Hoghogh e Zanan Dar Iran [Thirty Five Years with Hijab; Expanded Violations of women's Rights in Iran]* 4 (Mar. 7, 2014), available at <http://justice4iran.org/english/wp-content/uploads/2014/03/Hejab-Report-JFI-English.pdf>.

154. *Id.* at 9.

155. Justice for Iran, *supra* note 153, at 9 (citing KAYHAN NEWSPAPER Nr. 10655, 1 (Mar. 7, 1979)).

The Islamization of state and society established both sex segregation and mandatory *hijab*.¹⁵⁶ In 1979, despite women's protest for three days¹⁵⁷ while there were no compulsory *hijab* laws in force, first informal pressure and decisions by the government forced some working women, including TV announcers, to comply with Islamic *hijab*; this later applied to the entire female population.¹⁵⁸ In the 1980-81 academic school year, personnel were required to wear compulsory *hijab*.¹⁵⁹ By 1982, having *hijab* was the mandatory dress code for women in all government offices. Further, stores put up signs rejecting services to "*bihijab*" women (improper *hijab*).¹⁶⁰ In 1983, for the first time, the Parliament passed *Ta'zirat*, a law stipulating punishment of up to seventy-four lashes for violation of the *hijab*.¹⁶¹ In 1996, the *Ta'zirat* (punishment) was abolished, and the issue of *hijab* was addressed by Article 638 of the Islamic Penal Code.¹⁶² According to the Note in this Article, the punishment changed to imprisonment or a fine.¹⁶³

Later, in 2005,¹⁶⁴ the Cultural Council, which is part of the Ministry of Islamic Guidance, approved the "implementation procedure for promotion of a culture of chastity."¹⁶⁵ This law ordered disciplinary forces with the task of "[d]eclaring the limits and legal definition of modesty and standards of improper *hijab* in society with the aim of recognizing its manifestations" as well as "taking legal steps to confront individuals with improper *hijab*."¹⁶⁶ The disciplinary forces also have the responsibility of "warning individuals with improper *hijab* and confronting them in public," such as while driving a vehicle or visiting parks, cinemas, sport facilities, mountains, beaches, islands, airports, and free trade zones.¹⁶⁷ Since 2007, disciplinary forces established "guidance patrols" to monitor the streets and public places functioning as one of the

156. POVERY & POVERY, *supra* note 142, at 27.

157. Justice for Iran, *supra* note 153, at 9 (citing KAYHAN NEWSPAPER Nr. 10655, 1 (Mar. 7, 1979)).

158. Justice for Iran, *supra* note 153, at 9-10.

159. SHAHIDIAN, *supra* note 143, at 197.

160. *Id.*

161. Justice for Iran, *supra* note 153, at 12.

162. Justice for Iran, *supra* note 153, at 11-12 (citing TA'ZIRAT, art. 102 as the section which was abolished).

163. Per Article 638 of the Islamic Penal Code, "[w]omen, who appear in public places and roads without wearing an Islamic *hijab*, shall be sentenced to ten days to two months' imprisonment or a fine of fifty thousand to five hundred thousand Rials." ISLAMIC PENAL CODE OF THE ISLAMIC REPUBLIC OF IRAN Tehran 1375 [May 22, 1996] (Iran), available at http://mehr.org/Islamic_Penal_Code_of_Iran.pdf.

164. On Feb. 4, 2005.

165. Justice for Iran, *supra* note 153, at 12.

166. *Id.*

167. *Id.*

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organs dealing with the enforcement of this law to determine the criteria of the "improper *hijab*."¹⁶⁸

In traditional Islamic view, *hijab* is a divinely ordered requirement that associates with man's unalterable weakness in resisting sexual temptations when facing any women (other than grandmothers, mother, aunts, and sisters).¹⁶⁹ *Hijab* is a manifestation of chastity, dignity, and modesty.¹⁷⁰ It is presented as something that always existed in Islam and always guaranteed women's presence in the public by liberating women to enter the social domain, granting women human identity, and allowing her to engage in social activities free from sexual attractions.¹⁷¹

It is important to mention that there is no proper, clear, or written definition of *hijab* in Iranian law or any clear rules on what is considered a violation of *hijab*.¹⁷² According to *Shi'a* Islam, *hijab* is covering hair and the whole body with the exception of below the wrists.¹⁷³ There are no certain rules and measures to implement these restrictions against women. Instead, its implementation has been left to the sole discretion of the disciplinary and other official forces.¹⁷⁴ These criteria of the concept of "improper *hijab*" differ on a regular basis and in many cases depend on the personal preferences of the patrol officer.¹⁷⁵ These forces find every opportunity to abuse women who may in any way may be thought to be violating the *hijab*; even extending to an objection to the color of a woman's clothes or how loose or tight her clothes seem.¹⁷⁶ However, these restrictions are unstable and change during different times and administrations.¹⁷⁷ The scope of *hijab* is not limited only to Iranian Muslim women and girls; it is now mandatory to all women and girls present in Iran, regardless of their religious beliefs or national origin.¹⁷⁸ *Hijab* is mandatory for all girls over the age of seven.¹⁷⁹ On the contrary,

168. This document was published in Siyasat Newspaper on May 19, 2010. *Id.* at 13.

169. AFSHARI, *supra* note 141, at 262.

170. *Id.*

171. *Id.*

172. Justice for Iran, *supra* note 153, at 4.

173. *Id.*

174. *Id.*

175. *Id.* at 13.

176. Mohammad Hossein Nayyeri, *Compulsory Hijab*, GENDER INEQUALITY AND DISCRIMINATION: THE CASE OF IRANIAN WOMEN, IRAN'S HUMAN RIGHTS DOCUMENTATION CENTER § 1.6 (Mar. 8, 2013), available at <http://iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#8>. See also Justice for Iran, *supra* note 153, at 4.

177. Justice for Iran, *supra* note 153, at 4.

178. *Id.*

179. The age of puberty for girls is nine years old according to *Shi'a* Islam, however since girls start going to school at the age of seven they must follow all restrictions and rules of *hijab*. Justice for Iran, *supra* note 153, at 4.

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there is no dress code punishment for men under the Islamic Penal Code.¹⁸⁰

According to the findings of the report, *Thirty-Five Years of Compulsory Hijab*,¹⁸¹ the majority of women who have been detained for violating *hijab* have been subject to insult, molestation, harassment, and beating. Furthermore, this study, after reviewing the behavior of the judicial system, documents unfair trials and unjust verdicts dealing with women who violated *hijab*. According to this report, such official mistreatment by both police and the courts is part of the denial of psychological protection of women in the Iranian society which leads to increases in mental illness and suicide.¹⁸²

Within the last 35 years, enforcement of compulsory *hijab* on women is one of the most intrusive discriminations against women's fundamental human rights in Iran. Compulsory *hijab* not only discriminates against women, but also explicitly violates women's right to freedom of expression, thoughts, speech, and conscience.¹⁸³ Compulsory *hijab* is nothing but paralyzing the free will of women on how to express their persona by having the right to choose their appearance outside their homes.

This imposition reaffirms gender inequality and suppression. Women are once again deprived of their rights to choose how to dress in public and forced to follow the Islamic dress codes through governmental enforcement.¹⁸⁴

Furthermore, compulsory *hijab* refers not only to strict dress codes for women, but to enforced segregation of the sexes. This has resulted, for example, in gender segregation in the educational system.¹⁸⁵ Gender segregation was first enforced in all primary and secondary schools

180. Nayyeri, *supra* note 176. See also Maryam Sinaee, *Iran May Separate Sexes At Universities*, THE NATIONAL (Jul. 1, 2011), <http://www.thenational.ae/news/world/middle-east/iran-may-separate-sexes-at-universities>.

181. Justice for Iran, *supra* note 153. *Thirty Five Years with Hijab* is the first and the most recent comprehensive study with regards to compulsory *hijab* in Iran, within a human rights framework. Sources used in this report include statistics and official reports published by the Islamic Republic of Iran. It also draws on reports in independent media, blogs and social networking fora, publications and interviews with 18 women who have been persecuted because of *hijab*. Accessing official Islamic Republic publications from outside Iran proved to be a challenge. Every effort was made to conduct extensive and comprehensive research, however, some issues such as compulsory *hijab* in prisons is not included in this research.

182. Justice for Iran, *supra* note 153, at 6-7.

183. AFSHARI, *supra* note 141, at 264.

184. Justice for Iran, *supra* note 153, at 4.

185. Nayyeri, *supra* note 176.

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following the revolution and continues to this day. In universities, sex segregation is not a common practice; however, there are long standing unspoken Islamic traditions for female and male students, such as sitting in separate rows of chairs.¹⁸⁶

The passage of the Family Protection Law¹⁸⁷ was criticized by Islamic scholars because it put a limitation on men's rights and was thus considered against Islamic rules.¹⁸⁸ Less than a month after the revolution, the FPL was repealed¹⁸⁹ because it was in conflict with Islamic laws,¹⁹⁰ by *Imam Khomeini's fatwa*-authoritative religious order.¹⁹¹ Less than three months after the revolution, women were barred from becoming judges and those already serving as judges were demoted to administrative positions.¹⁹²

Compulsory *hijab*, not only discriminates against women, but also explicitly violates women's right to freedom of expression, thoughts, and conscience.¹⁹³ The enforcement of the compulsory *hijab* by the government of Iran violates different international treaties such as Articles 3 and 26 of ICCPR. According to Article 3 of ICCPR, a State has the duty "to ensure the equal right of men and women to the enjoyment of all civil and political rights."¹⁹⁴ In addition, Article 26 of the ICCPR states "the law shall prohibit any discrimination and guarantee[s] to all persons equal and effective protection against discrimination on any ground such as race, colour, sex."¹⁹⁵ This is a guarantee against discrimination against women. Article 19 of the ICCPR also emphasizes "the right to hold opinions,"¹⁹⁶ and "the right to freedom of expression."¹⁹⁷

186. Nayyeri, *supra* note 176. See also Sinaiee, *supra* note 180.

187. See *supra* notes 97-102 and accompanying text.

188. HOSSEIN MEHRPOUR, MABAHESI AZ HOGHOGE ZAN [CERTAIN ISSUES ON WOMEN'S RIGHTS] 151 (Ettela'at Publications, 1379) (translated by author). See also TOQRANEGAR, *supra* note 6, at 245.

189. SEDGHI, *supra* note 41, at 201.

190. TOQRANEGAR, *supra* note 6, at 245.

191. Nayyeri, *supra* note 176, at § 2. See also Letter No. 1143/1 of the Supreme Judicial Council (Apr. 14, 1981) (Iran).

192. SEDGHI, *supra* note 41, at 201.

193. AFSHARI, *supra* note 141, at 264.

194. International Covenant on Civil and Political Rights art. 3, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 [hereinafter ICCPR].

195. *Id.* at art. 26.

196. *Id.* at art. 19 (1). "1. Everyone shall have the right to hold opinions without interference."

197. *Id.* at art. 19(2). "2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Compulsory *hijab* paralyses women's free will according to men's wishes about how women should appear in the public arena. Compulsory *hijab* violates a woman's "right to hold opinion" and her "right of conscience" since the way a woman dresses in public is one way to express her personal thoughts and opinions, her personality, and results in the inevitable violation of a woman's freedom of expression. Imposing compulsory restrictive measures only on women how to dress in public not only is a violation of Article 3 (equality) and Article 26 (non-discrimination) of ICCPR, but also it is a clear violation of a woman's right to freedom of expression guaranteed by Article 19.¹⁹⁸ The "right to freedom of opinion and expression" is also guaranteed by Article 19 of the Universal Declaration of Human Rights.¹⁹⁹

2. Constitutional Discrimination Against Women and Violations of International Human Rights

After approval of the new Constitution, out of 177 Articles, the only article that specifically mentions women's rights is Article 21. Article 20 emphasizes the enjoyment of "equal rights by both women and men" in conformity with Islamic criteria.²⁰⁰ Article 21 is reaffirmation of the limitation on women's rights. The most important part of Article 21 is the specific constitutional obligations of the Islamic Republic to Iranian women: "[t]he government must ensure the rights of women in all respects, in conformity with Islamic criteria."²⁰¹ The core aspect of Article 21 is the explicit language of the provision, which strictly limits women's rights according to the principles of Islam. According to the Constitution, women's private, social and domestic rights and responsibilities must originate from, and be consistent with, Islamic Laws.²⁰² Since the first part of Article 21 states that the government must ensure the rights of women in "all respects" and "in conformity with Islamic criteria," it means that every dialogue about women's rights must be understood in its religious context.²⁰³ A good example is that women,

198. Compulsory *hijab* against women also violates Articles 2(2) (non-discrimination), Article 3 (equal rights of men and women) and Article 15(a) of ICESCR, *infra* note 217.

199. UDHR, *infra* note 250.

200. CONSTITUTION, *supra* note 138, at Art. 20.

201. The second part of Article 21 of the Constitution is about goals of the government regarding women. Goals such as creating a favorable environment for the growth of woman's personality and the restoration of her rights; protection of mothers; establishing competent courts to protect and preserve the family; the provision of special insurance for widows, and aged women and women without support. CONSTITUTION, *supra* note 138, at Art. 21.

202. AMIR SAED VAKIL & POURIYA ASKARI, GHANON E ASASI DAR NAZM E HOGHOGHI KONONI [THE CONSTITUTIONAL LAW UNDER THE CURRENT SYSTEM] 108 (Mojd Publications) (translated by author).

203. SHAHIDIAN, *supra* note 143, at 118. "The Islamic principles" as mentioned in the Constitution with regards to women's rights can be very vague. Because women's rights are defined

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as “citizens,” can vote and be elected in some offices; yet based on Islamic views are banned from judgeships and rendering the final decision of the court.²⁰⁴

In 2013, a United Nations Special Rapporteur report stated that the U.N. found discrimination against women and “gender-based disparities” problematic in Iran.²⁰⁵ In response, Iran not only denied all of the U.N. findings, but also emphasized, “Iran has carried out promotional measures on the rights of women and is committed to the economic, social, and educational advancement of women.”²⁰⁶

Earlier, in response to another U.N. report, Iran pointed out that the Constitution reads, “men and women equally enjoy the protection of the law, and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.”²⁰⁷ However, the government representatives have clarified that while “it is believed that men and women are equal in human dignity and human rights, this is not to be confused with equating men and women’s role in family, society, and in the development process.”²⁰⁸

Based on the Iranian constitutional mandate that limits women’s rights according to the principles of Islam, the United Nations General Assembly (UNGA) Special Rapporteur in his 2013 report²⁰⁹ joined the statement transmitted by the UNGA Special Rapporteur’s,²¹⁰ 2012 report

by the Traditionalists, but not defined by the Reformist. Mehrangiz e Kar, 3(e) Article 21, *Didgahe Ghanone Asasi Jomhori Isami Be Zanan [The Constitution of the Islamic Republic of Iran’s Perspective about Women]*, TAVANNA, <https://tavaana.org/fa/node/2361>.

204. GHANONE SHARAYETE ENTEKHABE GHOZZATTE DADGOSTARI (LAW ON THE QUALIFICATIONS FOR APPOINTMENT OF JUDGES), MARKAZE PAJOHESH HAYE MAJLIS SHORAYE ESLAMI [THE ISLAMIC CONSULTATIVE ASSEMBLY RESEARCH CENTER] (1983), available at <http://rc.majlis.ir/fa/law/show/90547>.

205. Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, ¶ 39, A/HRC/22/56 (Feb. 2013) [hereinafter 2013 HRC Report].

206. March 2013 Detailed Reply by the Islamic Republic to the Special Rapporteur’s Report, available at <http://shaheedoniran.org/english/dr-shaheeds-work/latest-reports/a-brief-reply-by-the-iranian-government-to-the-sr-s-february-2013-report/>. See also Committee on Economic, Social and Cultural Rights, *List of issues in relation to the second periodic report of the Islamic Republic of Iran*, E/C.12/IRN/Q/2/Add.1 (May 21-25, 2012), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/428/08/PDF/G1342808.pdf?OpenElement>.

207. CONSTITUTION, *supra* note 138, at Art. 20; Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant*, ¶ 27, CCPR/C/IRN/3 (May 31, 2010). See also 2013 HRC Report, *supra* note 205, at ¶ 41.

208. 2013 HRC Report, *supra* note 205, at ¶ 41 (citing General Discussion of the Commission on the Status of Women, 56th Session; Intervention by H.E. Mr. Eshagh Al-Habib, Ambassador and Deputy Representative of the Islamic Republic of Iran to the United Nations, on behalf of H.E. Maryam Mojatahedzadeh, Advisor to the President and Head for the Center for Women and Family Affairs (Feb. 2012)).

209. 2013 HRC Report, *supra* note 205.

210. U.N. General Assembly, *Cultural rights*, A/67/287 (Aug. 10, 2012).

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in the field of “Cultural Rights” which asserts that “the tendency to view culture as largely an impediment to women’s human rights is both oversimplistic and problematic.”²¹¹ “Many practices and norms that discriminate against women are justified by reference to culture, religion and tradition.”²¹² “No social group has suffered greater violation of its human rights in the name of culture than women.”²¹³ The Special Rapporteur concluded that emphasis on gender roles places limitations on the Iranian Government’s obligation to protect women’s full enjoyment of their civil, political, social, cultural and economic rights.²¹⁴ Also based on the aforementioned report, he asserts that “this view arbitrarily qualifies the degree to which women may enjoy these rights as that which the Government perceives to be in conformity with Islamic criteria.”²¹⁵ He maintained that “this particular argument undermines the notion of universal rights, and compromises the rights protected by the International Covenant on Civil and Political Rights (ICCPR)²¹⁶ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)²¹⁷ for virtually half of the Iranian population.” Iran has signed and ratified both.²¹⁸

Also, in the preamble of the Constitution, the section “Women in the Constitution” strictly mentions women in the family and the precious role of motherhood; introducing “family” as one of the fundamental principles of the Islamic government.²¹⁹ Because the fundamental principle of the Islamic government for women is “motherhood,” as mentioned in the Constitution, women’s rights as citizens are defined in the context of their “worthwhile and responsible task of motherhood.”²²⁰ The primacy of women’s domestic role has affected their role in social, economic, and political affairs.²²¹ The Constitution considers “motherhood” the focal point and an undeniable right for women.²²²

To recognize the extent of women’s rights offered by the Constitution, it is vital to identify Islam’s approach regarding women, and whether it considers women equal to men. Islam certainly does not recognize

211. *Id.* at ¶ 3. See also 2013 HRC Report, *supra* note 205, at 43.

212. *Cultural rights*, *supra* note 210, at ¶ 3.

213. *Cultural rights*, *supra* note 210.

214. 2013 HRC Report, *supra* note 205.

215. 2013 HRC Report, *supra* note 205, at ¶ 43.

216. ICCPR, *supra* note 194.

217. Covenant of Economic, Social, and Cultural Rights, Dec. 6, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

218. 2013 HRC Report, *supra* note 205.

219. CONSTITUTION, *supra* note 138, at Preamble.

220. SHAHIDIAN, *supra* note 143, at 118.

221. *Id.*

222. *Id.* at 265.

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identical rights, responsibilities and punishments for women and men based on their natural similarities and differences.²²³ Islam is not against equality between women and men; however, it is against similar rights.²²⁴ According to Islam, existence of differences in their legal rights and responsibilities does not mean superiority of one gender to another. However it creates specific legal rights for women and men with regards to their specific role in the family.²²⁵ The existence of different rights for women and men within the legal system is evident in the application of Islamic principles.

The Constitution talks about both women and men equally enjoying all human rights in conformity with Islamic criteria.²²⁶ Nonetheless, the language of the constitution, which is the highest legal authority, explicitly limits the enjoyment of rights for women to only when these rights are in accordance to Islamic laws. The definition of women's equal rights is restricted only to what Islam's view is about equal rights.

Another controversial constitutional article discriminating against women is Article 115, which sets qualifications for the presidential candidates. One political and social right for women is the enjoyment of having the same right as men to vote and to be elected in the presidential election. As one of their social-political rights, qualified female presidential candidates must be treated equal to their male counterparts in participating in the presidential election. According to the Constitution, the President is the highest official in the country after the Supreme Leader who is the highest official.²²⁷ Following Article 113 of the Constitution, the president has the responsibility to execute the constitution and is in charge of the executive branch, except for the direct duties of the Supreme Leader in the executive branch.²²⁸ According to Article 110(9) of the Constitution, the Guardian Council must confirm the suitability of candidates for the presidency before elections take place. As a result, Article 115 of the Constitution sets the qualifications for the presidential candidates. The president must be elected among religious and political *rejal* (respected religious and political figures/men), possessing all the required qualifications mentioned in this

223. SHAHID MOTAHARI, NEZAME HOGHOGE ZAN DAR ESLAM [WOMEN'S RIGHTS IN ISLAM] 121-122 (Sadra Publication, Qum, 1357). See also SAYED MOHAMMAD HASHEMI, HOGHOGE ASASI JOMHORI ESLAMI IRAN [ISLAMIC REPUBLIC OF IRANIAN CONSTITUTION] Vol. 1, 543 (Dadgostar Publication, 1999) (translated by author).

224. MOTAHARI, *supra* note 223, at 112.

225. VAKIL & ASKARIE, *supra* note 202, at 111-112.

226. CONSTITUTION, *supra* note 138, at Art. 20.

227. CONSTITUTION, *supra* note 138, at Art. 113.

228. ALI VAFADAR, HOGHOGE ASASI VATAHAVOLAT E SIYASI [CONSTITUTIONAL LAW AND POLITICAL EVOLUTIONS] 559 (Shervin Publication, 1995) (translated by author).

article such as being a citizen of the Islamic Republic and believing in the official religion of the country as well as being a faithful believer in the foundations of the Islamic Republic.²²⁹

However, there is significant controversy about Article 115 and the ambiguous use of the Arabic (not Farsi) word “*rejal*” (men) in the beginning of this Article. In Arabic, “*rejal*” is used opposite the word “*nesa*” meaning “women.”²³⁰ In *Dehkhoda* (an official Persian dictionary), “*rejal*” is also defined as “men.”²³¹ In the absence of an explicit prohibition of women from becoming presidents and the ambiguity of the language that has been used by the lawmaker, the issue is whether men are the only gender to be qualified as presidents. If the word “*rejal*” is construed as its true meaning which is “men,” and it is what the lawmakers intended, then women are prohibited from holding the presidential post. Even in the case of an otherwise qualified woman, Article 115 discriminates based on a person’s gender as to who can become President. On the other hand, the term “*rejal*” had also been used through the years in a common public usage to mean influential, respected political, and religious figures, regardless of their gender.²³² If this is what lawmakers aimed for, then women are not discriminated against by Article 115, and can be presidential candidates.

Based on the detailed discussion of the lawmakers after the revolution, an express gender qualification (male) was rejected by the majority of the members of the Guardian Council at the time of reviewing this Article. Some of the members were against using the word “man” in the beginning of this article and did not vote to add the explicit gender qualification.²³³

229. CONSTITUTION, *supra* note 138, at Art. 115.

230. HASHEMI, *supra* note 223, at Vol. 2, 270.

231. ALI AKBAR DEHKHODA, LUGHAT NAME DEHKHODA (FARHANG-I MUTEVASSET) [PERISAN DICTIONARY] (Dr. Ja’far Shahidi ed.); available at <http://www.loghatnaameh.org/dehkhodasearchresult-fa.html?searchtype=0&word=2LHYrNin2YQ%3d>.

232. HASHEMI, *supra* note 223, at Vol. 2, 270. See also KAR, *supra* note 59, at 91.

233. Faraj Allah Hedayat Niya Ghanji, *Riyasat Jomhori e Zanan [Women’s Presidency]*, SAYTE ETELA RESANI SHORAYE NEGAHBAN [THE GUARDIAN COUNCIL INFORMATION WEBSITE] (2004), <http://www.shora-gc.ir/Portal/Home/ShowPage.aspx?Object=News&CategoryID=8fac823a-5745-41b6-a9e2-b879c74deb7b&WebPartID=9e3f5a95-7363-42d7-8e58-e450d9975ad4&ID=28259be1-dd05-40a7-8234-33487258e6c1> (translated by author). See also MASHROHE MOZAKERATE MAJLIS BARASI NAHAI GHANONE ASASI JOMHORI ESLAMI IRAN [THE DETAILED AND FINAL DISCUSSION OF THE CONSIDERATION COMMITTEE OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] Vol. 4, 197 (1985-86).

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After the passage of the final suggested draft of this article,²³⁴ because of the existence of disagreement among members of the Guardian Council whether to include the word “man” as a qualification for the president, instead of using the word “man,” the phrase “*rejal e mazhabi va siyasi*” (respected religious and political figures/men) was used and later was approved. It is important to note that there are no official written records of the Guardian Council’s meetings regarding this matter.²³⁵

In the end, the majority opinions of the Guardian Council members were adopted by using “respected religious and political men” in the beginning of this article, to emphasize the qualification of men as presidents; meanwhile they used language that did not explicitly reject qualified women.²³⁶

Right before the presidential election of 2013, in an interview with *Mehr* News, the spokesperson of the Guardian Council, Dr. Kadkhodai in his response to the question “There are ambiguities surrounding the definition of ‘*rejal e siyasi*,’ what are the decisive factors in choosing ‘*rejal*’?” he reaffirmed the possibility of vagueness in the language used in Article 115 and that lawmakers have created the Guardian Council to clarify any ambiguity. However, he also stated that “political *rejal* is someone who is well opinioned in the political sphere, with political participation and reputation who has the ability to appear in the highest political position; the same thing is applicable to the religious *rejal* . . . Having just a higher education is not a factor.”²³⁷ According to the Constitution,²³⁸ the Guardian Council is the only body that has the power to construe the constitutional provisions; therefore, earlier the spokesperson of the Guardian Council, Dr. Kadkhodai’ stated that “in the

234. “The President must be selected among respected religious and political figures who meet the mentioned requirement: Iranian by origin; citizen of the Islamic Republic; administrative capacity and prudent; having good record in virtue, honesty, and trusteeship; faithful and believer in foundation of the Islamic Republic of Iran and the official religion of the country.” Hedayat Niya Ghanji, *supra* note 233 (citing *Edareh Kole Omore Farhangi va Ravabete Omomi Majlis Shoraye Eslami* [THE MAIN CENTER OF CULTURAL AND PUBLIC RELATIONS AFFAIRS OF THE ISLAMIC CONSULTATIVE ASSEMBLY], MASHROHE MOZAKERATE MAJLIS BARASI NAHAI GHANONE ASASI JOMHORI ESLAMI IRAN [THE DETAILED AND FINAL DISCUSSION OF THE CONSIDERATION COMMITTEE OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN], Vol. 4, 197 (1985-86)).

235. Hedayat Niya Ghanji, *supra* note 233.

236. *Id.*

237. Interview with Dr. Kadkhodai, Akhbare Sokhangoye Shoraye Negahban [News of the Spokesperson of The Guardian Council], *Bazbini Dar Asle 115 Baraye Salamat e Entekhabat* [Review of Article 115 For A Healthy Election], *Khavar Gozari Mehr* [Mehr News] (translated by author), available at <http://www.shora-gc.ir>, <http://www.shora-gc.ir/Portal/Home/ShowPage.aspx?Object=News&CategoryID=1649831b-f60a-44a8-ac21-51d63e34cdb9&WebPartID=bffcf800-40b2-46a5-931c-4a56db364e44&ID=b9895649-6051-40fb-b09e-7c18b60d44cc>.

238. CONSTITUTION, *supra* note 138, at Art. 98.

past there have been women candidates who registered to participate in the presidential election, and there is no specific prohibition.”²³⁹

To the practical aspect of implementation of Article 115, no woman candidate has been approved since the beginning of the Islamic Republic in Iran.²⁴⁰ Since the mid-1990s, women have registered as presidential candidates but the Guardian Council rejected them all, finding all of them disqualified.²⁴¹ Despite women’s participation as candidates in the presidential elections of 2001, 2005, 2009, and the last one in 2013, no woman has ever been found to be qualified by the Guardian Council. In 2009, the spokesperson of the Guardian Council announced that the Council opinion was not based on the gender of the candidates. However all women have been disqualified as lacking the required competence for the job.²⁴²

In 2013, a report of the Special Rapporteur transmitted to the United Nations General Assembly found that “all 30 women who registered their candidature were disqualified for the 2013 presidential election.”²⁴³ In its counter report to the Rapporteur’s report, Iran suggested that “all female candidates were disqualified because of their lack of “executive and political experience” and that gender was not a consideration.”²⁴⁴

Iran signed and ratified many international treaties that specifically deal with women’s human rights. Iran signed and ratified ICCPR and ICESCR which are binding treaties, indicating its intention to promote and protect women’s enjoyment of all civil, political, social, and economic rights set out in the Covenants.²⁴⁵

239. *Sharayet Rais Jomhor; Manzor Az Rejal Chist?* [The Qualifications for the Presidency; What Does Rejal Mean?], SAYTE ETELA RESANI SHORAYE NEGAHBAN [THE INFORMATION CENTER OF THE GUARDIAN COUNCIL] (2013-2014), http://www.shora-gc.ir/Portal/Home/ShowPage.aspx?Object=News&CategoryID=8fac823a-5745-41b6-a9e2-b879c74deb7b&WebPartID=9e3f5a95-7363-42d7-8e58-e450d9975ad4&ID=95dc7d48-73e1-4aa3-9d10-b7bbd4b4c4b8__ (translated by author) (citing *Paygah Khabari Tahlili Faravar* [Analysis Basis for Faravar News] (2009-2010); *Shoraye Negahban: Rais Jomhor Shodan e Zanan Mani Nadarad* [The Guardian Council: Women Becoming Presidents Has No Meaning], PAYGAHE KHABARI FARARO [FARARO NEWS] (2009-2010)).

240. HASHEMI, *supra* note 223, at Vol. 2, 270.

241. POVERY & POVERY, *supra* note 142, at 122. In 1997, there were eight women among 238 candidates running for the presidential election. ROKSANA BAHRAMITASH & ERIC J. HOOGLUND ED., *GENDER IN CONTEMPORARY IRAN: PUSHING THE BOUNDARIES* 31 (Routledge, 2011).

242. POVERY & POVERY, *supra* note 142, at 123.

243. Human Rights Council, *Situation of human rights in the Islamic Republic of Iran*, ¶ 34, A/68/503, (Oct. 4, 2013).

244. *Id.* at ¶ 35.

245. Human Rights Council, *Situation of human rights in the Islamic Republic of Iran*, ¶¶ 15, 53, A/66/374, (Sept. 23, 2011).

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In 2011, the United Nations Human Rights Committee asked Iran to explain “why no woman may serve as president of the country.”²⁴⁶ In its response, Iran asserted “the Guardian Council has not made any interpretation of Article 115 of the Constitution.”²⁴⁷ Nonetheless, in 2004 the spokesman of the Guardian Council, Gholam Hossein Elham declared that the “Council has not changed its interpretation of the term ‘rejal’ in Article 115 and this term is not applicable to women.”²⁴⁸ The delegation played a game with the language as a technique to mislead the Committee and to hide the reality that Iran is discriminating against female presidential candidates in violation of the ICCPR provisions.²⁴⁹

Per Article 2(1) of ICCPR, each state party must “undertake to respect and to ensure to all individuals within its territory . . . the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex.” Followed by Article 3, which ensures “equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.” Article 25(b) explicitly emphasizes the “right and the opportunity, without any of the distinctions mentioned in article 2 to vote and to be elected at genuine periodic elections.” Therefore, discriminating against women presidential candidates is a clear violation of the ICCPR provisions guaranteeing equal rights of women and men and having the opportunity without being discriminated against to be elected to office.

According to the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly, which Iran signed and ratified, there are multiple articles that guarantee the undeniable equal and non-

246. Human Rights Committee, *List of issues to be taken up in connection with the consideration of the third periodic report of the Islamic Republic of Iran*, ¶ 2, CCPR/C/IRN/Q/3 (May 17, 2011) [hereinafter HRC List of Issues 2011].

247. Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Islamic Republic of Iran*, ¶ 7, CCPR/C/IRN/Q/3/Add.1 (Sept. 12, 2011) [HRC Addendum 2011].

248. The spokesman of the Guardian Council declared that “in case of deciding whether women candidates are qualified in the presidential election, the Guardian Council has the ultimate duty according to Article 115 of the Constitution to make a decision; however, if the issue is whether women candidates can register in the presidential elections, this is the duty of Department of the Interior and nobody can stop women from presidential candidacy registration.” Elham: *The Guardian Council’s Interpretation of the Term “Rejal” Has Not Changed*, JAMEJAM ONLINE (2004), <http://www1.jamejamonline.ir/newstext.aspx?newsnum=100004167229> (translated by author).

249. Mohammad H. Nayyeri, *An Analysis of the Responses Given by the Iranian Delegation to the Human Rights Committee, Iran Human Rights Documentation Center* (Sept. 12, 2011), available at http://www.iranhrdc.org/english/publications/legal-commentary/3536-an-analysis-of-the-responses-given-by-the-iranian-delegation-to-the-human-rights-committee.html#UcNJs6zn_IU.

discriminatory treatment of individual rights.²⁵⁰ Even though the UDHR is soft law, meaning that it does not have a binding force of a treaty, it was the first comprehensive catalogue of human rights and is universally accepted as setting the fundamental principles of human rights norms in the world. According to Article 21(1) of the UDHR, “everyone has the right to take part in the government of his country, directly or through freely chosen representatives.”²⁵¹ This article is followed by Article 1, which emphasizes the equal rights of humans; and Article 2, which explicitly prohibits discrimination based on sex.²⁵² As a result, discriminating against women presidential candidates is a clear violation of Articles 1, 2, and 21 of the Universal Declaration of Human Rights.

In recent years, despite the language game and the constant denial of the Guardian Council that it discriminates against female candidates or the explicit statement of the spokesperson of the Guardian Council in 2004 finding women unqualified as presidents, after thirty-five years of implementation of Article 115 in every presidential election, the undeniable fact is that the interpretation of word “*rejal*” as “men” is the one used by the Guardian Council. The ambiguous use of language by lawmakers in Article 115 is a crafty route to discriminate against women; humiliating women by the political correctness used by the language of the Constitution and asserting one definition that pretends women can be qualified, but applying another where they never are.

Imposing indirect discrimination against women repeats itself in Article 163 of the Constitution by setting qualifications for judgeships. Article 163 states, “[t]he conditions and qualifications to be fulfilled by a judge will be determined by law, in accordance with the criteria of *fiqh*.”²⁵³ To implement Article 163, the Law on the Qualifications for Appointment of Judges was ratified.²⁵⁴ According to this law, the gender requirement of being a man was approved.²⁵⁵ Following implementation of the new law, all then serving female judges were either removed from the office or demoted to lower positions such as administrative and consultant roles.²⁵⁶ The Law on the Qualifications for Appointment of Judges

250. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

251. *Id.* at Art. 21.

252. *Id.* at Art. 1, 2.

253. CONSTITUTION, *supra* note 138, at Art. 163.

254. GHANONE SHARAYETE ENTEKHABE GHOZZATTE DADGOSTARI [THE LAW ON THE REQUIREMENTS FOR JUDGESHIP] [1983] (Iran), *available at* MARKAZE PAJOHESH-HAYE MAJLIS SHORAYE ESLAMI [THE ISLAMIC CONSULTATIVE ASSEMBLY RESEARCH CENTER], <http://rc.majlis.ir/fa/law/show/90547> (translated by author).

255. *Id.*

256. POVERY & POVERY, *supra* note 142, at 109.

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explicitly bans women from judgeships.²⁵⁷ Even in the case of qualified women, who meet all the requirements, they cannot become judges.²⁵⁸

Lawmakers followed the famous consensus of opinion of the *Shi'a foqaha* (Islamic jurists), who believe that women cannot be appointed as judges.²⁵⁹ Following Article 163, requirements for judgeship must be in accordance with *fiqh*, which in this case means women are prohibited from judgeships by the Islamic scholars' point of view.²⁶⁰ The Law on the Qualifications for Appointment of Judges has been ratified a few times, and additional laws were passed which allows women to work as advisors in other legal institutions²⁶¹ or investigative judges.²⁶² Even though an investigative judge has some responsibilities, she is prohibited from rendering any final court decision, which is one of the distinct powers of a true judge.²⁶³

There are a great many official international reports, such as the UN Special Rapporteurs' reports discussed above, which have been submitted to the United Nations over the years that indicate gender discrimination in decision-making positions in the judiciary such as judgeships in Iran.²⁶⁴ Amongst many other reports of the Special Rapporteur,²⁶⁵ the most recent report in 2013, explicitly asserted that "a dearth of female representation in decision-making roles" is problematic for women's participation in their civil and political life, as guaranteed by ICCPR provisions.²⁶⁶ Women in Iran are permitted to serve as legal

257. THE LAW ON THE REQUIREMENTS FOR JUDGESHIP, *supra* note 254.

258. MEHRPOUR, *supra* note 188, at 313.

259. *Id.*

260. *Id.*

261. *Ghanone Ekhtesase Tedadi Az Dadghahaye Mojud be Dadghahaye Mozo e Asle (21 Ghanone Asasi (Dadgahe Khanevadeh) [The Law Assigns a Number of Existing Courts and Tribunals to the Subject of Article 21 of the Constitution (the family court)]*, MARKAZE PAJOHESH HAYE MAJLIS SHORAYE ESLAMI [THE ISLAMIC CONSULTATIVE ASSEMBLY RESEARCH CENTER], THE LAW ASSIGNS A NUMBER OF EXISTING COURTS AND TRIBUNALS TO THE SUBJECT OF ARTICLE 21 OF THE CONSTITUTION], <http://rc.majlis.ir/fa/law/show/92925> (translated by author).

262. POVERY & POVERY, *supra* note 142, at 109.

263. KAR, *supra* note 59, at 101-102.

264. 2013 HRC Report, *supra* note 205; Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, A/HRC/19/66 (Mar. 6, 2012); HRC List of Issues 2011, *supra* note 246; U.N. General Assembly, *Situation of human rights in the Islamic Republic of Iran*, A/53/423 (Sept. 23, 1998); HRC 2013, *supra* note 243.

265. Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, A/HRC/19/66 (Mar. 6, 2012) [hereinafter HRC Report 2012].

266. 2013 HRC Report, *supra* note 205, at ¶ 52. Violation of Article 3 of ICCPR, *supra* note 194, which guarantees equal rights to both men and women.

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counselors, “but are prohibited from issuing and signing final verdicts.”²⁶⁷

In 2013, Iran again denied the report of the Special Rapporteur, which asserted that “women are prohibited from issuing and signing final verdicts” and are being discriminated against.²⁶⁸ In its response, Iran declared that, “in the arena of decision-making in judicial positions...there are also 560 women judges, which are a major and important development in believing in empowerment of women.”²⁶⁹ Despite Iran’s counter report indicating that there are so called “women judges,” they are not decision-making judges who preside as a real judge in the courtroom.²⁷⁰ These judges are counselors in family courts or administrative authorities.²⁷¹ Per the explicit language used in the Law on the Qualifications for Appointment of Judges, judges should be elected among “men.”²⁷²

Earlier, in 2011, Iran’s response to the direct question asked by the Human Rights Commission Special Rapporteur (list of issues to be taken up in connection with the consideration of the third periodic report of the Islamic Republic of Iran), “explain why women cannot become presiding judges?”²⁷³ was nothing but a rejection of the report and a reaffirmation of its previous responses that there are women judges in Iran.²⁷⁴

In addition to restrictions on employment of women, in recent years Iran has increasingly restricted the enjoyment of women’s right to higher education.²⁷⁵ For instance, for the academic year of 2012-2013, authorities enacted “Islamization” policies that placed restrictions on academic freedom for university students, in particular women. There are now bans on female enrollment in a wide range of specific academic

267. 2013 HRC Report, *supra* note 205, at ¶ 52. See also HRC Report 2012, *supra* note 265, at ¶ 44 (indicating that women do not hold positions as presiding judges in court of law and that they are deprived of the right to hold various offices of the State).

268. 2013 HRC Report, *supra* note 205, at ¶ 52.

269. March 2013 detailed reply by the Islamic Republic to the SR’s report [A/HRC/22/56, Feb 2013], SHAHEED ON IRAN (Mar. 8, 2013), <http://shaheedoniran.org/english/dr-shaheeds-work/latest-reports/detailed-reply-of-the-islamic-republic-of-iran-to-the-report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-islamic-republic-of-iran/>.

270. NAYYERI, *supra* note 249.

271. *Id.*

272. See *supra* notes 254-258 and accompanying text.

273. HRC List of Issues 2011, *supra* note 246.

274. HRC Addendum 2011, *supra* note 247.

275. Justice for Iran, Violations of Economic, Social and Cultural Rights in the Islamic Republic of Iran, A Brief Submitted to the Committee on Economic, Social, and Cultural Rights 50th Session (May, 2013).

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fields in many universities.²⁷⁶ These restrictions include bans on women enrollment in approximately 14 fields of study ranging from petroleum and mechanical engineering (water, gas and installations) to emergency medical technology and religious studies, as well as the placement of quotas that severely limit the percentage of women students in such fields of study as social sciences, mine, material, agricultural and civil engineering, physics and mathematics, and digital arts.²⁷⁷ In response to criticism from Iranian parliamentarians who called for an explanation, the Science and Higher Education Minister responded that 90% of degrees still remain open to both sexes, that single-sex courses were needed to create "balance," and that "some fields are not very suitable for women's nature."²⁷⁸

Restricting women's right to higher education because of their 'nature' is a clear case of discrimination against women, which is prohibited explicitly by the International Covenant on Economic, Social and Cultural Rights provisions which Iran is bound to recognize and abide by.²⁷⁹ According to Article 2(2) of the ICESCR, "the state parties undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex."²⁸⁰ Additionally, Article 3 of ICESCR explicitly requests the state party to ensure the "equal rights of men and women to the enjoyment of all economic, social, and cultural rights."²⁸¹ Further, Article 13(c) makes it clear that "higher education shall be made equally accessible to all."²⁸² Prohibiting or limiting women from enrolling in certain fields of study is clearly discrimination against them and in violation of Article 2, 3, and 13(c) of the ICESCR. As Iran's obligation to comply with ICESCR provisions, it is obligated to ensure equal opportunities without discriminating against women especially in areas like education and work.

In 2013, the United Nations General Assembly's Third Committee vote overwhelmingly supported human rights in Iran and urged the Iranian

276. 2013 HRC Report, *supra* note 205, at ¶ 46. See also *Iran: Ensure Equal Access to Higher Education*, HUMAN RIGHTS WATCH (Sept. 22, 2012), <http://www.hrw.org/news/2012/09/22/iran-ensure-equal-access-higher-education>.

277. Justice for Iran, *supra* note 275. See also 2013 HRC Report, *supra* note 205.

278. 2013 HRC Report, *supra* note 205, at ¶ 46.

279. ICESCR, *supra* note 217, at Art. 2, 3, 13. See also U.N. General Assembly, *Situation of human rights in the Islamic Republic of Iran*, A/C.3/68/L.57* (Nov. 1, 2013). Prohibiting women from higher education is also a violation of Article 26 of the UDHR guarantying "higher education shall be equally accessible to all on the basis of merit." UDHR, *supra* note 250, at Art. 26.

280. ICESCR, *supra* note 217, at Art. 2.

281. ICESCR, *supra* note 217, at Art. 3.

282. ICESCR, *supra* note 217, at Art. 13.

government to comply with UN human rights mechanisms and take concrete steps to address the ongoing violations in the country.²⁸³ Accordingly, United Nations General Assembly passed a resolution²⁸⁴ which “takes note of the report of the Secretary-General submitted in September 2013²⁸⁵ . . . in which he notes that he remains deeply troubled by ongoing human rights violations in the Iran.”²⁸⁶ It also cited the report of the Special Rapporteur²⁸⁷ on the situation of human rights in Iran submitted in 2013 pursuant to a Human Rights Council resolution in which the Special Rapporteur “continues to catalogue a wide range of systemic and systematic human rights violations.”²⁸⁸ Pursuant to this resolution the General Assembly “welcomes pledges made by the new President of the Islamic Republic of Iran with regard to some important human rights issues, particularly on eliminating discrimination against women.”²⁸⁹ Also, the General Assembly expresses “concern over the restrictions placed on candidates, including the exclusion of all women candidates.”²⁹⁰ This resolution also “*expresses deep concern* at serious ongoing and recurring human rights violations . . . including pervasive gender inequality and violence against women and increased discrimination against women and girls in law and in practice, as well as restrictions on access to government decision-making positions.”²⁹¹ The resolution specifically calls upon the Government of Iran “to eliminate, in law and in practice, all forms of discriminations and other human rights violations against women and girls, to promote women’s participation in decision-making positions.”²⁹² However, in March 2014, the United Nations Human Rights Council after presenting official reports documenting continued human rights violations in Iran, renewed the mandate of Special Rapporteur in Iran.²⁹³

283. *UN Shows Strong Support for Human Rights in Iran with 83-to-86 Vote*, INTERNATIONAL CAMPAIGN FOR HUMAN RIGHTS IN IRAN (Nov. 19, 2013), [www.http://www.iranhumanrights.org/2013/11/un-vote/](http://www.iranhumanrights.org/2013/11/un-vote/).

284. U.N. General Assembly, *Situation of human rights in the Islamic Republic of Iran*, A/C.3/68/L.57* (Nov. 1, 2013) [hereinafter UNGA 2013].

285. *Id.* at ¶ 1. Pursuant to *Resolution adopted by the General Assembly on 20 December 2012*, A/RES/67/182 (Mar. 20 2013).

286. UNGA 2013, *supra* note 284, at ¶ 1.

287. HRC 2013, *supra* note 243.

288. UNGA 2013, *supra* note 284, at ¶ 1.

289. UNGA 2013, *supra* note 284, at ¶ 2.

290. UNGA 2013, *supra* note 284, at ¶ 3.

291. UNGA 2013, *supra* note 284, at ¶ 5 (g) (emphasis in original).

292. UNGA 2013, *supra* note 284, at ¶ 6 (d).

293. *Iran’s Human Rights Showing Little Progress, UN Votes to Renew Special Mandate*, INTERNATIONAL CAMPAIGN FOR HUMAN RIGHTS IN IRAN (Mar. 28, 2014), <http://www.iranhumanrights.org/2014/03/unhrc-2014/>.

CONCLUSION

Women's rights in Iran have gone through an undeniable evolution throughout the long history of various governmental regimes over the centuries. Thousands of years ago, there was a period of civilization and enlightenment concerning women. Although it may not have been full equality for women in the modern sense, by the ancient standard they were incredibly enlightened. However, the freedom and rights that were gained for women were ended by the imposition of the Arab's Islamic traditions after the Islamic conquest.

The beginning of the 20th century was the birth of the parliamentary system in Iran. Despite women's unprecedented participation in the Constitutional Revolution, paving the way to change after hundreds of years of restrictive patriarchal Islamic rules, in the end it was devastating for women. Women were denied equal fundamental political and legal rights, such as voting and being elected in the parliament; they were still counted in statutes the same as criminals and retarded individuals.

During the fifty years of Pahlavi rule, women were granted the most social, political, and legal rights-seen in Iran for more than 2,000 years. This was accomplished by again abandoning the strict patriarchal Islamic jurisprudence of the past as the basis for women's rights and promotion of some western ideas.

After the accomplishments of the Pahlavi, even though Reza Shah's innovative policies aggressively transformed Iran and its legal system, his progressive yet controversial policies with regards to women did not go far enough to completely secularize the legal system and transform women's rights. Throughout the Pahlavi era, women's legal rights were enslaved by a religious-based legal system; they remained far from being treated fairly.

The second period of Pahlavi, ruled by Mohammad Reza Pahlavi, counts as the most significant and progressive period concerning modern Iranian women's rights. Privileges such as women's right to vote, women's participation in holding important political offices, presiding as judges, and receiving higher education all were granted, most for the first time. Women had more rights than in most countries in the Islamic world. Nonetheless, they were still not counted as fully equal to men.

Ironically, the Islamic Revolution of 1979, which was wildly supported by women, put an end to the westernized and progressive path of women's rights reforms during the Pahlavi. This was the return of the promotion of strict patriarchal Islamic traditions. For the 21st century

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modern Iranian women who had just fought for their rights and been emancipated from much of the long history of patriarchal Islamic traditions just a few decades earlier, found the past had returned with a vengeance.

After the Islamic Revolution, women were among the first minority groups to experience dramatic backward transformation in their social, political, and legal rights. As a result of explicit language used by the Constitution,²⁹⁴ the rights of women have to be in conformity with Islamic criteria, which confines women's rights within the religious interpretations of women's rights. As a result compulsory *hijab*, demotion of women judges to lower positions, finding women unqualified to become president, new restrictions on education, and repealing of the Family Protection Law are among the widespread discriminations against women's fundamental legal rights.

Whether it is the language game and the constant denial of the discrimination against women carved into the legal system; using the physical and emotional differences between women and men (Islamic principal) as a valid justification for treating women and men differently by laws; using "cultural relativism" as a counter argument to deny and justify the systematic discrimination against women in front of the world; or using explicit declarations of a male gender requirement for decision-making judiciary positions such as judgeships results in Iranian women's social, political and legal rights being systematically violated, and they are treated as a second class citizens.

Iran is a party to several major human rights conventions that are binding which set the fundamental principles for the protection and improvement of human rights and which guaranteed gender equality and non-discrimination principles. Not only is Iran obliged to comply with their provisions, but it is obligated to implement internationally accepted human rights norms to improve women's social, political, and legal rights domestically. According to the detailed official reports provided by the United Nations Special Rapporteurs,²⁹⁵ Iran has failed to measure up to international expectations by reinforcing the existing cultural prejudices against women within its legal system which is a violation of its international obligations. Gender equality in Iran has taken one step forward; two steps back!

294. CONSTITUTION, *supra* note 138, at Art. 21.

295. See UNGA 2011, *supra* note 279; 2013 HRC Report, *supra* note 205; Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, A/HRC/25/61 (Mar. 18, 2014).