

## The Changes of Legal Age of Marriage in Legal System

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**Abstract:** *An early until now, the Iran's legal system, has identified that reach a certain age to be as criterion for determining the qualifications of the person for marriage, at various stages of the legislative, So that sometimes this age is determined beyond of the normally puberty age and sometimes, the puberty of marriage is regarded as a natural maturation. in this paper we will examine the legal developments of age in the legal system in the pre-revolutionary and post-revolutionary period.*

**Key words:** *Marriage Age, Marriage, Wife, Husband.*

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### I. Introduction

#### Part I: Before the Revolution

Before the revolution, two laws were adopted to determine the age of marriage.

#### First discussion: civil law

For the first time in the legal system of Iran, in Article 1041 of the Civil Code (adopted in 1934) was written: "female's marriage before reaching to the age of 15 years and male marriage before reaching to the age of 18 years is prohibited. Unless in prudent cases that are granted exceptions of exemption from the requirement age with the recommendation of the public prosecutor and court approval. However, this exemption cannot be given to women less than 13 years and to the male of which are less than 15 years." In accordance with mentioned Article, the marriage age was considered 15 years for girls, and 18 years for boys and get marry at a younger age than 13 years for girls and 15 for boys was absolutely forbidden and in case of advisement to girls and boys aged 13 to 15 years old were allowed to marry with court approval of the prosecutor. This exemption certificate from the age requirement was granted based on physical or mental interests or reputations of girls and boys.

The advisement that the law refers to it was included physical, financial or spiritual advisement, but however, since the marriage of girls who was under 15 years was permitted in our habits, customs and religion, Judicial procedures more focused on physical maturity for the girls marriage. Between this ages determination of the minimum of legal age for marriage and predict the possibility of deviating from it, in fact, led to growing the marriage at less than the minimum legal age. In Amendment Article 3 of the Marriage Act of 1937 was written also "contrary to the provisions of Article 1041 of the Civil Code, Anyone get marriage with a person who has not reached the legal age for marriage, will be sentenced to six months to two years in disciplinary prison. If a girl has not reached to the age of 13 years, get married, at least she will be sentenced two to three years disciplinary prison, in any case may be, in addition to imprisonment, she or he to be sentenced a fine of two thousand to twenty thousand riyals and with contrary to the above provisions if the marriage is lead to deficiency one of the permanent members or it led to disease of woman, her husband punishment is since five to ten years' imprisonment with hard labor, and if the marriage is lead to the death of woman, so the punishment of husband is life imprisonment with hard labor. Party and suitor and other persons involved in the crime, sentenced to the same penalty or punishment that is prescribed for crime vice...."

#### The second discussion: The Family Protection Law

Consequences of marriage at low age in the late forties solar led to the attempts were made, until some Iranian laws is changed about on family issues. Given the time and conditions of approval of marriage age in civil law in 1934 and the family and community views about the reforms and changes that should be made in the family laws and with considering that the civil law change as a mother law, is a long-term process especially in the area of family law, and in our society it is faced with several obstacles, the Family Protection Act was passed; that it compensates the existed shortcomings and gaps, particularly concerning women's rights in the family, and it create a balance between the rights of men and women in the family. From 1957, the legal committee of the NGO "NewWayCrowd" headed Mehrangiz Dowlatshahi, the Iran's first female ambassador, began writing the draft law, Seven years later, with slight changes, the National Assembly had passed it as the Family Protection Law. these efforts was led to the enactment of the Family Protection Law in 1967, but in this law did not change the age of marriage. relatively short time after the adoption of the law, other law was passed

again in 1974, with the same as the Family Protection Law, and it increased the minimum age of marriage in Iran dramatically, and it declared that the all laws inconsistent with its own is void.

In accordance with Article 23 of this law, " marriage of Girls before reaching the age of 18 years and boys before reaching to age of 20 years is prohibited, unless in cases where is the interest, exceptionally, in the case of the woman that her age should not be less than 15 years old and she have physical and mental aptitude for marriage may be exemption from the requirement age is granted with suggested the city prosecutor and court approval. Contrary to the provisions of this article, if a woman or a man get marry with a person who has not reached the legal age for marriage then will be sentenced to punishments that stipulated in Article 3 of the Marriage Act of 1937." the formulation of Article 23 of the Family Protection Law, although it was effective in eliminating the consequences of early marriages, but it have the basic problem that were not taken the measures to control the physical and mental needs of young girls and boys who are between puberty and marriage. With the passage of the mentioned law, the legal age for marriage of girls is the same to grow age were given and for boys is two years more. the above Article met with scholars opposition and was declared unlawful at the same time approved. Even Sharif Emami that he has a tumultuous period of his premiership in 1978 declared invalid the law for satisfies to Clergymen.

## **Part II: After the revolution**

After the Islamic Revolution, the Civil Code regarding to age of marriage was modified twice.

### **First discussion: Amendment of the Civil Code in 1982**

After the Islamic Revolution, many criticisms were raised on Article 1041 of the Civil Code and the Law on Protection of family and it said there is conflict with Shariah law. including in the first days after the victory of the Islamic Revolution in February 12, 1979, the Imam Khomeini's head office has announced: " the Family Protection Act, is canceled because it is contrary to Islam." So in the first Parliament in 1982, The draft "bill on amending some provisions of the Civil law" proposal to amend the above mentioned article, was submitted to parliament, in the reform of the Civil Code in 1982, Article 1041 that it was the ban on child marriage, was diagnosed against with Sharia, and marriage before puberty was permissible to observe the condition of interest by the parents of child. in the new law did not need to allow of the court. in 1982, Article 1041 of the Civil Code was amended as follows: " Marriage is prohibited before maturity. Note: Marriage before puberty is right with the permission of the parents of child, and complies with the condition of interest.

The amendment to Article written on November 5, 1991 was changed as follows: " Marriage before puberty is correct with the permission of the child's parents, and with comply to the best interest condition." as noted above, with following the famous jurists, the puberty determined as the legal age for marriage, and the possibility of marriage before reaching this age is recognized and specific age for marriage was deleted. In accordance with the view of lawyers and social activists, the representative's action was considered as the hasty practical and inconsistent with the realities of Iranian society at that time. But despite all the criticism faced to the Article 1041, it stay remains without any harm from 1982 to 2002. But from the beginning adopted were criticized by many university professors and researchers and other priorities and scholars, lawyers and judges.

Among the criticisms is that, the maturity is achieved with Physical ability to sexual and signs that Jurists have pointed out, only it is refers to collect and discover the reality, the maturity age should be determined based on dominance and due to physical conditions and environmental conditions and it is have not rule aspect for all historical periods and individuals.

Therefore, cannot be determined that, the puberty were as marriage age, and puberty were 9 and 15 lunar years. As well as the provisions of this Article are a fundamental flaw for mentioned article, because, in general way, The prohibition stipulated in article assumption is permissible but its sentence assigned to it, and so it is void. Of course, for the conflict between the Article 1041 of the Civil Code and its amendments one of the jurists has been interpret the means of marriage word on the Article refers to " Sexual intercourse " and on the amendments refers to marriage, and he has determined the sentence prescribed by the natural guardian as one exception to the lack of capacity of the child in marriage. As well as the changes that occurred in the country's legal system after the Islamic Revolution, Article 3 of the Law of Marriage Act of 1937 which were previously dealt also was repealed with the adoption of Article 646 of the Penal Code of 1996. Under this Article: " marriage before puberty without parent permission is prohibited. If a man get to marry with a girl that who has not reached to puberty age, with Contrary to the provisions of Article 1041 of the Civil Law and its following amendments, he will be sentenced to imprisonment from six months to two years." This Article was repealed with the adoption of Article 50 of the Family Protection Law in 28.02.2012. Article 50 provides that: " If a man get marry with contrary to the provisions of article 1041 of the Civil Code, he sentenced to grade six imprisonment. If the mentioned marriage lead to permanent injury or disease of female, the husband in addition to paying compensation then sentenced to imprisonment of grade five, And if the marry lead to woman

death, in this case the husband in addition to paying compensation, he will be sentenced to imprisonment of grade four.

Note: If a guardian, mother, legal guardian or responsible for the care and upbringing wife have a direct impact in offense under this article, Sentenced to imprisonment of grade six. This verdict also is set to Party."

### **Second discussion: Overview of the Civil Code in 2002**

The current Article 1041 that it is developed and approval According to the latest revision of the aforementioned article, as follows; A bill amending the Law on Amendment of Article 1041 of the Civil Code of 1991, "which was approved at a meeting of the Assembly dated in 12.17.2000 and it had been failed from the Guardian Council, and in the implementation of the principle of (112) of the Constitution be referred to the Expediency Council, At the informal meeting of the Expediency Council was approved the following; Single Article - Article 1041 of the Civil Code Amendment Act of 1991: 10: 4 and its note is modified as follows:" Marrying of girl before the age of 13 solar and marrying of boy before the age of 15 solar only with permission of parent and observance of interests with the diagnosis of a competent court is correct."

The above law consists of a single article on the implementation of Article (112) of the Constitution of the Islamic Republic of Iran, and it approved in the Expediency Council meeting dated 21/05/2002.

Amendment of Assembly in 2002, is eschewing from the allocation of Article means and even the disproof or violation of its mandate in the form of note, And also without regard to puberty age and ban on marriage before this age, another age for marriage of girls and boys be determined. However, the legislator again predict the allow of marriage before the minimum legal ages, from the guardian to follow the famous jurists, by determining constraints for it and in other words its sentence reiterated in former Clause. Therefore, Article 1041 of the Civil Code reform has been investigated in two parts: Of course now, some of the courts of law believe that the restrictions contained in Article 1041 of the Civil Code is not requires the judgment of a person growth, and in such marriages only refers to permits issue. This action of court, is consistent with the Legislation philosophy of above-mentioned Article, But it is powerless in problems arising from the lack of growth in such persons and vindication of property and their financial rights. Although the age of 13 years for the girl in marriage is contrary to the promise Shi'a jurists, but this criteria can not be considered Religious unlawful, because some Shiite jurists and most Sunni scholars, believe that age of puberty for girls are higher than 9 years. The legislative put solar year to basis for determining and calculation the age of the people marriage. In this Article the criterion of interest diagnosis for child marriage is not stated. It seems that the court recognizes the interest of the child, with regard to the custom and to expert opinion.

At first glance it might be assumed that, despite recent reports of increasing average age of marriage among young people, perhaps wanting to get married in the minimum age prescribed by law shall not applicable. However, the statistics which provided by the National Youth Organization in 2004 show that more than 30 thousand children of married 14-10 year-olds exist in the country. Among this, the girls under 14 years, with a population of 24 thousand and 506 people, have a highest statistics. The frequency of such marriages has caused that they be named as the phenomenon of child brides or child mothers. Since many of these marriages took place without maintaining minimum for marriage, and registered with the appropriate economic policies, it is leading to legal and social issues. Therefore, in addition to determining the grounds for changes in attitudes, values and cultural structures of society along with determining legal and criminal sanctions for violations of the minimum age for marriage and also the non-registration of marriage, Can help to decrease of such marriages and prevent from adverse consequences of them. It is possible the sentence in Article 1041 of the Civil Code, create the cases of early marriage that the couple or one of them Were not mature and do not vindication of the own rights of financial capacity, such as dowry, alimony, and fee and.... In such cases, claiming those rights and making the such claims must be made by the parent or legal guardian, and may be done in most cases without respecting to the him or her interests, or the person is inevitable be developed an Lawsuit of growth at the beginning of the marriage. Now, despite lack of access to court statistics, Many judges for escape the consequences of failure to authentication of growth the couples which get married on the basis of Article 1041 of the Civil Code, interpret the sentence in this article to the sentencing of growth and announce the verdict of person growth with this diagnosis. Also many public offices for registering of marriages and divorces, for register of such marriages demand the mentioned warrant; Therefore, the Problems caused by the absence of mature individuals who is younger than the minimum legal age for marriage had been overcome with ease in the legal system of Iran. And such people assume adult in vindication of property and financial rights and fulfill this obligation. Whereas in many cases resorting to such a procedure, is not only beneficial for the diagnosis to growth of person but may be it have adverse financial consequences for them in the future.

In addition to the adverse consequences resulting from early marriage should also be noted the adverse effects due to high legal age of marriage. Nowadays many experts acknowledged to the fact of reduce the age at sexual maturity which require to forecasting a minimum age of marriage that it is compatible with the realities of society. In fact as the lowering of minimum age for marriage could be have many adverse effects,

soincreasing the age of marriage may be lead to neglect of those young people who have reached to puberty and are ready for marriage, but lack the minimum legal age; And it may be expand many adverse effects, including an increase in non-registered legal marriage or development of mental and moral disorders in this age. Therefore, before any legislation for the minimum age of marriage must be investigated all aspects of legal, social, economic, moral, psychological and biological matter, and determine the necessary minimum to appropriate with the mentioned facts. Amended Article 1041 of the Civil Code has remains unchanged since 2002, and despite it is fact that the Iranian society has changed considerably in the past decade. In countries where the average age of marriage for boys and girls have been to more than 26 and 23 years respectively, it seems that the minimum legal age of marriage that it has been proposed in civil law, it is not consistent with the existing reality.

## **II. Conclusion**

1. The age of marriage in the legal system Iran has undergone major changes So that the minimum age of marriage has been reviewed 5 times.
2. In the legal system Iran, foundations of marriage age has two basis contains legal basis and juridical basis, in juridical basis has emphasis on the puberty as legal marriage age and puberty age are considered to marriage age, and in the legal basis sometimes growth age is considered to as the age of marriage, and sometimes a certain age has been considered as the minimum age for marriage.

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