



CHILDREN IV. LEGAL RIGHTS OF CHILDREN IN MODERN PERSIA

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Generally speaking the modern Persian legal system has evolved in accordance with Islamic jurisprudence. The rights discussed here are those legally granted to minors between birth and maturity. A person is considered a minor (*ṣaġīr*) until he or she has attained the physical and psychological growth necessary for full participation in society. The person who has reached the age of maturity (*bolūġ*) determined by the law is considered mature (*bāleġ*) and no longer legally a child. Whereas before the revolution of 1357 Š./1978-79 the age of maturity was fixed at the completion of eighteen years, it was subsequently changed to the completion of nine lunar years, in accordance with Islamic law. Boys are considered mature at the completion of fifteen lunar years (“Qānūn-e Madanī-e Īrān” [Persian civil code, 1314 Š./1935, art. 1210, amendment 1).

In Islamic law the relationship between child and parents may be either legitimate or illegitimate. A child is legitimate if he or she is born of a union recognized and supported by law (*ibid.*, bk. 8, chap. 1, arts. 1158-67). The



legitimate child possesses specific legal rights, the most important being the right to care and upbringing (*hezāna*) by the mother and father and to education. The provisions of the Persian civil code relevant to *hezāna* correspond generally to those of Islamic law. Neither of the parents has the right to refuse to care for the child during the span when *hezāna* is incumbent upon them, and the child cannot be separated from them except in accordance with law (*ibid.*, bk. 8, chap. 2, arts. 1168-76). Unless there has been a prior agreement between the parents, if they divorce, *hezāna* for a boy is assigned to the mother until the child's second birthday and then passes to the father, for a girl to the mother until the child reaches the age of seven ("Qānūn-e Vāgoḏārī-e Haqq-e Hezānat-e Farzandān-e Şaġīr yā Maġjūr be Mādarān-e Ānhā" [Law for the assignment of *hezāna* of minor or retarded children to their mothers], 1364 Š./1985). Financial responsibility (*nafaqa*) for the care and education of a child devolves in the first place on the father and male patrilineal ascendants and only in the second place on the mother and the matrilineal ascendants (Persian Civil Code, 1314 Š./1935, bk. 9, chap. 1, arts. 1196-1206). A parent or other legal guardian who has the necessary financial resources but refuses to provide for the child's education is subject to legal penalties ("Qānūn-e Ta'mīn-e Wasā'el wa Emkānāt-e Taḥşīl-e Aţfāl wa Javānān-e Īrānī" [Law for the provision of the means and facilities for education for Persian children and youths], 1353 Š./1974).

A sexual union not permitted in Islamic jurisprudence is also not recognized in the Persian civil code, and children born from such a union are defined as illegitimate. Such a child belongs to neither parent, nor does he or she have the claims of a legitimate child on the natural parents; for example, he or she cannot use their names, though it is customary in nurseries (*şirkvārgāh*) and orphanages (*parvareşgāh*) to assign the surname of the natural mother. If her name is not known, an identity card is issued with false names for the parents. In contracting marriage, however, the status of the illegitimate child is the same as that of the legitimate child: Marrying one's natural parent or sibling, whether legitimate or illegitimate, is not permitted (for the legal status of illegitimate children, see "Qānūn-e Madanī-e Īrān," 1314 Š./1935, arts. 1045, 1660-67).

The adoption of children is not officially recognized in Islamic jurisprudence. In Persian civil law the right to adopt children is granted only to Zoroastrians, Jews, and Christians, in accordance with their own religious laws (see "Qānūn-e Ejāza-ye Re'āyat-e Aḥwāl-e Şakşīya-ye Īrānīān-e Ġayr-e Şī'a dar Maḥākem"



[Law permitting the observance by courts of the personal status on non-Shi'ite Persians], 1312 Š./1933).

In 1353 Š./1974, however, a new law for the protection of children without guardians (“Qānūn-e Hemāyat az Kūdakān-e Bedūn-e Sarparast”) was passed; under its provisions childless married couples can assume custody of children without guardians, on specific conditions and following specific procedures. The child must be less than twelve years old, and the natural father, patrilineal ascendants, and natural mother must be unknown. The custody relationship does not, however, entail the same legal rights and obligations as the blood relationship: for example, the child’s right to inheritance or restrictions on marrying a member of the custodian’s family. A child with no legal guardian or a guardian judged incompetent must be cared for in one of the state orphanages established for the purpose; there is also a small number of private charitable institutions in which children without legal guardians may receive care.

The person entrusted with the *hezāna* of a child is not necessarily also entrusted with the administration of the child’s financial affairs (*welāya*), which is subject to special conditions. A child’s father and paternal grandfather are required by law to serve as administrators (*walī[y]-e qahrī*), with equal and independent responsibility; both are recognized as the child’s legal representatives in all matters pertaining to property and property rights (Persian Civil Code, 1314 Š./1935, bk. 8, chap. 3, arts. 1180-87).

If either the father or the paternal grandfather dies, the other *walī-e qahrī* can make a will providing for a guardian (*waṣī[y]*) for the child after his own death. The guardian becomes responsible for both the *hezāna* of the child and the administration of his or her property within the terms specified in the will; as he is the designated successor to the *walī-e qahrī*, he does not have to seek permission from any authority in fulfilling his tasks (“Qānūn-e Madanī-e Īrān,” 1307 Š./1928, arts. 825-60; 1314 Š./1935, arts. 1188-94).

If a child has neither a *walī-e qahrī* nor a *waṣī*, a trustee (*qayyem*) must be appointed to administer his or her financial affairs. The trustee is chosen on the recommendation of the *dādestān* (public prosecutor), subject to approval by a special civil court. The mother has first claim to function as the trustee, on condition that she has not remarried since the death of the child’s father; if she has remarried, she must have the permission of her new husband to function as trustee. If the mother does not wish or is not competent to act as trustee, a



qualified individual is chosen from among the child's relatives. If no such individual can be found or if no one agrees to accept the responsibility, the court may appoint any other individual deemed appropriate. The administration of the child's financial affairs becomes the sole responsibility of the trustee, who may undertake any action that he or she considers beneficial to the child, with a few exceptions that require permission from the public prosecutor or the court (see "Qānūn-e Madanī-e Īrān," 1314 Š./1935, bk. 10, chaps. 2-4, arts. 1218-52; Qānūn-e Omūr-e Ḥasbī" [Law on custodial matters], 1319 Š./1940, chap. 2, arts. 48-102; cf. "Qānūn-e Rāje' be Kīānat-e Walī-e Qahrī" [Law concerning mismanagement by the *walī-e qahrī*], 1313 Š./1985).

Children who commit crimes are exempt from legal penalties (see "Qānūn-e Mojāzāt-e Eslāmī" [Islamic penal law], 1360 Š./1981, art. 26). If a child beats or wounds someone or commits murder, blood money (*dā'a*) must be paid to the victim or the victim's legal heirs by the child's family. Responsibility falls on family members in the following order: father, patrilineal ascendants, brothers, sons of brothers, paternal uncles, sons of paternal uncles. The mother and female relatives are generally not held responsible for losses caused by a child (see "Qānūn-e Diāt" [Law on blood money], 1361 Š./1982). If, owing to negligence in supervision, a minor child inflicts material damage, the parent, guardian, or trustee is held responsible. If he or she cannot pay compensation for all or part of the damage inflicted, the property of the minor is used for the purpose, so long as paying compensation does not impose hardship or indigence on the child (see "Qānūn-e Mas'ūliyat-e Madanī" [Law on civil responsibility], 1339 Š./1950, art. 7).

The minimum age at which both boys and girls may work in Persia is now fixed at fifteen years by the *Qānūn-e Kār* (Labor Law) of 1369 Š./1990-91. Before the enactment of this law the minimum age for employment was twelve (*Qānūn-e Kār*, 1337 Š./1958, arts. 16-20). The employment of younger children, even as apprentices, is now forbidden. The physical fitness of a job applicant between fifteen and nineteen years old must be confirmed by a doctor in Sāzmān-e ta'mīn-e ejtemā'ī (Social-security organization) before he or she can begin work. A laborer in this age group (*kārgar-e now-javān*) must pass a thorough medical examination at least once a year. If his physical condition is found inadequate for the requirements of his job, his employer is required by law to give him a job that is more suitable (*Qānūn-e Kār*, 1369 Š./1990-91, art. 79).



The minimum voting age for elections to the Islamic consultative assembly (Majles-e Šūrā-ye Eslāmī) and for presidential elections is sixteen years. Younger children do not have the right to participate in political activities (“Qānūn-e Entekāb-e Riāsat-e Jomhūrī-e Īrān” [Law for the election of the president of the Republic of Iran], 1364 Š./1985). A person younger than eighteen years cannot be employed in a ministry or government office (“Qānūn-e Esteḡdām-e Kešvarī” [Law on employment in the civil service], 1345 Š./1966) or obtain a driver’s license; he or she can be issued a passport only with the written permission of the *walī-e qahrī* or *qayyem* (“Qānūn-e Goḍar-nāma” [Passport law], 1351 Š./1972).

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