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6 Harm and Consent in the Socio-Legal Perspectives on Child Marriage in Iran

Ladan Rahbari

Introduction

Marriage is an important social and economic institution in Islam. It is considered both a social necessity and a moral safeguard (Rahman & Kabir, 2005) with regulations on the biopolitical and economic realms of the Islamic family unit. As a significant regulatory measure, most Islamic perspectives encourage halal¹ heterosexual relationships and denounce celibacy as an unwelcome practice, if not a disreputable and dishonourable one (Hathout, 1997; Zarean & Barzegar, 2016). There are multiple Hadith by the Prophet of Islam that are often quoted to highlight the importance of marriage as the ‘true’ way of Islam, including “whoever marries has completed half of their religion” (Hadithlib, n.d.) and “marriage is my Sunnah” (Islam Quest, 2013b). But while marriage is valued in Islam, it is in no way a compulsory practice. Additionally, based on different interpretations of Islamic guidelines and the political and social circumstances in Muslim majority contexts, a variety of approaches towards marriage have emerged (Sachedina, 1990). Although there is great diversity in the Middle Eastern region in terms of marriage forms and traditions, one commonly shared value is marriage itself, which remains fundamental to the social identity of Muslim people (Tremayne, 2006), especially when it comes to women’s social identity.

In Iran, a country with a predominantly Shi’i Muslim population, marriage is a legal and social institution with conditions that have been dramatically influenced by the 1979 Iranian Revolution, after which interpretations of Islamic law were encoded into the country’s legal system. The establishment of the Islamic Republic of Iran led to the foundation of a state that encoded a combination of Shi’i Shari’a and non-religious laws. This means that both religious and political institutions play a role in creating and updating the country’s legal frameworks (Roy, 1999). With the application of Shi’i law in Iran, many previous policies relating to women and family issues saw a return to more classic and ‘purist’ readings of Shi’i rulings and in some realms, such as the age of marriage, the progress that had been made in the years before the 1979 Revolution was reversed (Moghadam, 1999). Prominent scholars of modern Iran agree that women’s rights after the establishment of the Islamic Republic should not be painted with a general pessimistic brush (Afary, 2009; MirHosseini, 2006; Moghadam, 1999).

However, some important changes in the realm of women's rights that were made after the Revolution did have severe consequences for Iranian women in the years to come.

One such change was the reduction of the legal age of marriage. After the Revolution, the minimum age of marriage was dropped to the age approved by some Shi'i scholars based on the Shari'a law, which was 9 years old for girls and 15 years old for boys. The law affects girls much more than boys, not only because of the six-year age difference between the legal age of marriage for girls and boys but also because girls are generally more vulnerable to child marriage. After a series of legal reforms in August 2003, and after political efforts by women members of the Iranian parliament, the legal marriage age was raised to 13 for girls; however, a clause was added stating that earlier marriage is allowed if the girl's legal guardian and an Islamic court approved the girl's readiness for marriage.² This clause has made the application of the law regarding the minimum age of marriage somewhat arbitrary (Rahbari, 2019). Recent attempts by Iranian politicians and women's rights activists in Iran to raise the age of marriage to 16 and ban marriage under the age of 13 have been blocked by the Iranian parliament (Bani Hashemi, 2018), for their supposed incompatibility with prominent 'Islamic' perspectives in Iran.

This study discusses the case of child marriage in Iran, where Twelver Shi'i Islam³ is the official state religion as well as the reported religion of most of the country's Muslim population. Child marriage is a marriage where either or both the bride and groom (most often the bride) is/are under the legal age of 18, which is the age limit for protection under the 1989 Convention on the Rights of the Child (Tremayne, 2006). Child marriage is considered a global issue and a widespread harmful practice that affects a great number of girls (Montazeri et al., 2016). The policy Office of the United Nations High Commissioner for Human Rights (OHCHR) of the United Nations considers child marriage a form of harmful traditional/cultural practice (HTP or HCP). HCP/HTPs are associated with 'cultural traditions' of gender inequality, violating women's right to "health, life, dignity and personal integrity" (OHCHR, 1995). Early marriage is categorized as HCP because of all forms of physical, psychological, and social harm that child marriage inflicts upon girls. To the author's knowledge, the concept of HCP/HTP has never been used by academic researchers to study the case of child/early marriage in Iran.

When girls marry underage, they are prone to psychological and social stress, health complications (e.g. the risk of operative delivery, low weight and malnutrition, and other issues caused by high fertility rate and poor sexual and reproductive health), and obstacles that prevent the girl from pursuing education and employment opportunities (OHCHR, 1995). The physical and psychosocial harm caused by child marriage has been documented in extensive research across the globe (Jain & Kurz, 2007; Nour, 2006; Santhya et al., 2010). Child marriage is also linked to other contextual social issues and gender inequality, as well as other harmful practices such as forced marriage. There are specific socio-political factors that underpin the practices of forced marriage (Anitha & Gill,

2017, p. 167) and child marriage that need to be considered in any given context. Thus, to understand the complexity of the issues around child marriage in Iran, it is necessary to investigate the specificities of the Iranian socio-cultural, religious, and political context as well as the variety of marriage practices that are legalized in the country by Shi'i theological institutions and measures that are taken by the state to facilitate or hinder marriages.

Besides investigating the issue of child marriage in the Islamic Republic of Iran, this chapter has a conceptual focus on consent and its relation to age. Consent is an issue that has attracted a great deal of feminist scholarship (Anitha & Gill, 2017; Hasday, 2000; Koshan, 2016; McGrath, 2005). Feminists believe that the current normative paradigms under which existing social institutions operate disqualify female experience and effectively negate the possibility of genuine choice for women (Drakopoulou, 2007, p. 10), but at the same time, consent is developed in more critical ways to establish its ethical criteria (Hill Kennedy & Niederbuhl, 2001; Primoratz, 2001). The connection between age limits of consent has also been explored in feminist studies on religion (Anagol-McGinn, 1992; Reid, 2004), but in the Iranian context, scholarship on consent is rare. Therefore, this study's contribution is in introducing the contemporary problematics and developments on child marriage in Iran and investigating and interrogating the notion of consent in Shi'i Islamic perspectives on marriage.

This study starts from the premise that child marriage is a harmful practice. Still, the question remains whether the HCP/HTP framework with its emphasis on 'culture' offers a vigorous framework for analysing the practice in a way that leads to effective policy to eradicate it. HCP has already been criticized for its essentialization of culture and tradition as singular and fixed and its bias towards religions, specifically towards Islam (Le Roux et al., 2017; Rahbari, 2019). Taking these critiques into account, this study offers an analysis of child marriage as a harmful practice that takes place at the intersection of religion, gender, and age. The study locates itself at the crossroad of the sociology of Islam and gender studies. In the next sections, I will first briefly introduce important factors that have a role to play in the practice of child marriage in Iran. The study will then discuss the implications and controversies over the legal age of marriage, its existing critique, and the conceptualizations of age of consent and early marriage in Iran and by Shi'i jurisprudence. By doing this, I will also interrogate the problem of consent in early marriage within the Shi'i legal and juristic perspectives as the dominant sources forming Iranian law. I then provide an in-depth discussion on the role of the contemporary socio-legal discourses and juristic Shi'i perspectives – in their heterogeneity – in conceptualizing consent and in both sanctioning and problematizing early marriage.

Marriage Laws in Iran and Shi'i Perspectives

The Iranian Civil Code provides two different types of marriage: permanent and temporary (Bernardi, 1986). A permanent marriage is a legally binding conjugal contract based on a relationship that, from the very start, is assumed to

be lifelong. This form of marriage, called permanent marriage, does not have a predefined end date and ends only through the legal process of divorce. The other form of marriage, which is called temporary marriage,⁴ refers to a marriage that is valid only for a short and predefined period and automatically expires without needing divorce (Sobhani, 2013).⁵ Since marriage is perceived as an economic contract as well as a social one, Shi'i jurists employ the analogy of rent in the case of temporary marriage, as opposed to the analogy of sale in the case of permanent marriage (Mir-Hosseini, 2003). In practice, temporary marriage often involves a transaction, wherein the woman receives compensation equivalent to the duration of the marriage.

Most contemporary Shi'i scholars consider temporary marriage a legitimate form of marriage, and some even encourage young people to practice it to avoid 'sinful' intimate premarital relationships. Despite the continuous promotion of temporary marriage by Iranian authorities, it remains a largely unpopular practice among Iranians, and for this, it is often practised in secrecy (Farahani, et al., 2011). Temporary marriage is also documented in other countries with Shi'i populations where it is illegal, such as Iraq (Al-Maghafi, 2019) and Afghanistan (Immigration and Refugee Board of Canada, 2012). However, even though there is relatively little dispute around the legitimacy of temporary marriage, there is a small minority of Islamic jurists who rule out the practice because of its incompatibility with contemporary societies and the common law⁶ (e.g. see: Saanei, n.d.).

What is more, there is no juristic or legal restriction on the number of temporary wives a man can marry simultaneously (Zar Rokh, 2011). Temporary marriage in Iran could lead to a conjugal union between an unmarried woman and an unmarried or married Muslim man,⁷ because the laws in Iran that allow polygyny as the sole right of men to marry multiple wives after seeking the consent of the first wife and permission of the Islamic court (Schneider, 2016).⁸ The consent of the first wife can, however, be circumvented. This is because, unlike permanent marriages that must be registered (Rahbari, 2019), temporary marriage can be officially registered, or couples can opt for a private registration that does not enter any database but offers the couple a marriage certificate. Married men can thus opt for a temporary marriage with private registration that allows them to practise polygyny without acquiring the first wife's consent. This shows an existing loophole in the law as there are not enough legal measures in place to ensure that men do not enter into a temporary marriage without first consulting and gaining the consent of their permanent wife.

The practice of temporary marriage is not only connected to the problem of unregistered marriages but also the issue of child marriages in Iran, as young women/girls are one of the most prominent groups negatively affected by the practice of temporary (and sometimes unregistered) marriages (Bahrami, 2018). Even though the legal age of marriage was dropped after the Islamic Revolution, the average age of marriage has increased gradually and steadily from 24 to 27 for men and from 19 to 23 for women from 1976 to 2016. Regardless, as shown by UNICEF's 2017 report, 3% of children marry by the age of 15, and 17% marry by the age of 18 (Girls Not Brides, 2017). Official reports inside Iran also indicate

that more than 29,000 marriages were registered in 2016 that have taken place between girls who were younger than 15 and boys/men of different age groups (Mehrkhane, 2016). This report also showed that girls under 15 years of age mostly married men of the 20–24 age group and totalled over 16,900 marriages (approximately 58% of all marriages). As previously discussed, since the evidence of unregistered (child) temporary marriages exists, these numbers that are based only on registered marriages do not reflect the complete picture.

While women in Iran have gained access to education, the connection made between education and delay in the age of marriage is not straightforward. Education does not necessarily represent the ideal solution for early marriage (Tremayne, 2006). Despite some growth in women's employment and participation in economic activities (Rahbari, 2016b), women are still seen as economic burdens in the lower socio-economic class and in rural settings, and in this context, marrying off young girls might be a strategy to reduce the costs of living for their paternal family (Mardi et al., 2018). In Iran, the most common reasons behind child marriage and forced marriage include poverty in the girl's family, the social prestige awarded to girls who marry young, lack of child support persons/institutions, and sub-cultural traditions and tribal customs (Suuntaus Project, 2015). Child marriage is more common in some provinces than others; the highest rates are reported in the provinces of Sistan and Baluchestan, Kurdistan, Khuzestan, and Khorasan (Suuntaus Project, 2015).⁹ Some of these provinces (e.g. Sistan and Baluchestan, Kurdistan, and Southern and Northern Khorasan) are among the least developed in the country,¹⁰ while others (e.g. Khuzestan) are better developed (Karimi Moughari & Barati, 2017). Therefore, the differences can be associated with broader development levels as well as socio-cultural and religious factors.

When it comes to the primary sources in Islam, namely the Quran and the Sunnah (teachings and sayings by the Prophet and other prominent Islamic figures), no specific age is mentioned as the proper age of marriage.¹¹ However, in the Quranic verses, there are guidelines on what a good marriage should look like. For instance, the age of marriage is equated to the age of maturity:

Then if you find in them maturity of intellect, make over to them their property, and do not consume it extravagantly and hastily against their growing up.

(Quran Chapter 4, verse 6)

In traditional *fiqh* – Islamic jurisprudence – there was no minimum age for marriage, but there was a minimum age for the consummation of marriage (Zar Rokh, 2011), meaning that having sex with the spouse has to wait until they reach puberty. The legal and appropriate Islamic age of marriage is thus deduced differently based on interpretation traditions that relied on different *fiqhi* perspectives. This means that the legal age of marriage is not the same in all countries that legally adhere to Islamic *Shari'a*. There are, for instance, differences between the

Sunni and Shi'i perspectives. According to some contemporary Shi'i jurists, a girl is eligible to marry at about eight years and nine months and a boy at about fourteen years and seven months, when they are supposed to have reached puberty and can reproduce (Tremayne, 2006).¹²

While the age of nine is considered an appropriate age according to some Shi'i interpretations, it is considered necessary to abstain from having sexual relations before the girl is both physically and mentally mature. But in contradiction to this ruling, some other Shi'i mujtahids oppose the age of marriage and advocate for eliminating child marriage because of the harm it causes to the child's life (Radio Farda, 2019). In Iran, while jurists have predominantly maintained their position that 9 years is an appropriate age for marriage, the legal age of marriage has been raised to 13. The Islamic age of marriage becomes specifically relevant when the child's legal guardian wants the child to marry under the legal age of marriage (13). In such cases, the marriage of the girl under 13 is allowed if the girl's guardian and an Islamic court approve the girl's maturity, not only physically but also mentally and emotionally. As such, while religious sanctioning of early marriage is not always the reason behind child marriage, it is a significant facilitator that both adjusts the moral tone and affects legal possibilities (Rahbari, 2019).

Because of the persisting social value of virginity for permanent marriages (Rahbari, 2016a), women with previous temporary or permanent marriage history are sometimes viewed as 'damaged goods.'¹³ In the context of Iran, where marriage is still an important source of social status, the girl/woman's future social life may be put in peril if they are perceived not to be virgins. Early pregnancies, losing their spouse, and financial support (especially when there is a great age gap between spouses), as well as other legal and social issues attached to unregistered and temporary marriages, are among the many problematic aspects of child marriage.

What is specifically concerning in discussions and debates around the age of marriage is that there are no considerations regarding consent or better yet, the impossibility of consent in child marriage. While as a rule, in Shi'i rulings and marriage laws, consent is necessary for any marriage to be considered legitimate and legal (Karimi 2014, p. 86), the incapacity of a child to consent to marriage and the problematic issue of the guardian consenting on behalf of the child are generally not acknowledged. In the next section, I will discuss consent and its variation in Shi'i and Iranian legal discourses.

Consent to Marry and Its Effects on Child Marriage

Consent to marry and to have sex is often perceived as a secular and liberal concept that aims at individual fulfilment and relies on the notion of personal sexual autonomy (Elias, 2018). However, this notion that relies on individual rational choice-making is not the only existing definition of consent. By prohibiting sexual violence against women in the form of coerced sex, Islam considers consent an important moral consideration in a sexual relationship (Elias, 2018). Consent to sex is necessary but not sufficient to legitimize a sexual relationship, and the relationship gains legitimacy through an Islamic marriage (Riaz, 2013).

Additionally, the notion of consent is usually used when referring to approval acquired from the spouses. In Islamic marriage, there is sometimes another party whose consent is required: the girl/woman's male (legal) guardian. This means that in classic Islamic views on marriage, while a man has the autonomy to choose a wife and marry her, an adult woman or a girl needs her male guardian's consent, with the exception of divorced women or women who do not have (access to) their legal guardians. In Iranian law, the legal guardian is, by default, the girl/woman's father and, in his absence, the girl/woman's paternal grandfather (Mansoury, 2019). While the father's consent is considered crucial, the girl/woman's consent suffices in the absence of the father or the paternal grandfather (Mansoury, 2019). In Shi'i jurisprudence, the guardian's consent can also be contested if the girl/woman is of the legal age of marriage. The guardian's role and power over the girl/woman are also complex and depend on the judgement of the court, but legally speaking, when a girl/woman who is of legal age of marriage wants to marry, and the guardian does not approve of the marriage, if the argument made by the guardian against the marriage is not convincing to the court, the court can solely and without the consent of the guardian allow the marriage contract to take effect (Sajjadi Amin, 2008).

Moreover, a marriage that has been constructed without the guardian's consent is not automatically null. Still, if the guardian refers the case to the Islamic court, the court can rule out the marriage, in which case, a divorce is required (Safir, 2018). This shows that while the consent of both parties – the girl/woman and her guardian – are considered important, the consent of the girl/woman is, at least, theoretically prioritized. This means that a girl/woman should not be coerced to marry, and a marriage contract that has been issued under coercion and without the true consent of the girl/woman is juristically null and does not even require a divorce procedure to be nullified. The fact that a girl/woman's statement of consent is required does not mean they cannot be coerced. In Iranian law, the girl/woman has the right to ask for a divorce or the nullification of the contract if this happens (Moghaddasi & Ameri, 2016).¹⁴

Despite the existing Islamic Shi'a rulings and law on consent in marriage, there are two main problems in the discourses around consent in marriage in Iran: (i) the vagueness in the juristic rulings and legal clauses on how the girl/woman's consent is to be received, and (ii) the implications of legal and juristic arguments on consent for the impossibility of consent by a child. Regarding the former, basing consent on the verbal expression of consent during marriage risks overlooking the covert and subtle forms of coercion and does not recognize the structural constraints under which girls/women exercise their agency in matters of marriage (Anitha & Gill, 2017, p. 172). Islamic narratives on consent, on which Shi'i scholars draw, highlight the importance of consent by stating that the Prophet himself sought his daughter Fatima's consent before giving his own consent on her marriage to Ali-Ibn-Abi-Taleb (also the Prophet's cousin and the first Shi'i Imam) (Sajjadi Amin, 2008). The Prophet's deeds, sayings, and teachings (i.e. Sunnah) are an important part of the Islamic frameworks on which Muslim populations around the globe rely.

There are, however, different versions of the narrative on how Fatima's consent was received, two of which have been popularized in Iran. The first narrative states that when the Prophet asked Fatima whether she would accept marrying Ali, she gazed down, smiled, and stayed silent. The Prophet then said, "Her silence is a sign of consent" (Noori, 2009). The second narrative recounts that upon being asked, Fatima responded, "I consent to what God and the Prophet see fit for me" (Dashti, 2017). Fatima's consent is not verbally received in the first narrative, and her lack of objection is interpreted as consent. In contrast, in the second narrative, Fatima does not give explicit consent but seems to be willingly leaving the decision to her father. Drawing on these narratives as a model of behaviour risks justifying interpretations that consider a lack of coercion by the girl's family or objection by the girl equivalent to consent.

This argument connects to the second problem – consent in child marriage – in which the most starkly present problem is that the consent of the child – even though expressed – should not provide grounds for marriage because a child can simply not consent. Iranian state's position on the age of majority and its consequences for marriage law has been scrutinized from inside and from outside the country. While the state has signed the Convention on the Rights of the Child¹⁵ in 1991, its signature has been conditional, and the country reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws (UNICEF, 1989). Additionally, in the case of consent of a child, since marriage is allowed upon receipt of consent from the guardian, the child's consent is not considered necessary if the court and the child's guardian agree on the benefits of marriage for the child. In this context, the child is protected even less than an adult since an adult woman cannot be obligated to marry by her guardian, but a child can. The issue of the age of marriage in Iran is entangled with specific Shi'i interpretations that most Shi'i scholars believe, and according to which Fatima's consent to marriage was received at the age of nine. This age is thus taken as a model for the Shi'i practice of marriage. Although some Shi'i scholars have reported Fatima's marriage age was between 9 and 14 (Gharvi Nayini, 2008) and other Sunni and Shi'a scholars have reported that it was high as 18 (Islam Quest, 2013a), many contemporary prominent scholars in Shi'i seminaries of Iran and Iraq declare that 9 is the minimum age of majority and thus marriage.

Consent to marry also must be discussed in connection to the consent to sex. Classic Shi'i jurisprudence and the laws on marital sexual relationships in Iran both rule that after marriage, the girl/woman has a marital responsibility to have sex with her husband. Thus, while coercion of sex is not allowed, the refusal of a wife to consent to sex could have legal ramifications for her. Article 1108 of the Iranian Civil Code vaguely states:

Whenever a woman abstains from performing her marital duties without legitimate obstacles, she does not qualify for receiving mahr.

(Khajezade & Hoseini Mighan, 2018)

While sex is not mentioned in the article, it is treated in the Iranian courts as one of the ‘marital duties’ that the wife owes to the husband. Abstinence from providing it would disqualify the wife from receiving *mahr* (money or possessions promised to the girl/woman, especially in case of a divorce, to provide financial security for her) and will give the man the right to file a complaint to the Islamic court, apply for a permit to divorce the wife, or to marry a second wife (Rahmani et al., 2017).¹⁶ There is also juristic consensus on sex as a marital duty, meaning that the wife should be sexually available to the husband unless there is legitimate justification.¹⁷ Although consent to marry is automatically translated into consent to sex, it is left out of many public, legal, and Shi’i juristic discussions on both marriage and consent in Iran. As demonstrated in this section, the discussions on consent are not only vague but also insufficiently developed. This is partly because Iran’s complex legal system relies not only on semi-democratically¹⁸ elected social and political entities but also on the country’s Shi’i seminaries that promote a patriarchal version of Shi’i *fiqh*.

HCP and the Problem of Consent and Child Marriage

The HCP/HTP framework introduced in the introduction section is used by OHCHR to problematize child marriage not only because of all forms of harm that could be inflicted upon girls but also because of the assumed ‘traditional’ and ‘cultural’ roots of the problem of child marriage. While cultural justifications are sometimes offered for child marriage, it cannot be considered a purely cultural or traditional practice in the context of Iran. More specifically, if culture is defined as “a way of life of humans generally and of specific social groups and peoples” (Cobley, 2008), then child marriage is certainly not a ‘cultural’ issue in Iran, since not only is it not a common or general way of life but also a contested practice that is largely problematized in the society.

There are multiple problems within the socio-legal and interpretations of ‘Islamic’ perspectives in Iran. Some of these problems are rooted in very specific interpretations of Shi’i Islamic law that is linked more with political institutions than with the popular or cultural readings of Shi’a Islam. While it is possible to discuss the evident harm in the practice of child marriage and the historical role religion has played in facilitating and regulating it, it is also possible to trace the effects of politics in the institutionalized version of Islam and distance oneself from assuming it as a merely ‘cultural’ or ‘religious’ phenomenon. Using culture and tradition as a point of reference risks generalizing cultures and traditions while treating them as static as well as geographically and temporally universal phenomena. In the context of Iran, the diversity of different regions – in aspects of identity such as religion, ethnicity, and language as well as economic, political, and developmental factors – has affected the practice of child marriage (Mardi et al., 2018; Suuntaus Project, 2015). This shows a complex national picture that cannot be simply described as ‘cultural’ or ‘traditional.’ On the other hand, the Iranian state’s patriarchal biopolitical approach to women’s bodies and gender issues, which is not necessarily supported by Iranians (Rahbari, 2019), highlights

that the religious and legal systems are not only culturally motivated but also politically and ideologically constituted. The HCP/HTP framework's inclination to associate harm with cultural beliefs does not offer a framework that adequately politicizes this complex setting.

The harm in child marriage is not only in the lack of consent, and the notion of consent itself has theoretical limitations. For example, considering the consent of the girl/woman as the only prerequisite to marriage or sex pays little attention to the many ways in which all women located within a matrix of structural inequalities can face social expectations, pressure, and constraint in matters regarding marriage (Anitha & Gill, 2017). Thus, consent is not a perfect model for adult women. Consent-based and individualized accounts might indeed prevent us from seeing how particular acts are informed and endowed with moral significance by sexist social relations, practices, and institutions (Primoratz, 2001). In contexts where the law's formal adherence to the concept of consent is considered the decisive criterion of the legality of an act, the pragmatic constraints that harsh reality places upon women's consensual freedom and exercise of rational choice might get ignored (Drakopoulou, 2007, p. 11).

I have, by now, problematized the usage of HCP and its 'cultural' approach towards child marriage. I believe that 'harmful gendered practice' is a more useful term to refer to child marriage in the Iranian context because (i) the practice of child marriage is disproportionately and largely affecting young women and girls; (ii) it is a combination of gendered biopolitics, and patriarchal socio-cultural dynamics that perpetuate child marriage in Iran, not a pervasive form of cultural practice; (iii) girls/women's classed position and experience of systematic gendered discrimination have led to their disempowerment. While cultural factors have affected gender dynamics, girls/women's economic, social, and political deprivation intersect to cause further marginalization; (iv) employing 'culture' as an analytical category obscures the prominent role of the State, as well as religiopolitical legal frameworks and discourses in the country.

The limitations of consent are important to note, but in the context of Iran, where consent to marriage is not an adequately developed legal framework, discussions on consent are urgently needed. Consent is used in vague terms. An individual's consent to marriage and sex is entangled in discourses on legal and religious obligations, and the legal frameworks do not guarantee that structural forces around the individual are minimized. Consent should be reformulated to acknowledge that no form of consent can legitimately be given on behalf of another person and reflect the power dynamics that might explicitly or implicitly impact the decision-making process. In the case of consent in the Islamic model, adult women's consent should be empowered and more explicitly prioritized, and child marriage should be contested for the clear reason that Islam values both maturity and informed consent as requirements for marriage. Neither condition is met when a child is married by her guardian. The Islamic canonical sources have repeatedly advised Muslims to protect children, but the current rulings and laws on the age of marriage are neither guaranteeing the protection of children nor

are they adjusted to the global and contemporary Iranian society's stance against child marriage.

The harm against children through child marriage requires serious attention and socio-legal change. Changing Iranian laws that allow child marriage is complex and difficult since, as discussed throughout this chapter, the current legal frameworks in Iran allow for forms of temporary and privately registered marriage, which are closely connected to the practice of child marriage. Additionally, any form of reform involves the participation of religious and legal institutions, none of which are completely free from the state's biased views on women's rights. As this chapter shows, however, it is not enough to rely on 'culture' or 'religion' as a point of entry to the debates on child marriage; instead, recognizing the harm in some of the existing political, socio-legal, and religious perspectives that are deeply gendered is the first step towards the much-needed legal reform of marriage laws in Iran.

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Notes

- 1 'Halal' is a term used in Islamic moral and legal discourses to refer to all that is permissible. As a default, everything is halal unless otherwise advised in Islamic sources such as the Quran and the Hadith. To have sexual relationships with someone in halal ways, it is necessary to perform an Islamic marriage.
- 2 If a man marries a child in ways that defy this law, they will be criminally charged with jail time between six months and two years and will receive a monetary fine (Rooznameh Rasmi, 2013); in case of permanent damage to the child's body or transmitting chronic illnesses to her as a result of marriage, the jail time is raised to two to five years, and in case of the child's death to five to ten years (Hadese24, 2019).
- 3 Twelver branch of Shi'a believes in the existence and infallibility of 12 legitimate Imams who are among their 14 key figures: the Prophet, Fatima (Prophet's daughter) and the 12 Imams (Halimatusa'diyah, 2013). Shi'a Islam has other branches, but Twelvers are the largest Shi'i population. In this chapter, I refer to the Twelver branch wherever I use Shi'a/Shi'i.
- 4 Called *sigheh* in Farsi and *mut'ah* in Arabic.
- 5 While the practice has long been outlawed in Sunni traditions of Islam, it is still considered legitimate in (most) Shi'i jurisprudence and is practised in Shi'i contexts, including Iran (Haeri, 2014).
- 6 *Orf* in Farsi and *urf* in Arabic.
- 7 Interfaith marriages are allowed only between Muslim men and non-Muslim women; women cannot marry non-Muslim men (Jabbari, 2007).
- 8 First Iranian family law was codified in 1928–1935 as part of the Iranian Civil Code and was reformed in 1967 with the enactment of the Family Protection Act (FPA, in Farsi, *qanune hemayat az khanevdeh*). The FPA abolished the husband's right to unconditional polygamy and made it conditional on the first wife's consent and gave the wife the right to divorce in case the husband did not seek her consent (Schneider, 2016).
- 9 Suuntaus Project, online (2015).

- 10 Khorasan has three regions: Southern, Northern, and Razavi. The latter is relatively more developed than the first two.
- 11 I have used translations from <http://corpus.quran.com/> but I have changed the pronouns – where gender is not known – to they/their/them for both singular and plural nouns.
- 12 According to the Islamic lunar hijri calendar, the age of marriage for girls is 9 years and for boys 15 years. The lunar year is shorter than Gregorian year.
- 13 The hymen/virginity myth – the idea that the hymen wraps the vagina and breaks and bleeds during first intercourse – is still widely popular in Iran.
- 14 Depending on the conditions of coercion or non-consent, the court might nullify the marriage or grant a divorce.
- 15 According to which, 18 is the age of majority.
- 16 The husband has the right to sex but does not have the right to force the woman to have sex.
- 17 Legitimate justification according to Iranian law include wife's or husband's sexually transmitted infections or diseases, fear of physical harm, or damage to the woman's integrity. The woman can also abstain from sex temporarily if the act of sex would intervene with religious obligations (e.g. during Ramadan or Haj ritual).
- 18 While the Iranian political system relies on elections (e.g. for the Iranian parliament, Council of Guardians, and the president), the candidates for any political office are vigorously and undemocratically vetted (Daghagheleh, 2018).