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Temporary Marriages, *Mahramiyat*, and the Rights of the Child in Shi'i Adoption

The Legal and Juristic Dilemmas

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Abstract

Iran accepts temporary marriage to facilitate and sanctify sexual relationships. The concession of temporary marriage has, however, been the subject of controversy in the past four decades. One significant refutation of temporary marriage is related to its attempted usage in the case of child-adoption, sanctioned by both the state and some Shi'i *mujtahids*. The explicated rationale is that an adopted child does not benefit from *mahramiyat* and is, therefore, non-*mahram* to members of the adoptive family after reaching puberty. To establish *mahramiyat*, Shi'i jurisprudence allows for temporary marriage between the adoptee and a member of the adoptive family. By performing a temporary marriage, new familial ties are established, and *mahramiyat* limitations are lifted. This proposed solution, however, can lead to other significant legal and social complications. This paper investigates Shi'i jurisprudence allowing temporary marriage in child-adoption scenarios in contemporary Twelver Shi'a by exploring relevant *fiqh/ijtihad* and legal perspectives in Iran.

Keywords

adoption – child rights – kinship – *mahramiyat* – temporary marriage – Twelver Shi'a

1 Introduction: Family Planning and Adoption in Islam

Islam encourages its adherents to take benefit from the blessings granted by God in the material world, including sex and sexual intimacy. Since Islamic

religious teachings do not promote celibacy (Rizvi 1990, Hathout 1997, Rahbari 2019), seeking marriage is highly recommended. Marriage is considered to be a social necessity and the legitimate or *halal* way to engage in intimacy and to procreate (IUPUI 2019, Sayfuddinm and Muhametov 2011, Hathout 1997, Sachedina 1990).¹ Islam encourages procreation (Hathout 1997), considering it to be one of the essential purposes of marriage (Atighetchi 1994). Despite this context, Islamic guidelines and laws relating to the family have manifested themselves in a range of ways in various Muslim-majority states, resulting in a variety of approaches towards marriage and family formation (Sachedina 1990, Boonstra 2001). To understand this diversity, a conceptual distinction should be made between faith consisting of religious values and principles and organized religion, which includes institutions, laws, and regulated practices (Mir-Hosseini 2006). In addition, there exists a plurality of approaches to scriptural interpretation regarding procreation and marriage across Muslim-majority states.

The family is an essential legal and social entity in Muslim-majority states. With an emphasis on procreation within the family, the treatment of adoption as a legitimate mode of family formation raises critical questions. The classic Islamic tradition relating to kinship is based on blood relations and excludes any adopted children from obtaining ties of lineage from adoptive families. How, then, is this reconciled with the caring for orphaned or unprotected children? Many Qur'an and Hadith references impart the value of kindness, generosity, and caring towards orphaned or unprotected children (Giladi 2014) through a system of guardianship, called *kafala*, which resembles foster parenting (The Digest 2011). *Kafala* entails sponsoring and guarding the adoptee rather than making the child a member of the adoptive family. This system emphasizes that the adoptees should be informed of their biological roots (Martin 2004), and the adoptive family are viewed as trustees and caretakers of someone else's child, rather than a child of their own (Land 2014). Islamic countries have a variety of customized social and legal approaches to *kafala* and adoption (The Digest 2011). In the Shi'i state of Iran, for instance, adoption follows a model that is neither purely based on Islamic *kafala* nor equivalent to internationally accepted models.

While adoption is possible and encouraged by the Iranian state, a dilemma emerges when the adoptee reaches the age of puberty and has to adhere to modesty and *mahramiyat*, usually applied when one is in the presence of a

1 Halal is a term referring to all that is allowed according to Islamic law. It is a general term used for a large array of issues, actions, food, music, etc., all of which remain *halal* unless prescribed or proven otherwise (Martin 2004).

non-family person; in this case, in relation to the members of the adoptive family, including parents (Hathout 1997).² This will introduce spatial limitations and will especially restrict the possibility of interactions between children and the adoptive family members of the opposite sex, particularly for families who actively observe *mahramiyat* guidelines. To overcome this issue and maintain *mahramiyat* between the adoptee and the adoptive family, one (questionable) solution put forth in Shi'i jurisprudence allows temporary marriages to occur between the adopted child and a member of the adoptive family, often the adoptive (grand)father. This solution is not mandated by the state, but is instead introduced to address religious people's sensibilities, and for creating a legitimate pathway for people who want to make sure they are observing *mahramiyat* guidelines correctly.

This article investigates how contemporary Twelver Shi'a in Iran has tried to facilitate *mahramiyat* in adoption situations using temporary marriage. The paper aims to investigate only the juristic and ethical dimensions of the practice and its possible implications for children's rights. The possibility of using temporary marriage to facilitate adoption is directly linked to the issue of child marriage – including temporary child marriage – in Iran, which raises concerns about the rights of the child as conceived in international law. To this end, the research has been carried out using the systematic study of Shi'i *mujtahids*'³ rulings⁴ in different *risalah*,⁵ online legal databases and media, and *mujtahids*' juristic inventories, including the 'questions-and-answers' sections on *fiqhi*⁶ websites, where juristic answers to specific questions are provided either directly by the *mujtahid* or by other Shi'i scholars. The study draws upon sources in Persian language available after the establishment of the Islamic Republic in 1979. This period is chosen because it marked a turn in legal frameworks on family formation owing to the establishment of a Twelver Shi'i Islamic regime in Iran based on a specific interpretation of Islamic shari'a.⁷

2 *Mahramiyat* refers to a framework of interpersonal relations based on familial bloodlines that regulates interactions with the opposite sex and marriages.

3 *Mujtahids* are religious scholars with juristic authority (Rahbari 2019).

4 Ruling is used for *hokm* (in Farsi) which are the commands and contextualized interpretations extracted from religious sources.

5 A compilation of religious rules and prescriptions by *mujtahids*.

6 *Fiqhi* is the adjectival form of *fiqh*. *Fiqh* is the human effort of giving a specific ruling on a particular human act by studying the relevant textual sources and investigating its proper context (Dahlen 2003).

7 Meaning "path" in Arabic, shari'a guides all aspects of Muslim life, including daily routines, familial and religious obligations, and financial dealings. It is derived primarily from the Qur'an and the Sunna – the sayings, practices, and teachings of the Prophet Muḥammad. Precedents and analogy applied by Muslim scholars are used to address new issues. The

The author acknowledges the limitations of the study, as they did not find any statistics or reliable data on actual cases of temporary marriage in the adoption context. There is a lack of qualitative, statistical, and demographic data on temporary marriage with children both under and above the age of puberty, within or outside the adoption context. Moreover, these topics are politically sensitive, and it has been increasingly difficult for researchers in Iran to study them. It is, therefore, challenging to estimate the extent to which Iranian people do comply with the existing laws and religious mandates of *mahramiyat*, or how far they are affected by the juristic and legal frameworks discussed in this paper.

The paper is organized as follows: first, the paper contextualizes temporary marriage and adoption within the Shi'i state of Iran. Then, it focuses on relevant juristic and legal discourses, and turns attention to resultant social and legal problems arising from the use of temporary marriage to facilitate *mahramiyat* in adoption scenarios. Finally, the implications of temporary marriage for both adopted children and the adoptive family and implications for children and the rights of the child, in particular, are discussed.

2 Shi'i Practice of Temporary Marriage: A Brief Overview

In Iran, despite drawing on *kafala*, adoption legally aims to provide adoptees with families that would treat them 'just as their own' (Rezvani Mofrad and Mojde 2016). Iran does not engage in international adoption and only allows internal adoption by its own citizens (The Digest 2011). In a context where Shi'i jurisprudence and social norms affect the law, the legal framework must deal with some discrepancies within these two frameworks. For example, while according to Shi'i jurisprudence, the adoptee does not inherit from the adoptive parents, under Iranian law, there is, in fact, a financial guarantee and/or life insurance to financially protect the adopted child.⁸ To protect the child in the adopted family, as explained above, temporary marriage is used to make the child *mahram* to the adoptive family members. The Iranian state's promotion of temporary marriage, in general, has not been received well by the public and has caused controversies during the past four decades (Rahbari 2019),

consensus of the Muslim community also plays a role in defining this theological manual (Johnson, Sergie, and Vriens 2011).

8 Executive Regulations of the Orphaned and Neglected Children Protection Law, section 5, implemented in 2015.

and the controversy over the application of temporary marriage in adoption has also drawn great dissent.

The practice of temporary marriage, known as *sigheh* in Iran, refers to a legalized form of marriage between a man and a woman for a short and pre-determined period, for which the woman gets compensated. Temporary marriage is not only sanctioned but also encouraged in Shi'i discourses to avoid premarital, extramarital, and other 'illegitimate' sexual relationships (Rahbari 2016). It is thus considered a sanctified way of indulging sexual desires (Milani 1992) in Shi'i discourses, but it remains an unpopular one among the Iranian public (Rahbari 2019). Besides this primary function, temporary marriage has also been used for non-sexual purposes such as for non-*mahram* men and women to be able to share spaces and interact more freely (e.g., during travel) (Haeri 1986). The practice is explained by Shi'i *mujtahid*:

A man and a woman who are not prevented by religious reasons (such as being related by blood or in terms of a common milk-mother) from marrying one another can, after agreeing upon a dowry and for a specified period of time, enter into wedlock; and after the elapse of the specified time, they separate from one another, without there being any need for the formalities of divorce. If in the meantime they have any offspring, these children are licit and are entitled to receive inheritance from both parents. After the specified period of time has elapsed, the woman must observe the period of *idda*⁹ (seclusion) as prescribed in the Shari'a; and if pregnant, she must wait until after the birth of the baby, and then she has the right to marry another man.

SOBHANI 2001, 192

Temporary marriages became more prominent following the 1979 Islamic Revolution, when Iran adopted specific interpretations of Shi'i Islamic *fiqh* in order to inform the state laws and legal frameworks. For instance, during the Iran–Iraq War¹⁰ and its aftermath, the state encouraged polygamy and temporary marriage as solutions addressing the sexual needs of war widows and disabled war veterans, and as outlets for those constrained by the strict

9 The period after a divorce during which the woman should abstain from marrying another man. In Shi'a Islam, this period is three lunar months.

10 The Iran–Iraq War was an armed conflict between Iran and Iraq, beginning on 22 September 1980, when Iraq invaded Iran, and ending on 20 August 1988, when Iran accepted the UN-brokered ceasefire (Wikipedia).

regulations against dating (Afary 2009, 13). Later, in 2002, the so-called Chastity House (*khaneye-efaf*) project suggested by conservative political forces aimed to sanction institutions that offered men temporary wives (Setare 2016). While temporary marriage was already legal, the Chastity House project aimed to normalize it, and to eliminate the so-called moral decadence (*fesad*) in society by replacing illegitimate and un-Islamic sexual relations with temporary marriages. This project caused outrage among women's rights advocates, politicians, and civil society because of its potential for abuse of the most vulnerable and often legally unprotected temporary wives.

The Chastity House project was dismissed in 2002. However, in 2009, members of the Legal Commission of the Iranian Parliament and the Cultural Commission of the Iranian Parliament brought up early temporary marriage again as a solution to the 'un-Islamic' sexual behaviors seemingly prevalent among young Iranians (Shojaei 2009). The attempt to normalize temporary marriage continued, and in 2014 the Islamic Parliament Research Center published a study that suggested early temporary marriage would solve the sexual crisis in Iran of premarital sexual relations among young Iranians. This report suggested that socially disadvantaged women would benefit from the financial protection of men who could afford temporary wives (Shargh 2014). Despite decades of civil society and women's rights activism, institutions such as Chastity House were brought back behind closed doors and are regulated today and active in Iran. There is no statistical or geographic information available either on women who are active participants, or on the male clients of the institutions. However, as a sociological study in Iran has shown, children have been one of the most prominent groups to be negatively affected by the practice of temporary marriage, as they experience interruption of education, mental and sexual harm, and difficulties caused by early divorce (Bahrami 2018).

In this context, marriage between an adoptee and an adoptive parent was allowed but conditioned on the approval of the family court, with the court being obliged to hear the view of the Juvenile Welfare Center (Yassari 2019). In 2013, amid widespread opposition from civil society, the law changed to state a general prohibition of the practice unless the family court considers the marriage, after consultation with the Juvenile Welfare Centers, to be in the best interests of the child (Yassari 2019, 95). This means that the practice was again conditionally sanctioned. The next section provides a more detailed description of the phenomenon of marrying the adoptee in the post-revolution Iranian context.

3 Temporary Marriage to Facilitate Adoption

The establishment of a Shi'i state in Iran in 1979 resulted in the transformation of gender regimes and official family formation perspectives. Despite these transformations, post-revolutionary Iran did not experience a return to more traditional gender mores (Afary 2009, 12). In fact, in terms of early and child marriage, despite the establishment of regulations such as reducing the legal age of marriage, the average age of marriage for both men and women has gradually increased.¹¹ The law currently sanctions marriage for girls over the age of 13 and for boys over the age of 15. However, this regulation is conditional, and children below the age of 13 can be married if their legal guardians¹² and an Islamic court sanction the marriage.¹³ For girls marrying over the age of 13, the legal guardian's consent suffices. According to Iran's official statistics for 2016, 39,279 brides were younger than the age of 15 years, accounting for 5.57 percent of all brides (Mousavi 2019).¹⁴ This demonstrates the potential widespread nature of this issue, although it is unclear whether any of these marriages are linked to an adoption scenario.

Focusing specifically on the adoption context, the Iranian adoption system professes to work towards the best interest of the child, and the adoption model considers the adoptee to be an attachment to the family. The law upholds the adoptive parents' responsibilities towards the child in terms of 'protection, rearing, financial support and respect' in the same manner as expected for a biological child (Rezvani Mofrad and Mojde 2016). In order to provide children with better care, Iran has moderated its adoption law to facilitate adoption in different ways. A notable recent change was the adoption of the Orphaned and Neglected Children Protection Law passed in the Iranian parliament in 2013, which enabled single women to adopt (only) a girl child (Rooznameh Rasmi 2013). In the case of adoption, Iran clearly favors women, as it is only possible for single women to adopt a child, not single men.¹⁵ Single women are

11 Between 1976 and 2016, the average age of marriage gradually but steadily increased from 24 for men and 19 for women to 27 for men and 23 for women. The average ages of marriage differ between provinces and between rural and urban areas, with rural areas having a lower average.

12 By order of priority: father and grandfather; mothers are not considered legal guardians in the marriage context.

13 The Civil Code of the Islamic Republic of Iran, section 1041, amended and implemented.

14 The total number of boys who married under 15 years old was 366, making up 0.05 percent of the number of all grooms (Mousavi 2019). This shows that, while child marriage happens in both gender groups, it is a much more prominent problem for young girls.

15 Besides the general conditions for adoption such as good health, religious affiliation to one of the officially accepted religions in the Iranian constitution, belonging to the

prioritized even over couples who already have children (Rooznameh Rasmi 2013). This shows a radical willingness to change the traditional family model, which previously included a husband/father as the primary guardian, as the core requirement of family formation. Of course, the *mahramiyat* question also does not arise when a single woman adopts a daughter.

In line with these attempts, where required, paving the way for *mahramiyat* is one of the ways in which the state attempts to facilitate adoption. The regulations categorize people of the opposite sex as (1) *mahram*, which consists of people with whom one can safely interact and cannot marry; and (2) non-*mahram*, who are those whom one may marry and should abstain from interacting with outside of sanctioned guidelines.¹⁶ There are other *mahrams* – who are not always permanently *mahram* – through marriage bonds, such as the spouse (Rahbari 2017).¹⁷ Since kinship in Islamic jurisprudence is based only upon blood relations, marriage, and breastfeeding, according to the dominant majority of Shi'i *mujtahids*, adopting a child does not automatically create *mahramiyat*. This means that after reaching the age of puberty (9), a female adoptee becomes non-*mahram* to the adoptive father, brother(s), and other *mahram* male relatives, and a male adoptee becomes non-*mahram* to the adoptive mother and other *mahram* female relatives when he reaches the male age of puberty (15). This will introduce spatial limitations and will restrict the interactions between children and family members of the opposite sex. In the absence of the *mahram* relationship, they are effectively 'strangers,' with whom interactions are limited.

Juristically speaking, *mahramiyat* conditions can be facilitated in two ways: breastfeeding and temporary marriage (Marjaema 2013). Since breastfeeding a child makes the child *mahram* to the breastfeeding woman and her relatives, this method can be used to solve the problems of *mahramiyat*. However, this solution is subject to particular conditions and is not always available. For

same religious group (with the exception of Muslims, who can adopt from other religious groups), and having no previous convictions, the woman should be over 30 years old and be able to financially support herself and the child. A single woman who meets the adoption criteria can only adopt female children (ISNA 2017, Davoudabadi n.d.).

- 16 Permanent *mahrams* through blood are parents, fathers- and mothers-in-law, grandparents and further ancestors' siblings, children, sons- and daughters-in-law, stepfathers, -mothers, and stepchildren, grandchildren, and further descendants, siblings of parents, grandparents, and further ancestors' children and further descendants of siblings.
- 17 E.g., a spouse is *mahram* as long as the couple is married; after divorce, the spouse is not *mahram*. The mother- and father-in-law are, however, permanent *mahrams*, meaning that they will be *mahrams* to their son-/daughter-in-law even after he/she is divorced from their child.

instance, if the adopted child is too old to be breastfed,¹⁸ or none of the close relatives could naturally breastfeed the child,¹⁹ then the conditions are not met. In light of these limitations, juristic and legal authorities have suggested a temporary marriage between the adoptee and members of the adoptive family as the alternative solution.

While talking about adoptive parents, the law mostly applies to a marriage between the female adoptee and the adoptive (grand)father. The law provides safeguards by making the marriage conditional upon a court evaluation and court order and allows it in cases where the court deems it beneficial for the adoptee. Advocates of the law, such as the Deputy of Social Affairs of the former State Welfare Organization, have asserted that, besides the lack of religious basis for banning such a marriage, legalizing marriage with the adoptee would regulate an already existing phenomenon and prevent less regulated and non-registered temporary marriages (Iran Adoption 2013c). This suggests that, before the 2013 law, marriage with an adoptee was already potentially being practiced without legal recognition.

In terms of public discourses on the topic, there is a general silence by the state concerning the occurrence of temporary marriage in adoption, and there are no statistics or reliable data on whether or how many such marriages have taken place. The lack of data adds to the confusion around the practice, as it is not known by the public how many and to what extent the practice affects the lives of adoptees. What is well known is that the temporary marriage solution has not been welcomed by a large section of the Iranian society, from women's activists, politicians, and civil society advocates of children's rights to private citizens who have expressed their outrage about this topic on social media, online blogosphere, websites, and forums. Many examples of such comments, blogs, and debates can be found in Persian digital spaces, including a Facebook campaign that attracted nine thousand followers. While these examples might be unrepresentative and biased in presenting the tech-savvy urban populations, they do reflect a widespread public dissatisfaction. For the opponents of the law, allowing temporary marriage between an adopted child and a member of the adoptive family paves the way to child abuse.

The topic of temporary marriage in the adoption context has received attention from scholars of different disciplines in Iran, especially within religious and legal studies. The existing literature has either drawn on the Qur'an and other primary religious sources (e.g., Najafabadi and Javaheri 2017), or has

18 *Mahramiyat* through breastfeeding happens only if the child is less than two years old.

19 According to Shi'i guidelines, the breast milk should have been produced naturally and not as a result of medical manipulations (Rahbari 2020a).

approached the topic from an Islamic legal perspective (e.g., Daraei, Naser, and Rezaei 2019, Nazari Tavakkoli and Nazari 2017). Most studies, within both existing trends, either conclude that marriage with an adoptee should be approached with more caution, or that it is not justifiable or allowed from *fiqhi* and legal perspectives. Additionally, from within the country's political structures, there have been continuous attempts to ban the practice by the Vice Presidency for Women and Family Affairs (Khaneye Mellat 2018), which have been backed by some members of the Iranian Parliament (Mehr News 2013). Despite these ongoing attempts, marriage with the adoptee remains conditionally sanctioned. Overall, the law is perceived as a regression in the Iranian child protection schemes (Shafaqna 2013), by many politicians, activists, and people in Iran and in the Iranian diaspora (Shojaei 2013). In a context where the patriarchal hard-liner positions are still being fought in both social and legal spheres, legitimizing marriage with the adoptee is interpreted as an extra gift to patriarchy.

Iranian public online and offline platforms run by lawyers and academics discuss some of the harmful effects of marriage between the adoptive father and the adoptee. Some have discussed the potentially harmful effects of a change in the emotional dynamics of the family, which can lead to an unhealthy sense of competition and jealousy between the adoptive mother and the adopted daughter (Iran Adoption 2013b, Young Journalists Club 2016). In addition to civil society, religious authorities have also voiced their concern about the legalization of marriage between adoptive parents and adoptees. Among these are Mohammad Taqi Fazel Meybodi – a member of Qom Seminary (Iran Adoption 2013a) – and *mujtahids* such as Ayatollah Yusef Saanei and Ayatollah Makarem Shirazi, who stated:

Considering that this marriage should be religiously considered beneficial for the child and as jurists say, it should be expedient for her/him, and since this is often not expedient for the child and paves the way for abuse by the adoptive father, it is my [juristic] opinion that it is not permissible by the religion.

quoted in Asriran 2013

Furthermore, little concern or consideration has been presented by the advocates of the law or the jurists who support temporary marriage in adoption to address the issue of consent by a child, neither legally nor juristically. Moreover, as a general rule, in Shi'i marriage, consent is necessary for a marriage to be considered legitimate and legally accepted. The impossibility of consent by an underaged person and how it could affect the child's wellbeing should be taken

into consideration in any further discussions on the legitimacy of the practice. Child marriage also contravenes the UN Convention on the Rights of the Child 1989, which Iran signed in 1991.²⁰ Despite signing it, Iran reserved the right not to apply its articles, which it perceives as incompatible with Islamic laws (UNICEF 1989).

4 Gendered Perspectives and Loopholes in the Adoption Model

Shi'i jurisprudence allows temporary marriage between the adopted child and members of the adoptive family to facilitate the creation of new familial ties, thus overcoming the problem of *mahramiyat*. As a result of this marriage, the child becomes *mahram* to the members of the adopted family. However, as discussed before, there are gender differences in the conditions and consequences of temporary marriage and *mahramiyat*. Some authorities sanction a temporary marriage in the adoption context only for female adoptees:

If the adoptee is female and the man [i.e. the adoptive father] has a father, then if the Islamic court rules it expedient for the child, the child can be temporarily married to his father [i.e. the adoptive grandfather] and become mahram to the man; if the adoptee is male, there is no way.

AYATOLLAH SAAFI, quoted in Marjaema 2013²¹

By temporarily marrying the adoptive grandfather, the adoptee becomes her adopted father's stepmother and thus *mahram* to the adoptive father, as well as uncles and brothers. The duration of this form of temporary marriage does not have to be life-long, but long enough to be considered 'marriage.'²² Other *mujtahids*, such as Ayatollah Noori Hamadani, have made similar rulings (Oveisi 2015). As seen in the quotation, this *fiqhi* approach to temporary marriage diverges based on gender. Since a male adoptee is non-*mahram* to the adoptive mother, his temporary marriage can only take place within the adoptive mother's family line. Similarly, the female adoptee's temporary marriage can only be effective if it takes place within the father's family line. But in the case of a male adoptee:

²⁰ According to which, 18 is the age of majority.

²¹ All quotations in languages other than English have been translated into English by the researcher.

²² According to Ayatollah Sistani, Shi'i *mujtahid*, the duration of marriage can be a few years (Ayatollah Sistani n.d.). It is possible to cancel the marriage earlier.

If the woman [i.e. the adoptive mother] has a living mother who is single, the adoptee can be temporarily married to her [...] with the condition that there is intercourse between them; but this is highly uncustomary [*orfi*].

AYATOLLAH MAKAREM SHIRAZI, quoted in Makarem n.d.

In this case, conditioning temporary marriage to an act of sexual intercourse in the case of a male adoptee makes the practice obscene and thus ruled out as a possibility. In this ruling, the notion of customary (*orfi*, which is derivative from *orf* in Persian) is used to explain why the practice of temporary marriage for a male adoptee is unlikely to take place. *Orf* is literally translatable to ‘common law’ and refers to matters on which there is a general public consensus. In *fiqh*, common law/*orf* is what has been socially established, has become part of the habitus of a given society, and is also justifiable by rational thinking (Izadifard, Nematzadeh, and Kaviar 2009). Common law is essential because the *ijtihad* tradition in Shi’a Islam delineates that the rulings of the *mujtahid* should be updated, applicable, and compatible with the societal needs of a context at any given moment in history (Izadifard, Nematzadeh, and Kaviar 2009). This means that *orf* should be taken into consideration in a *mujtahid’s* interpretations of divine law unless it is in direct contradiction to Islam. Considering the importance of common law in Shi’a rulings, one can discuss that, since the practice of temporary marriage is unpopular in Iranian society and is widely frowned upon, its inconsistency with *orfi* standpoints would justify juristic rulings against its practice.

Despite this, besides sanctioning temporary marriage with members of the adoptive family such as the grandfather, some *mujtahids* also rule in favor of a temporary marriage between the female adoptee and the adoptive father in specific cases, for instance, if the adoptive father has sons (Hadana n.d.). This ruling applies only to the case of female adoptees, since only the adoptive father can engage in polygamy by temporarily marrying the adoptee. If a marriage between the adoptive father and the adoptee takes place, there will be at least two immediate complications. First, when the period of marriage is over, the adoptive father and the adoptive daughter are no longer *mahram* to each other. Second, as long as the marriage is valid, the adoptee cannot get married to another man, since polygamy is not allowed for women. Other *mujtahids* have similarly sanctioned a temporary marriage between the adoptee and some of the male members of the adoptive family, including the adoptive father: ‘If an adoptee is female, she is made mahram by temporary marriage with the adoptive father, his father, son or grandson’ (Ayatollah Shubairi Zanjani, quoted in Marjaema 2013).

As seen above, most of the rulings on temporary marriage apply only to female adoptees. This raises questions about the impact of temporary marriage in the framework of adoption, which is ironically seen as a charitable practice. As mentioned above, one concern is that the child's understanding of the dynamics and the issue of consent has not been addressed. It is thus simply assumed that performing temporary marriage and making the child *mahram* to the adoptive relatives would be in the child's best interest. It is true that, in a Muslim context, *mahramiyat* between the adoptive family and the adoptee could be beneficial for everyone, and the benefits of the practice for Muslim families are not to be undermined, and that the temporary marriage is not to be perceived as a 'real' marriage contract. The very suggestion of temporary marriage in the case of adoption by the Shi'i *mujtahid* is an example of religious casuistry.²³ This means that the sole purpose of temporary marriage – here, acting as religious casuistry – is to create a condition where the adoptee and the adoptive family are not othered due to religious limitations caused by *mahramiyat* guidelines. This means that there are no expectations from the child to act as a 'spouse' in any way, and any form of sexual advances towards the adoptee is extremely taboo in the society (as the marriage itself is). Temporary marriage in the adoption context is thus no longer about making sex licit but about establishing a kinship bond that precludes the possibility of a sexual relationship between the adoptive parent and the adopted children.

However, in case of sexual abuse by the person who has temporarily married the child, prosecution would become complicated, if not impossible, because of an existing marital bond.²⁴ This complication, coupled with the legalization of marriage to one's own adoptive child, could leave the adoptee vulnerable to abuse without protection and any grounds for legal prosecution. Legally speaking, it is not clear, nor is it indicated anywhere in law, whether sexual violence perpetrated against the child in such 'marriage' settings would be categorized as abuse/rape/molestation or not. To put it tersely, although the adoptive marriage is a 'fake' marriage, it can still have very 'real' repercussions for the child.

23 In the *Merriam-Webster* dictionary, 'casuistry' is defined as a resolving of specific cases of conscience, duty, or conduct through interpretation of ethical principles or religious doctrine. Religious casuistry refers to the use of a juristic ruling to solve a problem that the ruling was not initially extracted to resolve. If the ruling is correctly extracted by a *mujtahid*, and the problem that it solves is not religiously non-permissible, then the usage of religious casuistry is justifiable (Khazali 2004).

24 Because the marriage has only been conducted for creating *mahramiyat*, from an *orfi* point of view, it is disqualified for intimacy; but the *fiqhi* implications of it have never been addressed to the author's knowledge.

Besides the majority Shi'i position by scholars who sanction *mahramiyat* through temporary marriage, there is a minority position, currently represented by Ayatollah Saanei as the only *mujtahid* who has advocated for another solution: 'adoptive *mahramiyat*'.²⁵ While similar to other *mujtahids*, he has prioritized *mahramiyat* through breastfeeding and temporary marriage with the adoptive grandparents (explicitly excluding adoptive parents) (Shariati Nasab 2014). He has also ruled that, in conditions where none of these two methods are available, and if not adopting the child would lead to hardship for the child, adopting can automatically and without other interventions lead to *mahramiyat*:

Because such actions [such as adoption], which are good and generous deeds to others, especially those towards orphaned and unprotected children, are *mustahab*²⁶ and desirable, and will bring prosperity in this life and reward in the afterlife. In terms of observation of *mahramiyat* after the child reaches puberty and matures, if it is necessary and if biological child-bearing is not possible, and if the child is told that he/she does not have [biological] parents and that he/she is not the adoptive parents' [biological] child, [*mahramiyat*] is permissible. Hardship and necessity resolve *mahramiyat*. Islam is the religion of ease and facility.

AYATOLLAH YUSEF SAANEI, quoted in Nobahar 2010

Saanei's standpoint is welcomed, especially by those critics who seek religious institutions' solidarity and cooperation to influence and change the contemporary legal frameworks in place. However, Ayatollah Saanei's ruling, and his other rulings on temporary marriage, women's inheritance, and family rights, have sparked criticism from political and religious conservatives who claim that his interpretations are examples of religious heresy (Fararu 2009, Damghani 2008).

Within this complex context, while temporary marriage with a child is hardly a justifiable solution for making adoption possible, it has offered one religiously sanctioned solution to families who wish to adopt a child and want to adhere to the religious requirements regarding *mahramiyat* and the Islamic upbringing of the child. It is, however, clear that the topics of adoption and temporary marriage are both entangled in political, juristic, and legal discourses,

25 Ayatollah Sadeghi Tehrani, who died in 2011, was another *mujtahid* who ruled for adoptive *mahramiyat*.

26 Non-obligatory good deeds that will be rewarded.

which are interwoven with the underlying standpoints of the Islamic state, and that their implications are widely under-scrutinized.

5 Discussion and Concluding Remarks

This paper has discussed Shi'i guidelines and legal discourses on temporary marriage in the context of adoption in contemporary Twelver Shi'a Islam in Iran. It has relied solely on *fiqhi* and legal regulations in Iran, and not on empirical findings. By doing so, the study did not aim to make claims on actual cases of temporary marriage in the adoption context, but rather to reveal the possible implications of temporary marriage for children and adoptive families, including undermining children's rights, and giving rise to an array of social problems discussed above.

The current legal standpoints on marriage and adoption reflect the integration of Islamic shari'a and governmental entities in Iran (Jafari and Maclaran 2014). Iranian laws should be seen as a possible site for *fiqhi* and non-religious perspectives to work as competing as well as moderating forces. In fact, in the contemporary Twelver Shi'i model of *fiqh*, the focus on the social potential of *fiqh* and the significance of *orf* could be instrumental in reinterpreting shari'a and might lead to change in the existing epistemological and authoritative orders (Rahbari 2020b). The notion of social *fiqh* is central in the Islamic Republic's interpretation of shari'a and refers to religious jurisprudence that goes beyond individual prescriptions and targets direct or indirect social implications (Shakeri and Abdoli 2015).²⁷ As such, social *fiqh* is based partly on the idea that religious rulings should be grounded, contextualized, and drawn on the social and political realities of the context. Even within the integrated model of religion and state, the reliance of contemporary Shi'i traditions on social *fiqh* and the notion of *orf* has the capacity to update jurisprudence where previous rulings stand in contrast with social beliefs. Therefore, many reformist groups believe that using mechanisms of persuasion, interchange, and dialogue with religious authorities could result in favorable outcomes in Iran.

Furthermore, besides the capacity of *fiqh*, the configuration of the Iranian legal framework is a space to enforce change. In the relationship between the religion and the Iranian legal framework, as discussed by Osanloo (2012),

27 Social *fiqh* goes beyond individual issues and responsibilities to engage with collective good and bad. This definition of similar to "dynamic" *fiqh*. For discussions on social, dynamic, governmental, and individual *fiqh*, see Mehrizi (1997).

Iranian law has codified religious guidelines and has created a body of regulations that should be followed by the people. These codified forms of religious guidelines and state mandates – despite being based on religion – are sources of authority separate from religious institutions. Because of the integration of Shi'i jurisprudence and the legal frameworks constituting a Republic state after the Islamic Revolution, the entity that came to fruition after the revolution was neither a pure, 'traditional' expression of Islam, nor a copy of the European state model, but something new (Osanloo 2012, 61). In this model, there are interactions with shari'a and non-religious legal frameworks. As Roy (1999) has discussed, even in a religious state such as Iran, political as well as religious institutions have a part in defining the status and role of religion (Roy 1999, 202). Iranian lawmakers have, in some cases, successfully negotiated changes in laws and have either encoded moderated versions of traditional juristic rulings or encouraged *mujtahids* to issue new rulings.

While it is challenging to reconcile adoption with the classic Islamic guidelines of *mahramiyat*, it is possible to use the capacities of both *fiqh* and law to change the legal frameworks of adoption. The lawmakers' and *mujtahids*' interventions have, for instance, successfully resolved the issue of adoptive inheritance by allowing adoption only if the adoptive parents provide life insurance or transfer substantial capital to the adoptee's ownership (Rooznameh Rasmi 2013). The issue of *mahramiyat*, however, has remained an obstacle. There are families for whom *mahramiyat* does not pose an urgent problem, and others for whom *mahramiyat* matters, but it is unthinkable for them to marry a young child to an adult. It seems that in this context, without issuing new juristic rulings on *mahramiyat*, not only will adoption not be as widely practiced as desired by the state, but also new legal loopholes will be created which might put the child's wellbeing in jeopardy.

Child marriage, whether in the adoption context or not, violates the very sanctity that many Islamic rulings bestow upon the institution of marriage. As this study has shown, religious arguments in patriarchal social contexts could, however, become a part of the problems that help perpetuate harmful practices such as child marriage (Karam 2015, 67). It seems that with the high value given to the protection of children's rights in Islam – especially unprotected and orphaned children – the role of religious scholars, institutions, and communities should be centralized in any efforts to eradicate forms of marriage that are harmful for individuals and/or the community, and violate children's and women's human rights.

The political, social, and religious debates on temporary marriage and adoption in Iran not only have challenged the classic Shi'i rulings and the very notion of kinship, but also have revealed a deep-rooted struggle in the

country's processes of legal reform in the face of prevailing political conservatism. While many political actors and forces strive to adhere to classic *fiqh* as the contemporary solution to the country's development as well as spiritual salvation, alternative, unruly, and challenging discourses of change through religious and political reform permeate through intellectuals, academics, feminists, and activists.

To conclude, this study has shown that it is impossible to address the legal and juristic dilemmas of *mahramiyat* in Shi'i adoption in Iran without understanding the complex ways in which multiple social, political, and religious discourses intersect. Islamic feminists such as Mir-Hosseini (2006) have stated that, in the case of the modern Iranian nation-state, the country has created a uniform legal system and has selectively reformed and codified elements of Islamic law that resist the idea of change.²⁸ Nevertheless, Mir-Hosseini (2006) is one of the advocates of improving family law within Islamic perspectives. One could argue that Ayatollah Saanei's position on *mahramiyat* through adoption might be a testimony to Mir-Hosseini's standpoint, and an example of how the capacity of religion could be applied to reinterpret religious rulings or proclaim new ones. This path could eventually lead us out of the contemporary legal and juristic dilemmas of *mahramiyat* and protect the rights of the child in the adoption context.

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28 Mir-Hosseini (2006) argues that the opponents of change are not only Muslim traditionalists (who resist minimalist versions of shari'a) but also Islamic fundamentalists (who want to return to an earlier and purer version of shari'a) and secular fundamentalists (who deny that religious law could have any value at all).

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