

4-24-N43-2755

WOMEN'S RIGHTS AND FAMILY LAW AMENDMENT IN IRAN: CORRELATION OF ISLAM, NATIONAL IDENTITY AND THE OTHERNESS OF THE WEST

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ABSTRACT

This paper examines how conceptualising 'family' in post-revolutionary Iran, in connection with the concepts of sanctity and the Islamic nation, makes family law amendment challenging. It argues that how other-making of the West by the post-revolutionary Islamic state makes conservatives reluctant to accept the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The paper discusses how the CEDAW opponents are concerned about the devaluation of the family's role in the society if Iran joins CEDAW because they assume that CEDAW clauses are influenced by Western culture. Although the supporters advocate Iran joining CEDAW, the compatibility of Islam and CEDAW is their concern as well, so they suggest a 'reservation right' and '*ijtihad*' as solutions. Based on the relevant theories, this paper argues that reforming family law is more problematic in Iran because in addition to the traditional status of family as a sacred entity, as in other Muslim societies, the family has been given a significant role by Islamic state in shaping and preserving the Islamic nation of Iran.

Key words: CEDAW, family law, nation, Islam, Iran

INTRODUCTION

The subject of women's rights in family law has been an important area of debate between women's rights activists inside and outside the government and Islamic hardliners in post-revolutionary Iran. Since the empowerment of Islamic revolutionary forces and the establishment of the Islamic Republic of Iran (IRI) following the 1979 revolution, broad amendments have been made to the socio-political and the individual rights of women. According to the emphasis of the Islamic state on implementing Sharia law in socio-political and legal areas of society, family law was one of the first realms that Ayatollah Khomeini, the leader of the revolution, commanded should be Islamised. Therefore, since the first year after the formation of the Islamic state, Ayatollah Khomeini denounced Mohammad Reza Shah's 'Family Protection Law' (FPL)² and commanded conversion to Islamic family rules.

Following the emergence of intense debates over the issue of Iran joining CEDAW from 2000 to 2004, during the reform era in Iran, the compatibility of CEDAW's clauses and Islam was one of the most controversial subjects between opponents and supporters of Iran joining CEDAW. Through a critical examination of the representation of CEDAW in reformist and conservative publications in IRI, 'family law' was identified as one of the dominant themes around which the discussions around the compatibility of Islam and CEDAW was articulated by CEDAW opponents and supporters. The matter of amending family law based on CEDAW, which is mainly discussed in articles by CEDAW opponents – published in conservative publications – is mostly seen as having a strong connection with the dichotomous relationship of Islam and the West. The conservative publications underlined the contradictions of Islamic-based family law in Iran and CEDAW clauses to warn about the marginalization of the Islamic identity of Iranian society concerning what they assume to be the aim of CEDAW – replacing

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² FPL was established in 1967 during the reign of Mohammad Reza Shah Pahlavi, former Shah of Iran. In accordance with this law, some Sharia-based family laws were annulled in favour of women.

Islamic values with Western ones. Moreover, by picturing the Western family as a fragile unit undervalued in Western culture, CEDAW opponents argue that implementing CEDAW's articles will result in the collapse of the family in Iran, mirroring what has happened in the West. On the other hand, CEDAW supporters, whose ideas are mostly reflected in reformist publications, attempted to justify the position that CEDAW and Islamic family law are not intrinsically in contradiction. They proposed the use of 'reservation right' and '*ijtihad*' as vehicles to resolve the conflict of some CEDAW clauses with Islamic family codes.

Family is a theme that predominates in articles by CEDAW opponents, rather than in those by CEDAW supporters. Therefore, it is little wonder that the discussion in this paper typically revolves around the claims of CEDAW opponents on the subject of family law. The aim of this paper is to describe how CEDAW opponents and supporters perceive family law amendment in Iran and how problematic this amendment is by analyzing the sacredness of the family in the Middle East, and the strong correspondence of the 'family' issue with safeguarding of the Islamic nation.

CONTEXT AND METHOD

There are two main camps in the political scene of Iran: conservatives and reformists. The former camp is dominant and has the support of IRI's leadership, while the latter camp shows more tolerance, compared to conservatives, to modern and democratic ideas, and advocates improving the relationship of Iran and the West (Mehran, 2003).

The presence of reformist in the political sphere was boosted when Khatami – a moderate Islamic cleric – was elected in 1997's presidential election. He was the first presidential candidate with specific plans in his electoral campaign for developing Iranian women's social and political participation and amending the laws so that women enjoy fair legislation as equal Iranian citizens with men (Paidar, 2001). The presidency era of Khatami is known as the reform era in Iran (1997–2005). What makes the reform era important for this study and in connection with today's Iran is the potential for reformists to gain power again in Iran (following the victory of Hassan Rouhani, who was supported by reformists in 2013 presidential election), although they have been almost excluded from top political positions in recent years. The publications of the reform era are the only way to addressing and comparing the ideas of the two sides, opponents and supporters, about CEDAW because many of these publications were shut down after the end of Khatami's presidency when Ahmadi-Nejad (2005–2013) became president.

In 1999, the reformist government of Khatami referred the bill of 'Iran joining CEDAW' to the fifth *majlis* (parliament). This bill was considered more seriously by the next *majlis* (2000–2004) with its reformist majority. The discussions around CEDAW are reflected in the publications between 2000 and 2004, while it was not discussed as much in the publications before and after this period. Thus, this study uses the time frame of 2000–2004.

This study employs a qualitative document-based method, using 61 reformist and conservative publications as the main site for CEDAW supporters and opponents to publicize their ideas in the reform era (Mir-Hosseini, 2002). The publications' articles related to CEDAW were collected regardless of their political attitudes by using relevant key words and searching library resources for electronic and hard copies. The collected publications were categorized as being reformist, conservative, or neutral.

Gidley (2012) states two broad ways of approaching documents in social research. The realist approach to documents involves using texts as evidence and as a representation of reality by 'gathering as great a volume of texts as possible and scouring them for details of "who", "when", "where" and "what"' (Gidley, 2012, p. 271). In this approach, documents are taken as a research resource and as a tool to access social reality. On the other hand, the social constructionist approach describes documents as social facts, and considers texts as topics

rather than a resource, ‘as realities in themselves rather than a way of accessing some other reality’ (Gildey, 2012, p. 271). The research approach in this study takes a constructionist approach because there is no intention to gather accurate information from authentic documents to understand what happened in the past. Instead, the focus is on the texts and examining various ways in which social realities (like Islam and West) are constructed and represented in reformist and conservative ideas.

The collected articles were published in Farsi; the extracts from these articles are translated into English, attempting to preserve both the exact content of the articles and the words and terms used in their language.

FAMILY NOTION: CONTRADICTION BETWEEN ISLAM AND CEDAW IN THE PERSPECTIVE OF CEDAW OPPONENTS

CEDAW opponent authors are mostly in agreement, at least in cultural terms, with the dominant conservative discourse of the Islamic state in terms of criticizing Western culture and of the marginalization of Islamic culture in Iran through the influence of Western culture. As one of the main subjects of their focus, CEDAW opponents consider CEDAW’s clauses in strong contradiction with Islam in terms of the definition of the family institution, and gender relations within it, especially the woman’s role in the family. In line with official conservative thought in Iran, CEDAW opponents emphasise that gender equality does not mean having exactly equal rights and duties for men and women in the realm of the family; it means that men and women’s rights and duties should be in conformity with their natural and inherent characteristics and abilities. CEDAW opponents’ discourse in Iran represents motherhood and wifeness as the main roles of women in society, and identifies that the key role of women is to preserve the institution of the family and its authentic cultural values. While motherhood is seen as an exclusive natural role of women in this discourse, CEDAW identifies motherhood as the shared responsibility of women, men and society. Accordingly, CEDAW asserts that women should not be deprived of other social roles in the public sphere on account of their child-raising responsibilities (Article 5(b)). CEDAW opponents claim that this approach of CEDAW towards motherhood – a shared responsibility – is influenced by Western culture in which motherhood is not recognised as the primary role of women. They also argue that Western societies are experiencing complexities in family and society due to women’s engagement in social roles equal to those of men.

The following extract from the article ‘*Recognition of the harms of joining to a western convention known as eliminating the discrimination*’, published in a conservative newspaper, by Keyhan (2003), is an example which clearly shows the view of the opposite discourse of CEDAW on priority, specificity, and the benefits of motherhood for women:

In this convention, motherhood as the specific dignity of ‘woman’, the symbol of her exclusive power and effectiveness, and as the most important and complicated type of female social participation, is ignored and underrated. What CEDAW considers as gender programming in employment and education system, which is aimed at eliminating gender clichés, is developed based on the paradigm of similarity between men and women, and does not concern any specific education for girls to practice the roles of ‘mother’ and ‘wife’ (Article 10. C³).

From the perspective of those who criticise CEDAW in IRI, the family in CEDAW is defined based on a Western model and, therefore, in their perspective, changing family law based on CEDAW is equalised with the Westernisation of the family structure and the replacement of

³ Article 10 (c) of CEDAW: The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods (<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>).

Islamic family law with Western legislation. The concerns of CEDAW opponents about Westernisation of family in Iran as a consequence of Iran joining CEDAW are reflected in four pivots in their articles. Firstly, CEDAW opponents claim that CEDAW threatens the existence of what they consider the normal family – a heterosexual and marital couple-based household – as, in their perspective CEDAW, being influenced by the Western culture, legitimises a same sex partnership as a family. Secondly, CEDAW opponents are concerned about changing the gender relations within family. They argue that CEDAW necessitates an alteration in the traditional model of the division of labour in the family – women for domestic responsibilities and men for outside-home careers to earn money. Thirdly, the opponents believe that compassion between family members in the Western model of family, as is promoted by CEDAW, is inadequate, and individuality is more respected than collective relationships, which can result in a lower emotional connection between family members. Finally, the last concern of the opponents, which is the main focal point of this paper, is the contradictions of Iranian family law and the CEDAW clauses. CEDAW opponents underline the maintenance of Islamic family law as an important tool to stabilise traditional gender relations within the family and prevent the weakening of the family institution, as has happened in the West according to their interpretation.

Some of the articles among those that verify the contradiction of CEDAW's family-related articles and Islam are precisely focused on the conflicts of CEDAW and Islamic family laws in Iran. In order to show the incompatibility of Islam and CEDAW, the opponents point to various Islamic family legal codes and the contents of IRI's constitution that are different from CEDAW's articles on the equality of rights between women and men in the family domain. CEDAW opponents refer to the following themes, extracted from Iran's constitution and family law, frequently to show CEDAW's view of complete equality and the Islamic view of difference on men's and women's rights in the family realm:

- Monopolised right of the father for the custody of children (for boys above the age of two and girls above the age of seven) after divorce;
- Women's requirement to receive father's (or other male guardians') permission for their marriage, in comparison with men's freedom to choose their spouse;
- Woman's requirement to have spousal consent to travel outside the country;
- Exclusive right of men to divorce whenever they decide;
- Smaller share of women in inheritance compared to men;
- Monopolised right of man in marital relationship to choose the place of residence;
- Exclusive right of men to transfer their nationality to their children;
- Introducing motherhood as the main role of women in the society, and the centrality of women in the family in terms of rearing the children.

The details of the contradictions between CEDAW's articles and Iran's family law and institution is outside the scope of this study. However, it must be noted that by underscoring these contradictions, CEDAW opponents ascribe the troubles that they see in the Western family to dismissing the Islamic family-related rules in Western society. The article "The convention of eliminating discrimination against women and the sensitivities" (Anonymous, 2003), published in the *Zane-Rooz* journal (02/08/2003), reveals this opinion. The article does not only mention the contradictions, but it also explains how the troubles that opponents consider for the Western family are derived from dismissing the Islamic family-related rules:

By looking at the clauses of this convention, one can understand the view that the drafters of this document have regarding family. In this view, the family is not considered a unified entity in need of management (part 16, articles C and D).

Each couple is free to choose where to live and, therefore, a man and his wife can live in different cities, separately, in complete freedom (part 15, article 4). The convention goes even further and declares the couple's independence in choosing nationality. That

the couple's consent will be the only requirement of marriage (part 16) means the consent of bride's father will be excluded and, in this way, the couple's independence will have priority over the father–daughter relationship and she will be deprived of her father's support.

Based on this article, a Muslim girl will be allowed to marry a non-Muslim man. This will not only endanger the girl's future religious beliefs, but it will also deny their children proper religious education.

CEDAW SUPPORTERS' RESPONSE TO CEDAW OPPONENTS' CRITICISM

CEDAW supporters do not specifically and profoundly address the contradictions between CEDAW's clauses and Islamic family laws. They mostly answer their opponents' criticisms around these contradictions in a general way, through two main solutions that they typically suggest. The two solutions are: a) employing a reservation right, which is used by the other Muslim countries which joined CEDAW; b) employing *Ijtihad* (independent reasoning) that allows a *Mojtahed* (high-ranking cleric) to re-interpret Sharia law with regard to contemporary circumstances and issues of Muslim life. For instance, the article "Clerics' disapproval – why and how?" published in the reformist newspaper of *Mardom-Salari* (25/05/2002) respectfully mentions the *ulamas* and the significance of their ideas about CEDAW. However, the article finally responds to the *ulamas'* opposition by suggesting the employment of new criteria to determine women's rights in conformity with today's circumstances:

In the new situation of women in which we can see women's presence in the society and their participation in earning the family income alongside men, it seems necessary to change the right based on the new criteria. Is it possible to apply previous male-centric measures to define women's rights when they are the breadwinner of the family?

Ultimately, what is common between the opinions of CEDAW opponents and supporters is that they both admit the prior role of Islam in defining or reformulating the family laws. They stress the use of a reservation right to preserve the traditional Islamic rules in the field of family or *Ijtihad* to reformulate Islamic family law in conformity with CEDAW's clauses.

THEORETICAL UNDERSTANDING OF INTOLERANCE TO AMENDMENT OF FAMILY LAW IN IRAN

As Bonjour and Hart (2013, p. 61) explain, 'gender and family norms play a crucial role in the production of collective identities, i.e. in defining who "we" are and what distinguishes "us" from "the others".' Moreover, they assert that gender relations are regularly deemed as the 'essence' of cultures, 'as ways of life to be passed on from generation to generation' (Bonjour and Hart 2013, p. 63).

As Giddens (1989) argues, although family is an important social institution in various societies, there are significant differences between the patterns of family and marriage formation in various cultures. Here, my focus is on the significant and determining position of the family in Iran that makes reforming the family laws and introducing conceptions alternative to the traditional family (Hoodfar, 2000) challenging. In the two following sub-sections, I will address two characteristics of the family position in the Middle East and Iran, which can be used here to describe the intolerance to reform of family law in Iran. These two characteristics are defined around the strong connection of religion and the Islamic nation with family: 1) the sacredness of family in the Middle East; and 2) otherness and nationalism in association with the concept of family.

The sacredness of the family in the Middle East

The importance of the family in the Middle East can be seen in what some scholars describe as the influence of state and religion as the two most powerful institutions on the family (Joseph, 2000). As Moghadam (2004, p. 140) argues, 'nowhere is family free of state regulations';

however, in Middle Eastern societies, the family is known to have a nearly sacred space (Joseph, 2000). Not only have Middle Eastern states legally privileged the family over the individual, but they are in line with the discourses that represent the family as ‘pre-political’, and as a domain beyond current time and situations that is best defined in the domain of the divine (Joseph, 2000).

Charrad (2000) argues that the family is considered a nearly sacred space in Middle-Eastern societies and this is linked with discourses that represent the family as *priori* and something engaged to the domain of the divine. The connection of family moralities with religious moralities has increased the religious control over family regulations (Joseph, 2000). This is more observable in the widespread intervention of religion in the legal domain of the family, and the delegation of family laws to religious courts throughout the Middle East. Such a connection makes amending family codes very challenging in Middle Eastern societies (Joseph, 2000).

The question of the contradiction of CEDAW’s articles and family laws in Iran can be found in numerous articles of CEDAW opponents. In these articles, CEDAW opponents endeavour to present Islamic family laws as the ideal pattern of gender relations that results in the preservation of the traditional family in society.

The influence of religious laws on family law in Iran has a long history, returning to before the Revolution in 1979. Prior to the codification of family law (1931–1935) in Iran in the context of Reza Shah’s modernisation project, *Ulama* (high-grade Muslim clerics) had a traditionally important role in judging family-related matters (such as marriage, divorce, child custody, and widows’ inheritance) based on Shi’a *fiqh* (jurisprudence) (Afshar, 1985b). However, in Reza Shah’s era (1925–1944), by establishing new courts and procedural rules for registering marriage and divorce, the influence of the *Ulama* was partially lowered. Reza Shah announced that all marriages and divorces had to be registered by the civil courts, under the direction of lawyers instead of clerics (Afshar, 1985b; Mir-Hosseini, 2007). Although Reza Shah’s decision broke the monopoly of the clergy on defining family regulations, classical Sharia laws remained almost intact as part of the new Civil Code (Mir-Hosseini, 2007).

Mohammad Reza Shah’s FPL, established in 1967, was seen a focal point in terms of family law reform in Iran by many scholars (Ebrahimi, 2005; Halper, 2005; Hoodfar, 1999; Mir-Hosseini, 2006; Yassari, 2002). FPL explicitly abolished some Sharia laws that were regarded as discriminatory towards women. For example, men and women were put on same footing in terms of access to divorce and child custody rights, while before these rights had exclusively belonged to men (Ebrahimi, 2005).

FPL lasted for a short time; in February 1979, two weeks after the establishment of the Islamic regime in Iran, Ayatollah Khomeini declared the FPL to be non-Islamic and ordered the return of Sharia to family law. Thus, 172 Civil Code articles about family issues returned to Sharia-based ones, in line with the Islamisation of the constitution and the courts (Mir-Hosseini, 2007). In the 1979 constitution, Islamic rules became the main foundation of family law in Iran, and only a *Mojtahed* who was an expert in Sharia laws could be Chief of the Supreme Court. Thus, the Prosecutor-General and also the Iranian Parliament became very vigilant about passing bills; the bills had to be in accordance with Islamic principles and norms (Ebrahimi, 2005).

The view of Joseph (2000, p. 20) of the link of citizenship and family law can be regarded here as explaining that family law as ‘a critical feature of citizenship laws and practices, has been anchored in religious law in most Middle Eastern countries’. Joseph describes the family in Middle Eastern societies as ‘a site of contestation in the making of state and nation’. Family law may rightfully be said to be the most critical site in which membership in religious communities has been a venue for constituting the Middle Eastern legal subject. In most Middle Eastern states, family law is either directly under the control of different legally

recognised religious sects, without offering any civil alternatives, or has 'incorporated the family codes of the dominant religious sect into the civil code' (Joseph 2000, p. 20). Joseph (2000) points out that the sanctification of the family domain via locating family law in religious law makes the amendment of family codes, such as changing the gender relation and advancing women's status as equal citizens with men, very challenging in these societies.

Otherness and nationalism in association with the concept of family

The concept of the 'other' is a key concept to explain the conservatives' resistance to amending family law and bringing it into line with CEDAW. The perception of the West as an 'other' has its roots in the first interconnections of Iranians and the West in 19th century during the Qajar dynasty. It arose when first the Iranians travelled to the West and Western travellers and diplomats went to Iran (Ghanoonparvar, 1993), during which, portraying the West as an 'other' happened through using terms such as exotic, anti-Islam, the vehicle of modernity, and imperialist (Ghanoonparvar, 1993; Boroujerdi, 1996).

The otherness of the West was strengthened by the 1979 revolution in Iran that overthrew the Pahlavi dynasty under Mohammad-Reza Shah, and replaced the Shah's regime with an Islamic republic under Ayatollah Khomeini. By 1979, the other-making of the West, which previously was typically found in discourses related to non-governmental nationalism, was strengthened as an official discourse of the Islamic Republic state, and has been accompanied by Islamic ideas.

The regime of Mohammad-Reza Shah (1941–1979) supported Western modernisation and secularisation in Iran. Hence, much of the literature (Bruce, 2000; Osanloo, 2012; Ruthven, 2004) has claimed that the 1979 Islamic revolution happened because 'Western' elements supported by the Shah were perceived as threats to the national authenticity of Iranians by Iranian nationalists and as threats to the maintenance and power of Islamic beliefs by Islamist groups (Tamadonfar, 2001).

In post-revolution era, the West has been represented by the dominant conservative discourse in Islamic Republic as an anti-Islam alien. Osanloo (2012) describes the position of the West as an 'other' in Iran's revolutionary movements, the influence of which ended with the dominance of Islamic groups and the establishment of the Islamic state in 1979. He stated that '[t]his was a revolution in large part against the excesses of Western societies, aimed at turning the country back to some "indigenous" values.' (Osanloo, 2012, p. 55)

The constitution is regarded here as a reliable text to present the socio-political and cultural ideas of the leadership of Islamic Republic state. Paidar (1995, p. 256) explains that IRI's constitution is the 'formalised expression of the revolutionary transformation from modernization to Islamisation'. A part of the opening chapter of the constitution (Constitution of the Islamic Republic, 1980, Article 3: e, f, g, h, i, n) explains the principles on which the Islamic Republic is based. One of these principles is defined as the 'complete expulsion of imperialism and the prevention of foreign influence' (Paidar, 1995, p. 257). Resistance against the influence of imperialism and foreign forces, mostly interpreted as the Western powers, is a principle for IRI.

According to Yeganeh (1993, p. 7), the 1979 revolution was the second attempt in the 20th century to 'redefine and change the existing relation between the state and the West, with the aim of establishing independence and democracy in Iran'. However, while in the first attempt, the constitutional revolution of 1906–11, political and economic independence was the main demand and the aim was to achieve this through imitating 'Western models of modernity, the emphasis in the recent revolution was on achieving cultural independence through construction of an "indigenous" and "authentic" Islamic model of modernity and progress in Iran' (Yeganeh, 1993, p. 7). Therefore, while liberal nationalism was the theme of the first revolutionary discourse, the latter (or second revolutionary movement) placed 'its trust in cultural nationalism' (Yeganeh, 1993, p. 7).

The centrality of Islamic ideology in the discourse of revolutionary leadership was strongly linked to the matter of the relationship between Iran and the West; at the same time, Shi'ite⁴ modernism and radicalism was essential in the revolutionary mobilisation against cultural imperialism (Yeganeh, 1993). Hence, 'a new "revolutionary" and "authentic" Muslim culture was constructed which appealed to wide sectors of the urban population' (Yeganeh, 1993, p. 7).

In IRI's constitution, the nation is defined as the 'Islamic nation', which is defined as a collective unity and the IRI's government is responsible of formulating its general policies as oriented to the merging of all Muslims, and it must persistently tend to bring about the political, economic and cultural unity of the Muslim world (Paidar, 1995). The 1979 revolution created a new alliance between Islam and nationalism, which became the cornerstone of the IRI's gender policies, including legislation in the province of the family (Yeganeh, 1993). Thus, the contemporary discourses about women's rights in family laws in Iran can be understood by associating the family issue with the phenomenon of the Islamic nation – that is, defined alongside the other-making of the West in post-revolutionary Iran.

The constitution specifies two main characteristics for the 'Islamic nation'. First, the Islamic nation is founded on the family. The constitution asserts in Article 21 that 'the family is the fundamental unit of society and the major centre for the growth and advancement of man [human beings]' (Paidar, 1995, p. 260). Article 11 emphasises that since the family is the fundamental unit of the Islamic society, all relevant regulations and plans must facilitate 'the foundation of a family and to protect the sanctity and stability of family relations on the basis of the law and the ethics of Islam' (ibid., Article 11 in Paidar, 1995, p. 258). Second, this constitution grants a prominent place to women, defining them as both mothers and citizens, and regards 'the establishment of an Islamic nation as dependent on the Islamization of women's position' (Yeganeh, 1993, p. 8). The constitution identifies the ideal Islamic woman in contrast to what is described as Western values of womanhood through giving women the right to meet their natural and biological instincts and also the right to participate in social life (Yeganeh, 1993). The constitution sees women in the post-revolutionary era as being freed of the oppressed and objectified status they suffered under the 'despotic regime' of the Shah (Paidar 1995, p. 258).

Correspondingly, Najmabadi (1987) states the emergence of Shi'ism as a popular political force in the 1970 revolution involved a demand for women to reject 'Westernisation'. The sexual objectification of women was recognised as a product of the cultural and economic dependence of Iran on the West. Moreover, women were encouraged to 'embrace the new Shii model of womanhood which represented "authenticity" and "independence" and emphasized women's double role as mothers and revolutionaries' (Najmabadi, 1987, as cited in Yeganeh, 1993, p. 7)

The constitution of IRI is 'full of images of women, as political actors, Islamic warriors, agents of construction of Islamic society, mothers, and creators' (Hoodfar, 2000, p. 295–296). However, it assumes women's primacy as mothers according to the importance of motherhood for 'true women' in Islam. Moreover, it claims that all laws and plans must facilitate the foundation and strengthening of families according to Islamic principles in the service of the Islamic revolution. It is worth noting that although the constitution claims that the Islamic society values women as the upholders of the family and nation, it advocates a set of laws that strengthens male control over women in the family (Yeganeh, 1993).

In the political discourse of IRI, the family is regarded as the principle elements in the identity of the Islamic nation and women are regarded as central to the future of the nation because of their role as 'biological reproducers, educators of children, transmitters of culture,

⁴ Referred to Shi'a, a branch of Islam that is official religion of the state and people in Iran as more than 90% of Iranians are Shi'a.

and participants in national life' (Yeganeh, 1993, p. 4). Women are introduced as the link between the family and Islamic society in twelve chapters and 174 articles of the constitution (Paidar, 1995, p. 258). Gender policies and family-related legislation are central in the national development and independence plans in the Islamic republic as they have been in two other states which have assumed power in Iran since the dissolution of the Qajar dynasty in 1925 – the states of Reza Shah Pahlavi and Mohammad Reza Shah Pahlavi (Yeganeh, 1993).

CONCLUSION

In the discussions of opponents and supporters about CEDAW, as reflected in conservative and reformist articles (2000–2004), 'family law' has emerged as one of the themes over which opponents criticised CEDAW broadly and seriously. Opponents emphasise the conflicts between Iran's Islamic family law and CEDAW's clauses to criticise what they represent as the aim of CEDAW of replacing Islamic values with Western ones. They represent the family in the West as a breakable unit in which the familial roles of men and women are not played out properly because of cultural and legal actions that equalise men and women. Therefore, CEDAW opponents' concern is that the same situation would happen to the family in Iran if it joined CEDAW. CEDAW supporters, on the other hand, support joining CEDAW, although in their articles the necessity of compatibility between CEDAW's clauses and Islam is admitted. Therefore, they mostly suggest using a 'reservation right' and '*ijtihad*' for contradictions between CEDAW's clauses and Islamic rules to prove that joining CEDAW does not mean the elimination of Islam.

On analysing the relevant literature, the paper concludes that the sensitivities on preserving family law in Iran are due family law in Iran, as in other Middle Eastern societies, being sanctified through being defined based on Sharia. Defining family law in the religious domain increases the control of clerics and religious powers over family legislation that is tangible in the case of Iran, where the influence of religion on the family law and the influence of clerics in judging family-related issues have a longer history than the establishment of the Islamic state. Furthermore, in post-revolutionary Iran, family and Islamic family legislations have gained a more important status because of the definition of family and traditional gender relations in the family as the principle foundations of the Islamic nation. The important role of the family to protect the Islamic nation against the Western other is underscored by IRI turning Iranian society back to its 'indigenous values'. Returning to indigenous and Islamic values and criticising the Shah's political and cultural adherence to the West is the cornerstone of IRI's discourse to legitimise the 1979 revolution and the establishment of Islamic state.

The sanctification of the family makes it difficult to intervene and bring changes in the realm of family legislation by agents outside the religious domain. Besides, the importance of family and women's familial roles in shaping and preserving the Islamic nation (the favourable collectivity of Islamic state to safeguard its values) makes defining new family law and more equal rights within it very challenging.

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