

The Best Interest of the Children in Iran

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Introduction

The 1989 Convention on the Rights of the Child (CRC) is the main legal instrument for protecting children worldwide. In addition to the specific provisions of the convention that relates to specific rights of the children, i.e., right to health, education, family, protection, etc., It embodies four general principles: the best interest of the child, the principle of non-discrimination against children, the child's inherent right to life, survival and development and the right to be heard and be able to express their views freely.

The analysis provided in this paper is focused on the application of this principle in the Iranian legal system compared to international standards. The paper focuses on the legal protection available for children in Iran. It will assess whether the children's best interest is reflected in the Iranian legal system and its implementation.

Definition of Child:

The UN Convention on the Rights of the Child:

A “child,” as defined in Article 1 of the Convention on the Rights of the Child (CRC), means: “every human being below the age of 18 years unless, under the law applicable to the child, the majority is attained earlier.”¹ However, the international definition of the child is not uniformly applied in each country.

Definition of the Child in Iran's legal system:

In Iran, the definition of a child is complex. Child rights in Iran heavily rely on Sharia law, and according to Sharia,² the child's age is defined according to their sexual and physical development (puberty) for boys and girls (15 years old for boys and 9 years old for girls). Puberty is a physical development rather than mental development and relies on maturity. This is evident in both criminal and civil procedures.

1. UNHCR Guidelines on Determining the Best Interests of the Child, accessed online: <https://www.unhcr.org/media/unhcr-guidelines-determining-best-interests-child>

2 S.N Ebrahimi, Child Custody Under Iranian Law, American Bar Association, Summer61 2005, Vol 39, P2.

Article 1210 of the Civil Code is considered the guiding legal provision defining a child. This provision sets the age of fifteen for boys and nine for girls as maturity. The provision states: "No one, when reaching the age of puberty, can be treated as under disability in respect of insanity or immaturity unless his immaturity or insanity is proved. Commentary # one of the same article provides that puberty in boys is fifteen and nine full lunar years in girls. Commentary # two provides that the properties which had belonged to a minor who has now reached the age of maturity may be given to him only if it has been proved that he has full legal capacity."

The Criminal Procedural Code, 2013 provides another definition of a child's age. Article 304 of the code states that all crimes against children and people under 18 are dealt with in the Court. In any case, convicts over eighteen, who committed the offence at a younger age, will be kept in the juvenile centers. Commentary #(?) one of this provision explains that a child has not reached the age of maturity. Commentary number two states that if the age of the accused exceeds 18 years during the investigation, the investigation of his charges will continue in accordance with this law in the Juvenile Court. If the accused's age exceeds 18 years before the trial begins, his charges will be investigated in a competent criminal court, depending on the

case. In this case, the accused will benefit from all the privileges applied in the juvenile court.

As will be explained further, the law in Iran has defined children subjectively and according to the content of each area of law.

A girl child is considered an adult at nine; this is when she presumably reaches puberty. The girl child of her family can apply to the court and obtain an order called “maturity order.” This order recognizes a girl at age nine as an adult and gives her all the rights an adult can practice, including decisions regarding marriage, custody, etc. However, the principles of the child's best interest require a holistic approach to the protection of the interests of the child. Giving a child full responsibility to make decisions about her life is not a feature of the principles of a child's best interest. The maturity order will also impose specific responsibilities on the child, including full civil and criminal responsibility and an obligation to follow all hijab rules.

The law has also defined the age of twelve as a unified minimum age for criminal responsibility for both boys and girls, provided that puberty does not occur before this age for girls. It should be noted that the minimum age of criminal

responsibility is set only for probationary charges that require discretionary custodial sentences (*Taziri crimes*). For all Hudod and Qisas cases, the age of criminal responsibility is set as nine for girls and fifteen for boys.

The age of fifteen is considered the beginning of maturity for boys. However, minors under fifteen should still have access to the juvenile justice system and be protected under PRCA. Nevertheless, a child of fifteen or above will bear full criminal and civil responsibility under the law and possibly be punished for Hudod and Qisa's crimes.

The age of eighteen is recognized as the official end to childhood in conformity to the UNCRC. Iran provides some limited legal protection for everyone under the age of eighteen. However, the protections provided are not unified and can vary about the definitions provided by Sharia. (Is it possible to use specific case details here?)

Children's Best Interest

The universal principle of Children's Best Interest:

The term; “best interests” broadly refers to the well-being of a child, which is determined by a variety of individual circumstances, including: the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences. Its interpretation and application must conform with the CRC and other international legal norms.³

According to Article 3 of the UNCRC, Children's interests should be at the forefront of all decisions that affect them in every situation, including; adoption, detention, custody disputes between parents - everything. This article states as follows:⁴

³ UNHCR Guidelines on Determining the Best Interests of the Child, accessed online: <https://www.unhcr.org/media/unhcr-guidelines-determining-best-interests-child>

⁴ Child Rights International Network - CRIN, article 3 of the UNCRC: Best Interest of the Child, accessed online: <https://archive.crin.org/en/home/rights/convention/articles/article-3-best-interests-child.html>

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the child's best interests shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, the number and suitability of their staff, and competent supervision.

As paragraph 1 of this article mentions, the child's best interests are a primary consideration in all actions or decisions concerning the child, both in the public and private spheres.⁵ The Convention also refers to the child's best

⁵ *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)**

interests in other articles, including separation from parents, family reunification, parental responsibilities, deprivation of family environment and alternative care, adoption, separation from adults in detention and procedural guarantees under the judicial procedures, including the presence of parents at court hearings for penal matters involving children in conflict with the law.

The committee on the rights of the child stress that the principles of the children's best interest are threefold:⁶

1. A subjective right,
2. A fundamental legal principle, and
3. A rule of procedure.

Moreover, the principle of the child's best interest is not a stand-alone principle, and it should be considered together and in the context of other principles, including non-discrimination, the right to life, survival and development, and the right to be heard.

⁶ *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)**

According to the general comments number 14 of the year 2013 of the UN Committee on the Rights of the Child,⁷ The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.^[1] The Committee has already pointed out^[2] that “an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.” It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the “child's best interests,” no right could be compromised by a negative interpretation of the child's best interests.

The general comments further guide the states on their obligations to ensure the best interest of the children: “Each State party must respect and implement the right of the child to have his or her best interests assessed and taken as a primary consideration, and is under the obligation to take all necessary, deliberate and concrete measures for the full implementation of this right.”

⁷ Committee on the Rights of the Children; General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, May 2013, accessed online:https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11%20

Does Iran comply with the best interests of the child standard?

Iran ratified the United Nations Convention on Children's Rights in July 1994. The reservation to the UNCRC by the Iranian government is general, stating that UNCRC provisions contrary to Islam are of no force and effect. Iran passed a single-provision legislation confirming the ratification of UNCRC.

In practice, Iran does not comply with the best interest of child's standards. Legislation and the practice of law do not conform to international standards. While national laws refer to the term "best interest of the child," there are countless contradictions to those principles. Moreover, how laws are practiced is not in accordance with the child's best interest. Iranian legislation does not reflect the provisions of the UNCRC.

The Iranian Constitution:

Article 4 of the Iranian constitution states that "all laws in Iran should be according to Ja'fari Jurisprudence. A council of six religious scholars screens all proposed legislation to ensure no contradiction with Ja'fari jurisprudence. Article 167 of the constitution states that when a law is silent about a matter, reference should be made to the Sharia law of Ja'fari

jurisprudence. Laws around the rights of women, children, and families are heavily screened for their conformity with the Ja'fari jurisprudence.

The Family Protection Act:

Article 45 of the Family Protection Act mandates the judicial authorities to prioritize the child's best interest in their decisions. It does not clearly define the child's best interest principles and does not reference UNCRC. There is no law enforcement mechanism for the implementation of the principles. This Act also ignores any role of the child or the court in deciding on the issues of custody and child support. The court does not give views of the child any weight.

Article 50 of the family protection act states that in the cases of child marriage where a child is harmed, the marriage was conducted according to the established legal principles. If the child faces any harm during the marriage, including harm resulting from sexual abuse, the husband will not be punished.

In the case of divorce, mothers mostly give away any financial rights they may have on the dissolution of marriage, including the right to child support; to obtain the custody of her children. However, in such conditions, where the mother

has no financial means to support herself and the children, the child's best interest is at risk as the child will not have access to quality living conditions. The family protection act is silent in such a situation and does not provide any guarantee for the protection of the right of the mother and the child.

The Protection of the Rights of the Children Act - PRCA:

In June 2020, a new law, the “ Protection Rights of Children Act- PRCA,” was passed in Iran. It is a single law in the country that protects children who are at risk. The law applies to all persons under the age of 18. It identifies several categories of children considered at risk and needing protection. Children in detention and children in conflict with the law are considered at risk by PRCA.

However, PRCA is in contradiction with other legislations. For instance, during the recent uprising of September 2022, many children were arrested, detained and tortured. In a recent case in Karaj province, at least three children were initially convicted and received death sentences; the sentence was later amended to long-term prison time. The children did not have access to legal representation. Contrary to the principles of PRCA, they were tried in a revolutionary court instead of a juvenile court.

PRCA emphasizes the right to education for children. However, in practice, hundreds of children who were detained following the incidents of September 2022 were deprived of access to education. Schools refused to readmit children who were released from detention.

Right to identity:

According to article eight of the UNCRC, the right to identity is a recognized right for every child. The Statistic Act enacted before the Islamic Revolution is still enforced in Iran. According to Article 12 of this act, the birth of any child in Iran, whether Iranian or non-Iranian, should be registered with the statistics registration office. However, in practice, the government does not fully implement this provision. The lack of implementation of this law directly impacts the best interest of several groups of children in Iran, including refugee children and children born to foreign fathers and Iranian mothers.

Article 976, section 2 of the civil code in Iran, grants citizenship and issue identity cards only to those born from an Iranian father. As a result, many children born from the marriage of Iranian women with foreign national fathers, including refugees from Afghanistan, Pakistan and Iraq, are

unable to qualify for Iranian citizenship. In addition, Iranian who lives in rural areas typically do not have a national identity document. Therefore, their children will also remain without an identity (citizenship might be a better word here for a western context. We can discuss).

For the reasons stated above, Iran is facing a large number of children who are not registered and are not recognized as Iranians. They lack access to social services, including welfare support, education and health care. In September 2019, the efforts from civil society organizations and child rights activists to address this issue resulted in the approval of the nationality act. According to this law, the children of Iranian mothers with foreign fathers were entitled to receive Iranian identity based on their mother's nationality.

However, the implementation of the nationality act faced severe challenges. The guideline for implementation of the act states that for an Iranian mother to obtain Iranian nationality for her child, there must be a security and background check conducted for all family members and the intelligence and IRGC processes should clear them. However, most marriages involving foreign nationals, particularly Afghan refugees, are conducted through religious means and often with no official court registration. Therefore, most

applications for obtaining national identity under the Nationality Act are refused, and children are denied registration.

The problem with identity is a persistent challenge in Iranian society, affecting several generations. Those without identity cannot obtain identity for their children as well. Several child rights activists claim that the government currently refuses to accept new applications for the issuance of national identity. The parliament already approves a proposal to abolish the nationality act.

In addition to the issue of identity, the Afghan refugee children who enter Iran through illegal routes along with their families, who are mostly escaping the Taliban and are in search of safety, are considered illegal immigrants. They are denied any humanitarian support by the government in Iran. These children are forced into the labour market, engaging in hazardous work, including break-making, collecting wastes, and begging on the streets. While this situation affects a large group of children, reliable data on the number of children in such situations is unavailable.

The principles of the best interest of the children are universal. It is not limited to those with defined nationality. A

refugee child has the same right as a child of the host country. Lack of identity deprived many children of access to their basic rights, including the right to education, health and social services. They are also denied access to humanitarian services.

Contradiction:

In places with conflicts between the PRCA and other legislations, including the criminal and civil codes, the judiciary refuses to impose PRCA.

Iran's PRCA contradicts the Islamic Criminal code. The PRCA recognizes that children should be protected when they conflict with the law. However, articles 147 and 91 of the Criminal Code allow the judiciary to issue capital punishment for the children, including life imprisonment, lashes, exile and even execution in the capital crimes of Qisas and Hudood.

The PRCA is also in contradiction with the civil code. PRCA encourages children's access to education, while Article 1041 of the civil code allows a child as young as 13 (girls) and 15(boys) years of age to be married. Children, particularly girls, are deprived of attending regular schools once married.

Article 1073 of the Civil Code and Article 9 of the PRCA give lesser punishment for the abusive conduct of a parent towards his or her child than for a stranger.

While the legal system in Iran recognizes that all people under eighteen are children, in practice, it sets different age criteria for different purposes. For example, the age of criminal responsibility is tied to maturity, which for girls is defined as nine years, and for boys, at 15 years. This discriminatory provision allows judges to issue death sentences against children. Human rights groups reported that in 2019 alone, Iran had executed four people for crimes they allegedly committed while under 18⁸. Moreover, according to the Human rights watch report in April 2023, Iran's security forces repressing widespread protests have unlawfully killed, tortured, sexually assaulted, and disappeared children as part of a pattern of serious violations⁹.

⁸ Iran: Child Protection Law Positive, but Insufficient, Human Rights Watch, 23rd June 2020, accessed online: <https://www.hrw.org/news/2020/06/23/iran-child-protection-law-positive-insufficient>

⁹ Iran: Security Forces Kill, Torture, Abuse Children, Young Protesters Unlawfully Detained, Human Rights Watch, 25th April 2023, accessed online: <https://www.hrw.org/news/2023/04/25/iran-security-forces-kill-torture-abuse-children>

Developments: the efforts to amend legislation recognizing tremendous respect for human rights were initiated almost ten years after the revolution. The members of civil society, human rights activists, scholars and writers have raised their voices constantly. There has been ongoing dialogue with parliament to improve the laws and their implementation. Most of the provisions of the family protection act, the civil code and the enforcement of the CRPA were the result of ongoing advocacy by society.

However, the state's approach to defining a child is a fundamental challenge in advancing children's rights in Iran. While there is progress toward access to education and health care for children, the issue of child marriage, custody and guardianship remains unchanged. The state has a strict approach to changing the age of children in those areas. The state is not open to any discussion about the named fields.

In addition, an overall challenge in addressing any change in the legal system is the strong presence of the Guardian's Council. The Guardian's Council consists of six religious scholars. They have a right to veto all matters that government decides.

Conclusion:

The firm reliance of the state in Iran on the Sharia law has resulted in the recognition of very early age as the age of maturity for children in Iran. The situation caused a denial of recognizing the child's best interest in matters affecting the child's life and development. Children face discrimination and abuse due to how the child's age is set in the legislation. Discrimination includes those caught by the criminal justice system. A child who has reached puberty may face capital punishment due to the acceptable definition of a child under Sharia law.

Children's views and interest is not a priority for the state in Iran. Civil society and the children's rights activists are primarily concerned that if there are no fundamental changes in the law and practice in Iran and if the best interest of the children is not taken into account while dealing with children's matters, the children in our country will grow up with the harsh experience of discrimination and harassment both inside their families and in the society.

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