Who is a child? Consideration of tradition and modernity in Iranian child law

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1. Introduction

As the Islamic Republic of Iran is going into its 25 year of existence, the years of Strom and Stress are giving way to an era of critical questioning and growing scepticism about the system and the leaders; a society is showing itself that is increasingly putting questions marks and demanding responses and accountability for the deeds of the government. This movement is often linked to president Khatami's access to power, however his actual impact has been so far limited. Women and the youth have become important figures on the political scene, able to decide the outcome of elections and being increasingly considered a determining power. This counts true for politics but also for legal reforms. Iranians question all the limitation put upon women as potentially being unislamic and use the flexibility of Islamic regulations to challenge the conservative views of the male clerical establishment. Today Iran is struggling between a claim to morality and compatibility with Islamic principles and the needs of modern society. With social realities changing the ideal prescribed by religious law is being challenged. In other words, while the legal system has its roots in a period of traditionalism, the economic, social and cultural attributes of Iranians have undergone and are undergoing a process of transformation. As a result, the voices for reforms have become louder and these demands have been formulated in law.

2. Sources of law

When family law was codified in 1935, the new Iranian Civil Code (hereafter CC) borrowed its rules from the Shīʿī rules on family and succession. The Iranian family law rules are thus a reflection of the Islamic concept of family, a concept that is based on the idea of the distribution of specific roles to the parties in a family relation. It is based on the per-

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ception of men and women as having different roles that ideally complement each other. A man's position is defined with respect to his relation to the outside world as the provider of the family. That means that it is his duty to provide for his wife and children. The duties of women revolve around their role as wives and mothers within the family. If any party breaches his or her duties the other side is allowed to refrain from pursuing his or her own duties. Iranian family law is a reflection of this idea, but also of a strong patriarchal concept of family in Iranian society. This perception is also perpetuated in the law of the child where mothers, fathers and children have been awarded different rights and duties. In the last years, however the evolution of society has been such that today 63% of the university graduates are women who are entering the job market, so that the traditional distribution of roles across gender lines has been diluted.

I shall look at some of the legal reforms undertaken in the law of the child as instances how the Iranian Legislator is balancing between traditional structure and rules and the needs of a modern and mobile society.

The Iranian law of the child is to be found in Article 1168 to 1194 CC. The Act on the Protection of the Family from 1975 (FPA) contains some specific rules regarding the children and finally the Act on Maturity from September 4, 1934[2] is relevant. Other regulations about legal age are to be found in Labour Law and the Penal Code. Furthermore, in 1993 the Islamic Republic of Iran (hereafter IRI) signed the Convention on the Rights of the Child from November 20, 1989 (hereafter Child Convention).[3]

3. Who is a child?

When in 1993 the Islamic Republic of Iran signed the Child Convention, it made a reservation to dislocate the provisions of the Child Convention whenever they conflicted with Iranian law or Islamic rules. The most important question in the Child Convention is to understand what age group it addresses. In other words we must know, who is a child?

2 Qānūn rāje-e be rošd mote'āmelīn from September 4, 1934.

3 The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by the General Assembly with resolution 44/25 of November 20, 1989. It entered into force on September 2, 1990. It has be ratified by 192 countries. Only the United States and Somalia have not ratified it so far.

Article 1 of the Child Convention reads:

> *For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*

The Child Convention thus determines majority as the decisive element that must be taken from the national laws of each signatory country. In Iranian law, the relevant ages for defining a child are however not consistent and many legal effects are bound to different ages. The Iranian Civil Code uses different words to denote what is commonly understood as a child; one can find the words *tefl, kūdak, saqīr; farzand, valad.* Most of these expressions including the term 'majority' are not explicitly defined in the CC. To understand what is meant by them we must turn to other provisions in the CC in order to deduce the relevant legal ages.

3.1 The age of puberty

From the rules concerning guardianship (Article 1207 et seq.) some criteria can be taken to identify the relevant ages. The first relevant age limit under Iranian law is the so called 'age of puberty.'[4] It is set by note 1 of Article 1210 CC:

> *Article 1210 Note 1 CC: The age of puberty is 15 full lunar years for boys and nine full lunar years for girls.*

The age of puberty is the first important legal caesura in a person's life; it determines the age of criminal responsibility and until the summer of 2002 it set the age for legal marriage.[5] Puberty as a legal age has been deduced from Islamic precepts that set the beginning of praying obligation at the beginning of puberty.

Before the Iranian revolution of 1979 the age of puberty was not relevant for marriage. The age of marriage for girls was set at the completion of her 15th birthday and for boys with the reaching of 18 years.[6] In exceptional cases it was possible to contract a marriage at an earlier age with the permission of the court, if the girl was at least 13 and the boy 15. In 1982

4 Ṣafā'ī, S.H., Emāmī,A., *moḫtaṣar-e ḥoqūq-e ḫānevade*, 5. edition, 2002, p. 334.

5 These years refer to lunar years as opposed to solar years: nine years in the lunar calendar correspond to eight years and nine months in the solar calendar, fifteen lunar years are fourteen solar years and seven months.

6 Safā'ī, S.H., Emāmī, A., *hoqūq-e ḫānevāde*, 8. edition 2002, Vol. 1, p. 70.

however Article 1041 CC was amended and denoted the age of puberty as the age for marriage capacity. It read:[7]

Article 1041 CC (old version): Marriage before reaching the age of puberty is forbidden.

Note 1: Marriage before reaching the age of puberty is only allowed with the consent of the vali (guardian) and under consideration of the well being of the ward.

Iranian officials had defended this rule by stating that early marriage would prevent illicit relationship.[8] In December 2000 however the Parliament drafted an amendment to Article 1041 CC to rise the age of marriage for girls from nine to 15 and for boys from 15 to 18.[9] The Council of Guardians, who as a supervising organ has the right to veto all proposed bills,[10] opposed its enactment and referred the draft back to the Parliament.[11] The Parliament reconsidered its draft and submitted an amended draft putting the age for girls at 14 and for boys at 17 years. The Council of Guardians disagreed again, so that the Expediency Council, an organ established in 1989 to mediate between the Parliament and the Council of Guardians,[12] had to step and in June 2002 the Expediency Council released its own version of Article 1041 CC.[13] It reads:

7 The amendment of Article 1041 CC from December 12,1983 was confirmed on November 5, 1995.

8 See *10-year old files for divorce from her 15 year-old husband*, Tehrān Times, Daily Newspaper, online edition, September 26, 2000.

9 See Moğāwezī, P., *Marriage age for girls in Iran goes up*, Entehāb, Daily Newspaper, October 18, 2000.

10 See Principle 4 of the Iranian Constitution 1979 as amended 1989: All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons of the Council of Guardians are judges in this matter.

11 Fesāhat, Z., *Will marriage at early ages be legalised?!*, Iran, Daily Newspaper, December 7, 2000.

12 Principle 112 of the Iranian Constitution 1979 as amended 1989:
(1) Upon the order of the Leader, the Expediency Council shall meet at any time the Council of Guardians judges a proposed bill of the Islamic Consultative Assembly to be against the principles of Shariah or the Constitution, and the Assembly is unable to meet the expectations of the Council of Guardians. Also, the Expediency Council shall meet for consideration on any issue forwarded to it by the Leader and shall carry out any other responsibility as mentioned in this Constitution.

13 Rūznāme-e rasmī No. 16713 from July 17, 2002.

Article 1041 CC (new): The marriage of a girl before the age of 13 in the solar calendar and a boy before the age of 15 is only permissible with the consent of his or her vali *and the court.*

So effectively the age for boys was only in so far changed, as the new Article 1041 CC refers to solar years, not to lunar years, as it used to be. As for girls the minimum age is now 13 solar years as opposed to nine lunar years. An important change is the inclusion of the court to grant permission for earlier marriage, that before only depended on the consent of the *vali*.

Although marriage at the age of 13 still appears to be very early, the amendment to Article 1041 CC must be hailed as an important though still insufficient step to find a more appropriate marriage age. It is furthermore interesting to note, that according to statistics, the average marriage age in Iran in 1966 was 18, in 1986, 20 and in 1996, 22.[14] Considering the fact that in the first half of 2003 the average marriage age in urban areas was at 28, the age in rural area must be still very low. It seems that the Legislator is just very slowly catching up on the changing social realities in Iran. It will, however be easier in the future to raise the marriage age from 13 to 17 or 18 than from the initial nine.

The age of puberty as limit for marriage has thus be erased and reaching the age of puberty remains only relevant in the field of Penal Law, where it determines the age of criminal responsibility. That means that for example if a ten year old girl steals, she will be tried and punished by the law in the same way that a 40 year man is tried and penalised. Thus it is even permissible to issue a death sentence for a girl who is 9 lunar years old.[15] This rule has also come under strong criticism, but no legislative attempt has been taken so far to change this age limit.

It also remains unclear, whether the reaching of the age of puberty has other consequences. It is in particular questionable whether the reaching of the age of puberty leads to the ending of the time of custody for the offspring. I shall thus first explain the rules of custody in the Iranian Civil Code and again look at the recent amendments.

14 Moğāwezī, P., *Marriage Age for Girls in Iran Goes up*, Entehāb, October 18, 2000.

15 See also Ebadi, Sh., *Children Rights Convention and Child's Rights in Iran*, Azma, Monthly Magazine, No. 5, November 1999, p. 12-13.

3.2 Personal and financial care of the child: negahdārī and velāyat

Based on the Islamic concept of child law, the Civil Code differentiates between *velāyat* i.e. the financial care and legal representation of the child and *negahdārī*, or *hezānat*[16] i.e. the personal care or custody over the child. The Civil Code does not however define either expressions. In the doctrine *velāyat* is commonly understood as the father's right to manage the child's assets and its financial affairs.[17] The *valī* has the power of attorney to represent the child and to act on his behalf.[18] It is also him who has to provide for his children and owes them maintenance. This is why the Civil Code allows only the father and in his absence the father of the father to exercise the *velāyat* over the child.[19]

Negahdārī on the other hand encompasses the education and supervision of the child and the care for its physical and spiritual well being.[20] This can be described as custody in a narrower sense. According to Article 1168 CC the parents shall care commonly for their children, *negahdārī* having been defined as a duty and a right of both parents. However a priority rule was stated, in case the parents would disagree. So for a given age of the children the mother was deemed to be more capable of taking care of them, whereas the father's capability to educate his child was set at an older age. This was explained with biological, psychological reasons and with the differing gender specific instincts.[21] According to Article 1169 CC as codified in 1935 the mother shall enjoy priority in custody over her son until the age of two and over her daughter until the age of seven. After that age the custody passed to the father. The article did not differentiate between the marital and the post marital situation.[22]

Until the enactment of the FPA 1975 the law in the Civil Code was not touched. The law in practice was close to the regulation. A child was considered to belong somehow more to its father, even though most of the education and the child upbringing lay on the shoulder of the female members of the family.

In 1975 the FPA brought some novelty. The sanctity of the father right to exercise the *velāyat* was touched and the new Article 15 FPA provided that the mother was also entitled to this position, if the father was unable to exercise it properly. Although this was just one article in the FPA, it was much contested and it turned to be the only article of the FPA 1975 that was explicitly abolished[23] in 1979 after the Iranian revolution and the coming to power of the clerical establishment. All other articles of the FPA have remained as such; some became implicitly abolished, but none, but Article 15 was explicitly declared unislamic and abolished.

The abolishment of the right of the mother to *velāyat* showed the sensitiveness of the issue. When the reformists brought the law of the child back on the reformist agenda, they left the issue of *velāyat* on the side and focused on the rules on custody, an issue that seemed to be somewhat easier to put forward. The endeavour to reach a more equilibrate distribution of the duty of custody had been on the agenda of the reformers of the sixth Parliament, that took office in 1999, for a long time. The parliamentarian committee for family, women and youth affairs drafted two alternatives to amend Article 1169 CC. One stream proposed to rise the custody times for the mother to care for her children until their age of puberty, i.e. for the girls until the age of nine and for boys the age of fifteen.[24] No unanimous support could be found in the Parliament and discussions revealed the strong conservative views on the matter. Thus a second alternative, that was not as drastic a change, was considered. The Parliament agreed on July 28, 2002 on a draft law putting the age of custody for children for both gender at seven years, effectively only rising the age of custody for the boys.[25] The draft law was finally accepted and came into force on December 31, 2003. It reads:

> *Article 1169 CC: The custody and care of a child, whose parents live apart from each other, will be the priority of the mother until the child reaches the age of seven, after that age it passes to the father. If the parents of a child that has passed the age of seven cannot agree on the*

16 The Civil Code uses the Persian word *negahdārī* and the Arabic expression *hezānat* as synonyms; they are interchangeable and denote the same thing.

17 Kātūzīān, *ḥoqūq-e madanī*, 5. edition, 1999, Vol. 2, p. 202; Safā'ī/Emāmī, *hoqūq-e ḥānevāde*, Vol. 2, p. 162.

18 Article 1183 CC.

19 Article 1180, 1181 CC.

20 Kātūzīān, Vol. 2, p. 139. Safā'ī/Emāmī, *ḥoqūq-e ḥānevade*, Vol. 2, p. 119.

21 Safā'ī/Emāmī, *ḥoqūq-e ḥānevade*, Vol. 2, note 110, p. 124 et seq.

22 Article 1183 CC.

22 Ṣafā'ī/ Emāmī, *moḫtaṣar*, p. 330.

23 Rūznāme-e rasmī No. 10094 from Mai 16, 1979.

24 Komīsīonha-ye erğā'ī qazāyi va hoqūqī, (legal and judicial commissions), January 22, 2002, p. 4.

25 Komīsīonha-ye erğā'ī qazāyi va hoqūqī, *eslāh-e māde-e 1169-e qānun-e madanī* (Amendment to Article 1169 CC) November 24, 2002. See also *eslāh-e māde-e 1169-e qānun-e madanī*, hoqūq-e zanān, No. 22, April 2002, p. 55.

custody, it is the duty of the court to take a decision in the best interest of the child.

The new rule is a combination between an age fixed rule and the power of discretion of the court. This means that for the first time the consideration of the best interest of the child shall be prominent whenever the parents cannot agree. The article also clearly focuses on the time of separation of the parents of the child, which leads to the conclusion that during marriage there is common custody between the parents as a duty and a right of both parents, whereas the priority rule of Article 1169 CC only applies in cases where the parents are separated.

Only one year has passed since the enactment of this rule and the strong patriarchal grip on custody of the children is still prominent in Iran. This new rule must however be seen as an important step to foster awareness about the fact that children themselves possess rights, and that the distribution of custody has to be done according to the welfare of the child. Here again the Legislator is considering new trends while trying to stay within what it conceives as Islamic; the age based rule was not completely abandoned, but there are no gender difference any more and the principle of the welfare of the child is now an explicit part of Iranian child law.

The Civil Code does not contain any rules as to determine when the right and the duty of custody ends, in particular, as mentioned above it is not answered explicitly whether custody ends with the reaching of the age of puberty of the child. As far as *velāyat* is concerned the situation is slightly different, since the Civil Code contains explicit rules, as we shall see. In so far it has been argued that the rules concerning *velāyat* can be also applied to *negahdārī*.[26]

In the doctrine it is generally agreed that with reaching the age of puberty the duty of the parents to take care of the child ends.[27] Since however a girl of nine lunar years is barely capable of taking care of herself, Iranian law has introduced the notion of mental maturity of the child, to discharge the parents from custody duties.

3.3 Mental maturity or rošd

It is argued that a person, who has reached the age of puberty and is able to handle its affairs independently and does not have to rely on his/her

26 See Ṣafā'ī/Emāmī, *mo<u>h</u>taṣar*, p. 344.

27 See Ṣafā'ī/Emāmī, *mo<u>h</u>taṣar*, p. 346.

father or mother, has no need for custody and care anymore. The criteria, whether a person is able to handle its affairs independently or not is measured from his/her mental maturity (persian, *rošd*). Thus the nine year old girl can only be released from the care of her parents if considered mentally mature. This rule is not explicitly denoted in the Civil Code but deduced from an analogy to the provisions relative to the ending of *velāyat* and guardianship.

Article 1193 CC reads:

As soon as the child becomes adult (kabir) and mentally mature (rašīd) the velāyat ends; if she/he subsequently becomes mentally insane, a legal guardian will be appointed for her/him.

Here the Civil Code introduces yet another expression that it misses to explain, which is *kabir* and has been translated with 'adult'. It is however unclear what the legislator meant by *kabir*, whether it denotes majority as a legal phenomenon or just the ending of childhood, as a physical event.

The expression of mental maturity (*rošd* (noun) or *rašīd* (adjective) is found in the rules relating to guardianship. Article 1207 CC reads:

Article 1207 CC: The following persons lack contractual capacity and are barred from disposing of their assets and financial rights:
1. *minors (siqār),*
2. *persons lacking mental maturity (qeyr-e rašīd),*
3. *lunatics.*

Here again, the expression of minors (*saqīr*, pl. *siqār*) is not defined in the Civil Code. It is however generally agreed that '*saqīr*' relates to persons who have not reached the age of puberty.[28] Article 1210 note 2 CC also contains an indication as to the relation of these different ages. It reads:

Article 1210 note 2 CC: The assets of a saqir *who has reached the age of puberty can only be delivered to him/her, provided he/she is mentally mature.*

Thus a person is first a minor (*saqīr*) then it reaches the age of puberty; 9 for girls, 15 for boys; and finally his mental maturity has to be proven before he/she can actually dispose of his/her assets independently. The presumption is thus that a child who has reached the age of puberty is not *rašīd*. It's *rošd* must be first proven.

28 Ṣafā'ī/Emāmī, *mo<u>h</u>taṣar*, p. 345.

The question that remains is what exactly is meant by *rošd*. Fortunately, the expression 'lack of mental maturity' (*qeyr-e rašīd*) is explicitly defined in Article 1208 CC. It reads:

> *Article 1208 CC: A person lacking mental maturity is one whose dispositions in his assets and his financial rights is not rational.*

Mental maturity is thus linked to the ability to take care of ones financial affairs and not to endanger ones assets. A mature person acts in a way that is in accordance with custom and mores.[29] The decision making process of an immature person is not faulty and is different from that of a mentally ill person. The acts of a mentally immature person are however so irrational, that they can not be accorded an unlimited acting permission. In the doctrine extravagance and excesses have been considered signs of immaturity. The decision whether a person is mature or not can be influenced by the circumstances of its life and its living standards: thus a child living in rural areas will be judged differently from a person living in urban areas.[30] In all cases however *rošd* is connected to the ability of a person to make rational financial decisions and not to waste its property. It designates the ability to discern good from bad and to make reasonable decisions, with a sound mind to understand and judge for oneself.

The next question that needs to be seen is the question at what time the need to prove mental maturity ends?[31] According to the Maturity Act a person will get *rašīd* the latest at the age of 18, with the effect of being awarded full contractual capacity. The Maturity Act consists only of one article. It says that persons under 18 years, independent from their gender, will count as mentally immature as far as contracts and other legal acts are concerned (except for marriage and divorce), except if their mental maturity is proven in court before the legal act is taken. Persons who have reached the age of 18 are considered mentally mature, except if mental immaturity is proven in court.

One can thus conclude that parental authority, their right and duties over their children ends the latest when the child reaches the age of 18. This is however not completely true for girls, since they always need for their first marriage the agreement of their *vali* (Article 1043 CC). This is necessary only for the first marriage of the girl. If permission is not granted or

29 Haeri Šahbaq, S.A., *Šarh-e qānūn-e madanī*, Vol. 2, 1997, on Article1193 and 1208 CC.

30 *ʿEbādī*, ḥoqūq-e kūdak, 5. edition, 1999, 12.

31 *ʿEbādī*, ḥoqūq-e kūdak, p. 13.

refused for no reason, the daughter can address the court and have the permission substituted by the judge. In this case the judge reviews the case and the reasons put forward by the *vali* and decide on his behalf.[32] In most cases, permission will be granted if the husband to be proves his capability to support his wife to be financially.[33]

3.4 Conclusion

There are thus several legal presumptions that we can be summed up as follows:

A person is considered a minor until it reaches the age of puberty it is than considered mentally immature, unless proven otherwise in court, until it reaches the age of 18. After the age of 18, a person is considered to have full contractual capacity, according to the Maturity Act, unless proven otherwise in court.

As far as the protection of the child is concerned, it remains to be seen as a last example, how the Iranian law differentiate between illegitimate children and children born into wedlock. Here again, as we shall see some novelties have occurred that need to be highlighted.

4. Illegitimate children

According to Article 1158 CC, a child born into a marriage is considered legitimate, provided not less that six months and not more than 10 months have expired between the sexual intercourse after the conclusion of the marriage and the birth of the child. The Iranian legal language does not use the expression of 'legitimate' or 'illegitimate' child, but it is said that the child born into wedlock under the above conditions is 'connected' (*molhaq*) to his father. Such a connection is denied to a child that is born outside wedlock or into wedlock but outside these specific times. For the sake of readability the expressions 'legitimate' child will be used in the following paragraph.

The exceptions to this rule are however wide. According to Article 1165 CC the child will be considered legitimate, if at the time of intercourse its parents were mistaken about the legality of their sexual relation. The law distinguishes between mistake in law and mistake in facts. In the first case,

32 Ṣafā'ī/Emāmī, *moḫtaṣar*, p. 75.

33 See also Yassari, N., *Das iranische Familienrecht und seine Anwendung im Teheraner Familiengericht*, in Tellenbach (ed. et al.) Beiträge zum islamischen Recht IV, 2004, p. 59-76.

the parents are wrong about their assumption that they are legally married; in the second case they mistake in the actual way a marriage must be concluded. The first case corresponds to the case where a religiously performed marriage is not registered with the state authorities, and accordingly the marriage is considered non-existent from the view point of the state. The couple consider themselves married and their sexual intercourse as permissible. If children are born into such a union, the law explicitly protects them, and acknowledges their 'connection' to their parents. In the second case the parents have mistaken about the proper way of concluding a marriage; some authors argue that even when the parents thought that sexual intercourse will effectively make them husband and wife, and that no other ceremony is necessary, their subjective presumption (that they are married) falls also into the scope of application of Article 1165 CC.

The exceptions to Article 1158 CC and their wide interpretation aims at avoiding the existence of illegitimate children as far as possible, a position that has not only effects in private law but also in penal law. Under the Iranian Penal Law extra-marital sexual intercourse is considered a criminal offence that is punishable by *hadd*-sanctions.

Only when the parents of a child were not married to each other and have had sex knowingly will the child born out of such an illicit union be considered illegitimate or put into the word of the Iranian Legislator will not have 'any connection to its conceiver.' Accordingly Article 1167 CC provides that a child conceived in fornification can not be considered to have any connection to its fornificator. Article 1167 CC only applies in the case of willingly undertaken and knowingly forbidden sexual intercourse. If one of the partners was mistaken or forced than the affiliation is accepted, since this would fall under the scope of application of Article 1165 CC.[34]

The article does however not define what actually is meant by 'the child is not connected' to its parents and what consequences this has for the child. The only article of the Civil Code that deals with this issue is Article 884 CC which provides that a child conceived in fornification will not inherit from its illegitimate parents.

The effect of illegitimacy have long been subject to a variety of opinions:[35] while the main view was that such a child had no right towards its parents, such as custody or maintenance and that it was upon the infringed society

34 *ʿEbādī*, ḥoqūq-e kūdak, p. 101.

35 *Kātūzīān, N.*, Vol. 2, p. 25; *Ṣafāʾī/Emāmī*, ḥoqūq-e ḫānevāde, Vol. 2, p. 112.

to take care of them,[36] others argued that the child was innocent in this situation and should not be deprived of its necessary protection. For a long time the view remained that an illegitimate child had no rights of parental protection towards its illegitimate parents, that no action for maintenance or support could be raised. Even though the commentators of the Civil Code insist that this rule was not to punish the child but the parents who had disturbed social order and good morals,[37] the negative effects for the child remained. It was argued, that were illegitimate children to be given legal protection, then this would encourage illicit extra marital relationship.

Finally, acknowledging that a clarification was desperately needed, in 1997 the Office of the Supreme Court made a statement in which it decided on the scope of application of Article 1167 CC.[38] It declared that a child born outside wedlock will be considered the child of its biological parents (*farzand-e orfī*) with the entire legal obligations that are attached to it, with the exception of inheritance.[39] The only difference between legitimate and illegitimate children rest in inheritance law, since the only article of the Civil Code that deals with illegitimate children is Article 884 CC.[40] Thus an illegitimate child must be awarded all other rights that are given to legitimate children.

Here again, it took a very long time before this issue was actually addressed and again one can only emphasise the impact of that statement on the legal situation of illegitimate children in Iran. It seems that the idea is blossoming that the rights of the child need to be addressed and solutions need to be found for social problems that cannot be solved otherwise.

5. Conclusion

The child law misses to define its various expressions. Too often the Civil Code remains silent and regulations have to be sought in other Acts and

36 This was conceived in the Act for the Protection of Women and Children without Guardian from November 15, 1992 *Qānūn-e taʾmīn-e zanān va kūdakān-e bī sarparast*, from the law collection of the year 1992, pp. 466-468.

37 *ʿEbādī*, ḥoqūq-e kūdak, p. 101.

38 Declaration of the Office of the Supreme Court, Nr. 617 from June 24, 1997 from the law collection of the year 1997 (*raʾ-ye vahdat-e ravīyeheya't-e ʿomūmī-e dīvān-e ʿālī-e kešvar*); quoted in Ṣafāʾī/Emāmī. *moḫtaṣar*, p. 329.

39 See also *ʿEbādī*, ḥoqūq-e kūdak, p. 102-105.

40 Article 884 CC provides that a child conceived in fornification will not inherit from its illegitimate parents.

Statutes. As far as the age of majority is concerned, no real answer can be given to the question, when it is finally reached. Since the Maturity Act uses the word *rašīd* it remains questionable whether the age of 18 is also the age of majority, for which there seems not to be any proper expression. Looking at other age limits does not clarify the situation either: according to the Iranian Election Law a person who has reached the age of 15 can vote; to take the driving licence the person must be 18 and the legal age in labour law is 15. Thus under certain circumstance a person is lacking legal capacity and at the same time heavy legal responsibility can lay on his/her shoulder. Therefore it would be very instructive if the Iranian legislator would tackle this issue and harmonise its laws accordingly and define explicitly when childhood ends and adulthood begins.

It can however be observed, that to a certain extent the Iranian Legislator has come to introduce the notion of the welfare and best interest of the child; be it the amendment of custody rules or the clarification on the maintenance rights of illegitimate children. The idea seems to be settling that regardless of the parental quality of their parents children need protection provided by the state in order to grow into healthy adults.