

**REFUGEE WOMEN AND
DOMESTIC VIOLENCE:
COUNTRY STUDIES**

Iran

A report by

Refugee Women's Resource Project

Asylum Aid

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Please note: we have highlighted in bold sections of the text which we consider may be particularly relevant for ease of reference.

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ISLAMIC REPUBLIC OF IRAN

1. Introduction

1.1 Political background

Iran was declared an Islamic Republic on 1 April 1979, after the overthrow of the Shah, Muhammad Reza Pahlavi. The U.S. State Department comments:

“The Constitution ratified after the revolution by popular referendum established a theocratic republic and declared as its purpose the establishment of institutions and a society based on Islamic principles and norms. The Government is dominated by Shi'a Muslim clergy. The Head of State, Ayatollah Ali Khamenei, is the Supreme Leader of the Islamic Revolution and has direct control of the armed forces, internal security forces, and the judiciary. Mohammad Khatami was elected to a 4-year term as President in a popular vote in February 1997. A popularly elected 290-seat unicameral Islamic Consultative Assembly, or Majles, develops and passes legislation. All legislation passed by the Majles is reviewed for adherence to Islamic and constitutional principles by a Council of Guardians, which consists of six clerical members, who are appointed by the Supreme Leader, and six lay jurists, who are appointed by the head of the judiciary and approved by the Majles. The Constitution provides the Council of Guardians with the power to screen and disqualify candidates for elective offices based on an ill-defined set of requirements, including the candidates' ideological beliefs. The judiciary is subject to government and religious influence.

“Several agencies share responsibility for internal security, including the Ministry of Intelligence and Security, the Ministry of Interior, and the Revolutionary Guards, a military force that was established after the revolution. Paramilitary volunteer forces known as Basijis, and gangs of thugs, known as the Ansar-e Hezbollah (Helpers of the Party of God), who often are aligned with specific members of the leadership, act as vigilantes, and are released into the streets to intimidate and threaten physically demonstrators, journalists, and individuals suspected of counterrevolutionary activities. Both regular and paramilitary security forces committed numerous, serious human rights abuses.”¹

Mohammad Khatami was re-elected as President following the elections of June 2001.

¹ U.S. Department of State (2001) *2000 Country Reports on Human Rights Practices: Iran*, Bureau of Democracy, Human Rights, and Labor, available at <http://www.state.gov/g/drl/hr/index.cfm?id=1470>

1.2 Human rights practice

Human rights abuses continue in Iran. The US State Department notes that, in 2000:

“The Government's human rights record remained poor; although efforts within society to make the Government accountable for its human rights policies continued, serious problems remain. The Government restricts citizens' right to change their government. Systematic abuses include extrajudicial killings and summary executions; disappearances; widespread use of torture and other degrading treatment, reportedly including rape; harsh prison conditions; arbitrary arrest and detention; and prolonged and incommunicado detention. Judicial proceedings were instituted against some government officials for misconduct. However, perpetrators often committed such abuses with impunity. A group of 20 police officials was brought to trial in March for their actions in an attack on a Tehran University student dormitory in July 1999. All but two were cleared, including the senior official involved. In December 18 former officials of the Intelligence Ministry were tried before a military court for the killings of four dissidents in 1998. The proceedings were closed and the results of the trial were not made public by year's end.

“The judiciary suffers from government and religious influence, and does not ensure that citizens receive due process or fair trials. The Government uses the judiciary to stifle dissent and obstruct progress on human rights. The Government infringes on citizens' privacy rights, and restricts freedom of speech, press, assembly, and association. The Government closed nearly all reform-oriented publications during the year and brought charges against prominent political figures and members of the clergy for expressing ideas viewed as contrary to the ruling orthodoxy. However, the Ministry of Culture and Islamic Guidance continued to issue licenses for the establishment of newspapers and magazines, some of which challenged government policies.

“The Government restricts freedom of religion. Religious minorities, particularly Baha'is, continued to suffer repression by conservative elements of the judiciary and security establishment. In July 10 Iranian Jews were tried and convicted on charges of illegal contacts with Israel, and sentenced to between 2 and 13 years in prison. Three others were acquitted. The trial procedures were unfair, and violated numerous internationally recognized standards of due process. The selection of candidates for elections effectively is controlled by the Government. Intense political struggle continued during the year between a broad popular movement that favored greater liberalization in government policies, particularly in the area of human rights, and certain hard-line elements in the government and society, which view such reforms as a threat to the survival of the Islamic republic. In many cases, this struggle is played out within the Government itself, with reformists and hardliners squaring off in divisive internal debates.

Reformers and moderates won a landslide victory in the February Majles election, and now constitute a majority of that body; however, the Council of Guardians and other elements within the Government blocked much of the early reform legislation passed by the Majles.

“The Government restricts the work of human rights groups and continues to deny entry to the country to the U.N. Special Representative for Human Rights in Iran. Violence against women occurs, and women face legal and societal discrimination. The Government discriminates against religious and ethnic minorities and restricts important workers' rights, including freedom of association and the right to organize and bargain collectively. Child labor persists. Vigilante groups, with strong ties to certain members of the Government, enforce their interpretation of appropriate social behavior through intimidation and violence.”²

According to the most recent UK Home Office Assessment:

“5.4. The Iranian government's human rights record is poor. There are improvements in a few areas, but problems remain.[4(6)] Human rights abuses are not being comprehensively addressed. The government has sought to conform public policy to its political and socio-religious values, although serious differences exist within the leadership and within the clergy. Ayatollah Khamenei, who supported President Khatami's opponent in the Presidential elections, remains Supreme Leader and the clergy's grip on the regime continues. The government has maintained power through repression and intimidation. [4(2),9(4)] 5.5. Procedures governing arrest, detention and trial are rarely made public.[4(2),9(4)] Reports of systematic human rights abuses include extrajudicial killings and summary executions; disappearances; widespread use of torture and other degrading treatment; harsh prison conditions; arbitrary arrest and detention; lack of due process; unfair trials; infringement on citizens' privacy; and restrictions on freedom of speech, assembly, association, religion and movement.[4(6)]”³

1.3 Iran and international legal instruments

Iran is a signatory to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights (ICCPR), the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination, and five other international instruments.

It is **not** a signatory to the Convention on the Elimination of All Forms of Discrimination against Women or the Convention against Torture and Other

² U.S. Department of State (2001), op.cit.

³ Home Office (October 2000), *Iran Assessment*, London, Country Information and Policy Unit. See Appendix A for references

Cruel, Inhuman or Degrading Treatment or Punishment. Neither is it a signatory to the optional Protocols to the ICCPR (including that aimed to abolish the death penalty).⁴

1.4 Women's human rights

The most recent U.S. State Department report on Iran notes the following:

“Women have access to primary and advanced education; however, social and legal constraints limit their professional opportunities. In September the Majles approved a controversial bill to allow single women to travel abroad for graduate education. The legislation was under consideration by the Council of Guardians at year's end. [5] Women are represented in many fields of the work force, and the Government has not prevented women from entering many traditionally male-dominated fields, including medicine, dentistry, journalism and agriculture. However, many women choose not to work outside the home. [6] A 1985 law enacted by the Government instituted 3 months of paid maternity leave, and 2 half-hour periods per day for nursing mothers to feed their babies. Pension benefits for women were established under the same law, which also decreed that companies hiring women should provide day-care facilities for young children of female employees.

“The State enforces gender segregation in most public spaces, and prohibits women mixing openly with unmarried men or men not related to them. Women must ride in a reserved section on public buses and enter public buildings, universities, and airports through separate entrances. Women are prohibited from attending male sporting events, although this restriction does not appear to be enforced universally. While the enforcement of a conservative Islamic dress codes has varied with the political climate since the death of Ayatollah Khomeini in 1989, what women wear in public is not entirely a matter of personal choice. Women are subject to harassment by the authorities if their dress or behavior is considered inappropriate, and may be sentenced to flogging or imprisonment for such violations. The law prohibits the publication of pictures of uncovered women in the print media, including pictures of foreign women. There are penalties for failure to observe Islamic dress codes at work (see Section 6.a.).

“Discrimination against women is reinforced by law through provisions of the Islamic Civil and Penal Codes, in particular those sections dealing with family and property law. Shortly after the 1979 revolution, the Government repealed the Family Protection Law, a hallmark bill that was adopted in 1967, which gave women increased rights in the

⁴ see Office of the United Nations High Commissioner for Human Rights (2001), *Status of Ratifications of the Principal International Human Rights Treaties as of 18 May 2001*, Geneva, Switzerland, available at www.unhcr.ch

⁵ Note: the Council of Guardians later overturned this bill's approval

⁶ Note: see section 5 for information on women's employment

home and workplace, and replaced it with a legal system based largely on Shari'a practices. In 1998 the Majles passed legislation that mandated segregation of the sexes in the provision of medical care. The bill provided for women to be treated only by female physicians and men by male physicians and raised questions about the quality of care that women could receive under such a regime, considering the current imbalance between the number of trained and licensed male and female physicians and specialists.

"In October the Parliament passed a bill to raise the legal age of marriage for women from 9 to 15. However, the Council of Guardians in November rejected the bill as contrary to Islamic law, although even under the current law, marriage at the minimum age is rare. All women, no matter the age, must have the permission of their father or a living male relative in order to marry. The law allows for the practice of Siqeh, or temporary marriage, a Shi'a custom in which a woman or a girl may become the wife of a married or single Muslim male after a simple and brief religious ceremony. The Siqeh marriage can last for a night or as little as 30 minutes. The bond is not recorded on identification documents, and, according to Islamic law, men may have as many Siqeh wives as they wish. Such wives are not granted rights associated with traditional marriage.

"The Penal Code includes provisions that mandate the stoning of women and men convicted of adultery (see Sections 1.a and 1.c.). Under legislation passed in 1983, women have the right to divorce, and regulations promulgated in 1984 substantially broadened the grounds on which a woman may seek a divorce.^[7] However, a husband is not required to cite a reason for divorcing his wife. In 1986 the Government issued a 12-point "contract" to serve as a model for marriage and divorce, which limits the privileges accorded to men by custom and traditional interpretations of Islamic law. The model contract also recognized a divorced woman's right to a share in the property that couples acquire during their marriage^[8] and to increased alimony rights. Women who remarry are forced to give up to the child's father custody of children from earlier marriages.^[9] In 1998 the Majles passed a law that granted custody of minor children to the mother in certain divorce cases in which the father is proven unfit to care for the child (the measure was enacted because of the complaints of mothers who had lost custody of their children to former husbands with drug addictions and criminal records). Muslim women may not marry non-Muslim men. The testimony of a woman is worth only half that of a man in court (see Section 1.e.). A married woman must obtain the written consent of her husband before traveling outside the country."¹⁰

⁷ However, see section 4 for the limitations of this provision

⁸ But not if the divorce has been initiated by or caused by any fault of the wife – the issue of fault being decided upon by the court : see Mir-Hosseini, Ziba (2000) *Marriage on Trial: A Study of Islamic Family Law*, London, I.B. Tauris, p 57

⁹ Note: for women's custody rights after divorce, see section 5

¹⁰ U.S. Department of State (2001), op.cit.

2. Domestic violence

The patriarchal structure, cultural traditions and religious edicts prevalent in Iranian society create a climate in which women are seen as men's property and domestic violence thus becomes an accepted expression of male dominance. Statistics on the prevalence of domestic violence are not available; however all sources consulted agree on its occurrence.

Haleh Afshar discusses the Islamic concept of *nushuz* (disobedience or failure to observe one's religious duties) in relation to women's duty to be submissive to their husbands. She notes that there is textual support from the Koran for the husband's duty to punish such disobedience, and comments that there is much evidence that Iranian men use this to justify domestic violence:

*"Good women are obedient. As for those from whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you, take no further action against them. (IV: 34)"*¹¹

According to the UK Home Office Assessment:

"6.7. Violence against women in the family is recognised, with "blood money" (Deyah) only awarded if the aggrieved party is a man. In addition, families of female victims of violent crimes are reported to have to pay for an assailant's court costs. Little detail is known of the degree of domestic violence in Iran, with no official statistics on abuse within the family.[4f] There is a lack of legislative provision to regulate actions against women.

*"6.11. In 1998 the Government published several papers on a three-year action plan to help prevent, identify and deal with violence against women[10q]"*¹²

The US Department of State Report for 2000 states:

*"Although reported cases of spousal abuse and violence against women occur, the statistics on such reports are not available publicly. Abuse in the family is considered a private matter and seldom is discussed publicly. In May 1999, the President's Advisor on Women's Affairs was quoted in the press as stating that "one cannot claim that violence against women does not take place in Iran." The Special Representative noted in his September report that media reporting on the situation of women has diminished, in part due to the closure of the reform-oriented press (see Section 2.a)."*¹³

¹¹ Afshar, Haleh (1998) *Islam and Feminisms: An Iranian Case-Study*, Basingstoke, Macmillan, p 143

¹² Home Office (October 2000), op.cit.

¹³ U.S. Department of State (2001), op.cit.

The Special Rapporteur to the United Nations on Violence Against Women noted in her 1999 report on Iran's three-year National Plan of Action on the Elimination of Domestic Violence Against Women that she was concerned about *"the link made in the Plan of Action between women's rights and 'duties in the family and society', since duties are often invoked to negate women's rights."* She also noted in her report that no specific criminal law exists in relation to domestic violence, and that statistics specifically relating to domestic violence were *"not provided"*.¹⁴

A report by the National Council of Women for a Democratic Iran gives some background information and an example of a woman's experiences:

"This situation [difficulties in obtaining justice in cases of domestic violence] has created an atmosphere of exhaustion, restlessness, and hopelessness among the women in the families where there is violence. The exploited women continue on with their lives with distrust and a lack of confidence in a better future. Violence in families will create lasting effects on the children, who are the men and women of the next generation. The cycle continues and they raise their children with the same rules that they are taught. As a result, violence in the family takes its toll on the society and creates a harsh living environment susceptible to violations and criminal activities.

*"For instance, a woman says "I was married at the age of 12, and I had my first child when I was 13. My husband was unemployed and we fought all the time. We never applied for a divorce because I was afraid of losing my child. Finally one night, he poured a bucket of acid over my body and I was completely burned. When I rushed to the sink to flush my face and body. I realized that he had shut off the main water supply. I was taken to the hospital. My operation was held up pending advance money for the surgery, and permission from my husband to operate on my face. My mother sold all of her valuables and provided the money. My husband said he would only permit my operation if I consented to not seeing my children for the rest of my life. Finally, with hospital's pressure on the family court they allowed me to receive the operation on my face and body. (Zanon Magazine, #42.)"*¹⁵

¹⁴ Coomaraswamy, Radhika (1999), *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences*, E/CN.4/1999/68, Geneva, Switzerland, Office of the United Nations Commission on Human Rights

¹⁵ National Council of Women for a Democratic Iran (2000), *Alternative Report by National Committee of Women for a Democratic Iran* submitted to the Conference of NGOs in Consultative Relationship with the United Nations, available at www.womenaction.org/global/ncwdi.htm

3. Domestic violence and the law

3.1 Lack of provision

There is no specific recognition of domestic violence in Iranian legislation. A woman whose husband is physically violent towards her could have recourse to the relevant article in the Criminal Code which is a general provision prohibiting assault and battery. Assault and battery is a "qisas" crime (see Craig Silverman, below, for an outline of categories of crime in Iran), which is seen as an assault against the victim and his/her family, and gives rise to a right of retribution or blood money. However, reports to the police are unlikely to be taken seriously unless perhaps several incidences of very severe injury have been reported; more information on the actual practice of trying to obtain justice through this system for women experiencing domestic violence is given in the next section.

Women suffer discrimination in the legal system (see below) and in any event, violence in the context of a husband and wife or family relationship will be viewed in the Islamic context of marital relationships, making it unlikely that the law will offer any redress.

3.2 The legal system in Iran

Iran's Constitution, adopted in 1979, states that the form of government of Iran is that of an Islamic Republic, and that the spirituality and ethics of Islam are to be the basis for political, social and economic relations.

The executive, legislative and judicial wings of state power are subject to the authority of the Wali Faqih (supreme religious/spiritual leader).

The following extract from an article in the New England International & Comparative Law Annual outlines the legal system in Iran:

"The sources of law in Iran are Islamic law, constitutional law, legislation (such as the code discussed here), and other informal sources such as Muslim customs and traditions and revolutionary considerations.(86) The legislative and judicial organs of the State are responsible for codifying and applying the shari'a (Islamic law).(87) The penal code of Iran has divided crimes into four categories: hudud, qisas, ta'zir, and diyat.(88) The distinctions between them are based on the type of punishment for each category of offense.(89)

"1. CATEGORIES OF CRIME IN IRAN

The hudud category of crimes includes those prohibited by God and punishable by mandatory penalties defined by the Quran.(90) The Quran houses God-given laws considered to be "infinitely more than just man-made laws."(91) Examples of hudud crimes, as enumerated in the Iranian penal code, include "theft, robbery, adultery, apostasy, drinking of alcoholic beverages, and rebellion against Islam."(92) The penalties imposed for these types of crimes are specified, and restricted to those listed in the Quran.(93) These punishments include

the amputation of hands for theft and the stoning to death for adultery.(94)

"The category of offenses designated as qisas include such acts as murder, manslaughter, battery, and mutilation.(95) These offenses, under Islamic law, are regarded as acts against the victim and his family.(96) The punishments for such offenses are retributive in nature and allow for "inflicting on a culprit an injury exactly equal to the injury he inflicted on his victim'."(97) Although retribution and vendettas are permissible punishments for qisas crimes, the "Quran and Iranian penal code recommend forgiveness, because the act of forgiving pleases God."(98)

"The ta'zir category of crimes in Iran are those which have no specific penalties assigned to them in the Quran.(99) The crimes in this category include such offenses as "immodest clothing, immoral behavior, and public drunkenness."(100)

"The range of punishment for crimes in the ta'zir category of offenses, not being designated in the Quran, is left to the discretion of the judge.(101) This discretion, however, is limited to the range designated in the Islamic Penal Code.(102) Punishments within this discretion include such things as admonition, fines, seizure of property, and public flogging.(103)

"The final category of crimes in Iran, diyat, is in actuality not a crime, but a category of punishment. Diyat is a form of compensation or blood-money which is ordered to be paid to a victim or his family as reparation for an injury or murder.(104) This is an alternative available to a family who chooses to "forgo their right of retribution under qisas and instead demand blood money from the perpetrator of the crime."(105) The measure of diyat, and methods of payment, for various crimes has been codified in the Iranian penal code.(106)"¹⁶

¹⁶ Silverman, Craig (1997) *An appeal to the United Nations: Terrorism must come within the jurisdiction of an international criminal court*, New England International & Comparative Law Annual

References from the above

86. See Amin, *supra* note 8, at 5.80.5.

87. See Nadar Entessar, *Criminal Law and the Legal System in Revolutionary Iran*, 8 B.C. Third World L. J. 91, 95 (1988).

88. See *Id.* at 96.

89. See *Id.* See also Kourosh Eshghipour, *The Islamic Revolution's Impact on the Legal and Social Status of Iranian Women*, 3 New Eng. Int'l and Comp. L. Ann. 161, 166-169 (1997).

90. See *Id.* at 96-97.

91. Entessar, *supra* note 85, at 92.

92. *Id.* at 97.

93. See *Id.*

94. See *Id.*

95. See Entessar, *supra* note 85, at 97.

96. See *Id.* at 97.

97. *Id.*

Domestic violence is not specifically mentioned in the criminal code, but would be considered under the offence of battery as a q'isas crime. The following section examines difficulties in obtaining any redress for such an offence.

3.3 The Civil Code

The Civil Code of Iran, in its chapter on marriage, details the circumstances in which a woman may seek a divorce, including maltreatment or bodily injury by her husband. However, the reality for women experiencing domestic violence in trying to access such provision is discussed in Section 4.

“Article 1102—As soon as a valid marriage takes place, matrimonial relations come into being between the parties and reciprocal rights and duties of the spouses are established.

“Article 1103--Man and wife are bound to treat each other well.

“Article 1114—The wife should reside in the residence that the husband decides unless the power to decide the residence has been reserved for her.

“Article 1115—If the cohabitation of the spouses involves the risk of bodily or financial injury or causing disreputation to the wife, she may choose a separate place of residence; and if the said suspected risk is proved the court may not order her return to the husband’s place of residence and so long as she is excused from returning to the husband’s residence her maintenance is to be borne by the husband.

“Article 1116—In respect of the preceding Article, so long as the litigation between the spouses has not ended, the place of residence of the wife shall be determined by mutual agreement of the parties failing which the court will decide on her residence after obtaining the views of the close relations of the parties; and where there are no relations the court itself will appoint a safe place for her.

“Article 1119—The parties to a marriage contract may stipulate in it or in another binding contract any condition which is not incompatible with the nature of the marriage contract; for example, it may be stipulated that if the husband marries another woman or absents himself for a certain period, or fails to continue to provide her with maintenance, or makes an attempt against the life of the wife or maltreats her in a

98. Id.

99. See Entessar, *supra* note 85, at 98.

100. Rose Marie Karadsheh, *Creating an International Criminal Court: Confronting the Conflicting Criminal Procedures of Iran and the United States*, 14 *Dick. J. Int'l L.* 243, 267 (1996).

101. See Entessar, *supra* note 85, at 98.

102. See Id.

103. See Id.

104. See Id.

105. Entessar, *supra* note 85, at 98.

106. See Id.

manner that makes their life together intolerable, the wife will have the power of an agent authorised to appoint another person to obtain her divorce after proving the realization of the stipulated condition in the court and the issuance of a final judgment thereon.

“Article 1130—(As amended on 21-8-1370 AH=12-11-1991) Where the continuation of marriage causes difficulty and hardship for the wife, she may refer to the religious judge requesting a divorce. If the difficulty and hardship is established for the court, the court can compel the husband to divorce his wife; where this may prove impractical the wife may be divorced by the permission of the religious judge⁶⁹

“69. The former text of Article 1130 read as follows: ~The ruling of the preceding Article shall apply to the following cases as well:

1—Where the husband does not attend to the other indispensable rights of the wife, and compelling him to do so proves impossible.

2—The ill-treatment by the husband of his wife to such an extent that it makes the continuation of the wife’s living with him unbearable.

3—Where because of contagious diseases of generally incurable nature the continuation of the married life may no longer be safe for the wife.”¹⁷

¹⁷ Taleghany, M.A.R. (trans) (1995) *The Civil Code of Iran*, Littleton, USA, Fred B. Rothman

4. The reality of seeking protection

4.1 The police

There appears to be little, if any protection available from the police in cases of domestic violence. The report by the National Council of Women for a Democratic Iran quoted above mentions the following news report which shows the lack of such protection. Please refer also to Section 6 for case law which confirms this.

*“Family violence against women, Iran Times” Sept 25, 1998 - In another example, a woman was murdered by her husband's brutal battery and torture. She was rushed to Sina hospital in Tehran. Shortly after, she died due to infection and deep injuries. Before her death, Mina Omolbanin was questioned on what had happened to her. She had lied that she had fallen down some steps, from fear of what else her husband might do. When the nurses insisted that she tell the truth about her injuries, she finally admitted, " My mother-in-law troubled me and my husband burned me with cigarette ashes and with skewers. He also beat me up with a cable." When asked why she didn't run away, she said, " I was imprisoned in a shed located at the end of the yard and did not see the sun for twelve days. He burned and beat me. Then he locked me up and left. I asked my father for help and he ignored my plea. My father told me, "You went to your husband's home with a bridal gown. You should leave that home with a white burial shroud." **In a few instances, I reported the beating and burning to the nearest police station. However, they did not help and never took control of the case.**" The judge released the content of the file to the news media. This 22 year old victim of violence was married off against her will in the city of Sarab. " ¹⁸*

Canada's Immigration and Refugee Board Research Directorate refers to information on police intervention in cases of domestic abuse provided by a professor of sociology at Concordia University in Montreal, who specializes in women's issues in Iran:

***“If a woman who is being beaten by her husband calls the police from her home, it is unlikely that they would intervene;** however, the woman has the option of going to the police station to lodge a complaint against her husband. If a woman chooses that option, she must produce a medical certificate proving that she has received a serious physical injury (e.g. a broken bone or knife-wound) at the hands of her husband before the police will open a file on the case. Moreover, the professor is not aware of any instance in which the police have opened a file after the first certified instance of physical injury at the hands of a husband. However, the professor believes that*

¹⁸ National Council of Women for a Democratic Iran (2000), op.cit.

the police will usually open a file if a woman produces a certificate of serious injury for a second or third time (26 June 1998).¹⁹

4.2 The judicial and legal system

4.2.1 Overall discrimination against women

The UK Home Office Assessment issued in April 2000 highlights the lack of independence of the legal system in Iran and the many ways in which it discriminates against women:

“4.10. The traditional court system is not independent and is subject to government and religious influence.[4a,4f] There are two court systems; the traditional courts, which adjudicate civil and criminal offences, and the Islamic Revolutionary Courts, established in 1979 to try political offences, narcotics crimes "crimes against God" [4a,4f] and official corruption.[4f] Defendants have the right to a public trial, may choose their own lawyer, and have the right of appeal. Trials are adjudicated by panels of judges, advised by the government to base their decisions on Islamic law.[4f] The Revolutionary Courts may consider cases that are normally in the jurisdiction of the civil and criminal courts, and may also overturn their decisions.[4a]

“4.12. Revolutionary Court judges are legally authorised to act as prosecutor and judge in the same case and these judges are appointed for their ideological beliefs. No major reform of the Revolutionary Court system has been undertaken since 1992. The Lawyers Committee for Human Rights then concluded that these courts were associated with abuses.[4f]

*“4.13. The Supreme Court, which has 16 branches, revoked all laws dating from the previous regime which did not conform with Islam.[1a] It has limited authority to review cases.[4f] In October 1982 all courts set up prior to the Islamic Revolution were abolished. In June 1987 Ayatollah Khomeini ordered the creation of clerical courts to try members of the clergy opposed to government policy. A new system of **qisas** (retribution) was established, placing the emphasis on speedy justice. Islamic codes of correction were introduced in 1983, including the dismembering of a hand for theft, flogging for fornication and violations of the strict code of dress for women, and stoning for*

¹⁹ Immigration and Refugee Board (1998) *Response to Information Request IRN29616.E* Ottawa, Research Directorate

References from the above:

Professor of counselling psychology, Ontario Institute for Studies in Education (OISE), University of Toronto. 30 June 1998. Telephone interview.

Professor of sociology, Concordia University, Montreal. 26 June 1998. Telephone interview.

Women Living Under Muslim Laws (WLUML). Fall 1996. Mehranguiz Kar and Homa Hoodfar. "Personal Status Law as Defined by the Islamic Republic of Iran: An Appraisal," *Shifting Boundaries in Marriage and Divorce in Muslim Communities*. Grabels, France: WLUML.

adultery. The traditional courts adjudicate and civil and criminal offences may be punished by the death penalty.[1a]

*“5.17. Four types of proof exist within the Iranian legal system. The application of confession, testimony, oath and "the knowledge of the judge" remains unclear to those outside the Iranian judiciary. There is a marked concern that confessions are often gained by coercion and that **the "testimony of righteous men" excludes women and members of religious minorities.**[10i]*

“6.6. Women suffer discrimination in the legal code, particularly in family and property matters. It is difficult for many women, particularly those living outside large cities, to obtain legal redress.[13] Under the legal system, women are denied equal rights of testimony and inheritance.[10L] A woman's testimony is worth half that of a man's [13], making it difficult for a woman to prove a case against a male defendant.[13,9c]”²⁰

The reality of the protection available for women experiencing violence under the legal system is described in the 2000 report by the National Committee of Women for a Democratic Iran referred to above:

“Violence Against Women

A Woman's life is valued only half as much as a man's Life, as stated in Article 209 of Islamic criminal law. A convicted man who has intentionally slain a woman is subject to execution only after the payment of "Deyeh" by the family of the victim. "Deyeh" is defined as a sum of money that the victim's family has to pay to the assailant's family for the physical damages, dismemberment, or death of the assailant. Additionally, Article 300 of the Islamic criminal law states that the "Deyeh" of a Muslim woman is half of the "Deyeh" of a Muslim man. By law the life of a woman has half the value of a man in Islamic criminal law. The "Deyeh" for a man is about 7 million toman in Iranian currency, approximately \$11,000 US dollars. If the murderer and slain are both men, the amount of "Deyeh" is determined by the education, occupation, and social position of the murderer and the slain. However, for a slain woman, the value of "Deyeh" is about 3.5 million toman, \$5,500 US dollars. The academic and social achievements of a woman are not taken into consideration in determining the "Deyeh."

“These laws can be further clarified by the following example. Mr. Gholamreza Khoshrowkoran Kordieh raped eleven women and murdered the victims in a sadistic and brutal manner. He was convicted and condemned to death. However, the verdict was carried out only after the payment of "Deyeh" by the victims' families. Before his execution, each of the families of the victims

²⁰ Home Office (April 2000), *Iran Assessment*, London, Country Information and Policy Unit

paid 3.5 million toman to his family. The execution could only be carried out when each and every one of the families paid the "Deyeh." If any of the families failed to make their payment, his execution will not take place. In practice, the Islamic law is supportive of criminals who commit crimes against women.

"Further gender discrimination in Islamic criminal law can be seen in amendment One of Article 1210. It defines the age of maturity for males as fifteen lunar years and for females as nine lunar years. According to the law, boys and girls from the age fifteen and nine, respectfully, are held legally responsible for their actions. Consequently, women have criminal liability for an additional six years more than men, as imposed by this law. According to Article 102 of the: Law Of Islamic Punishment, "during stoning, a man is put in a hole up to [his] waist and a woman up to her breast. " The law provides that if a person who is to be stoned manages to escape, he or she will be allowed to go free. Since, it is easier for man to escapee, this discrimination is literally a matter of life and death for she would have less chances to pull herself out of the hole.

"The law and law makers in Iran do not show any concern about violence in the family. The victims of violence in the family, who resort to family courts are condemned for causing their husbands' harsh and disrespectful behavior. Women are cautioned to be submissive to their husbands' wishes. They are expected to understand what their husband's violence is for the good of the family, and is necessary for the proper rearing of the children. The prosecutors often overlook violence in the family, and allow the parties to compromise among themselves.

"According to article 1102, the law states that "a man and his wife are supposed to live peacefully." In the sequential article, it states that, "the parties should assist each other in rearing their children and reinforcing the family structure." There is no mention of violence in any part of family law.

"According to Islamic law, if two people are involved in a conflict that may result in an injury, the injured can charge the assailant for assault and battery. The convicted assailant can be fined a "Deyeh", receive lashes or a term of imprisonment. However, if the victim is a woman, the only action the court takes is advising the victim and the perpetrator to meet and negotiate. In the case where the wife is injured, the wife needs to prove her claim of assault and battery in the court. The proof might not be a problem if the claim was addressed promptly. However, most cases linger in the court's list of claims for a long time before it is brought to a hearing. Most often, the physical wounds from the assault and

battery have already healed, making the case lacking in substantial evidence. Additionally, the psychological damage the woman experienced is nearly impossible to prove in court. Due to the difficulties involved with obtaining justice for victims of violence in the family, many times the victims would rather tolerate the pain and agony. **The victim will not charge the assailant, usually the husband, since the court offers no assistance or resolutions.** Slowly and surely, this violence will deteriorate the relationship. Unfortunately, most wait for the worse to come.”²¹

4.2.2 Lack of restraining orders

The Immigration and Refugee Board report notes:

“Regarding the issuance of restraining orders by Iranian courts, the professor said that there is no such thing as a restraining order against a husband in a case where the wife is living with the husband. However, if a married woman can prove to a court that her life is in danger from her husband, the court may allow her to move to her father's home, in which case the husband can be kept away legally (ibid.).”²²

In addition, the same report notes that in an article on Iran's Personal Status Law, published in 1996:

“A wife may choose to live in a separate residence if she can prove to the court that she has a reasonable fear of physical harm or harm to her reputation. If the court accepts her claim, she is entitled to receive economic support (nafaqa) until the couple reaches an agreement or the marriage ends. However, despite these provisions, it is very difficult for women to convince the court that they are in danger from their husbands. Prior history of abuse is considered evidence of danger only if the battery has caused major injury; this suggests that battery is permitted as long as it does not result in permanent harm or handicap. The judge is left to rule on the severity of a situation, and decisions are highly subjective. (WLUML 1996, 20)”²³

4.2.3 Seeking a divorce from a violent husband

As mentioned above, Article 1130 of the Civil Code allows a woman to initiate a divorce if the continuation of the marriage causes her difficulty and hardship. A woman who married before 1967 is unlikely to have any stipulations relating to divorce in her marriage contract and has to establish one of the grounds in the Civil Code, such as the one above in the case of domestic violence.

A woman who married between 1967 and 1982 will have a right in her marriage contract to initiate divorce under one of the grounds of Article 8 of

²¹ National Council of Women for a Democratic Iran (2000), op.cit.

²² Immigration and Refugee Board (1998), op.cit.

²³ Immigration and Refugee Board (1998), op.cit.

the Family Protection Law (now repealed). These included the husband's failure to support his wife, his second marriage, or his failure to treat co-wives equally.

In 1982 a new form of contract was issued which includes a woman's right to initiate divorce because of her husband's maltreatment, to the extent that the continuation of the marriage has been rendered intolerable to her. However, a crucial feature of these extended "rights" is that they are dependent on the husband signing the relevant clause of the contract. **This is because Shari'a law recognises divorce as the exclusive right of men, and therefore a woman can be delegated this right by the husband only if he wishes.** Mir-Hosseini notes in her study of Islamic family law:

*"These stipulations, which are now printed in every marriage contract, are not valid unless they bear the husband's signature under each clause. The husband retains the right to refrain from signing anything he perceives as unacceptable. This is in conformity with the Shari'a mandate of divorce: a man is free to repudiate, to delegate or refrain from delegating this right."*²⁴

In practice, Mir-Hosseini notes that:

*"The grounds upon which a woman bases her application [for divorce] influence both the speed at which her case is dealt with and its outcome. In cases where the establishment of the grounds is simple and straightforward, the court issues the divorce without more ado. Otherwise, all depends on the husband's goodwill, or on the judge's assessment of the marital dispute."*²⁵

Obviously this is where cultural and personal prejudices are able to influence women's divorce rights.

Haleh Afshar, in her book "Islam and Feminisms: An Iranian Case-Study", describes women's efforts to initiate divorce proceedings from a violent husband after the institution of the Islamic Republic in 1979:

"Women could also stipulate from the outset [in a marriage contract] that if the man was morally corrupt or maltreated his wife, then she had the right to apply for power of attorney to divorce herself from him.

"However, in practice it was much harder for women to convince the courts of their grievances than it was for men. Violence, for example, was theoretically recognised as a case of hardship and entitled women to divorce, but, as Mehranguiz Kaar^[26] explained to a

²⁴ Mir-Hosseini, Ziba (2000), *Marriage on Trial: A Study of Islamic Family Law*, London, I.B. Tauris, pp 57-58

²⁵ Mir-Hosseini (2000), *op.cit.*, p 65

²⁶ Kaar, a women's rights activist and lawyer, is one of 16 people whose trial began at the Revolutionary Court in November 2000. She had taken part in an April conference in Berlin on the implications of the February Majles elections. The defendants were arrested in Iran

Zanan reporter, **there was no definition as to what constituted violence and at what level of violence a women could claim the right to divorce her husband.** It was left to the judge to decide 'and the judge is always a man'. Kaar notes that 'culture' and 'customs' led many to assume that a degree of male violence was normal part of everyday married life:

Of course the courts do not consider every sort of violence as being maltreatment and causing hardship since rows, rough treatment and beating are current in many Iranian families. So in the Family Courts the judge uses his own criteria to define violence. (Zanan III, no 18, June-July 1994)^[27]

"In particular judges assumed that husbands had to resort to violence as part of their managerial role to impose their control. There are cases where the wife has been beaten on more than one occasion and the judicial police have recorded and certified those beatings. Yet while these have been considered valid grounds by one judge for a woman to divorce her husband, another judge has disregarded ten certified beatings because in his opinion the man is entitled to beat his wife. The lack of clarity in defining what constitutes violence results in men using their own judgement to interpret and impose the law (Zanan III, no 18, June-July 1994)

"Tehran representative Marzieh Dastjordi made very much the same point when she deplored the tendency of judges to tell women to return to their abusive husbands and get on with it. She declared that the laws had to change to deal with 'this major injustice towards women'. She lamented the fact that when women have been beaten by their husband, or even where the husband has buried the wife alive, the courts keep advising these women to continue living with their husband:

We see that even where the Courts have the legal means to give a fair decision, they do not do so. What is more, if a court does decide in favour of a woman, then the men do not obey the orders anyway. Every time it is women who lose out. (Zaneh Ruz, 1 October 1996, no. 1575)^[28]

"As with adultery, so with violence women were also required to have a witness to prove that they had been beaten by their husband. Kaar

after the conference and charged with taking part in antigovernment and anti-Islamic activities. Kaar was sentenced to 4 years imprisonment but is appealing as at June 2001 (source: Islamic Republic News Agency, June 20 2001, at www.irna.com). See US Department of State report for 2000 for further details.

²⁷ Zanan ('Women') is a women's journal concerned with feminist reinterpretations of Islam and women's rights, now banned and published in the US: see Najmabadi, Afsaneh (1998) 'Feminism in an Islamic Republic', in Haddad, Y. & Esposito, J. (eds), *Islam, Gender and Social Change*, Oxford, Oxford University Press, pp 65 - 77

²⁸ Zaneh Ruz ('Women of Today') is an Islamist women's journal, aiming to improve women's rights within an Islamic framework: see Najmabadi, Afsaneh (1998), op.cit., p 62

criticises this requirement which is impracticable in the context of the modern nuclear family. Kaar argues that the section of Iranian criminal law which makes the judge's decision dependent on the presence of witnesses does not work well in the context of the daily lives of women. These laws were founded on the basis of households living within the extended family structures where there would have been plenty of witnesses if a man were to beat his wife, but such laws sit uncomfortably with the twentieth-century flat-dwelling style of urban life. Flat-dwelling women who are beaten by their husbands cannot prove violence and hardship and therefore cannot obtain justice. It is only where the violence is so extreme that the woman is physically scarred that she can claim to have evidence.

Even then she has to prove that her injuries are so great as to be equivalent in terms of religious law repayment, blood money, dayeh, to three camel loads. That is to say to qualify a woman would have had to have been mutilated and crippled by the injuries. (Zanan III, no. 18, June-July 1994)"²⁹

A report by the Canadian Immigration and Refugee Board's Research Directorate on the subject of obtaining a divorce because of domestic violence notes:

*"The source stated that women can ask for divorce in severe cases of violence that result in life-threatening injuries. The religious court can be addressed because of the husband's bad behaviour. The woman would need to document her injuries with, for example, photographs and a hospital or doctor's report. The source stated that the religious court would usually attempt to mediate the conflict first. It would be unusual for the religious court to grant a divorce to the woman after a first appearance. **The source added that for the woman the process of divorcing her husband would be difficult and, although it results in a divorce, her economic survival would again depend on her family.**"³⁰*

4.3 Other support services

No evidence has been found of any support services for women experiencing domestic violence run either by the state or by NGOs.

Friends and relatives may provide support but social attitudes favour the continuation of the marital relationship even in such circumstances.

²⁹ Afshar (1998), op. cit., pp 182-184

³⁰ Immigration and Refugee Board (1997) *Update to Responses to Information Requests IRN19097.E and IRN16039.E Research Directorate, Ottawa*

References from the above

Professor, Department of Sociology, York University. 7 May 1997. Telephone interview.

In the report referred to above, the Research Directorate refers to the following information provided by a specialist on women's issues in Iran at the Department of Sociology at York University.

“The source stated that it is difficult to assess the extent of domestic violence in Iran because there are no statistics, but as in the rest of the world, violence against women exists in Iran. The source was not aware of state-run services for women victims of spousal abuse. In Iran and in the Middle East in general, the family is traditionally the provider for protection to women victims of spousal abuse.”³¹

In a later report, the same directorate refers to information supplied by a professor at the Ontario Institute for Studies in Education (OISE), who publishes on women's issues in Iran and on Islamic law:

*“Whether or not friends or neighbours would intervene when a woman is being abused by her husband depends on the nature of their relationship with the woman and on the kind of help sought by the woman. **The traditional attitude towards marital conflict in Iran (and this is reflected in the legal system as well as in social behaviour generally) inclines people to try to mediate between the husband and wife. The primary goal of a person who gets involved in a friend's or neighbour's marital dispute is likely to be to find a way to reconcile the couple so as to ensure that they continue to live together, even if the husband is abusive. This attitude is likely to be shared by male relatives of a woman who is being abused by her husband (30 June 1998).”³²***

³¹ Immigration and Refugee Board (1997), op. cit.

³² Immigration and Refugee Board (1998), op. cit.

5. The situation of separated or divorced women

5.1 Social attitudes, abuses and discrimination

According to the Islamic regime, a woman's main purpose in life is to marry and have children. Single or divorced women have neither prestige nor social status and suffer discrimination in many areas in addition to those described earlier, which apply to women in general.

5.2 The consequences of divorce

5.2.1 Custody of children

A woman who had managed to divorce or separate from her husband would lose custody of her children under Iranian law. Ziba Mir-Hosseini notes in her study of Islamic family law:

*“The Iranian Civil Code devotes an entire chapter to ‘incontestability of the guardianship rights’ of the father and paternal grandfather (Book 8, Chapter 3). On the other hand, **the mother’s access to hadana [custody] is severely restricted: she has the right to keep her son until the age of two (as soon as he is weaned) and her daughter until the age of seven (Article 1170, ICC [Iranian Civil Code]; after that the hadana right passes to the father. In case of the death of either parent, hadana passes to the one who is still alive (Article 1171, ICC); and in the case of the father’s absence or disqualification, it passes to the paternal grandfather. Under no circumstances is custody transmitted through the maternal line.***

*“This not only restricts the scope of custody negotiations but confines them to the pre-divorce domain. Although in theory a woman can use her mahr [dower, bride price] as a bargaining tool to gain the custody of her children, in practice this is only possible if divorce is sought by the husband...^[33] There are two related reasons for this, the first of which has to do with the customary and popular conceptions of mahr. This is seen as providing a woman with a kind of security in marriage, not a licence to divorce: if she wants to leave the marriage, then she has to leave the children behind. Secondly, **a woman’s limited right to custody means that she cannot make any legal claims for the maintenance of children in her charge, which leaves her with no leverage. A man can always counter by demanding the exercise of his right to custody.**³⁴*

Mir-Hosseini notes that the implementation of Shari'a law in Iran results in a patrifocal family structure, even after divorce. She comments that “a mother-child unit becomes viable only when women are financially able to support

³³ Note: under Shari'a, a husband who seeks a divorce has to pay his wife her *mahr* and three months' maintenance; Hosseini is suggesting that a wife could 'use this as a bargaining tool' by offering to forgo the payment in exchange for custody of the children.

³⁴ Mir-Hosseini (2000), op. cit. pp 153-4

*their children. in practice, a matrifocal option is a possibility for those who can afford to assume total responsibility for the upkeep of the children. Not many women are in a position to do this; for a large majority, divorce often entails the loss of their children, which may partially explain the lower incidence of divorce in Iran.*³⁵

The possibility of a woman keeping her children with her therefore depends not only on her financial position, but also on her husband's agreement to forgo his right to custody. In a case of domestic violence, this kind of voluntary concession is likely to be hard to obtain.

Haleh Afshar quotes the following case of a violent man who was given custody of his children:

“Zaneh Rouz published the case history of a man who had a long record of domestic violence and clearly lacked the competence to take care of his children. Nevertheless, the courts rejected the mother's plea and gave him custody; he proceeded to kill all three children. When Ayatollah Moussavi Bojnourdi, a well-known member of the judiciary, was asked to comment on this case, he replied ‘according to religious and legal requirements the father is entitled to have custody of his children after the stipulated age. The courts can only implement the law.’”³⁶

5.2.2 Possible charge of adultery

A woman who had divorced abroad and was then returned to Iran would face severe problems on return. The Alternative Report by National Committee of Women for a Democratic Iran (NCWDI) states:

***“Islamic government does not recognize the divorces and the marriages administered in foreign countries unless they are endorsed by Iranian embassies or consulates, or the rituals are repeated in Iran. The consequences and calamities of this restrictive rule translates as follows: If an Iranian married couple immigrate to a foreign country and divorce according to the laws of that country, the divorce is not legitimate for the woman. The process must be repeated in the Islamic embassy or the consulate. If each of the spouses remarries separately after the divorce in the overseas country and travels to Iran, the wife could be arrested and tried for committing adultery. The punishment for adultery is burying the woman in the ground and stoning her to death. However, this does not apply to the man. By law the man is not in marriage violation.*”**

“Moreover, in the same situation as above if the couple have children, and the court granted custody of the children to the mother, if they traveled to Iran, the husband could take the

³⁵ Mir-Hosseini (2000), op. cit. p 160

³⁶ Zaneh Rouz, 7 July 1984, quoted in Afshar, Haleh (1987) *Women, State, and Ideology: Studies from Africa and Asia*, Albany, USA, State University of New York Press, p 83

*children away from his ex-wife because husband is the sole custodian for the children. No custody privilege is granted to women under any circumstances.*³⁷

5.3 Economic security

Although many women do work outside the home, this activity must take place within an Islamic framework. Fatemeh Etemad Moghadam explains the prevailing ideology affecting women's employment in Iran:

"The Constitution of the Islamic Republic states that no one can be forced into a specific occupation, or exploited in the job market. Irrespective of race, language, and sex, people are entitled to equal access to employment, provided that such access is not contrary to Islamic principles, public welfare, and the rights of others."³⁸ While the Constitution is not explicitly gender-biased, the reference to Islamic principles can be used as an obstacle to equal access to employment. According to the clergy, Islamic ideology emphasizes the complementary aspects of the biological differences between men and women, and considers family – not individual – as the basic social unit. Thus it can be argued that the proper place for women is at home, that men as heads of households should be given priority to women in employment, and that women are biologically unfit for certain occupations. One of the main ideological objectives of the revolution was to force women to wear the veil. Veiling and segregation had important implications for women seeking employment. The government undertook a campaign to expel from work women considered "morally decadent", to paksazy (purify) the workplace. It also used incentives to persuade women to retire early. A 1979 law allowed workers to retire after 15 instead of 25 years of service. Although the law included male as well as female workers, more women than men retired."³⁹

Women must obtain permission from their husbands and/or another male head of the family to seek employment or to be employed.⁴⁰ This could cause problems for a woman who had fled domestic violence and was unable to return to her family due to fear of being traced by her husband, or whose family refused to take her in. Indeed, women's economic survival after divorce is dependent on family support.

Women suffer discrimination in relation to work-related benefits as well in employment rights. Maryam Poya explains that, in the 1990s,

³⁷ National Council of Women for a Democratic Iran (2000), op.cit.

³⁸ Constitution of the Islamic Republic of Iran, amendment 4, principle 43; amendment 2, principles 19,20,21 cited in Moghadam, Fatemeh Etemad (2001) 'Female Employment in Postrevolutionary Iran' in Joseph, Suad & Slyomovics, Susan (eds) *Women and Power in the Middle East*, Philadelphia, University of Pennsylvania Press, p 196

³⁹ Moghadam (2001), op. cit. pp 195-196

⁴⁰ see Poya, Maryam (1999) *Women, Work and Islamism*, Zed Books, London, p 113

“One important effect of gender ideology was the refusal to recognise women as breadwinners. Therefore their benefits were calculated as for single persons. A single person received half of a married person’s allowances and subsidies. For example, employers paid 3,000 rials per month to a single person and 7,000 rials to a married person in the form of goods or food subsidies. Sometimes, instead of a cash bonus, coupons were given for food items. These coupons could be sold in the black market if they were not needed for household use, adding a considerable amount to the family income.

“Women with children did not receive child benefit. Married women did not receive the married person’s allowance. This reduced their salary drastically in comparison with men’s. For the same reason, women’s tax, pension and retirement deductions and allowances were also calculated as for a single person. For example, after her death a woman’s pension would stop, while a man’s pension would be transferred to his family. Women and men were entitled to health schemes, but women could use the scheme only for themselves and not for their families.”⁴¹

A single woman would therefore receive a much lower income, and a woman who had managed to retain custody of her children would not be able to access any family-related benefits.

Nursery provision is inadequate, often overcrowded and expensive, meaning many women choose to take one to two years off per child until the child is old enough to leave with female relatives (with an inevitable impact on their salary, insurance and pension).⁴² A woman on her own with young children, who was estranged from family, would therefore have extreme difficulty in supporting herself.

The following extract from NCWDI’s report demonstrates the poor position of Iranian women relating to employment:

*“WOMEN AND ECONOMY, EMPLOYMENT
AND POVERTY*

“Jomouri Islami, May 12, 1999 - According to the daily Jomhuri Islami, only 9% of Iranian women have jobs. According to Hussein Mozaffar the Iranian Education Minister “Currently, women constitute 49.3% of the nations’ total population and girls 47% of the student population...The employment rate for women is nine percent, 72% of this being restricted to the educational sector.”

“International Labor Organization, quoted in Bergens Tidende, 12 July 1998 -An international study comparing workforce condition for women around the world ranked Iran 108th out of 110.

⁴¹ see Poya (1999), op. cit. p 119

⁴² see Poya (1999), op. cit. pp 114-117 for a full explanation of these problems

“IRNA, Aug 25, 1999, The country's official news agency, IRNA reported that only 0.3% of women are working at executive level. Zahra Shojai, Iranian Deputy for women's affairs, said that a large number of women are still deprived of their social rights and far from reaching an ideal point in this respect. She added that currently only 0.3% of executives in the country are women.

“Legal barrier to restrict women's participation in the job force

“Zanan magazine, No.55, Sept, 1999 Report by the public relations office of Tehran's Department of Education , Female teachers are strictly forbidden from attending classes of 10 year old boys in Iran. Khatami's Ministry of Education Barred Women Teachers From Teaching Boys Older Than 10”.⁴³

⁴³ National Council of Women for a Democratic Iran (2000), op.cit.

6. Case law

6.1 U.S.A.

The Center for Gender and Refugee Studies (CGRS) at Hastings, University of California, has listed one example of a successful asylum claim by a woman fleeing domestic violence in Iran, and one case whose outcome was pending as at July 1999. In both these cases police protection was not available.

"Case 49

Age/Birthdate: 1971

Key Facts

The applicant's marriage was arranged by her family when she was 17 years old. Her husband soon began to beat her, including throwing her out of the house in the middle of the night. Her husband is a member of the ruling Hezbollah Party, and shares the party's fundamentalist Islamic beliefs. He thinks that a woman should not work outside the home, speak with men, or leave the house without her husband's permission.

"She was raised by her mother to believe that women should have freedom and respect. She lost these freedoms when she became married. Her mother-in-law lived in the home and told her that she should see her husband as her "second god." Her mother-in-law also forced her to go to mosque. When her mother-in-law saw that the applicant disagreed with her husband, she got her son a second wife.

"Her husband's government connections include a brother-in-law who was the local judge. As a result, she could not go to the police when he beat her. He also was friends with the Islamic police, known as "Pasdars" or "Bassijis." The Pasdars would patrol the streets looking for women violating the dress codes, and beat or throw acid on those not in compliance. Vehicles would be pulled over to ensure that a woman was driving with a male relative. Although they are in charge of enforcing Islamic moral codes, the Pasdars themselves hired prostitutes and smoked opium, including at opium parties hosted by her husband in her own home.

"She received a scar when her husband threw a vase at her head. When she was 8 months pregnant, she was knocked unconscious after he kicked her down the stairs. On another occasion she was knocked unconscious and left alone in her home. Her reports to the police went ignored. He often threw her out of the house, and she would live with her family. She never wanted to return, but her father forced her to go.

"In 1993 her husband married an 18-year-old girl and threw the applicant out of the house. This time he did not ask her back. In 1995 he divorced her, but he still threatens her and her family. Complaints by her parents to the police led to her parents being threatened with prison; her parents, afraid, moved to another city.

"Due to the physical and psychological abuse that affected her and her daughter, the applicant's family arranged for her to leave Iran. She was put in touch with a friend; they met and agreed to marry. She then entered the United States on a K-1 visa, but he changed his mind after she came to the U.S. with her daughter.

"She would be subjected to abuse and disdain if returned to Iran as a divorced woman who has been in the U.S. Iranian assume that those who lived in the U.S. led an immoral life. She would be treated like a prostitute. Her contact with the U.S. would also lead her to being suspected of opposing the regime. Because the government embraces fundamentalist Islam, her views on the rights of women are opposed to the regime on both political and religious grounds.

"She would rather kill herself than return to Iran. She is opposed to the strict rules regulating women's conduct in Iran. She does not want her daughter to have to grow up in such an environment. Her husband would probably succeed in his effort to gain custody over their daughter.

Asylum Grounds

Political opinion; religion; social group

Legal Theory

Persecution and well-founded fear of persecution on account of political opinion; on account of religion; and on account of membership in the particular social group of divorced Iranian women who have lived in the United States.

Procedural History

Affirmative asylum grant, 12/98

Decision Level

Asylum Office

Asylum granted?

Yes

Attorney

Julia Day Marquez

San Francisco, CA; 415/392-7950

"Case 50

Age/Birthdate: 1959

Key Facts

"The applicant's marriage was arranged by the respective families when she and her husband were children; the marriage took place in 1982 when she was 13 years old. Her husband soon made clear his wish to have complete control over her life. She was told to ask permission to leave the home; she was not allowed to work, talk on the phone, etc. She was beaten for anything he disagreed with. She did not intentionally disobey his rules, because she was afraid of being hurt by his violent reaction. But she did express her opinion.

"Her husband does not believe that women have a complete brain; that

a wife must be a servant, remaining at home and dedicating her life to her children and husband. He has taken a second wife. She disagreed with almost all of his opinions.

"She was hospitalized numerous times due to her husband's violence, including twice when she was pregnant – once causing premature labor and stunting her son's growth. She has a scar on her leg from an attack with a stone and a cut on her hand from a knife.

"Because of her husband's position as an officer in the military, she is unable to gain protection from his abuse from the police, and he goes unpunished. The military has refused to hand him over to civilian jurisdiction for punishment even after he was convicted for causing her premature labor by pushing her down the stairs.

"She remained with her husband for several reasons. His military duties often took him away from home. Her family felt strongly that she should remain with her husband. A woman who leaves her husband is stigmatized and has no place in society. She did in fact often file for divorce, but only if a man files for divorce will the courts quickly process the case; a filing by a woman can take many years. Once she was talked out of it by his family; another time her husband simply failed to respond to the summons.

"She took the opportunity to come to the United States because, as a member of the Iranian military, her husband is not free to travel to the U.S. He has threatened to kill her if she leaves him. If returned to Iran, she fears that he will carry out his threats with impunity. She fears she and her children will be destitute. It is very difficult for a single woman to survive in Iranian society.

Asylum Grounds

Social group

Legal Theory

n/a

Procedural History

Affirmative application filed 2/11/98; pending as of 7/99.

Decision Level

n/a

Asylum granted?

n/a

Attorney

Julia Day Marquez

San Francisco, CA; 415/392-7950"⁴⁴

⁴⁴ Centre for Gender and Refugee Studies, University of California, available at www.uchastings.edu/cgrs/

6.2 Canada

Below is an example of a successful claim for refugee status from Canada's Immigration and Refugee Board:

“Throughout her 20-year arranged marriage, the claimant was beaten by her husband. She reported the abuse to the police several times, but nothing was done. She had not attempted to divorce her husband, but the documentary evidence indicates that physical abuse must result in permanent injury to constitute grounds for divorce and that economic survival is difficult for divorced women. Except for her children, the claimant had no family in Iran. Her failure to seek a divorce did not indicate a lack of a subjective fear of persecution. A psychological assessment indicated that the claimant was suffering from chronic Post Traumatic Stress Disorder. Referring to the Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the Refugee Division found that the claimant had a well-founded fear of persecution as a woman subject to domestic abuse. There was nothing to indicate that state protection would be any more available in the future than it had been in the past for the claimant. CRDD T98-07559, Sealy, Waters, June 9, 1999 (reasons signed June 24, 1999)”⁴⁵

⁴⁵ Immigration and Refugee Board (1999), Ottawa, available at www.irb.gc.ca

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86. See Amin, *supra* note 8, at 5.80.5.

87. See Nadar Entessar, *Criminal Law and the Legal System in Revolutionary Iran*, 8 B.C. Third World L. J. 91, 95 (1988).

88. See *Id.* at 96.

89. See *Id.* See also Kourosh Eshghipour, *The Islamic Revolution's Impact on the Legal and Social Status of Iranian Women*, 3 New Eng. Int'l and Comp. L. Ann. 161, 166-169 (1997).

90. See *Id.* at 96-97.

91. Entessar, *supra* note 85, at 92.

92. *Id.* at 97.

93. See *Id.*

94. See *Id.*

95. See Entessar, *supra* note 85, at 97.

96. See *Id.* at 97.

97. *Id.*

98. *Id.*

99. See Entessar, *supra* note 85, at 98.

100. Rose Marie Karadsheh, *Creating an International Criminal Court: Confronting the Conflicting Criminal Procedures of Iran and the United States*, 14 Dick. J. Int'l L. 243, 267 (1996).

101. See Entessar, *supra* note 85, at 98.

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105. Entessar, *supra* note 85, at 98.

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Appendix A

Home Office Country Information and Policy Unit, October 2000: Country Assessment, Iran

“Women

6.1. Both the Constitution and international conventions adopted by Iran grant men and women equal rights. This conforms with Islamic criteria. Further, Article 21 of the Constitution stipulates that the government shall guarantee women's rights in all respects and create a favourable atmosphere for restoring their material and spiritual rights.**[3(2)]**

6.2. This is not to say that women do not face social and legal discrimination.**[4(6)]** The view of women in a primarily familial context and motherhood role continues to be encouraged. Women may work or study,**[3(4)]** although some areas of study are closed to women, female students are segregated from male teachers, and social constraints inhibit their opportunities.**[2(5),13]** This said, the literacy level was more than 80% among Iranian women in 1998 **[14(2)]** and may be above 90%.**[10(16)]** The choice of a woman's occupation depends on her husband, who may prevent her working if he deems it contrary to the family's interest, although he must prove this to the Special Civil Tribunal.**[2(5),3(3),13]**

6.3. 30% of doctors are said to be women; women's recruitment to the police force has been approved in 1998, though mainly to work in women-related functions; and women journalists now have their own professional association. The first female university chancellor has been appointed, albeit to a women's university. **[10(16)]**

6.4. In the political field, women have been appointed to two positions of Cabinet Minister by President Khatami, with Masumeh Ebtekar appointed as the first female vice president (for environmental protection) thereby giving a woman Cabinet rank for the first time since the founding of the Islamic Republic.**[1, 4(2)]** and Azam Nouri as Deputy Minister of Culture and Islamic Guidance, both in 1997. A first-time appointment of a female ambassador, to serve in the Iranian mission in New York, was announced in late 1998.**[5(3)]** He has also appointed a woman to serve as Presidential Advisor in the Foreign Ministry's Department for Women and Social Affairs. One of the district mayors of Teheran is also female. However, women held only 13 of the 270 Majlis seats in 1999 **[1, 4(7)]**

6.5. Women have been appointed to four positions of female family court judge by President Khatami.**[3(2)]** However, the role of the four female judges was challenged and described as symbolic, as judicial consultants brought in to improve the image of women in Iran for the benefit of the international community.**[10(12),10(16)]** Their authority is limited principally to family law cases.**[4(6)]** Following the first female prosecutor appointment in 1996, twenty women were reported to be training as investigative judges.**[3(2)]** Women have also been appointed to senior diplomatic positions overseas. These developments indicate some change in the situation of women within Iran.**[10(16)]**

6.6. Women suffer discrimination in the legal code, particularly in family and property matters. It is difficult for many women, particularly those living outside large cities, to obtain legal redress.**[13]** Under the legal system, women are denied equal rights of testimony and inheritance.**[10(12)]** A woman's testimony is worth half that of a man's **[13]**, making it difficult for a woman to prove a case against a male defendant.**[13, 9(3)]**

6.7. Violence against women in the family is recognised, with "blood money" (Deyah) only awarded if the aggrieved party is a man. In addition, families of female victims of violent crimes are reported to have to pay for an assailant's court costs. Little detail is known of the degree of domestic violence in Iran, with no official statistics on abuse within the family.**[4(6)]** There is a lack of legislative provision to regulate actions against women. Iran welcomed UN contributions to the drafting of a convention on the elimination of forced labour and trafficking in women for sexual and other exploitation. **[10(17)]**

6.8. A prominent Iranian scholar, Ayatollah Bojnourdi, spoke out in favour of the revision of laws, which are discriminating between men and women. In 1998 the judiciary's Bureau of Women's Affairs further said that legislation meant to reduce hardship for women in divorce and property cases had not yet properly implemented.**[10(16)]** In addition to the position of women regarding evidence of witness, inheritance, retribution and judgement in civil and penal codes, the continued arranged marriages of young girls by fathers and grandfathers was noted.**[10(2)]**

6.9. Women are given segregated medical treatment following the recent "Medical Religious Standard Conformity Act", other than where emergency wards are used. They also travel in segregated railway carriages unless travelling with a male companion; have access to separate parks within some cities; and can use separate facilities in a newly opened passport office. While the Iranian authorities have claimed such steps are for the safety and convenience of women, they do not represent gender equality according to international standards. **[10(16)]** They may be perceived as discriminating against women.**[8(4)]**

6.10. In December 1997 President Khatami called for a re-evaluation of religious attitudes towards women, to "purge practices that are considered religious but are not".**[10(2)]** Conservatives responded by trying to ban activism for women's rights.**[8d]** In June 1998, Legal scholar Hojatoleslam Sayyid Mohsen Saidzadeh, was convicted by the SCC for his outspoken criticism of the treatment women under the law. He was released from prison early in 1999; however, the Government banned him from performing any clerical duties for 5 years and prohibited him from publishing. **[4(7)]** A bill aimed at making defence of women's rights outside legal and Sharia frameworks illegal, passed its second reading in August 1998. This bill would also prevent pictures of unveiled women from appearing in the press.**[8(4)]**

6.11. Limited practical improvement in the condition of women is evident. The Deputy Speaker in the Majlis has stated that laws need to be amended before women can enjoy their full rights. In 1998 the Government published several papers on a three-year action plan to help prevent, identify and deal with violence against women **[10(16)]**

The Hijab

6.12. The Hijab (modest dress code) became mandatory in 1980 and is required to be worn in all public places regardless of a woman's religion or citizenship. Women's hair must be fully covered and their faces free of make-up. Contravention of the dress code is punishable by either a verbal reprimand,**[3(1),3(2)]** a fine, 74 strokes of the lash **[3(1),3(2),8(2)]** or a prison term of up to three months.**[8(2)]** Enforcement has varied considerably since the death of Ayatollah Khomeini, and continues to be enforced arbitrarily.**[13]** Thousands of women have been arrested and taken in for questioning and in some cases flogged; arrests are carried out by the morality police, the Revolutionary Guards and the Baseej (see paragraphs 4.17-4.24). Detentions increase during periods such as the period of Moharram in May 1998, associated with mourning and piety.**[8(4)]** Failure to observe the Islamic dress code at work by government workers can result in prosecution under a law passed in 1993.**[4(6)]**

6.13. The public attempts at loosening the Hijab are driven predominantly by those aged under 25 years, who make up 60% of the population. The battle between Khatami and the hard-line conservatives over relaxing the Islamic restrictions continues.**[14(1)]**

Marriage

6.14. Current law in Iran sanctions two types of marriage: permanent marriage and temporary marriage (called **sigheh** or **mut'a**). Temporary marriage is limited by a period of time, normally specified in the marriage contract, which may vary from 1 hour to 99 years. The husband may terminate the marriage at any time. Men are allowed up to four permanent wives and an unlimited number of concubines or temporary wives.**[2(5),4(6)]** Muslim men are free to marry non-Muslim women, but marriage between Muslim women and non-Muslim men is not recognised.**[4(6)]**

6.15. The marriage rate has increased by only 4% from 1987 to 1995, whereas the divorce rate increased by 9% over the same period.**[3(2)]** The showing of the film "Leila" in Teheran in 1997 generated public debate about the status of married women, and of multiple marriage in particular.**[10(2)]** The minimum legal age for marriage is 18 for boys and 15 for girls. This was raised from 14 for boys and 9 for

girls, which is stipulated by Shari'a law.**[26(3)]** All women must have the permission of the father or a living male relative to marry. Muslim women may not marry non-Muslim men.**[4(6)]**

6.16. Following the 1979 Revolution in Iran, Islamic leaders told the populace to procreate and produce an army of 20 million. The population subsequently grew by up to 4% per annum. However, the clerics now support the notion of contraception with teachings from the Koran, and the population growth rate has halved.**[15(1)]**

Divorce

6.17. Divorce applies to permanent marriage only. A husband wishing to divorce is required to obtain court permission to register the divorce if his wife does not agree to the divorce, but registration can only be delayed by the court, not prevented. A husband is not required to cite a reason for divorcing his wife. The conditions under which a woman may divorce depend on the year that she married, and the legislation that was in effect at the time of her marriage.**[2(5),4(2)]** Divorced women, particularly in rural areas, may find themselves socially isolated and may face financial difficulty.**[21]**

6.18. In 1986 the government issued a 12-point model contract for marriage and divorce which limited the privileges traditionally accorded to men under Islamic law. A divorced woman's rights to a share of the matrimonial properties and to increased alimony rights were recognized.**[4(6)]**

6.19. In the event of divorce, the father traditionally has legal custody of his children **[2(5),4(2)]**, unless a woman can show her spouse to be an unfit father and applies under legislation passed in November 1998 to obtain custody.**[4(6),10(2)]** The civil code provides for custody of a male child to belong to the mother until the child is 2 years old, and of a female child until she is 7.**[2(5),4(2)]** Women who remarry are forced to give up custody of children from earlier marriages to their father.**[4(6)]**

Islamic Republic of Iran

Appendix B

Update March 2002

1.3 Iran and international legal instruments

The Women's Committee of National Council of Resistance of Iran issued a statement in January 2002 on the bill being presented to the parliament on Iran becoming a party to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Various conditions are attached to the proposed accession, which the Committee argue would negate its effectiveness; their view is that the proposed accession is a mere "propaganda ploy":

"- Iranian Resistance condemns misogynous mullahs' deceptive move on Convention for Elimination of All Forms of Discrimination Against Women

"The government-run ISNA news agency reported that the Khatami cabinet has presented to the mullahs' Majlis "a bill on Iran becoming a state party to Convention for Elimination of All Forms of Discrimination Against Women (CEDAW)."

"The Foreign Ministry, which has drawn up the bill, has stated that the government's objective in acceding to CEDAW was "to confront and reduce the negative propaganda against the Islamic Republic of Iran," ISNA reported. The government has laid down two conditions for acceding to the convention: "the Islamic Republic of Iran will only regard as applicable those articles of the Convention that do not contradict Islam" and, secondly, "in case of disagreement on the implementation or alteration of the Convention, Iran will not be bound to follow the procedure for settling the dispute through arbitration or referring the matter to the International Court of Justice."

"Ms. Sarvnaz Chitsaz, Chair of the NCR's Women's Committee, described the Khatami cabinet's bill as "a new peak of demagoguery and deception by the misogynous mullahs ruling Iran" and said: "Since CEDAW came into force in 1981 as an official United Nations document, more than a hundred states have acceded to it, but the Khatami government is setting conditions for its accession that amount to a de facto rejection of the entire convention. This regime never had and does not have the capacity to recognize even the most rudimentary rights of women stipulated in CEDAW. The mullahs' bill only serves as a reminder of the misogynous and reactionary nature of this regime and is an affront to international covenants and conventions."

"Women's Committee chair added: "The mullahs claim that 'articles in the Convention contradict Islam' is nothing but a shameless bid to attribute their reactionary antipathy toward women's rights and freedom to Islam."

"She pointed out that the conditions set by Khatami and his associates mean that "even if it were ratified by the mullahs' Majlis and endorsed by the reactionary Council of Guardians, it would only serve as a propaganda ploy for the regime to evade mounting international pressures, particularly from organizations defending women's rights."

Mrs. Chitsaz said: "In the past four years, Khatami, as the head of Supreme Council for Cultural Revolution, personally opposed accession to CEDAW, but now is resorting to a threadbare ploy. It is no secret, however, that the mullahs' criminal record against women only worsened during Khatami's tenure, to the extent that the last report by the Special Representative of the United Nations Human Rights Commission to the General Assembly likened Iran to 'a prison for women.' During this period, 11 out of 17 persons stoned to death were women. Brutal pressures, inhuman discrimination and cruel punishments such as flogging, arrest and torture of women for not observing the mandatory dress code, sexual segregation in medical facilities, etc., are only a part of this shameful record."

"The extensive participation of women in popular uprisings, protest demonstrations and antigovernment strikes in recent months have clearly shown that the women of Iran detest this anti-human, misogynous regime in its entirety," Ms. Chitsaz said. "They only see the realization of their rights and freedom in the overthrow of the ruling religious dictatorship with all its criminal factions." ⁴⁶

Amnesty International issued a report in December 2001 criticising Iran's continued violations of human rights which focussed on the legal system, in particular, and notes discriminatory laws including those relating to women's rights. Some relevant sections are reproduced below.

"The Constitution of the Islamic Republic of Iran contains many important safeguards of rights and freedoms that are guaranteed in the international instruments to which Iran is a state party (see box), including those relating to freedom of expression and fair trial. These seek to ensure that all individuals enjoy the same rights under law, and the human dignity that follows from this.

- *Human rights treaties that Iran has ratified: 1968 - International Convention on the Elimination of All Forms of Racial Discrimination*
- *1975 - International Covenant on Civil and Political Rights*
- *1975 - International Covenant on Economic, Social and Cultural Rights*

⁴⁶ Women's Committee of National Council of Resistance of Iran (2002), *Iranian Women Brief# 49*, January 2002, available at AIWUSA-Association of Iranian Women-USA, www.aiwusa.org/

- 1976 - Convention relating to the Status of Refugees
- 1976 - Protocol relating to the Status of Refugees
- 1994 - Convention on the Rights of the Child

“There is also a vigorous human rights debate in Iran's parliament, the Islamic Consultative Assembly (ICA), amongst members of the judiciary, non-governmental and professional bodies such as the Bar Association, and many newspapers.

“There are, however, issues of particular concern to Amnesty International regarding the implementation of international human rights safeguards, including in connection with freedom of expression and association and the administration of justice. The organization has repeatedly addressed the Iranian authorities on behalf of individual prisoners of conscience and people whose basic human rights appeared to be at risk, and has called for legislation to be reviewed and reforms to be implemented.

....

“Amnesty International's further concerns in Iran include prolonged and often incommunicado detention, torture and ill-treatment of prisoners, including the use of cruel, inhuman and degrading punishments such as flogging and amputation; impunity of state officials for human rights violations; the extensive use of the death penalty and its public implementation and discriminatory laws including those relating to women's rights.”⁴⁷

1.4 Women's human rights

The 2002 U.S. State Department report comments:

“Women

“Women have access to primary and advanced education; however, social and legal constraints limit their professional opportunities. In September 2000, the Majles approved a controversial bill to allow single women to travel abroad for graduate education. The Council of Guardians was considering the legislation at year's end. Women are represented in many fields of the work force, and the Government has not prevented women from entering many traditionally male-dominated fields, including medicine, dentistry, journalism and agriculture. However, many women choose not to work outside the home.

“According to the International Monetary Fund (IMF), there were 2 million women in the work force, of whom approximately 1.8 million

⁴⁷ Amnesty International (2001), *Iran: A legal system that fails to protect freedom of expression and association*, AI-index: MDE 13/045/2001, London, Amnesty International, available at www.amnesty.org

were employed during the year. A 1985 law enacted by the Government instituted 3 months of paid maternity leave, and 2 half-hour periods per day for nursing mothers to feed their babies. Pension benefits for women were established under the same law, which required companies hiring women to provide day-care facilities for young children of female employees.

“The State enforces gender segregation in most public spaces, and prohibits women mixing openly with unmarried men or men not related to them. Women must ride in a reserved section on public buses and enter public buildings, universities, and airports through separate entrances. Women are prohibited from attending male sporting events, although this restriction does not appear to be enforced universally. While the enforcement of a conservative Islamic dress codes has varied with the political climate since the death of Ayatollah Khomeini in 1989, what women wear in public is not entirely a matter of personal choice. The authorities harass women if their dress or behavior is considered inappropriate, and women may be sentenced to flogging or imprisonment for such violations. The law prohibits the publication of pictures of uncovered women in the print media, including pictures of foreign women. There are penalties for failure to observe Islamic dress codes at work.

“Discrimination against women is reinforced by law through provisions of the Islamic Civil and Penal Codes, in particular those sections dealing with family and property law. Shortly after the 1979 revolution, the Government repealed the Family Protection Law, a hallmark bill adopted in 1967, that gave women increased rights in the home and workplace, and replaced it with a legal system based largely on Shari'a practices. In 1998 the Majles passed legislation that mandated segregation of the sexes in the provision of medical care. The bill provided for women to be treated only by female physicians and men by male physicians and raised questions about the quality of care that women could receive under such a regime, considering the imbalance between the number of trained and licensed male and female physicians and specialists.”⁴⁸

⁴⁸ U.S. State Department (2002), *Country Reports on Human Rights Practices, 2001: Iran*, Washington, Bureau of Democracy, Human Rights and Labor, available at www.state.gov/g/drl/rls/hrrpt/2001/nea/8251.htm

2. Domestic violence

The US State Department 2002 report notes

“Although spousal abuse and violence against women occurred, statistics regarding such abuse are not available publicly. Abuse in the family is considered a private matter and seldom is discussed publicly. Rape is illegal; however, the law rarely is enforced, and rape is a widespread problem. The Special Representative noted in his September 2000 report that media reporting on the situation of women has diminished, in part due to the closure of the reform-oriented press.

[...]

“Prostitution is illegal. Information regarding the extent of the problem is not available.

“A girls' center in Karaj reportedly was involved in the trafficking of girls.[...]”⁴⁹

3. Domestic violence and the law

3.3 The civil code: marriage and divorce

The US State Department reported

“In October 2000, the Parliament passed a bill to raise the legal age of marriage for women from 9 to 15. However, the Council of Guardians rejected the bill in November 2000 as contrary to Islamic law. Nonetheless, even under the law, marriage at the minimum age is rare. All women, no matter the age, must have the permission of their father or a living male relative in order to marry. The law allows for the practice of Siqeh, or temporary marriage, a Shi'a custom in which a woman or a girl may become the wife of a married or single Muslim male after a simple and brief religious ceremony. The Siqeh marriage may last for a night or as little as 30 minutes. The bond is not recorded on identification documents, and, according to Islamic law, men may have as many Siqeh wives as they wish. Such wives are not granted rights associated with traditional marriage.

“The Penal Code includes provisions that mandate the stoning of women and men convicted of adultery. Women have the right to divorce, and the grounds on which a woman may seek a divorce include proving that her husband is addicted to drugs or that he has not supported her for extended periods. However, a husband is not required to cite a reason for divorcing his wife. In 1986 the Government issued a 12-point "contract" to serve as a model for marriage and divorce, which limits the privileges accorded to men by custom and traditional interpretations of Islamic law. The model contract also

⁴⁹ U.S. State Department (2002), *op. cit.*

recognized a divorced woman's right to a share in the property that couples acquire during their marriage and to increased alimony rights. [...]

“Muslim women may not marry non-Muslim men. The testimony of a woman is worth only half that of a man in court [...]. A married woman must obtain the written consent of her husband before traveling outside the country”⁵⁰

5. The situation of separated or divorced women

5.2.1 Custody of children

The US State Department country report highlighted

“Women who remarry are forced to give up to the child's father custody of children from earlier marriages. However, the law granted custody of minor children to the mother in certain divorce cases in which the father is proven unfit to care for the child, such as in cases in which the father suffers from drug addiction or has a criminal record. [...]⁵¹

5.3 Economic security

The 2002 report by the US State Department stated

“In his August report, the UNSR reported that poverty severely impacts women and that there are about one million single-mother families, and that 29 percent of the families below the poverty line are single-mother families. In addition, 70 percent of the single mothers in rural areas are illiterate.”⁵²

⁵⁰ U.S. State Department (2002), op. cit.

⁵¹ U.S. State Department (2002), op. cit.

⁵² U.S. State Department (2002), op. cit.

6. Case law

6.3 New Zealand

The following summary is from a successful case, whereby the applicant was granted refugee status.

“Refugee Appeal No. 71427/99 (16 August 2000); [2000] NZAR 545

“[73] The appellant, a citizen of the Islamic Republic of Iran, had been regularly beaten by her husband, an officer in the Revolutionary Guards. Immediately after birth, her son had been given away without her knowledge and she was expelled from the family home. She believed her son had died at birth. In divorce proceedings she learnt that her son was alive but custody was awarded to her husband. After the divorce she was subjected by the former husband to a campaign of harassment, leading to a breakdown in her health. After a long struggle she was eventually awarded informal custody of the child, but on terms requiring her not to leave the child’s home town or Iran. If she broke these conditions or remarried, custody would be forfeited. Notwithstanding these requirements, the appellant subsequently entered into a temporary marriage. The former husband continued to harass the appellant but was initially unaware of her re-marriage. However, after discovering what had happened he went in search of the appellant and assaulted members of her family as well as her temporary husband. The appellant left Iran illegally, taking her son with her. Her refugee claim was based on the Convention grounds of religion, political opinion and membership of a particular social group.

“[74] The holdings were:

“1. The interpretive approach to be followed was that prescribed by Article 31 of the Vienna Convention on the Law of Treaties, 1969. That is, the interpretation must be in good faith. Second, the ordinary meaning of the words of the treaty are presumed to be the authentic representation of the parties’ intentions. Third, the ordinary meaning of the words is not to be determined in a vacuum removed from the context of the treaty or its object or purpose. Primacy is to be given to the written text of the Refugee Convention, but the context, object and purpose of the treaty must also be considered (paras [43] & [44]).

Golder v United Kingdom (1975) 1 EHRR 524, 544 (ECHR) and Applicant A v Minister for Immigration and Ethnic Affairs (1997) 190 CLR 225 (HCA) applied.

“2. The refugee scheme is surrogate or substitute protection, activated only upon failure of national protection. Given that refugee law ought to concern itself with actions which deny human dignity in any key way, persecution may be defined as the sustained or systemic violation of human rights demonstrative of a failure of state protection. Core norms of international human rights law may be relied upon to define forms of serious harm within the scope of persecution. The core human rights are those contained in the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966, the Convention on the Elimination of All Forms of Racial Discrimination, 1966, the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 and the Convention on the Rights of the Child, 1989. The universality of these international human rights instruments will not permit social, cultural or religious practices in a country of origin from escaping assessment according to international human rights standards (paras [47] to [52]).

Canada (Attorney General) v Ward [1998] 2 SCR 689 (SC:Can) applied; R v Immigration Appeal Tribunal; Ex parte Shah [1999] 2 AC 629 (HL) and Horvath v Secretary of State for the Home Department [2000] 3 WLR 379 (HL) referred to.

“3. Various threats to human rights, in their cumulative effect, can deny human dignity in key ways and should properly be recognised as persecution for the purposes of the Refugee Convention. The need to recognise the cumulative effect of threats to human rights is particularly important in the context of refugee claims based on discrimination. The determination whether the treatment feared in any particular case amounts to persecution will involve normative judgments going beyond mere fact-finding (para [53]).

Damouni v Minister for Immigration, Local Government and Ethnic Affairs (1989) 87 ALR 97, 101 applied.

“4. Discrimination per se is not enough to establish a case for refugee status. A distinction must be drawn between a breach of human rights and persecution. Not every breach of a refugee claimant’s human rights constitutes persecution. The intention of the drafters of the Convention was not to protect persons against any and all forms of even serious harm, but was rather to restrict refugee recognition to situations in which there was a risk of a type of injury that would be inconsistent with the basic duty of protection owed by a state to its own population. However, decision-makers should consciously strive both to recognise and to give proper weight to the impact of discriminatory measures on women (paras [54] and [55]).

“5. The Refugee Convention does not require that the state itself be the agent of harm. Persecution at the hands of “private” or non-state agents of persecution equally falls within the definition. There are four situations in which it can be said that there is a failure of state protection. First, persecution committed by the state; second, persecution condoned by the state; third, persecution tolerated by the state and fourth, persecution not condoned or not tolerated by the state but nevertheless present because the state either refuses or is unable to offer adequate protection (paras [56] to [60]).

Canada (Attorney General) v Ward [1993] 2 SCR 689 (SC:Can) applied. R v Immigration Appeal Tribunal; Ex parte Shah [1999] 2 AC 629 (HL) and Horvath v Secretary of State for the Home Department [2000] 3 WLR 379 (HL) referred to.

“6. The standard against which the sufficiency of state protection is to be measured is whether the protection available from the state will reduce the risk of serious harm to below the level of well-foundedness, or, as it is understood in New Zealand, to below the level of a real chance of serious harm. The duty of the state is not, however, to eliminate all risk of harm. We live in a highly imperfect world and hardship and suffering remains very much part of the human condition for perhaps the majority of humankind. (Paras [62] to [67])

Canada (Attorney General) v Ward [1993] 2 SCR 689 (SC:Can) applied. Horvath v Secretary of State for the Home Department [2000] 3 WLR 379 (HL) not followed.

“7. A finding of persecution can only be made if the facts establish both serious harm and an absence of state protection. Persecution = Serious Harm + The Failure of State Protection (paras [72] & [73]).

R v Immigration Appeal Tribunal; Ex parte Shah [1999] 2 AC 629 (HL) and Horvath v Secretary of State for the Home Department [2000] 3 WLR 379 (HL) applied.

“8. On the question of serious harm, the evidence established that the policy of gender discrimination and the enforcement of gender-based norms against women as a group in Iran was of a nature which permitted a finding of persecution in the sense of a sustained or systemic violation of basic human rights. On the question of failure of state protection, the evidence established that the state itself had put in place the very legislative framework which to a large measure was the source of the serious harm faced by the appellant. In addition, the state itself condoned, if not encouraged the “private” or domestic violence which comprised the balance of the serious harm faced by the appellant. The evidence also established that the state would fail to

protect her should she return to Iran. On her return she would face both serious harm and a failure of state protection (paras [74] to [82]).

“9. On the facts, subject to the appellant being able to satisfy the nexus requirement, the religion and political opinion Convention grounds were directly applicable to her case (para [88]).

“10. While the Iranian laws on marriage, divorce and custody rights are designed, with supposed Islamic justification, to maintain political power, the overarching characteristic of the disenfranchised is their gender, that is the fact that they are women. Whether women are a particular social group as that term is understood in Article 1A(2) of the Refugee Convention depends on the application of agreed principles. First, the ambit of the social group ground of the definition must be evaluated on the basis of the basic principles underlying the Refugee Convention. International refugee law was meant to serve as a substitute for national protection where the latter was not provided. The Convention has built-in limitations to the obligations of signatory states which reflect the fact that the international community did not intend to offer a haven for all suffering individuals. Second, the particular social group category is limited by anti-discrimination notions inherent in civil and political rights. Third, the *eiusdem generis* approach developed in *Re Acosta* provides a good working rule in that it properly recognises that the persecution for reason for membership of a particular social group means persecution that is directed toward an individual who is a member of a group of persons all of whom share a common immutable characteristic. That characteristic must be either beyond the power of an individual to change, or so fundamental to individual identity or conscience that it ought not be required to be changed. What is excluded by this definition are groups defined by a characteristic which is changeable or from which disassociation is possible, so long as neither option requires renunciation of basic human rights. Fourth, while the social group ground is an open-ended category which does not admit of a finite list of applications, three possible categories can be identified, namely groups defined by an innate or unchangeable characteristic, groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association and groups associated by a former voluntary status, unalterable due to its historical permanence. Fifth, the social group category is not an all encompassing category. Not every association bound by a common thread is included. Sixth, there can only be a particular social group if the group exists independently of, and is not defined by, the persecution. Seventh, cohesiveness is not a requirement for the existence of a particular social group. Finally, members of the group must share an internal defining characteristic. (paras [90] to [106]).

Canada (Attorney General) v Ward [1993] 2 SCR 689 (SC:Can); *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 at 252-253 (HCA) and *R v Immigration Appeal Tribunal; Ex parte Shah* [1999] 2 AC 629 (HL) applied.

“11. Applying these principles, it is indisputable that gender can be the defining characteristic of a social group and that women may be a particular social group (para [106]).

“12. The evidence relating to Iran establishes that the overarching characteristic of those fundamentally disenfranchised and marginalised by the state is the fact that they are women. This is a shared, immutable, internal defining characteristic. On the facts, the particular social group was women (para [108]).

“13. The words “for reasons of” in the refugee definition require a causal nexus between actual or perceived membership of the particular social group and the well-founded fear of persecution. It is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reason of the person’s membership or perceived membership of the particular social group (para [111]).

“14. Accepting that Persecution = Serious Harm + The Failure of State Protection, the nexus between the Convention reason and the persecution can be provided either by the serious harm limb or by the failure of the state protection limb. This means that if a refugee claimant is at real risk of serious harm at the hands of a non-state agent (eg husband, partner or other non-state agent) for reasons unrelated to any of the Convention grounds, but the failure of state protection is for reason of a Convention ground, the nexus requirement is satisfied. Conversely, if the risk of harm by the non-state agent is Convention related, but the failure of state protection is not, the nexus requirement is still satisfied. In either case the persecution is for reason of the admitted Convention reason. This is because “persecution” is a construct of two separate but essential elements, namely risk of serious harm and failure of protection. Logically, if either of the two constitutive elements is “for reason of” a Convention ground, the summative construct is itself for reason of a Convention ground. (Para [112])

R v Immigration Appeal Tribunal; Ex parte Shah [1999] 2 AC 629 (HL) applied.

“15. It was therefore important in a case where there is more than one agent of persecution to examine separately, in relation to each agent, the cause of the risk of serious harm or, as the case may be, the failure of state protection, such failure being established if the anticipated response of the state does not bring the risk of harm to below a well-founded fear. (Para [113]).

“16. As to the feared serious harm at the hands of the husband, no nexus had been established in relation to the religion, political opinion and social group grounds. However, as to the feared serious harm at the hands of the state, the evidence clearly established that the appellant was at risk of serious harm at the hands of the state and because the state was totalitarian in nature, no state protection would be available to her. The reason why the appellant was exposed to serious harm and to lack of state protection both from the husband and from the state itself was because she is a woman. While the cloak under which this persecution would ostensibly take place was religion and political opinion, the overarching reason why she was at risk of persecution was because she is a woman. The social group category was therefore the primary Convention ground in relation to which a nexus had been established (paras [116] to [120]).”⁵³

⁵³ Summary taken from: Auckland District Law Society Seminar, (2001) *Winning Immigration and Refugee Cases: Recent Case Law*, 26 February 2001, Available at: www.refugee.org.nz/ADLS2.htm Full text of the judgement is available from: Refugee Status Appeals Authority, (2000) *Refugee Appeal No. 71427/99*, Available at: www.refugee.org.nz/Fulltext/71427-99.htm