Ius Sanguinis a Matre in Iran's Nationality Law

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DOI: 10.22034/IRUNS.2023.168476

Received: 2022-08-12 Accepted: 2023-01-24

Abstract

The traditional approach of states to grant nationality has been applied in discriminatory manner between parents, but the equality movement has fundamentally changed the approach of states in favor of parental equality. The main question of this article is what is the role of the mother in Iran` nationality law regarding the transfer of her nationality to the child? The Iranian legislature's approach in this regard was initially based on discrimination between Iranian parents in transferring nationality to their children, but gradually, this approach has been moving towards the elimination of discrimination. The Iranian legislature` approach in this regard should be examined in three different categories. In Civil code of Iran, the role of the mother was completely ignored. According to Single Act of 2006, in case of the child born in Iran of an Iranian mother and a foreign father, the nationality of Iran would be granted to the child. In 2019, this regulation was amended and children born abroad Iran are also granted Iranian nationality. But there is still a discrimination between the parents, because a child whose mother is Iranian and whose father is foreigner, will be granted Iranian nationality if it would not contrary to national security. Meanwhile, Iranian Nationality is granted to child born of Iranian Father and whose mother is foreigner unconditionally.

Keywords: Citizenship, Ius sanguinis, Ius sanguinis a matre, Original Nationality, Gender Equality.

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Introduction

In Iran, until the Mashrotiat (Constitutional Revolution) in 1906, like many other issues, there were no provisions on nationality, and this issue was mentioned only in some treaties that the Iranian government had concluded with the Ottoman, Russian and British governments. The first treaty addressing the issue of nationality and the name of nationals relates to the annexed chapter to a treaty ratified in September 1746 between Iran (Nader Shah Afshar) and the Ottomans, which provided: "If Iranian and Ottoman nationals "Fleeing to each other's territory and trying to leave their nationality, the governments will not accept this new nationality and will hand them over to another government."

As it turns out, this part of the treaty is somehow related to the extradition of criminals, and the parties have pledged to refuse to grant them nationality without the permission of the fugitive government. It is said that "from this time onwards, the word 'citizens' is gradually replaced by 'Vassal' in treaties."[1]

On August 6, 1906, Muzaffar al-Din Shah Qajar accepted the will and the nationwide protest of the Iranian people, and issued a decree to establish the National Consultative Assembly (Majlis). He died a few months later on December 30, 1906. A few days after the issuance of the Constitutional Decree and before the establishment of the Majlis, on August 15, 1906, the Nationality Code in 15 articles was signed by Muzaffar al-Din Shah[2]. This code should in fact be considered the first comprehensive document on the rules of Iranian nationality.

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[1]- Seyed Jalaluddin, MADANI, Private International Law, *Ganj-e-Danesh Library Publications*, Second Edition, Fall 1993, p.67 (in Persian)

2- Javad, AMERI, Private International Law, *Agah Publications*, Tehran, 1983, p.33(in Persian)

During the reign of Pahlavi Dynasty and the governing of Reza Shah, in 1925, the cabinet submitted a bill to the parliament in 10 articles on the subject of nationality, which was unsuccessful and the government called for a more comprehensive law. The Nationality Act continued until 1929, when it was replaced by the Nationality Act on September 7, 1929, which was approved by the Majlis and consisted of 16 articles.[3]. The major substantive and formal changes took place during the drafting of the second volume of the Civil Code, and on February 16, 1935, Articles 976 to 991 of the Civil Code were assigned to the provisions of nationality.[4]

Since then, there has been no significant fundamental change in the rules of Iranian nationality, but on the issue of the effect of the Iranian mother's nationality and her role in transferring nationality to the child, there have been changes in Iranian law, as described in this article.

In this article, we examine the extent to which the rule of non-discrimination has been observed in the granting of nationality by parents to their children in the Iranian law. The answer to this question is that there have been changes in the field of legislation in the direction of eliminating discrimination between men and women in granting nationality to their children, but there is still a somewhat discrimination between Iranian parents in granting nationality to their children.

The main question of this research is to what extent the Iranian legislature is also influenced by global developments focused on non-discrimination and what is the latest provisions in this regard?

The authors hypothesize that the rules of nationality in many states, under the influence of the Convention on the Elimination of

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[3] Mohammad , NASIRI, **Private International Law**, Third Edition, Tehran, Agah Publications.(in Persian), p.6 (in Persian)

[4] Mahmoud SALJOOGHI, **Private International Law**, vol:1, Edit:3, Tehran, Dadgostar Publication, 2002, pp. 176-177 (in Persian)

All Forms of Discrimination against Women and other related international instruments, have been moving towards the principle of full equality between men and women in the transfer of nationality to children. Many states have created full equality between mother and father in this regard, and many others have moved towards equality. In the Iranian law, despite the changes that took place in 2006 and 2019, there is still no complete equality between mother and father in the transfer of nationality to the child, but the Iranian legislature has also moved towards creating equality and eliminating discrimination. "A number of Muslim women writers, scholars, jurists, and political activists have come with alternative egalitarian interpretations on the position of women in Islam"[5] generally and in nationality law specially.

In this article, we first explain the basic principle that states have a central role in determining the rules of nationality, and this area is within the domaine réservé (reserved domain) of states. We then examine the restrictions imposed by governments under international law. We will explain these limitations in the light of developments in the international human rights law, including the principle of non-discrimination.

The principle of non-discrimination, including on the basis of gender equality, leads us to conclude that the general legislative approach of states, including in Iran, has been to eliminate or reduce the causes of discrimination on this basis.

[5] Minoo, MOALLEM, "Universalization of particulars: The civic body and gendered citizenship in Iran", *Citizenship Studies*, Volume 3, 1999 - Issue 3, p. 330.(in Persian)

I. Determining the rules of nationality in the realm of exclusive competence of states

"Nationality is a legal relationship between an individual and the state." In the classic international law, the determination of the citizens of a country has long been within the exclusive jurisdiction of that state, and states have given themselves exclusive and unlimited authority to formulate the rules of nationality. In other words, determining the political and spiritual affiliation of each person with a state was considered as an element of the sovereignty of the state and other states did not have the right to interfere in this area. Accordingly, nationality in the system of international law was one of the most common examples of matters falling within the exclusive domestic jurisdiction of states. The teaching of the most highly qualified scholars emphasizes this theory.[6]

This issue has also been emphasized in international documents. Article 1 of Convention on Certain Questions Relating to the Conflict of Nationality Laws, as the first multilateral treaty of nationality concluded between States, provides:[7]

It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality."

Article 2 of the Convention adds: "Any question as to whether a person is a national of a particular State shall be determined in accordance with the law of that State."

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[6] Rainer BAUBOCK, Eva ERSBOLL, Kees GROENDIJK and Harald WALDRAUCH," Acquisition and Loss of Nationality: Comparative Analyses*", Comparative Analyses Policies and Trends in 15 European Countries*,vol, Amsterdam University Press, 2007,p.15

[7] ian BROWNLIE, Principles of Public International law, fifth Edition, 1998 *Oxford University Press*, p.385

Paragraph A of Article 3 of the 1997 European Convention on Nationality (ECN) also reads as follows:

"Each State shall determine under its own law who are its nationals."

The International Court of Justice also upheld this approach in the Nottebohm case:

" It is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation »[8]

it is recognized that granting of nationality falls within the ambit of the sovereignty of States[9] and, consequently ,each State determines the conditions for attribution of nationality.

Granting nationality on the basis of lineage or the transfer of nationality through a parent in nationality law is referred to as the Ius sanguinis, which together with the Ius soli, constitute the basic principles of granting original nationality [10]

In the past, the emphasis on the Ius sanguinis, has been more than the Ius soli, so that a review of statutes of states in 1929 by the Harvard Law School (when less than 70 countries were on the world political map) shows that nationality laws of 17 states are based solely on the Ius sanguinis, but the law of no country is based solely on the Ius soli[11].

Acquisition of nationality by ius sanguinis (acquisition by descent) is a well-stablished rule in domestic laws. Acquisition iure sanguinis implies that the nationality of a certain country is acquired

[8] The Nottebohm Case (Liechtenstein v Guatemala) 1955 ICJ Reports 4 at 20.
[9] ICJ, Nottebohm Case, (Liechtenstein v Guatemala) Judgment 6 April 1955, page20.
[10] Brownlie , op.cit, p.391
[11] The Harvard Draft Code on Nationality, 1929,p.29

by a child due to the fact that (s)he has a parent who is a national of that country[12].

II. Restrictions on the competence of states in determining the rules of nationality with emphasis on the Non-discrimination

Despite The principle of independence and territorial integrity of states in determining their nationals and the regulation of nationality, there is no doubt that unrestrained and unrestricted exercise of state authority in the field of nationality will lead to chaos and trample on the legitimate rights and interests of individuals and states. For example, if a state imposes its nationality on a foreigner without any real connection and, as a result, obliges him / her to perform duties arising from nationality, including military service, that state has taken an action that is objected to by the relevant person. The necessity to comply with human rights rules (contractual or customary obligations) also obliges states to accept restrictions on nationality rules.

Thus, although the rule of nationality and the determination of nationalities are governed by the sovereignty of states and within the sphere of exclusive power of states, in recent decades this issue has been influenced by international principles and rules.

In European Convention on Nationality, after pointing out in Article 3 (a) the principle of the State's competence to determine its nationals, Article 3 (b) emphasizes the need to comply with international obligations:

“This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognized with regard to nationality."

[12] Gerard-René DE GROOT & Olivier VONK, "Acquisition of Nationality by Birth on a Particular Territory or Establishment of Parentage: Global Trends Regarding Ius Sanguinis and Ius Soli", *Netherlands International Law Review (2018) 65: 321*

One of the well-known principles of the international human rights law is the principle of non-discrimination in the enjoyment of rights and privileges. The Charter of the United Nations is the first universal document to emphasize the prohibition of discrimination in the enjoyment of human rights. Paragraph 3 of Article 1 of a Charter states the following:

"To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

The first paragraph of Article 2 of the Universal Declaration of Human Rights addresses the causes of more discrimination:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

Article 2 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966, in similar terms to the Universal Declaration of Human Rights, emphasize the principle of non-discrimination in the enjoyment of all the rights enshrined in these instruments. In the Covenants, 11 grounds of discrimination are mentioned and in the last part of the article, by mentioning the phrase "any other situation", it draws the attention of governments to the exclusion of these causes.

One of the grounds of discrimination is the distinction between the role of parents in transferring the nationality of their respective state to the child. There is no doubt that one of the important effects

of globalization has been the widespread travel and migration of people and travel to other countries. As a result, the number of multinational marriages (marriages of people with different nationalities) has increased because people of different nationalities get to know each other and get married, so assuming different nationalities of couples, the issue of equal actions and or the principle Ius sanguinis is unequal.[13]

In the past, nationality was granted to the child within the framework of the Ius sanguinis only "through the father"[14]. Also created a similar norm. Therefore, many domestic laws have also been influenced by these legal concepts and have recognized the dependent nationality of a married woman and the absolute incompetence of a woman to transfer nationality to her child" [15]

These rules have been challenged by Feminist since the early twentieth century. It is natural that they have been and continue to be serious critics of discriminatory acts on the discriminatory application of Ius sanguinis, and their efforts have so far led to the abolition of this discrimination in the laws of many countries, and especially after the end of World War II, discriminatory regulations were abolished. Like men, they were able to transfer the nationality of their respective states to their children. The new approach is to identify "Ius sanguinis a matre" alongside of Ius sanguinis a patre.

In fact, since the enactment of nationality laws, under the influence of the general approach of legislators in many countries, there has been no equal position between mother and father in the transfer of nationality to the child. There were discriminatory rules

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[13] Brondsted Sejersen, Tanja (2008), "I Vow to Thee My Countries", *International Migration Review*, Vol.42, No.3, p.538

[14] Ius sanguinis a patre

[15] Ebrahim ABDIPOURFARD and Saeed CHACH (2019). "Inequality between Iranian parents in the transfer of nationality to children", *Studies in Comparative Law*, Volume 10, Number 1. P.274(in Persian)

including in the sphere of nationality laws between men and women in almost all European states before the end of World War II.

It should be noted that for a long time and in different societies, the child joined the father and assumed that the parents had different nationalities the child was given only the nationality of his/her father, for example in Napoleon's civil law, according to the traditional perception that Nationality, like a surname passed down from father to child, neglected the role of mother[16]. The same approach was reflected in the laws of many European states, including Austria, Belgium, Spain, Prussia, Italy, Russia, Netherlands, Norway, and Sweden. This view has been changed in Western and European countries today, but some states, especially in the Third World, still recognize nationality as transferable only Ius a patre.

The existence of this type of discrimination can be interpreted in the context of the general paradigm of discrimination against women, and it is based on the fact that among the laws of 193 UN member states, the laws of 50 countries have discriminatory provisions in the field of nationality based on gender[17]

Some scholars argue that a few countries including Iran do not allow mothers to transmit their nationality on their children with no, or very limited, exceptions[18]. This statement is somewhat true. At the same time, it is not entirely accurate and needs to be explained.

The Convention on the Elimination of All Forms of Discrimination against Women, adopted on December 18, 1978, is the most important international instrument rejecting the discriminatory approach to the application of Ius sanguinis. The first

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[16] Patrick WEIL and Alexis SPIRE (2007), *Acquisition and Loss of Nationality: Comparative Analyses Volume. One: Comparative Analyses: Policies and Trends in 15 European Countries*, Netherland, Amsterdam University Press,P.188

[17] https://equalnationalityrights.org/countries/globaloverview#global-com

[18] Ibid, p.327

paragraph of Article 9 of this Convention recognizes the equality of men and women in the acquisition, change and retain of nationality, and the second paragraph of the article recognizes the equality of men and women in assigning the nationality of their respective states to their children. Article 9 provides:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2.States Parties shall grant women equal rights with men with respect to the nationality of their children.

The subject of this paper is to deal with the second paragraph of Article 9 of the Convention against Discrimination against Women (CEDAW). Of the 189 states that have acceded to the Convention on the Elimination of All Forms of Discrimination against Women, 25 states have made reservation to Article 9 as a whole or partially to paragraph 2 of this article. The names of these states are as follows:

Bahamas, Bangladesh, Bahrain, Brunei Darussalam, Fiji, Jordan, Kuwait, Lebanon, Monaco, Oman, Qatar, Saudi Arabia, UAE, Syria, Tunisia, South Korea, North Korea, Thailand, Jamaica, Liechtenstein, Cyprus, Egypt, Algeria, Morocco and Iraq[19]

It should also be noted that a significant number of states parties who had made the reservation to paragraph 2 of Article 9 of CEDAW informed the Secretary-General of the United Nations that they had withdrawn their reservations.[20]

[19] Report on Discrimination against women on nationality related issues, including the impact on children, 2013, para.59

[20] The names of these States are as follows: Thailand on 26 October 1992, Jamaica on 8 September 1995, Liechtenstein on 3 October 1996, South Korea on 24 August 1999, Fiji on 24 January 24, 2000, Cyprus on June 28, 2000, Egypt on January 4,

Therefore, it can be said that CEDAW has had a very important effect on changing the approach of states in eliminating discrimination between parents in granting nationality to the children.

The Committee on Human Rights also seems to emphasize the prohibition of discrimination between men and women in the granting of nationality. This point is clearly stated in its General Comment No. 28:

"To fulfil their obligations under article 23, paragraph 4, States parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to the custody and care of children, the children's religious and moral education, the capacity to transmit to children the parent's nationality, and the ownership or administration of property, whether common property or property in the sole ownership of either spouse."[21]

Article 5 (paragraph 1) of the 1997 European Convention on Nationality also provides in this regard:

"The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, color or national or ethnic origin."

In the current situation, nearly 25 countries differentiate between parents in granting nationality to Their children[22] Currently, in the Western Hemisphere including continental Europe, North America and Canada as well as Central and Latin America; Discrimination between parents in transmitting to children the parent's nationality has abolished. These countries have given mothers and fathers

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2008, Algeria on July 15, 2009, Morocco on April 8, 2011, Iraq on February 18, 2014, Tunisia on April 17, 2014, North Korea on 23 November 2015

[21] General Comment No. 28, para.25

[22] Zahra ,ALBARAZI (2017) "Regional report on nationality: the Middle East and North Africa (MENA)", Global Nationality Observatory (GLOBALCIT),p.11

exactly the same rights in granting nationality to their children, and have made no distinction between being born in the territory of that state or abroad[23].

With the exception of the Bahamas and Barbados in the Western Hemisphere, other countries that do not discriminate between parents in granting nationality to their children are located in three regions: the Middle East, Africa, and East Asia[24].

III. The role of the mother to transmit her nationality in Iran`s nationality law

In Iranian law, the legislator's approach to the role of the mother in transmitting Iranian nationality to her child can be divided into three stages. The first, concerns the inclusion of nationality rules in Iranian civil law, in which almost no role was envisaged for the role of mother in the realm of Ius sanguinis. The second is the approval of Single Act of 2006, which for children born in Iran to Iranian mothers and foreign fathers, with certain conditions, Iranian nationality was granted, and the third is the amendment of Single Act was adopted in September 2019, which is an important step towards Elimination of discrimination between Iranian parents in transmitting of nationality to the children. We explain these three stages in this part of the article.

a) Civil Code of Iran

Paragraph 2 of Article 976 of the Civil Code of Iran inserted *Ius sanguinis* in Iran's nationality law. According to article 976," The

[23] Harald WALDRAUC (2007), *Acquisition and Loss of Nationality: Comparative Analyses Volume. One: Comparative Analyses: Policies and Trends in 15 European Countries*, Netherland, Amsterdam University Press,p.80

[24] for more information, see: https://equalnationalityrights.org/countries/a).

following persons are considered to be Iranian nationals". Article 976 (2) provides: " Those born Iran or outside whose fathers are Iranian."

Regarding the attribution of nationality by parents to their children (based on Ius sanguinis), it is clear that there is discrimination between men and women, because the Iranian legislator explicitly refers to the nationality of the father and not the mother in the above paragraph. As a result, a child born to an Iranian mother and a foreigner father cannot be considered an Iranian. (the ruling refers to the case where the child was born abroad. Obviously, if the child was born in Iran, the ruling may be different. We will discuss it later).

In fact, Iranian Civil Code (chapter 2 that was adopted in 1934 and It was essentially a translation of French Civil Code), did not treat the mother in an equal manner with father. Although some well-known jurists have long pointed out the need to observe the equal role of parents in transmitting Iranian nationality to their children[25] ,but until 2006 no change was made in favor of women.

The general approach of the Iranian legislator in Civil Code was to pay attention exclusively to the role of the Iranian father in the transfer of nationality to the child. It is on this basis that even in setting the rules based on Ius soli, the role of the Iranian mother is not mentioned. It should be noted that in the Iranian Civil Code, three groups can have Iranian nationality based on Ius soli, which are specifically referred to in the third, fourth and fifth paragraphs of Article 976: "The following persons are considered to be citizens of Iran: ....

3- Those born in Iran of unknown parentage.

4 - Persons born in Iran of foreign parents, at least one of whom was also born in Iran.

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[25] Seyed Hassan, EMAMI (1998), Civil Law, Volume 4, Tehran, *Islamic Library Publications*,p.165(in Persian)

5- Persons born in Iran of a father of foreign nationality who have resided at least one more year in Iran immediately after reaching the full age of 18; in other cases their naturalization as Iranian nationals will be subject to the stipulations for Iranian naturalization laid down by the law."

According to Article 976 (4), There must be three conditions to qualify a person born in Iran as a national:

A: The birth of a child in Iran

B: Foreign nationality of the child's parents

A: The birth of one of the child's parents in Iran

The attribution of Iranian nationality in the above-mentioned circumstances is known as "double Ius soli ". Granting nationality to the above-mentioned children is justified by the fact that the birth of two generations of foreigners in Iran demonstrate that child has such a degree of relationship with Iranian society that justifies the granting of nationality to a second-generation child.

Prior to 2006, according to the opinions No. 3807 dated 1983 and No. 5025/7 dated 1983 of the Legal Advisory Department of the Judiciary, a child born in Iran to an Iranian mother and father of foreign nationality, *a fortiori*, would be considered Iranian. These opinions were issued for this reason that according to article 976 (4), Persons born in Iran of foreign parents, one of whom was also born in Iran, would be considered as national of Iran[26].

The influx of refugees from Afghanistan into Iran in the 1980s made the Iranian government reluctant to implement these advisory opinions for security reasons. Iran was worried that granting nationality to these children has negative consequences and would encourage other foreign nationals in Iran (especially Afghan nationals) to marry Iranian women and obtain residency in Iran.

[26] Saljooghi,op.cit, p.82.

For solving this problem, the government amended the Article 45 of the *Civil Registration Act* in late 1985, which was the basis for depriving children born in Iran of Afghan or Iraqi father and Iranian mothers. This article provides: "If the identity and nationality of individuals is questioned and the necessary documents are not provided to prove it, the matter will be referred to law enforcement authorities for proof of identity and to prove nationality, and if approved, action will be taken in accordance with regulations".

Therefore, even with paragraph 4 of Article 976 BC, children born in Iran of foreign man and an Iranian woman were not granted Iranian nationality. Until in 2006, the Iranian parliament passed a special Act to solve the problem of this group of children.

b) The Act on Determining the Nationality of Children Born from a Marriage of Iranian Women and foreign Men

In 2006, with the efforts of a group of members of the Iranian parliament, a draft in the form of a Single Act entitled " The Act of Determining the Nationality of children born of the marriage of Iranian mothers married to foreign men "was adopted by the Iranian parliament on September 3, 2006. The object of adopting this Act was to determine the nationality of nearly 120,000 children born in Iran who were the result of marriage of Iranian women with foreign men (these men were often Afghan and Iraqi nationality and resided in Iran illegally).[27]

This special Act provided: "Children born in Iran of Iranian women married to foreign men or born in Iran up to one year after the adoption of this law may apply for Iranian nationality after reaching

[27] For further study in this regard, see Sattar Azizi and Bijan Haji Azizi, "Study of the position of the Iranian mother in the transfer of nationality to the child: a critique of Article 976 of the Iranian Civil Code and the single act of 2006", Journal of Legal Research, No. 56 (Winter 2011), Pp. 333-370 (in Persian)

the age of eighteen". Iranian Nationality will be granted to that child under these conditions:

1- No criminal or security violations background
2- Renunciation of nationality (foreign nationality)

In the Single Act of 2006, the legislature gave a limited role to the Iranian mother in transferring her Iranian nationality. This means that the children of Iranian women married to foreign men born in Iran could obtain Iranian nationality under certain conditions. Meanwhile, the children born abroad of foreign father and Iranian mother could not obtain Iranian nationality[28].

c) Amendment to the Act on Determining the Nationality of Children Born from a Marriage of Iranian Women and foreign Men

In the third and last stage, the legislature in 2019 amended the Single Act of 2006 and took another step to bring closer the rights of Iranian mothers and fathers in granting nationality to their children[29]. Under the recent amendments, the condition of the birth of a child in

[28] Atefeh ABBASI, Fatemeh BADAGHI (2009) "The right of nationality of children resulting from the marriage of Iranian women and foreign men", *Quarterly Journal of Jurisprudence and Family Law*, Fourteenth Year, No. 51. P.101(in Persian)

[29] - The first part of this law states: " Children born from a sharia marriage of Iranian women and non-Iranian men, which has been born before or will be born after the adoption of this act, before they reach the full age of 18 - based on the solar calendar - at the request of their Iranian mother shall be granted Iranian nationality if had no security violations background (determined by the Ministry of Intelligence and the Intelligence Organization of the Islamic Revolutionary Guard Corps "IRGC"). The aforementioned children, upon reaching the full age of 18 based on the solar calendar, in the absence of their Iranian mother's request, may apply for Iranian nationality and if they had no security violations background (determined by the Ministry of Intelligence and the Intelligence Organization of the IRGC) they shall be granted Iranian nationality. The results of the security checks must be provided within three months and Police is obligated to act for the issuance of a residence permit for the non-Iranian father if had no security violations background (determined by the Ministry of Intelligence and the Intelligence Organization of the IRGC)."

Iran has been abolished, and an Iranian mother can transmit her respective nationality to a child born outside Iran. The child's obligation to renounce non-Iranian nationality was also abolished. Two other important differences between Single Act of 2006 and the amendment of 2019 are that, firstly, the condition for issuing a marriage license (in the case of marriage of Iranian woman and foreign man) to grant nationality to a child was abolished and it is sufficient that the marriage of Iranian woman and a foreign man took place in accordance with Sharia law. In 2019, a mother can apply for Iranian nationality for her child as soon as she is born[30]. The advantage of this Act in comparison to Single Act of 2006 is that the problem of many children living in Iran who are the result of the marriage of an Iranian mother and a foreign father, would be solved[31].

It should be noted that part 1 of Article 3 of the Executive regulations of this Act (2019) "Granting Iranian Nationality to Children of Iranian Women Married to Foreign Men", which was approved on June 4, 2019, provides a definition of the criterion of sharia marriage, which contradicts the object of adopting the amendment to the single Act, which was to facilitate the granting of nationality to children resulting from the marriage of Iranian women to foreign men. Note to Article 3 states: “The proof of occurrence of marriages that have taken place from the effective date of the Act until the publication of this regulation in the official gazette is

[30] Of course, there is still a requirement to have a marriage license for Iranian women who marry a foreign man, but the guarantee of its implementation is a criminal penalty for a foreign man and according to the new amendments and contrary to the second note of the single article of 1385, has no effect on nationality.

[31] Gholam Ali GHASEMI and Mohammad BAFHAM (2020). "Critique and Review of Developments in Iranian Law Regarding the Nationality of Persons Born to Iranian Mothers (from Civil Code 1928 to Law 2019)", *Quarterly Journal of Private Law Studies*, Volume 50, Number 1, Spring 1399, p.145 (in Persian)

conditional to the submission of an official marriage contract or a final judgment of court establishing a legal marriage. "In the case of marriages that take place after the publication of this regulation, only registered marriages will be the criterion for confirming the nationality of the children born from these marriages."

Despite the great advantages that the Act of 2019 has given to Iranian mothers, there is still a difference between Iranian parents in transferring nationality, and granting nationality to an Iranian child born of Iranian woman marrying a foreign man is subject to demand and the lack of security violation background. However, there are no such restrictions for children whose father is Iranian. In fact, there are still two fundamental differences between the role of Iranian parents in transferring nationality to their children:

1- Transmitting nationality to a child whose father is Iranian is done without any preconditions. While granting nationality to children resulting from the marriage of an Iranian mother to a foreign father is subject to the request of the mother (before the child turns 18) or by the child himself (after reaching the age of 18). It is true that the child born of an Iranian father's marriage to a foreign mother who was born abroad also has to go to the Iranian consulate to apply for a birth certificate and benefit from Iranian nationality, but this is different from assuming a child born of marriage. Iranian mother and foreign father, even if born in Iran, is that the application for Iranian nationality by the mother or the child must be notified to the competent authorities and the authorities must agree to this application. While the child resulting from the marriage of an Iranian man to a foreign woman will be granted an Iranian identity document known as ‘Shenasnameh’. as soon as the father's Iranian identity is established and the child is assigned to him.

2- The children resulting from the marriage of an Iranian mother to a foreign father will be granted Iranian nationality if, at the discretion of the security authorities (Ministry of Intelligence and the

Intelligence Organization of the IRGC), the child has no security problems. Therefore, the government has the right and discretion to refuse to grant nationality to the child in case of security problems, but the government and security authorities do not have this discretion and authority over the children resulting from the marriage of an Iranian man with a foreign woman.

Due to the fact that according to paragraph 4 of Article 976 BC, granting Iranian nationality to children born in Iran of foreign parents, one of whom was also born in Iran, does not require the opinion of security authorities, the inclusion of this condition for children born of Iranian women and foreign men, is not fair. it would be appropriate to remove this condition or amend paragraph 4 of Article 976. Despite this, the Act of 2019 is considered a major development in relation to ensuring the principle of equality between parents in transferring Iranian citizenship to their children. Unfortunately, at the end of 2022, news was published in media that, if approved by the parliament, this progress could be reversed. The executive branch wants to establish an institution called "National Migration Organization". In Article 41 of the establishment of this organization, the termination of the 2019 Act is foreseen. If this proposal is approved in the Iranian parliament, the wish of many children of Iranian mothers who hoped to obtain Iranian citizenship will be destroyed.

Conclusion

The approach of many states over the past century to the role of the mother in transmitting nationality to her child has changed. Whereas in the past, nationality was passed on to the child only Ius sanguinis a patre, but now, most states (about seven-eighths of states) give parents an equal role in transferring nationality to their children,

and some states refer to this rule as a cardinal principles of nationality law[32].

As a result, mothers who married to foreign men can transfer their nationality to their children, just like men in their respective states. Nevertheless, in 25 countries, mothers still play a lesser role than fathers in transmitting nationality to their children. Most of these states are located in the Middle East and Africa. It seems that the origin of this discriminatory rules goes back to the patriarchal culture and has nothing to do with religious teachings because there is no concept of nationality in Shariah law.

Influenced by this general global approach and in order to respond to the social needs and demands of Iranian mothers, the Iranian legislature has changed the traditional approach (the original approach was the translation of French Civil Code) in Civil Code in two stages (respectively in 2006 and 2019) and granted nationality to the children resulting from the marriage of an Iranian mother to foreign men. In 2006, nationality was granted only to children born in Iran. This restriction was abolished in September 2019, and Iranian mothers, like fathers, can transmit her Iranian nationality to their children born abroad. But there is still a discrimination between Iranian parents in transferring nationality. Granting nationality by the mother to the child is possible if, at the discretion of the security authorities, the granting of nationality does not have a security problem and the government has the discretion to oppose granting nationality. although we have witnessed some progress but complete equality between Iranian parents in transferring their nationality is not likely to be happened in the foreseeable future.

[32] Gerard-René GROOT, International Standards on Nationality Law: Texts, Cases and Materials, Wolf Legal Publishers, 2016, p.13