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TYING A SLIPKNOT: TEMPORARY MARRIAGES IN IRAN

Tamilla F. Ghodsi*

INTRODUCTION

The government of the Islamic Republic of Iran recognizes the validity of two forms of marriage: permanent and temporary. Temporary marriages, referred to as mut'a or sigheh, between Muslim men and women are contractual arrangements that legally unite them for a designated amount of time and for which the temporary wife is paid. For various reasons, the current regime in Iran, under the leadership of President Ali Akbar Rafsanjani, promotes the institution of temporary marriages. The government views this form of marriage as a pragmatic way for individuals to satisfy their sexual desires within legal confines. Legal control of individuals' sexual relations, officials believe, will promote family stability and ultimately social harmony.

Despite the legal and religious sanctioning of temporary marriages, Iranians do not commonly engage in them. Individuals reject this institution as religiously illegitimate and morally reprehensible. Some have even likened the institution to "legalized prostitution." The institution appears progressive because, as will be illustrated in Part V, it represents a recognition of the sexual needs of individuals. However, the formal and substantive characteristics of the institution, discussed in Part IV, also signal regressive tendencies — the institution seems to be designed to meet men's needs and their sexual urges, and women are given fewer rights than men when contracting into these relationships.


1. Gelareh Asayesh, Iran: The Rules of Courtship, TORONTO STAR, Feb. 4, 1991, at B1. This was also true before the revolution: "Temporary marriage hardly flourishes except around the great sanctuaries and places of pilgrimage, as brothels were formerly near the cathedrals of the West." Paul Vieille, Iranian Women in Family Alliance and Sexual Politics, in WOMEN IN THE MUSLIM WORLD 451, 466 (Lois Beck & Nikki Keddie eds., 1978).

2. Jane Khatib-Chahidi, Sexual Prohibitions, Shared Space and Fictive Marriages in Shi'ite Iran, in WOMEN AND SPACE: GROUND RULES AND SOCIAL MAPS 112, 126 (Shirley Ardener ed., 1981). Journalist Trudy Rubin has discovered that "[n]ot all women are enthusiastic about the sigheh. Some working-class women complained that their husbands use any spare cash to contract temporary marriages for a few hours, turning sigheh into virtual prostitution." Trudy Rubin, Women Still Getting Arrested for Improper Dress in Iran, GAZETTE (Montreal), July 6, 1991, at B3.

3. One author has remarked, "[T]he custom of mut'a . . . seems to me to be possessed of some merits and, on the whole, somewhat more enlightened than prostitution." A.G. Mojtabai, Hers, N.Y. TIMES, June 5, 1980, at C2.

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The current scholarship regarding temporary marriages has two major flaws. First, the topic is underanalyzed by both Shi'a and Sunni Islamic sources. This dearth of research is more evident in work of Sunni Muslims. Sunni Muslims do not recognize the legitimacy of this institution, which was outlawed by the second Caliph, Omar, a follower of the Prophet Muhammad. Though not recognized officially, however, there is evidence which indicates that Sunni Arabs do engage in mut'a (though as infrequently as Shi'a Iranians).

A second criticism of the current scholarship, applicable to both Western and Islamic sources, relates to the lack of objectivity with which mut'a is analyzed. Shi'a Islamic sources generally praise the institution as a solution to the problems that can be caused by unchecked human sexual urges and needs. Temporary marriage is seen as a legitimate and progressive way in which Islam deals with the sexual nature of human beings, while preserving traditional Islamic values. Western-educated authors, both scholars and journalists, suffer from the same lack of objectivity, but their bias is more critical of the institution. These Western sources rarely attempt to analyze the tradition of mut'a and the validity of its rationales. Instead, they focus on criticism, specifically, of the institution's tendencies to place women in an inferior position vis-à-vis men.

The purpose of this Note is to analyze the institution of mut'a critically, but objectively. It is important to first understand that it is possible to learn something from this institution. The sanctioning of temporary marriages illustrates the pervasive role of law as a method of social

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4. See infra note 14 for an explanation of the differing sects in Islam and the distinction between the Shi'a and Sunni sects.

5. See Jamal J. Nasir, The Islamic Law of Personal Status 57–59 (1990). Nasir briefly deals with the distinction between the two types of marriages, and he focuses predominantly on the rationales for the Sunni ban of the institution.


The Prophet Muhammad was succeeded by four undisputed Caliphs, or leaders. They were Abu Bakr (632–34), Omar ibn al-Khattab (634–44), Uthman ibn Affan (644–56), and Ali ibn Abi Talib (656–61). For a history of the Caliphate period in Islam, see John L. Esposito, Islam, The Straight Path 40–44 (1988).


8. See, e.g., Nashat, supra note 6; Haeri, supra note 6; Rubin, supra note 2; Haleh Afshar, Women, Marriage and the State in Iran, in Women, State, and Ideology: Studies From Africa and Asia 70 (Haleh Afshar ed., 1987).
control, a characteristic which has parallels in the West. Furthermore, the institution may be challenged on its merits. For example, this Note intends to illustrate how the lack of formalism and the presence of great ambiguity in the institution have contributed to its lack of acceptance in Iranian society. The institution's deficiencies demonstrate the necessity of formality and clarity in any legal institution.

In Part II of the Note, a brief outline of Iranian political history is included, laying the foundation for the historical reasons for the existence of temporary marriages. Part III illustrates the historical evolution of Iranian attitudes towards women. It concentrates on the traditional Islamic perception of women, and it shows how this viewpoint has affected the current status of women in Iran. This analysis serves as important background to the main focus of the Note.

In Part IV, the Note assesses the Islamic rules with regard to temporary marriages. Initially, it will discuss the characteristics and limitations of marriages in Islam. In particular, Part IV contrasts the temporary marriage with the permanent alternative. Part V of the Note seeks to evaluate the institution of temporary marriages in Iranian society. It highlights justifications for the existence of temporary marriages and contains an examination of the advantages and disadvantages of this form of union. The analysis will examine why, despite the legality of this institution, Iranians so infrequently engage in it.

I. A BRIEF POLITICAL, RELIGIOUS, AND LEGAL HISTORY OF IRAN

Iranian history dates to the time of the Persian empire under the Achaemenid Dynasty beginning about 2500 years ago. Between that time and 1906, when the first Constitution was ratified, Iran had been predominantly ruled as an absolute monarchy. The ancient Persian monarchy was an absolute monarchy; the King's word was law (dad or dat in ancient Persian). However, the interpretation of the words used by the King was generally determined in consultation with nobles and officials... The King was also advised by 'royal judges' of the applicable rules and legal norms[.]

Id. at 51.
has changed dramatically throughout this period, but despite these changes, the government has consistently exerted a great deal of control over the Iranian population.

During the Sassanian Dynasty (224–651), Iranians were predominantly of the Zoroastrian faith. They derived their rules and norms of behavior from the Zend Avesta, the holy book of the Zoroastrians; additionally, there is an indication that they used the laws of the Code of Hammurabi. The Sassanian Dynasty collapsed when Islamic conquerors invaded Iran beginning around 640 A.D., ushering in a period in which the legal system changed to incorporate Islamic legal principles.

Under the Safavid Dynasty (1501–1722), Islamic law became firmly ingrained in the Iranian legal system. The Safavid Kings (or Shahs) declared Shi’a Islam to be the official religion of Iran. They centralized the judiciary and created a bifurcated system of State and Islamic courts, with the ultimate authority residing in the central government and the Shah. Islamic courts derive Islamic law from the following sources: (1) the Qu’ran, the Islamic holy book, which contains many enumerated rules of conduct, (2) tradition or sunna, which are the

11. Id. at 52.
14. The two predominant sects in Islam are Shi’a and Sunni. The Sunni represent the majority of Moslems. The split between the two sects revolves mainly around their leadership. The Shi’a claim that the Prophet Muhammad designated Ali, his son-in-law, to be his rightful successor, but the Sunni reject this claim. Both the Sunni and Shi’a sects have further split into differing schools of thought. The Safavid Shahs claimed that they were direct descendants of the Prophet, and adopted Shi’ism as the State religion of Iran in order to legitimize their authority. See generally Mahdavi, supra note 13, at 256–57. For more details regarding the historical split and differences between the two sects, see ESPOSITO, supra note 6, at 47–56; Fuad I. Khuri, The Ulama: A Comparative Study of Sunni and Shi’a Religious Officials, 23 MIDDLE E. STUD. 291 (1987).
15. AMIN, supra note 10, at 53.
16. Muslims believe that the Qur’an, or Koran, is the living word of God, as revealed by the Prophet Muhammad. NASIR, supra note 5, at 19–20; YAHYA NOORI & SAYED HASSAN AMIN, LEGAL AND POLITICAL STRUCTURE OF AN ISLAMIC STATE: THE IMPLICATIONS FOR IRAN AND PAKISTAN 14–15 (1987); ESPOSITO, supra note 6, at 79–80. The Qur’an enumerates many rules for human conduct:

Islam is a religion of rules and laws, but it is more than a religion. It is a way of life for its followers. Its laws govern every aspect of the human interaction. The believer is told what he can or cannot eat or drink. There are rules in Islam which govern the believers’ sexual activity, family interaction, business transactions, etc.
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compiled sayings and ways of the Prophet Mohammed;\(^1\) (3) common consent, or *ijima*, which is used “to resolve unprecedented problems[,]”\(^2\) although “[c]ommon consent as a source of law in Islam is an opinion adapted and expressed by all eminent religious and learned individuals of the Muslim Society, and unlike democracy it does not give any weight to the views of ordinary citizens;”\(^3\) and (4) logical deduction, or *aql*, which is unique to the Shi’a legal system as an independent source of law.\(^4\) This last source is quite a useful tool because it enhances the flexibility of the Shi’a legal system and judges can “use *aql* for reform appropriate to the times and circumstances and in keeping with Islamic doctrines.”\(^5\)

The absolute rule of the Iranian Shahs weakened under the Qajar Dynasty (1787–1925)\(^6\) when liberal movements and Western influence on the Dynasty contributed to the successful ratification of the first Constitution.\(^7\) Western influence began in the nineteenth century with the Russians, British, and French vying for control and influence in Iran.\(^8\) In the twentieth century, the United States also began to take an interest and intervened in Iranian affairs.\(^9\)


17. NOORI & AMIN, supra note 16, at 15–16; ESPOSITO, supra note 6, at 80–83.


19. LEGAL ASPECTS, supra note 18, at 18.

20. NOORI & AMIN, supra note 16, at 17. If a judge does not find applicable rules using the first three sources, he can use logical deduction and “apply an accepted principle or an assumption which according to his wisdom and knowledge might best fit the problem.” LEGAL ASPECTS, supra note 18, at 19. See also ESPOSITO, supra note 6, at 84.


25. For incidents of U.S. intervention in Iran, see generally WILLIAM MORGAN SHUSTER, _THE STRANGLING OF PERSIA_ (1987); Mark J. Gasiorowski, _The 1953 Coup D’Etat in Iran_, 19
The Constitution of 1906 created a secular judicial system and incorporated European ideas into Iranian laws. From that time through the Pahlavi Dynasty (1925–1979), the government largely codified the Iranian legal system, directly translating many of the laws from European, especially French, codes. They minimized the influence of religion on the law but maintained the dual-court system created under the Safavid Dynasty. The legal system looked predominantly to the following sources of law: statute; Supreme Court decisions; general custom and usage; and the writings of Iranian and French legal scholars. It limited the role of *shari'a* (Islamic legal jurisprudence) to personal matters.

With the Islamic revolution of 1979 came a reversal of much of the legal reform by the Qajar and Pahlavi Dynasties. The revolution "marked the end of an era of accelerated Westernization, and in its place there was established a traditional Islamic State embodying traditional Islamic values." The government enacted the Constitution of the Islamic Republic of Iran, which adopted the *shari'a* and the Shi'a school of Islamic law.

26. Reza Khan took control after a coup on 31 Oct. 1925 deposed the last Shah of the Qajar Dynasty, and became Reza Shah Pahlavi on 12 Dec. 1925. The country's name was changed to Iran on 21 March 1935. Reza Shah abdicated on 16 Sept. 1941 in favour of his son, Muhammad Reza Pahlavi.

27. *Legal Aspects, supra* note 18, at 17. The Civil Code "is based mainly on the Islamic law. However, it provides certain novel and modern rules of law adopted from the European civil codes." *Id.* The other codes are also influenced by Western legal scholarship, containing similar patterns of rules while differing on the specifics.

28. *Amin, supra* note 10, at 59. "Under the Shahs, the jurisdiction of *Shi'a* jurists had been steadily declining since the First Iranian Constitution of 1906." *Legal Aspects, supra* note 18, at 17.


30. *Statesman's Year-Book, supra* note 23, at 778, ("Following widespread civil unrest, the Shah left Iran on 17 Jan. 1979. The Ayatollah Ruhollah Khomeini, spiritual leader of the Shi'a Moslem community, returned from 15 years' exile on 1 Feb. 1979 and appointed a provisional government on 5 Feb. An Islamic Republic was proclaimed on 1 Apr. 1979."). The revolution occurred primarily in response to the repressive conditions that existed under the Pahlavi Dynasty. Under the leadership of Mohammad Reza Shah Pahlavi there was continuous abuse of human rights, and the Shah's U.S. trained secret police force, SAVAK, wielded a great deal of power. Further, there was popular resistance to the Shah's accelerated modernization program for Iran, which many felt threatened traditional Islamic values. For more detailed accounts of the causes of the Iranian revolution, see generally *Hamid Dabashi, Theology of Discontent* (1993); Michael M.J. Fischer, *Iran: From Religious Dispute to Revolution* (1980); Noori & Amin, *supra* note 16.

as the primary sources of law.\textsuperscript{32} The \textit{shari‘a}\textsuperscript{33} is an all-encompassing code of regulations for Muslims in all areas of their lives, including marriage, divorce, sexuality, and social relations.\textsuperscript{34}

Article 4 of the Constitution declares the supremacy of the \textit{shari‘a}:

All civil, penal, financial, economic, administrative, cultural, military, political and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution, as well as to all laws and regulations, and the fugaha or the Council of Guardians have the duty of supervising its implementation.\textsuperscript{35}

Further, Article 72 of the Constitution prohibits the legislature from enacting “laws contrary to the principles and ordinances of the official religion of the country or to the Constitution.”\textsuperscript{36} The long Iranian tradition of having one supreme authority remains under the Islamic Republic, and this position rests in the Spiritual Leader or \textit{faqih}.\textsuperscript{37}

\textsuperscript{32} Legal Aspects, supra note 18, at 17.

Iranian civil laws which were first ratified in 1928 with the establishment of a modern judiciary system, following the Constitutional Revolution of 1905–1911, are mainly based on the Islamic laws (\textit{sharia}). Some parts, however, which have been adapted from the French civil laws, are mainly to do with criminal law. The laws regarding marriage, divorce, children’s guardianship inheritance and in general those dealing with the relationships between men and women, are all \textit{‘sharia’} laws.


33. \textit{Shari‘a}, alternatively referred to as \textit{sharia} or \textit{shari‘at}, literally means “‘the road to the watering hole,’ the clear, right, or straight path to be followed. In Islam, it came to mean the divinely mandated path, the straight path of Islam, that Muslims were to follow, God’s will or law.” Esposito, supra note 6, at 79.


36. Id. at 55. This is enforced by the Council of Guardians which makes sure that legislation is in accordance with the Islamic code and the Constitution. Id.

37. The Constitution of the Islamic Republic “gives supreme authority to the Spiritual Leader (\textit{wali fagih}), which position was held by Ayatollah Khomeini until his death on 3 June 1989. Ayatollah Seyed Ali Khamenei was elected to succeed him on 4 June 1989.” Statesman’s Year-Book, supra note 23, at 779.
At the beginning of the revolution the legal system was in a state of confusion. The revolutionary councils began to revise the previous Iranian codes, incorporating many of the teachings and pronouncements of Ayatollah Khomeini, the spiritual leader of the revolution, as part of the law. At the present time, the state of the law is still in flux, but the judicial system looks to the shari'a and Khomeini's pronouncements as the primary sources of authority. Prior judicial decisions and custom play a smaller role, although judges sometimes refer to them. Further, judges also consider prerevolutionary laws where there is no judicial precedent or postrevolutionary pronouncement.

This brief account of Iranian history illustrates the pervasive role of the government in the lives of the Iranian people. This characteristic can be attributed to a tradition of absolute authority in a ruling head of State and the government's incorporation of the shari'a, which enumerates many rules of behavior, into Iranian laws. An in-depth discussion of this feature of Iranian political history is beyond the scope of this Note. The historical background simply provides some understanding of the rationale behind the current Islamic regime's promotion of temporary marriages. Before embarking on a discussion of the details of temporary marriages, the next Part traces the development of the role which Iranian society accords women.

II. DEVELOPMENT OF IRANIAN VIEWS TOWARD WOMEN

Iran's political history has significantly affected the role of women in Iran. In the years prior to the Islamic conquests, Iranian society gave women high social standing and a large amount of liberty. The Zoroastrian influence in Iran was responsible for the enhanced role of women in society: "[T]he pre-Islamic woman in Persia owned property, became guardian of a minor, went to court to defend her rights, and ruled the

38. Amin states:
The Supreme Judicial Council, set up under the 1979 Constitution has taken upon itself to revise the pre-revolution civil, commercial and penal codes. . . . The 1982 amendment to the 1927–1935 Civil Code are [sic] minimal, but the amendments to the other laws, particularly in the criminal area, have fundamentally changed the structure of the Iranian legal system.

LEGAL ASPECTS, supra note 18, at 17–18.

39. The views of Ayatollah Khomeini "were, at first, to be 'transitional laws' until new legislation was passed by the Majlis (Parliament). In practice, however, the Legal Treatise written by the Ayatollah Khomeini to date remains as the major, but 'unofficial', statement of law in Iran." Id. at 18. See also Noori & Amin, supra note 16, at 10.

40. Amin, supra note 10, at 63; Reynolds & Flors, supra note 29, at 2.
The status of women in Iran declined with the Islamic conquests and with the adoption of Shi'a Islam as Iran's State religion. This change occurred despite the fact that in Islam, men and women are considered equal in the eyes of God or Allah. It is generally believed that "Equality is the prevalent theme in the Qur'an. The Islamic belief is that all people, regardless of gender and race, are equal in the eyes of Allah, because they share a common origin." The Qur'an, however, promoted a change in women's status because it designated specific roles for men and women in society. Consider verse IV.34, where the Qur'an states: "Men are the protectors And maintainers of women, Because God has given The one more (strength) Than the other, and because They support them From their means. Therefore the righteous women Are devoutly obedient[.]

This verse clearly places women in a subordinate position in relation to men by

41. Honarvar, supra note 16, at 364. The author states that, "[t]he Zoroastrian woman of Iran were far more advanced socially and in reality suffered a setback with the introduction of Islam into their society." Id. at 384. The Zoroastrian religion granted women high status because of the "Zoroastrian myth that the male and female are created simultaneously and equally out of plant life." Id. at 364. See also Mahdavi, supra note 13, at 255 ("During the Mongol period, women held high political and social positions. But after Shi'ism was declared the official religion by the Safavids in 1501 the status of women declined."); MANECKJI NUSSERVANJI DHALLA, ZOROASTRIAN CIVILIZATION: FROM THE EARLIEST TIMES TO THE DOWNFALL OF THE LAST ZOROASTRIAN EMPIRE 651 A.D., at 74 (1922). Zoroastrian society elevated women to an equal status with men:

The position of woman, as we glean from the Avestan texts, was high indeed. The works of the earliest period speak of her as the companion of man. She did not veil herself, and attended social and religious gatherings in company with man. . . . At home woman enjoyed economic freedom. She was a helpmate for her husband, and wielded great influence over the family.

Id.; see also Shirreen Mahdavi, Women and the Shii Ulama in Iran, 19 MIDDLE E. STUD. 17 (1983) [hereinafter Women and the Shii Ulama].

42. The lower status of women is not unique to Shi'a Islam:

Sunni and Shia . . . perhaps have had more in common in their position on women's rights and status than on any other major issue. Whether on the question of female inheritance, marriage, divorce, children's custody, the veil, or other issues, it is difficult to see if one faction grants more rights to women.

Azari, supra note 32, at 5.


44. Honarvar, supra note 16, at 384. In contrast to Christianity and Judaism, Islam views women more positively. For example, the Qur'an does not blame Eve for Adam's fall from Eden: "Woman is not portrayed as the cause of the Fall, as in Judeo-Christian traditions. Moreover, the sin of Adam and Eve is just that — their own personal sin." ESPOSITO, supra note 6, at 31. See also MOTAHERI, supra note 7, at 146–52.

45. THE HOLY QUR'AN, supra note 43, S.IV.34, at 190.
giving men authority over women. It is but one of many passages in the Qur'an which differentiates between the sexes and grants women lower status or lesser rights. For example, traditional Islamic scholars interpret the Qur'an to allow men the right to marry up to four women,\textsuperscript{46} the right to a unilateral declaration of divorce,\textsuperscript{47} and the right to a greater level of inheritance than women.\textsuperscript{48} Women may only marry one man at a time and have limited divorce and inheritance rights.\textsuperscript{49}

These verses alone do not subjugate women. Rather, men's interpretation of the Qur'anic rules has resulted in women's subordination in both Shi'a and Sunni societies: "In spite of some generalized statements in the Koran about sexual equality, women in Islam were subjugated and regarded as inferior beings. . . . This is because the legal interpreters of Islam were primarily men, and prophecy, leadership in public prayer, and saintship were in general reserved for men."\textsuperscript{50}

Islamic theologians and scholars claim that Islam has greatly improved the status of women from that which existed in pre-Islamic Arabia.\textsuperscript{51} To some extent this assertion appears valid. For example, Islam outlawed the practice of female infanticide, gave women the right to own property, and limited the practice of the taking of an unlimited number of wives.\textsuperscript{52} However, even with these reforms, disparities still exist between the rights Islam accords to men and women. These

\textsuperscript{46} S.IV.3, \textit{in id.} at 179. Commentators disagree as to whether the Qur'an, in fact, sanctions polygamy. Mahdavi states:

There is no justification for polygamy in the Koran but the interpreters do so in terms of shortage of men, orphans and the female's need for sex. Another justification for polygamy is that it is better to formalize the male's polygamous desires than to force him to have extra-marital sex as in the West.

\textit{Women and the Shi' Ulama, supra} note 41, at 21.

\textsuperscript{47} \textit{THE HOLY QUR'AN, supra} note 43, S.II.226-37, at 89-95.

\textsuperscript{48} S.IV.11, \textit{in id.} at 181.

\textsuperscript{49} \textit{Women and the Shi' Ulama, supra} note 41, at 18. "The Muslim society is a male dominated society. There is detailed legislation on family life in the Qur'an dealing with marriage, divorce, and inheritance and almost all of them favoring men." Honavar, \textit{supra} note 16, at 365. For a contemporary reinterpretation of these verses, see generally ABDULLAHI AHMED AN'Nâ'im, \textit{TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW} (1990).

\textsuperscript{50} VERN L. BULLOUGH ET AL., \textit{THE SUBORDINATED SEX: A HISTORY OF ATTITUDES TOWARD WOMEN} 113 (1988). The Qur'an "says a great deal about the position of women but much of it has been interpreted in such as way as to become socially restraining and to justify men's rights and superior position." Mahdavi, \textit{supra} note 13, at 258.


\textsuperscript{52} \textit{See infra} note 89-90 and accompanying text.
discrepancies are testimony to the continued subordinate status of women in Islam. It should also be noted that any rise in the status of Arabic women after Islam was met with a corresponding decrease in the status of Iranian women. That is, even if the rights and status of Arabic women were increased, the rights and privileges which women enjoyed in pre-Islamic Iran disappeared with the advent of Islam.

Fundamentalist Islamic ideologists would disagree, contending that Islam accords women a very special role and, in fact, reveres women. Islamic societies consider the family unit to be of central importance, and the mother is considered the base of this unit. The mother’s role is therefore essential in raising children and providing for family needs. The significance of this function for Iranian society as a whole is that the mother is to be revered and protected by the male members of the household.

The traditional rationale behind this role differentiation between the sexes lies in the natural differences that Islamic scholars perceive to exist between men and women. Women are perceived to be better suited to the tasks of raising and educating children and dealing with personal problems because of their more emotional and sensitive natures. In contrast, scholars believe that men are both physically and mentally more capable of protecting and financially providing for the family.

Shi'a theologians reaffirmed traditional Islamic views on male and female roles by positing both psychological and physiological reasons for the different status of men and women. For example, a prominent

53. From Muslim theologians and fundamentalists “we learn that the role of Muslim women centers around childbearing and child rearing, educating children and inculcating them with Muslim precepts.” Madelain Farah, *Introduction to Marriage and Sexuality in Islam: A Translation of Al-Ghazali’s Book on the Etiquette of Marriage from the Ihya 5* (Madelain Farah trans., 1984). The religion “places the husband as the head of the household and its provider. While not disallowing a woman to work outside her home, it (Islam) clearly states that a woman’s primary functions in life are to: bear children, provide a loving home for her family, and obey her husband’s orders.” Honarvar, supra note 16, at 382.


55. *Haeri*, supra note 6, at 4 (“[N]ature imprints men and women fundamentally, differently, and inescapably.”).


57. In Iran, “the most prominent contemporary interpreters of the Shia position on women have been three ‘ulama, or mujtahids: ‘Allamah Tabataba’i, ‘Allamah Nuri, and Ayatullah Mutahhiri.” Mahdavi, supra note 13, at 257. Betteridge describes a mujtahid as “one learned in religious sciences whose learning and abilities have been formally recognized and certified by the Shi’ite religious leaders (‘ulama) of the time. A mujtahid is unique in having the right to make independent decisions in the interpretation of religious law.” Betteridge, supra note 56, at 155 n.2.
Shi'a theologian, 'Allamah Nuri accounted for the superiority of males over females by pointing to physiological differences between men and women such as the size of the heart, the weight of the brain, and the size of the skull. The psychological differences, according to him, are that women are affectionate and emotional and have weaker nerves. Men, however, are wise and intellectual and have strong nerves, which make them more qualified to strive, struggle, and campaign against the odds of everyday life.\(^5\)

Historically, Iranian theologians have utilized these perceived differences to exclude women from certain professions.\(^5\) The judicial system traditionally relied on these same differences to limit women's right to divorce and to justify submitting women to the authority of their male guardians, whether it be the woman's father or her husband.\(^6\)

58. Mahdavi, supra note 13, at 259. Further, "[w]omen are also viewed as being more sensitive and emotional than men, who are more rational in their approach and are thus considered better suited to make major decisions both inside and outside the home." Zolan, supra note 21, at 185. For Ayatollah Motaheri's views with regard to the differences between men and women, see Motaheri, supra note 7, at 199–222; Azari, supra note 32, at 17–21. It is because of these believed biological differences in women that Islamic theologians deny them the opportunity of becoming mujtahids, or religious interpreters and leaders. See Michael M.J. Fischer, On Changing the Concept and Position of Persian Women, in WOMEN IN THE MUSLIM WORLD, supra note 1, at 189, 195. Of course, Islamic scholars are not the only ones who have made such characterizations of men and women. For similar comparisons in U.S. law, see Bradwell v. State, 83 U.S. 130, 139–42 (1872) (Bradley, J., concurring).

59. Farah Azari elaborates:

The ideology that justifies discriminatory laws against women in Muslim society is derived from a belief in the unequal creation of women and the difference in their nature to men. Mental and physical differences and 'deficiencies' are quoted as the basis for social differences as are limitations in their reasoning powers and their generally weaker intellectual faculties altogether. These, combined with their excessive emotionality, are taken to be attributes that disqualify them from participating in the legal profession, in politics, in the armed forces, and in general in any job that will give women a say in running the society.

Azari, supra note 32, at 16.

60. In Islam, divorce is highly discouraged because it disrupts the family unit, which lies at the base of society. It does not "carry an immoral connotation. However, Islam strongly discourages the right to exercise divorce on frivolous and unimportant grounds because frequent use of divorce destroys the family unit." Honarvar, supra note 16, at 371. Muslim theologians do not feel that women, because of their perceived emotional nature and somewhat irrational tendencies, should be completely free to make this decision. Men, of course, are free to pursue a divorce. One Islamic scholar justifies denying women the right to divorce by pointing to women's psychological and physiological constitution. He argues that menstruation affects women's mental and physical attributes; additionally, he posits, women are impressionable, susceptible to suggestion, and lack self-control. He states: "If women were given the power of unilateral divorce, it is possible that millions of them would divorce their husbands and it is probable that millions of divorces would have ensued and there would be chaos in society." Dol, supra note 51, at 95.

61. Traditional Islamic theologians believe that

[on earth, where God had made man superior to woman, women were to be subject to their nearest male relative, whose right over them was similar to his right}
Both traditional Islamic thinkers and Shi‘a ideologians have cited the importance of the family unit as a rationale for other restrictions on women, and they have justified these practices by referring to the natural differences between males and females. The scholars viewed women as natural sexual temptresses, while viewing men as having uncontrollable sexual desires. In order to curb men’s insatiable sexual appetite, Islamic theologians advocate that women should be veiled or secluded so that men will not be tempted by women into engaging in extramarital sexual relations. Furthermore, in order to satisfy men’s sexual desires Islamic scholars have allowed polygamy and the Shi‘a scholars, in particular, have advocated that men engage in temporary marriages.

over any of his other property. In Islamic tradition the wife’s honor was in the hands of her husband, and it was his business to see that she was not violated.

BULLOUGH ET AL., supra note 50, at 117.

62. The traditionalists view of women “as creatures in need of security and protection, and are also viewed as being sexually dangerous because they use their sexuality to attract and lure men.” Zolan, supra note 21, at 186.

63. Mahdavi states:
The primary assumption is that men and women are not equal because they are biologically different. The biological differences affect both sexual needs and mental ability. . . . Men are rational; women are emotional. In practice, these differences lead to divisions in work, needs, and social life. Women are seen as a disturbing element to men in their conduct of everyday life. This causes difficulty, because the male’s sexual desire is seen as uncontrollable.

Mahdavi, supra note 13, at 258.

64. The practice of veiling in Islam is based on verse XXIV.31 of the Qur’an, which states:

And say to the believing women That they should lower Their gaze and guard Their modesty; that they Should not display their Beauty and ornaments except What (must ordinarily) appear Draw their veils over Their bosoms and not display Their beauty except To their husbands, their fathers, Their husband’s father, their sons,. . . .

THE HOLY QUR’AN, supra note 43, at 904–05. Commentators believe that “[a] woman’s Islamic garb reduces sexual tension in public places, frees her from the competition of being sexually appealing, negates her image as a sex object, and attenuates differences in wealth and/or physical attractiveness.” Mostafa Hashem Sherif, What is Hijab?, LXXVII MUSLIM WORLD 151, 153 (1987). Other scholars believe that the veil was a pre-Islamic practice and that the Qur’an does not specifically mandate veiling. See generally id.; ESPOSITO, supra note 6, at 100–01.

65. See Doi, supra note 51, at 52, regarding one Islamic scholar’s views about examples of situations for which polygamy is seen as the “best solution.” Examples include when the wife is suffering from a serious disease, cannot bear children, or is of unsound mind. Id.

66. Mahdavi, supra note 13, at 258; Farah Azari, Sexuality and Women’s Oppression in Iran, in WOMEN OF IRAN 90, 113 (1983) [hereinafter Sexuality and Women’s Oppression].
These traditional Islamic beliefs with respect to the role and nature of women became part of the shari'a, and they dominated Iranian society by their incorporation in the civil laws. In 1967, however, Mohammed Reza Shah Pahlavi promoted the enactment of the Family Protection Act. This was an attempt by the regime to shift away from the shari'a and to increase the rights of women. Although the government did not outlaw temporary marriages, it instituted various other reforms with the Act and its subsequent amendments, such as: (1) establishing special family courts to hear divorce and child custody cases; (2) allowing women the right to sue for divorce and limiting the traditional rights held by men; (3) raising the minimum age for marriage for women from fifteen to eighteen and from eighteen to twenty for men; (4) legalizing abortions; (5) establishing family planning centers; and (6) curtailing the right of men to have multiple marriages. The reforms under the Pahlavi Dynasty had also allowed women to participate in education, employment, and suffrage.

The restoration of the shari'a, however, following the Islamic revolution, reversed the gains women had made in improving their status. Article 20 of the Constitution accords women equality with

67. For a general discussion of the Family Protection Act, see Introduction to FAMILY LAWS OF IRAN 8 (Sayyid Ali Reza Naqavi trans., 1971). The full text of the Act is available in id. at 66.

68. The Iranian Civil Code contained provisions regulating temporary marriages: "A marriage is temporary when it is contracted for a specified period." Civil Code § 1075, in id. at 30. "The period of a temporary marriage must be expressly specified." Civil Code § 1076, in id.


70. Introduction to FAMILY LAWS OF IRAN, supra note 67, at 11. Farah Azari states that:

The major achievement of the Act was in divorce. It removed the unconditional right of a man to divorce and made it subject to approval by the family protection court, so that a man and a woman both had almost equal rights in applying to the courts which were established all over the country for a certificate of incompatibility.

Azari, supra note 32, at 13. The Act, however, did not guarantee such a right since all judgments had to be approved by a cleric.

71. The Act "allows a husband, already having a wife, to marry another woman, provided he has obtained a permission for this purpose from the court." Introduction to FAMILY LAWS OF IRAN, supra note 67, at 8.

72. Women and the Shii Ulama, supra note 41, at 17; Fischer, supra note 58, at 191 ("Today, there are few areas excluded to women: aside from an activist queen, there have been two women cabinet ministers, a number of senators and Majlis representatives, mayors, city councillors, writers, architects, lawyers, doctors, senior civil servants, journalists, and university professors.").

73. The regime under the Shah "had accomplished major improvements in the area of women's rights vis-a-vis the family, most of which have been repudiated by Khomeni." Zolan, supra note 21, at 190. See Afshar, supra note 8, at 70–71. Women had made many gains before the current regime came to power:
men, stating that "All citizens of the nation, both women and men, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria." Nonetheless, the equality granted women in the Constitution is subject to the shari'a, which theologians have traditionally used to limit women's rights. In fact,

[w]ithin weeks of the revolution, Khomeini ordered that all women wear the Islamic headdress. The Family Protection Law was annulled. The minimum age of marriage was reduced to 15 for girls, and courts allowed families dispensation to marry off daughters as young as ten years old. Polygamy again became legal, and temporary marriages have become common.

The regime stressed the traditional role of the woman as the mother and caregiver:

The family is the fundamental unit of society and the major center for the growth and advancement of man... This view of the family unit delivers woman from being regarded as an object or as an instrument in the service of consumerism and exploitation. Not only does woman recover thereby her momentous and precious function of motherhood, rearing alert and active human beings, she also becomes the fellow struggler of man in all the different areas of life. Given the weighty responsibilities that woman thus assumes, she is accorded in Islam great value and nobility.

[D]uring the 80 years preceding the Islamic revolution, Iranian women fought for and gained access to education (1910), the abolition of the veil (1936), the vote (1962), and a curb on the unequivocal male right of divorce and the right to contest for the custody of children (1973), free abortion on demand (1974), and a ban on polygamy and the right to maintenance after divorce (1976).

Id.

74. CONSTITUTION, supra note 35, at 36 (emphasis added). The Constitution provides for women's rights, provided that such rights do not run counter to Islamic policy. Article 21 states:

The government must assure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals: a. create a favorable environment for the growth of woman's personality and the restoration of her rights, tangible and intangible; b. the protection of mothers, particularly during pregnancy and childrearing, and the protection of children without guardians; c. the creation of a competent court to protect and preserve the family; d. the provision of special insurance for widows and aged and destitute women; e. the granting of guardianship of children to their mothers whenever suitable in order to protect the interests of the children, in the absence of a legal guardian.

Id. at 36–37.

75. Bakhash, supra note 69; See also Zolan, supra note 21, at 191.

76. Introduction, in CONSTITUTION, supra note 35, at 22. Zolan states:
Once again, this relegation of women to their traditional role has resulted in the practices of excluding women, mandatory veiling, polygamy, and temporary marriages. A scholar has characterized the current situation as follows:

The Islamic Republic in Iran has created two classes of citizen: the male who benefits from the provisions of Islamic law and justice and the female who does not. With the sole exception of the right to vote, Iranian women are in all other respects formally recognized as second-class citizens who have no place in the public arena and no security in the domestic sphere. The husband has

The views of Ayatollah Khomeini and other influential Islamic leaders regarding the true nature of women indicate that they feel that the role of wife and mother is what women are best suited for. The belief regarding the proper role for women in Iranian society can be traced to the view held by Islamic leaders that the division of labor in society should be gender-based due to the innate differences between men and women which are in keeping with the command of God as revealed in the sharia.

Zolan, supra note 21, at 185.

77. The clerics have excluded women by limiting their educational and employment opportunities.

For example, as a result of the belief regarding the inherent emotionality and lack of intellectual ability of women, traditional elements argued that women should be banned from occupying judicial positions. Hence, female judges were dismissed from their positions, barred from practice, and told to look for "clerical and administrative posts" in the judiciary.

Zolan, supra note 21, at 189 (citations omitted). In addition, "[w]omen can become physicians, but they are barred from studying mechanics or electrical engineering." Further, "[w]omen may not pursue advanced degrees outside Iran if they are single." Nora Boustany, In Iran, the Chador has Begun to Chafe; With Little Organized Help, Women Seek to Wrest their Rights, WASH. POST, Oct. 26, 1992, at A1. Also, "since 1979, female participation in most areas of government has been banned, with most working women serving as unpaid agricultural laborers on family landholdings." POLITICAL HANDBOOK, supra note 13, at 354. Ann Mayer states that women's exclusion from the legal profession has "deliberately excluded [them] from having a say in the legal order that assigns them an inferior status or from assuming positions where they might challenge the Islamic pedigree of the regime's discriminatory laws." Mayer, supra note 51, at 131. For a concise analysis of the employment opportunities for women in the Islamic Republic, see Val Moghadam, Women, Work, and Ideology in the Islamic Republic, 20 INT'L J. MIDDLE E. STUD. 221-43 (1988).

78. In Iran, the government has officially mandated that women wear the hejab, or veil. The law mandates "that a woman's head must be covered, except for the oval of her face and that her entire body be covered except for the hands up to the wrist." Zolan, supra note 21, at 189 (citation omitted). Muslim theologians argue that veiling has raised the status of women because once "the Muslim woman is veiled, she can be treated as a person and not merely as a sex object[,]" Fischer, supra note 58, at 196. See also Judith Miller, Women Regain a Kind of Security in Islam's Embrace, N.Y. TIMES, Dec. 27, 1992, at E6 ("Wearing the hijab lets women move about the city unmolested and unharassed by the young men and teen-age boys who have poured into the capital from the countryside in search of work. It sends an unmistakable signal to every male: This is a devout woman. Leave her alone.").

79. See supra note 75.

80. Id.
Temporary Marriages in Iran

become an absolute ruler, entitled to exercise the power of life and death in his home.\(^8\)

This analysis of the role of women in Iranian society illustrates their precarious position. Their rights are consistently subject to Shi'\(a\) interpretations of both Islamic rules and the shari'a, interpretations which have resulted in women having lesser rights and lower status. Some commentators believe that, as will be shown in the following discussion, the institution of temporary marriages reaffirms these traditional Shi'\(a\) interpretations. In the next Part, the Note will initiate an analysis of this institution, and in Part V, the Note will evaluate its merits.

III. TEMPORARY MARRIAGES IN IRAN

The Shi'\(a\) sect of Islam recognizes three forms of marriage: (1) permanent marriage or nihah;\(^8\)\(^2\) (2) temporary marriage, known as mut'a or sigheh;\(^8\)\(^3\) and (3) slave marriage or nihah ul-ima.\(^8\)\(^4\) The Iranian Civil Code recognizes the permanent and the temporary forms of marriage,\(^8\)\(^5\) and these two types of marriage are the focus of this Note. The law has always permitted temporary marriages in Iran, although they are socially

81. Afshar, supra note 8, at 83. Mayer reaffirms this analysis:

The record, therefore, overwhelmingly establishes that Islamic principles, Islamic law, and Islamic morality have been interpreted in Iran to justify depriving women of any semblance of equality with men, subjecting them to a wide range of discriminatory laws and treatment, and effectively confining them to serving their husbands, performing domestic tasks, and bearing and raising children.

MAYER, supra note 51, at 132.

82. Nikah marriage "literally meant sexual intercourse, although it was also used in the Koran to mean contract." BULLOUGH ET AL., supra note 50, at 118.

83. Mut'a is an Arabic term meaning: "(a) 'that which gives benefits, but for a short while'; (b) 'enjoyment,' 'pleasure, i.e., to saturate'; and (c) 'to have the usufruct of something[]." HAERI, supra note 6, at 50 (citation omitted). The Persian term for mut'a is sigheh, "which denotes both the form of the marriage contract and the woman who becomes the 'temporary' wife in such contracts." Khatib-Chahidi, supra note 2, at 125.

84. See HAERI, supra note 6, at 30.

85. Albert Bernardi, Iran: Family Law After the Islamic Revolution, 25 J. FAM. L. 151, 151 (1986-87) (citing article 1075 of Iranian Civil Code). Both marriages are also sanctioned in the writings of the Ayatollah Khomeini:

By means of a marriage contract, a woman becomes lawful to a man and this may be in two forms, permanent and nonpermanent. The permanent contract is that in which the duration of matrimony is not specified and the woman who is contracted for in this form is called "permanent," and the nonpermanent contract is that in which the duration of matrimony is specified; for example, the woman is contracted for a period of one hour or one day or one month or one year or more, and the woman who is contracted for in this form is called "mot'e" or "sigheh."

frowned upon. The current Islamic regime, as will be discussed in Part V, has been promoting the use of the temporary marriages despite Iranians’ general disapproval of the institution.\textsuperscript{86} The regime “has made an orchestrated effort to educate the public of the specifics of the institution, its divine roots, its contemporary relevance, emphasizing its positive effects for the individual and social moral health.”\textsuperscript{87}

This Part of the Note describes the institution of temporary marriages in Iran. The first Section sets out the basis for this discussion, describing the institution of marriage in Islam, as well as its characteristics and significance. Next, the Note discusses the characteristics of actual marriages and outlines the limitations Islam places on them. The third Section describes temporary marriages by contrasting them to permanent marriages.

\textbf{A. Marriage in Islam}

In both Shi’a and Sunni Islam, marriage is a sacred institution and is often cited as a mandate for every individual. In contrast to early Christianity, which “considered marriage good but celibacy better, Islam accepted marriage as the highest good, ordained by God: ‘He created for you helpmeets from yourselves that ye. might find rest in them, and He ordained between you love and mercy. Lo, herein indeed are potents for folk who reflect.’”\textsuperscript{88}

The marriage rules designated by the Prophet Muhammad were designed to reform the immoral and paganistic practices that existed in pre-Islamic Arabia:

\begin{quote}
Historians allege that the societal conditions, at least for the one hundred years immediately preceding the advent of Islam, had deteriorated considerably. They claim the condition of women at the time of the Prophet differed very little from that of animals. Women had no legal rights, polygamy was a common practice, divorce was easily obtained, and female infanticide was an everyday occurrence.\textsuperscript{89}
\end{quote}

\textsuperscript{86} See supra note 1 and accompanying text.

\textsuperscript{87} HAERI, supra note 6, at 7. Following the revolution, “the Islamic regime embarked on an intensive campaign to revitalize temporary marriage . . . . The objective was to ‘purify’ the institution of some of its negative cultural connotations and moral stigmatization[.]” Id. at 96.

\textsuperscript{88} BULLOUGH ET AL., supra note 50, at 116 (citation omitted). Islam reveres the institution of marriage because it is believed that marriage “is the cornerstone of the Islamic culture. It is an institution ordained for the protection of society and its members from foulness and unchastity.” Honarvar, supra note 16, at 365.

\textsuperscript{89} Honarvar, supra note 16, at 366.
Islam reformed these conditions by granting women legal rights, limiting polygamy, reducing the ability of individuals to obtain a divorce, and outlawing female infanticide.90

Furthermore, law, religion, and society each gives marriage special significance in Iran. In law, as will be discussed below, marriage is a contract between the husband and wife and creates rights and responsibilities between the parties.91 In religion, "marriage as an institution leads to the uplift of man and is a means for the continuance of the human race."92 Finally, in society, marriage has importance because the culture considers married women to have high social standing and reveres them because of their role as mothers. The designation of various rules and limitations maintains the significance of marriage in Islam.

B. Characteristics of Marriage in Islam

In Islam, marriage is considered a contract between a man and a woman. Therefore, the personal relationship between individuals, as is the case in relationships between individuals undertaking a commercial venture, is governed by Islamic contract law and is "subject to the same regulations as other contracts[.]"93

Marriage contracts are initially subject to two requirements: First, for a marriage contract to be valid a certain number of witnesses are required; second, "like all forms of Islamic contracts, [the marriage contract] requires an act of offer and acceptance made in the same session. An act of 'offer' involves uttering a ritualistic formula by the woman, and 'acceptance' involves a similar formulaic reply by the husband."94

90. The Prophet’s teachings included:

reforms of existing social practices and injunctions for the abolition of infanticide, for protection of widows and orphans, and for the limitation of polygamy. The marriage contract included rights and obligations for both husband and wife, granted a marriage dowry to the woman, and contained inheritance rights for the woman.

Farah, supra note 53, at 10–11. See also Khadduri, supra note 34, at 213.

91. “Marriage in Islam is regarded as a contract because it is based on the mutual consent of both man and woman and because it is dissoluble when the rights and duties, which are fixed by law, are not met.” Farah, supra note 53, at 11.

92. Honarvar, supra note 16, at 368.

93. The Arabic word for contract is 'aqd, which is also the Persian word for the official marriage ceremony. S.E. Rayner, The Theory of Contracts in Islamic Law 87 (1991). See Khatib-Chahidi, supra note 2, at 125. Marriage in Islam is regarded as a contract because "it 1) requires a proposal and a consent, 2) allows provisions for its breach, and 3) permits revisions or modifications to suit each individual case." Honarvar, supra note 16, at 367.

94. Haeri, supra note 6, at 36. The acts of offer and acceptance “must convey an unequivocal intention that the parties intend to become husband and wife.” Rayner, supra note 93, at 165. Ayatollah Khomeini argues, however, that it is not enough that the parties express their intent to be bound. It is necessary for the marriage formula to be pronounced,
These requirements are intended to reinforce the belief that the contract was freely and mutually agreed upon by the parties. Furthermore, "although an offer to marry is actually made through a woman's father, the woman's consent is considered imperative if the contract is to be binding." In marriage, as with other contracts, there is little liberty of contract in Islamic law. Although "Islamic law does not recognize the liberty of contract, it provides an appreciable measure of freedom within fixed types. . . . ' Freedom within fixed types of contracts means inserting mutually agreeable clauses in the contract." However, in Iran men and women negotiate marriage contracts from unequal bargaining positions because of the higher status the male holds in Iranian society. Given this disparity, women cannot, as a practical matter, negotiate for contract clauses which benefit them.

An integral part of the Islamic marriage contract is the brideprice or mahr. The mahr is traditionally the subject of negotiation between the parents of the bride and groom. It is a certain amount of money that the groom intends to give to the bride herself for the marriage. Usually, this money is not actually given to the bride unless the couple decides to divorce. It is given then so that the woman will be financially secure after the marriage is over, when her husband no longer provides for her. The element of brideprice has caused some commentators to liken the Islamic marriage contract to a contract for sale. The brideprice is

but this can be done by the parties themselves. Khomeini, supra note 85, matter 2371, at 410.

95. "Marriage was considered as a contract between two 'freely consenting adults' who, within bounds are free to set their own terms on it. The question of being 'free' though is only relative for a woman, first marriage being subject to approval by her father or the paternal grandfather, regardless of her age." Azari, supra note 32, at 11. See also Honarvar, supra note 16, at 367.

96. Khadduri, supra note 34, at 213.

97. Haeri, supra note 6, at 31 (citation omitted).

98. Haeri believes that "[w]hat is lacking in such masculine Shi'i reasoning is the fact that men and women negotiate from a position of inequality: legally, economically, psychologically, or socially." Id. at 202.

99. Farah, supra note 53, at 14. Mahr is an Arabic term. It can never be eliminated from the marriage contract. Haeri, supra note 6, at 34. Nasir states that "[t]he Shias maintain that if the husband makes a condition in the marriage contract that he shall pay no dower, this condition shall be null and void, but the contract shall remain valid." Nasir, supra note 5, at 87. Islam, however, is not unique in requiring a brideprice. Fischer argues that both the Jewish and Zoroastrian religions in Iran have provisions in their marriages similar to the mahr. Fischer, supra note 58, at 198-201. For Ayatollah Motaheri's views regarding the mahr, see MotaHERI, supra note 7, at 225-74.

100. Usually, the more wealthy the bride and the better her attributes and family connections, the higher will be her brideprice. The brideprice therefore reflects what the groom and his family consider the bride to be worth.
perceived to be the consideration given for the object of the sale, the woman. In fact, a contemporary Muslim scholar has been quoted as "giving several interpretations of the term nikah, [and] concluding that 'nikah is a contract for the ownership, tamlik, of the use of [the] vagina.'" Islam places additional limitations on marriages which are consistent with their legal, religious, and social role. It outlawed the widespread practice of polygamy that existed prior to the advent of the religion. Islamic theologians only later interpreted the Qur'an to permit men to marry up to four wives. Women, however, may not have more than one husband. The man’s right to multiple marriages, though, is limited both practically and socially. Not only are multiple marriages socially frowned upon, but they are also practically impossible. If a man wishes to marry more than one woman, the Qur'an states that he must treat them all equally in every respect. This requirement can be a great financial and physical burden and therefore a large deterrent to polygamous relationships.

A second religious constraint on marriages concerns relationships between individuals of differing faiths. Islam permits marriage among

101. Haeri characterizes the submission of brideprice as "[t]he most essential component of a marriage contract. . . . In exchange, the husband gains a legitimate ownership right over the object of sale, which in this case is his wife's sexual and reproductive organ." Haeri, supra note 6, at 36–37. Haeri further contends that "many of the ulama argue that paying something to the wife, no matter how small, is religiously meritorious, for 'it legitimizes the intercourse.'" Id. at 37 (quoting Tusi). But see Doi, supra note 51, at 154–56 (praising the mahr). Doi suggests that "Islam has elevated the status of women, as mahr is given as a mark of respect for her." Id. at 155.

102. Haeri, supra note 6, at 34 (quoting Jabiri-Arablu). Haeri further illustrates the comparison:

Hilli provides an example again; though on the one hand he writes that nikah is a 'sort of ownership' and that it is 'similar to a [contract of] sale,' on the other hand he emphasizes that 'the purpose of the exchange of vagina, 'mu'avizih-i buz', is reproduction and recreation, and not just financial exchange.

Id (citation omitted).

103. The Holy Qur'an, supra note 43, S.IV.3, at 179. In case "a man having four wives marries a fifth wife, the marriage is not void, but is considered irregular. Such marriage, although not wholly within the legal bounds, is recognized for the purpose of legitimization of the children and the rights to inheritance." Honarvar, supra note 16, at 369. See supra note 46.

104. The Qur'an states: "But if ye fear that ye shall not be able to deal justly (with them), then only one[,]" The Holy Qur'an, supra note 43, S.IV.3, at 179. "A woman may not marry more than one man at a time so that paternity be known; a man may marry more than one woman but only if he can treat them equally." Fischer, supra note 58, at 194–95.

105. The Qur'an warns: "Do not marry Unbelieving women (idolaters). Until they believe: A slave woman who believes Is better than an unbelieving woman, Even though she allure you. Nor marry (your girls) To unbelievers until They believe[.]" The Holy Qur'an, supra note 43, S.II.221, at 87.
individuals of differing Islamic sects; however, limitations exist on individuals who seek to marry nonMuslims: “A Muslim man may marry any non-Muslim except an idolatress or a fire-worshipper and have a saihin, or valid marriage. However, a Muslim woman is strictly forbidden from marrying a non-Muslim.”

A third limitation on Muslim marriages is that women must wait a certain period of time after a marriage before they may remarry. This “is known as ‘idda and it is roughly four months, unless the woman is pregnant, in which case the period lasts until delivery.” The waiting period is necessary because it will ensure that the paternity of any child conceived before this period is certain. Further, Islam also prohibits marriage between individuals of close relation to each other. This limitation is discussed in greater detail in Part V.2.

Islamic scholars believe that these religious characteristics of Islamic marriage contracts improve the marriage institution and increase women’s rights in marriage. However, the rules still explicitly favor men, who may have multiple wives and may marry nonMuslims, while women cannot do the same. Furthermore, social realities limit the effect of these reforms; women lack the bargaining power to negotiate beneficial contract terms and sometimes must also give up their brideprice in order to obtain a divorce. The next Section explores in greater detail the temporary marriage contract to illustrate that such contracts typically contain even fewer rights for the bride than their permanent counterparts.

106. Honarvar, supra note 16, at 370. For an explanation of the ban on Muslim women from marrying nonMuslims, see Doi, supra note 51, at 47–48.

107. The Qur’an states: “Divorced women Shall wait concerning themselves For three monthly periods.” The Holy Qur’an, supra note 43, S.II.228, at 89–90. Furthermore, “If any of you die And leave widows behind, They shall wait concerning themselves Four months and ten days . . . .” S.II.234, in id. at 93–94. See also MOTAHERI, supra note 7, at 57.


109. NASIR, supra note 5, at 146.

110. The Qur’an states:

Prohibited to you (For marriage) are: — Your mothers, daughters, Sisters; father’s sisters, Mother’s sisters; brother’s daughters, Sister’s daughters; foster-mothers (Who gave you suck), foster-sisters; Your wives’ mothers; Your step-daughters under your Guardianship, born of your wives To whom ye have gone in, — No prohibition if ye have not gone in; — (Those who have been) Wives of your sons proceeding From your loins; And two sisters in wedlock At one and the same time, Except for what is past; For God is Oft-forgiving, Most Merciful. . . .


111. See infra notes 134–35.
C. Temporary versus Permanent Marriages

Although Shi'a Islam considers both permanent and temporary marriages to be contracts, there are significant differences between the two types of marriages. This Section analyzes three components that are integral to contracting into a temporary marriage. It also analyzes other differences between temporary and permanent marriages such as the rights and responsibilities inherent in the different types of marriage.

There are three components of temporary marriages that will serve as the initial basis of comparison with permanent marriages: (1) the legal form of the contract; (2) the duration of the term of marriage; and (3) the consideration for the marriage.

To be valid, the temporary marriage must have the legal form of a contract. "[L]ike any other contract in Islam, it requires an act of offer, *ijab*, made by the woman, and acceptance, *gabul*, made by the man." However, the temporary marriage is less formalistic than the permanent marriage, and the parties themselves may perform the acts of contractual formation and the marriage ceremony. Further, the mut'a marriage does not require witnesses as to its formation, nor is it required that the contract be registered. As long as both individuals voluntarily contract to enter the marriage and are aware of the terms of the contract, it will be valid. The parties are relatively autonomous in negotiating the terms of the contract, if the terms do not contravene the shari'a.

The second component that is important in a temporary marriage is its duration. The mut'a contract must state the precise duration of the marriage term, which can range from one hour to ninety-nine years. The time period, or *ajal*, "that a mut'a marriage shall last must be made quantifiably clear...[f]or that matter, one cannot designate one's lifetime as the length of a mut'a marriage because this timing is imprecise." In fact, "[omitting] mention of duration can make the contract a permanent one." However, some commentators believe that this

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112. Haeri, supra note 6, at 51.
113. See Khomeini, supra note 85, matter 2377, at 411.
114. Haeri, supra note 6, at 2.
115. Id. at 52. See also Motaheri, supra note 7, at 56-57 (indicating that the parties have more liberty in temporary marriages because of the greater flexibility of the contract terms which the parties can employ); Khomeini, supra note 85, at 305.
116. Haeri, supra note 6, at 52. Haeri states that "specifying the number of occasions of intercourse, *jama', such as 'once or twice,' is not acceptable because the timing is indeterminate and imprecise." Id. at 53.
117. Khatib-Chahidi, supra note 2, at 126.
simply invalidates the contract. The duration specified determines the end of the contract, and therefore, there need be no provision for divorce. However, the recision or a unilateral termination by the temporary husband can also terminate the contract.118

A third component of the mut'a marriage contract is that it must state the consideration to be paid by the husband to the wife. This is comparable to the mahr paid to the bride in the permanent marriage. However, the consideration paid in a mut'a marriage is generally less than that in a nikah marriage, and it is usually paid before consummation of the marriage. The temporary marriage payment, or ajr, "must be of measurable quality and unambiguous" and "failure to specify the amount of consideration, ajr, renders the contract invalid[]."119

As earlier stated, because of the brideprice in the contract for permanent marriage, that type of marriage contract is similar to a contract for sale. Because of the requirements of mut'a marriage for both specificity as to duration of contract and consideration, many scholars have likened that contract to a contract for a lease. Although the current Shi'a theologians in Iran have rejected this analogy and even invalidated mut'a contracts which refer to the woman as the object of lease,120 "[m]any of the classic ulama, religious and legal scholars, and even some of the contemporary legal experts have explicitly or implicitly alluded to the similarities between the two, referring, unreflexively, to the woman as the object of lease, musta'jirih."1121

Beyond these three components, the temporary and permanent marriages have different objectives and confer different rights and

118. Id. (stating that, "some Shi’ite jurists say the consent of the husband alone is sufficient."); Haeri, supra note 6, at 53; Nasir, supra note 5, at 59.

119. Haeri, supra note 6, at 53.

120. Ayatollah Motaheri questions the analogy between the temporary marriage and a lease. He states that permanent and temporary unions are "[b]oth marriages and both must be accomplished with the proper marriage words and if the temporary marriage is worded with the particular verses used for hiring and leasing, it will be void." Motaheri, supra note 7, at 66 (translated by author). He then indicates that hiring individuals is not a practice that has been abolished and that in fact individuals such as physicians, civil servants, and others are also hired. Id. Motaheri further states, without explanation, that the temporary wife is not a hired person, but rather it is European and American actresses and models who are women for hire. Id. at 66–67. He argues that "[t]he hired woman is that who for attracting customers for an economic institution, using thousands of manners, most of which are artificial and for the purpose of accomplishing the function of wage earning, appears on the television screen and advertises for the benefit of a commercial good." Id. at 67 (translated by author).

121. Haeri, supra note 6, at 32 (citations omitted). A mut’a woman is believed to be the object of lease because "she is contracted for a fixed period, with a fixed payment, for the purpose of sexual pleasure, underscoring the pleasure principle of mut’a marriage. This dual transaction of sex and goods [often money] is the core of mut’a marriage." Shahla Haeri, The Institution of Mut’a Marriage in Iran: A Formal and Historical Perspective, in WOMEN AND REVOLUTION IN IRAN, supra note 6, at 232 [hereinafter Institution].
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responsibilities to the parties. In choosing between the two types, the Shi'a doctrine ideologically "distinguishes temporary marriage, mut'a, from permanent marriage, nikah, in that the objective of mut'a is sexual enjoyment whereas while that of nikah is procreation."122

Both forms of marriage require that women obtain consent from their fathers before engaging in the contract.123 However, generally, females engaging in temporary marriages are widows or divorcées. As such they are not subject to a father's guardianship and have the autonomy to contract voluntarily into marriage.124 Virgins, however, must always obtain their father's permission before contracting into any marriage. The law does not forbid virgins to engage in mut'a. However, because permanent marriages are favored legally and socially, and because virginity is immensely significant in determining a woman's permanent marriage prospects, virgins generally do not enter into such contracts.125

122. Haeri, supra note 6, at 50. The "institution of marriage was centered around the production of children and the caring for, protecting and providing for wives and children. Hence, procreation rather than sensual pleasure was the prime factor in marriage." Farah, supra note 53, at 15.

123. Khatib-Chahidi, supra note 2, at 126. Khomeini has stated:

The girl who has reached puberty and is physically mature, meaning that she is able to distinguish her own interests, if she wants to get married, and in the event that she is a virgin, must, as a precautionary necessity, from her father or grandfather, receive permission, and her mother's or brother's permission is not necessary.

Khomeini, supra note 85, matter 2384, at 413 (translated by author). See also Motaheri, supra note 7, at 92–99. Women who are no longer virgins do not need to obtain their father's permission. Khomeni, supra note 85, matter 2385, at 413.

124. Haeri, supra note 6, at 5. Haeri states that

the greater frequency of sigheh marriages is among young divorced or widowed women of the lower socioeconomic class. . . . A divorce usually places a woman in a vulnerable situation in Iranian society. She is often perceived to be a moral and economic burden on her family and a threat to the stability of other marriages because she is believed to be sexually experienced.

Id. at 147. The "threat" that divorcées pose can presumably be reduced if they contract into temporary marriages, which may be one reason that the current regime is promoting the institution.

125. Id. at 13. Azari explains that virginity is "[t]he most cherished possession for a girl in Iran. . . . Her chances of a reasonable marriage depend more on this vital requirement than any other features she may have," Sexuality and Women's Oppression, supra note 66, at 107. See also Farah, supra note 53, at 16 (historically, "[m]arrying a virgin was stressed as a principal factor in attaining a happy conjugal life."). Farah summarizes the rationale of a prominent theologian, Imam al-Ghazali, for marrying a virgin: "The argument he set forth for marrying a virgin was that it will draw the couple closer, since it would be the woman's first intimate contact and she would not have had another with whom to compare her husband."

Id. The importance of virginity is also explained by Vieille:

The young girl must be a virgin on her wedding night; if she is not, she cannot be established in honorable conditions and her family will be covered with shame. . . .
There are also various limitations in the rights and responsibilities of the parties to the temporary marriage contract. As in permanent marriages, there are limitations on interfaith marriages. Although Muslim men may marry non-Muslim women, Muslim women are not permitted interfaith marriages of any kind.\textsuperscript{126} Further, as in permanent marriages, temporary wives must wait a certain amount of time at the expiration of a temporary marriage contract before they can contract into another marriage.\textsuperscript{127} Again, this is in order to be sure of the paternity of any children conceived in the relationship. In addition, women may not contract to enter more than one temporary marriage at a time, as is the case with permanent marriages. However, men may contract to marry an unlimited number of temporary wives.\textsuperscript{128} Therefore, in addition to the four permanent wives which Shi‘a Muslim men are allowed to have, they may also contract to enter marriage with as many temporary wives as they wish.

The two types of marriage also differ in the ways that they may be terminated. As stated earlier, it is generally not expected that individuals contracting into temporary marriages will divorce; they simply wait until the expiration of the duration of the contract. However, the husband in a temporary marriage may unilaterally or both parties may mutually agree to terminate the marriage contract before expiration.\textsuperscript{129} In contrast, a permanent marriage may be terminated in three ways: (1) divorce or \textit{talaq};\textsuperscript{130} (2) mutual consent;\textsuperscript{131} and (3) annulment, \textit{faskh}, by either the

\begin{footnotes}
\footnote{The idea of the honor of families and lineages is in fact central in the question of virginity: honor consists of giving and accepting only goods that are ritually pure. The loss of virginity is an offense against honor, an irreparable loss of honor.}

Vieille, \textit{supra} note 1, at 453–54.

\footnote{126. Haeri, \textit{supra} note 6, at 52.}

\footnote{127. Motaheri, \textit{supra} note 7, at 57; Khaledghi, \textit{supra} note 7, at 309.}

\footnote{128. It is therefore “possible for a man of eighty with four permanent wives to enter into any number of temporary marriages.” Women and the Shi‘i Ulama, \textit{supra} note 41, at 22. This too was the case under the Pahlavi regime before the Islamic revolution:}

The number of temporary wives is not limited by Shiah \textit{Fiqh}, and hence by the Iranian law. Thus, a man is at liberty to contract as many temporary marriages as he desires, subject to the sole condition that he must be financially and physically capable of maintaining these wives and doing justice to them.

\begin{footnotes}
\footnote{Introduction to Family Laws of Iran, \textit{supra} note 67, at 9.}

\footnote{129. The temporary wife cannot terminate the contract because she is “the object of the lease,” Haeri, \textit{supra} note 6, at 45, and because “the purpose of a \textit{mut’a} marriage is enjoyment, not of both partners, but of the husband only.” Id. at 57.}

\footnote{130. The Arabic word \textit{talaq} “is a derivative of the word \textit{tallaqa}, which means to release an animal.” Honarvar, \textit{supra} note 16, at 372.}

\footnote{131. \textit{Id.} at 375 (executed when “both parties agree that the marriage contract is a nonworkable contract, one that should be dissolved; and based on this mutual consent the parties return considerations, of \textit{iwad}, to each other and declare the marriage dissolved.”).}

\end{footnotes}
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husband or the wife. Under the permanent marriage, the woman, unlike the woman contracting for a temporary marriage, may obtain a divorce. However, even in a permanent marriage a woman’s right to a divorce is practically impossible to exercise: “The marriage contract used in Iran lays down 16 circumstances under which a woman can get a divorce: a man can get one without reason.” Very often, it will be extremely difficult to satisfy these conditions and the woman will not be able to obtain a divorce. This sometimes forces women to buy their way out of their marriages, which is usually done by giving up their brideprice. The fact that women may have to give up their brideprice and probably their children to the father’s custody deters women from proceeding with a divorce. Although a recent reform of Iranian divorce laws gives women more rights in these proceedings, the law’s goals as yet have not been realized in practice.

One of the primary advantages of temporary marriages is that children resulting from such unions are considered legitimate and are given inheritance rights from the father, as with children resulting from permanent marriages. However, while the permanent wife holds

132. *Iranian Women; Cover up, quick*, ECONOMIST, Aug. 22, 1992, at 42. Although men can obtain divorces easily, Bob Hepburn, *Iran; Three Years After Khomeini*, OTTAWA CITIZEN, June 9, 1992, at A8, “women can seek divorces only if a husband is mentally ill, suffers an incurable disease, cannot have children or is unwilling to support the family.” Id. Further, “Talaq permits a husband to divorce his wife at any time without the wife’s knowledge and without having her present at the proceeding.” Honarvar, *supra* note 16, at 372.

133. “It is nearly impossible for women to file for divorce in this country.... Only if her husband is proved insane or has been missing for four years will the courts approve the woman’s request.” Katayon Ghazi, *A Voice for Change; High-ranking Official in Iran Works to Break Gender Barriers*, CHI. TRIB., Nov. 22, 1992, at 12 (quoting a legal expert).

134. Azari, *supra* note 32, at 11. Despite the fact that the mahr in the marriage contract is intended to provide for a woman after her divorce, “she is frequently forced to waive her claim to mahr as a condition for her husband’s consent to the divorce.” Honarvar, *supra* note 16, at 379.


136. A recent report indicates that

Iran’s clerical leaders have adopted a new divorce law granting unprecedented rights to women. It allows a woman to seek compensation through the courts for housework her husband ordered her to do during the marriage. It also requires that divorce be sanctioned only by civic courts, aiming to put an end to the common practice of men easily divorcing their wives against their wishes.

Sharif Imam-Jomeh, *Iran Grants Rights to Women in New Divorce Law*, The Reuter Library Report, Dec. 8, 1992, available in LEXIS, Nexis Library, Reuters File. *But see Iran Panel Backs Divorce Payments*, N.Y. TIMES, Dec. 17, 1992, at A12 (“Some Iranians say that the measure will be difficult to put into effect given the existing contradictions between remnants of the civil war from the old regime and Islamic law, which limit women’s participation in court proceedings.”).

inheritance rights, the temporary wife does not.\textsuperscript{138} Furthermore, the temporary wife does not have "maintenance rights," which generally means that the temporary husband does not have to provide economic support for her during the course of the marriage, as he must for his permanent wife.\textsuperscript{139} These distinctions between the two types of marriages highlight both the advantages and disadvantages for the parties in a temporary marriage. The temporary marriage could be considered advantageous because it represents a way for individuals to legally engage in relationships which would otherwise result in the parties' punishment, as explained in Part V.B. However, the institution is also less formal than a \textit{nikah} marriage and carries with it fewer benefits and rights to the temporary wife. These disadvantages may explain why few individuals have engaged in such relationships, despite the promotion of the institution by the Iranian government. The following discussion evaluates in detail the advantages and disadvantages of the temporary marriage.

\section{IV. Evaluation of the Institution of Temporary Marriages}

The above comparison of temporary and permanent marriages, at least preliminarily, indicates that because of their permanence and greater benefits to the woman, permanent marriages are more favorable. One commentator notes that "[t]raditionally there has been a social stigma associated with the 'sigheh' for women. . . . The result has been that mainly women from working class or peasant origins have consented to this type of marriage and then usually to men of higher social status and wealth than themselves."\textsuperscript{140} The next Part analyzes why the Shi'a theologians advocate the practice of temporary marriages and why it is practiced by some individuals, while disregarded by others. The first Section discusses the traditional and modern justifications for the institution of \textit{mut'a}. The Note then analyzes in detail the advantages and disadvantages of temporary marriages to women.

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\item[\textsuperscript{138}] \textsc{Khomeini}, supra note 85, matter 2433, at 420; \textsc{Azari}, supra note 32, at 11--12. \\
\item[\textsuperscript{139}] Khomeni states: "The woman who is temporarily married even when pregnant does not have maintenance rights." \textsc{Khomeini}, supra note 85, matter 2432, at 420 (translated by author). \textsc{See also Khaleghi}, supra note 7, at 309; \textsc{Khatib-Chahidi}, supra note 2, at 126; \textsc{Azari}, supra note 32, at 11--12; \textsc{Haeri}, supra note 6, at 59. Ayatollah Motaheri, however, indicates that it may be possible to provide for maintenance rights in the marriage contract. \textsc{Motaheri}, supra note 7, at 305. Maintenance rights were available to temporary wives under the Pahlavi regime. \textit{Introduction} to \textit{Family Laws of Iran}, supra note 67, at 5.
\item[\textsuperscript{140}] \textsc{Azari}, supra note 32, at 18.
\end{footnotes}
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A. Theological Basis for the Institution of Temporary Marriages

The Shi'a theologians contend that Islam sanctions temporary marriages: "[T]hey argue that mut'a marriage is sanctioned in the Qur'an 4:24, and that it has been permitted by the Prophet Muhammad himself." There is evidence, however, which indicates that temporary marriages have pre-Islamic roots and were common to Arabian tribes.

Sunni Muslims also practiced temporary marriages until the second Caliph, Omar, outlawed them. The Shi'a argue, however, that the Qur'anic verse, from which they derive legitimacy for the practice, is sufficiently explicit and cannot simply be annulled by the opinion of the Caliph Omar. The Shi'a ideologians have stated that engaging in temporary marriages is in fact rewarded by God because it directly

141. Haeri, supra note 6, at 1. The verse to which Shi'a theologians refer is the following:

Also (prohibited are)
Women already married,
Except those
Whom your right hand possesses:
Thus hath God ordained
(Prohibitions) against you:
Except for these, all others
Are lawful, provided
Ye seek (them in marriage)
With gifts from your property
Desiring chastity, not lust.
Seeing that ye derive
Benefit from them, give them
Their dowers (at least)
As prescribed; but if,
After a dower is prescribed, ye agree
Mutually (to vary it),
There is no blame on you,
And God is All-knowing
All-wise.

The Holy Qur'an, supra note 43, S.IV.24, at 187. See also Khaleghi, supra note 7, at 306-07. Shi'a theologians believe that mut'a "incurs God's reward, savab, that it is approved by the Prophet, and that it was practiced by many of his companions and other revered Shi'i leaders." Haeri, supra note 6, at 6 (citations omitted). But see Women and the Shii Ulama, supra note 41, at 22 (stating that "[t]here is a great difference of opinion over this verse as some interpreters actually read or add words to the Surah which some others do not accept.").

142. Haeri, supra note 6, at 49; Farah, supra note 53, at 14. In the pre-Islamic period, "the Arabs practiced two types of marriage which were collectively termed Sadiqa. . . . The two types of Sadiqa marriage arrangements were: the muta marriage and the beena marriage." Honarvar, supra note 16, at 365.

143. In contrast to the Shi'a, "[t]he Sunnis view mut'a to be a form of prostitution and as such is banned by all Sunni legal schools." Zolan, supra note 21, at 188.

144. Farah, supra note 53, at 14.
challenges Omar's ban, which they believe contravened actual Islamic practice during the time of the Prophet.\footnote{145}{HAERI, supra note 6, at 7.}

According to Shi'a theologians there were four main reasons for the Prophet's allowance of temporary marriages in the early Islamic period: \footnote{146}{See generally Mahdavi, supra note 13, at 263.} (1) they provided a legal framework for individuals to engage in sexual relations in times of war when men were separated from their families; (2) they satisfied individuals' sexual needs; \footnote{147}{Mut'a has been described as “a divinely recommended solution for the gratification of unavoidable sexual drive[.]” HAERI, supra note 6, at 78.} (3) they represented a way for widows of wars to be provided for; \footnote{148}{Id. at 156.} and (4) they provided legitimacy and thus inheritance rights to children born to individuals engaging in extramarital relations. \footnote{149}{Although, if "a mut'a wife becomes pregnant, the child's legitimacy is legally secured on the basis of the Islamic maxim, 'the child is of the bed,'" because "a contract of mut'a marriage requires no witnesses or registration, however, it is difficult to prove the validity of a claim." Id. at 55.}

Commentators also note modern justifications for engaging in temporary marriages. Because engaging in temporary marriages brings women monetary benefits, some see the institution as a means of economic support for needy women. Shi'a theologians fear that unless women are allowed to support themselves in this manner, they might resort to prostitution. \footnote{150}{Id. at 157. Haeri disagrees with this analysis, however, arguing that [m]ost sigheh marriages—short-term ones in particular—are not economically advantageous, particularly since women have to abstain from sexual intercourse for at least forty-five days after it ends. Although the financial arrangement does temporarily assist some women in precarious economic circumstances, money is not the only, or even the greatest, impetus for most of these women's sigheh contracts. Id. at 149–50.} This may be a valid concern given the limited employment and educational opportunities for women under the current Iranian regime. \footnote{151}{See supra note 77.}

Furthermore, theologians believe that "reintroducing [mut'a] to the society [is] the appropriate Islamic response to resolving human (read 'men's') needs for multiple sexual partners." \footnote{152}{HAERI, supra note 6, at 8 (citation omitted).} Allowing men to contract into multiple marriages presumably enables them to indulge in their sexual desires, which many believe are uncontrollable and...
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Also, under the current regime, the poor economic situation places a heavy burden on young individuals who wish to marry and start a family. Temporary marriages therefore provide "a very timely and modern means for satisfying youth's sexual needs without preventing them from pursuing their educational and professional objectives." The current regime is also promoting the practice of temporary marriage because the Iran-Iraq war left many widows in Iran. As noted earlier in Part III, women, especially if they are single, are considered to be sexual temptresses. As such, they could cause men, whose sexual appetites are considered uncontrollable, to engage in extramarital affairs. In order to prevent these occurrences, the current regime advocates that these women be allowed to engage in temporary marriages.

B. Advantages of Mut'a: Preservation of the Family and Social Harmony

The current Islamic regime promotes mut'a and some individuals engage in it because they believe that temporary marriages preserve the

153. See supra note 63.
154. Haeri, supra note 6, at 8 (citation omitted). See also Motaheri, supra note 7, at 58–60. Azari explains Ayatollah Motaheri's views:

[He] proposes the temporary marriage as a complement to permanent marriage in an age when he maintains that 'the gap between natural puberty and social puberty, or the ability to start a family, has widened.' He acknowledges the sexual drives of a young person as having great significance in their lives, and the fact that those young people who plan to build a career are not prepared to take on the responsibilities of marriage till long after their sexual awakening. He subsequently proposes that rather than expect the young to enter a period of celibacy or indulge in free sexual unions — which he calls 'sexual communism' — we should encourage them to enter into temporary marriages.

Azari, supra note 32, at 18. See also Mahdavi, supra note 13, at 264.
155. A Western journalist remarks that

[the two main reasons for the government campaign to secure respectability for sigheh are the Iran-Iraq war of 1980–88 and Iran’s economic crisis. The war widened hundreds of thousands of Iranian women. They were shunned as potential wives in permanent marriages, and yet were not able to have sex legally. Economic crisis means that marriage is beyond the means of huge numbers of young, jobless Iranians facing dire frustration because of the punishments laid down for sexual relations outside marriage.

Christopher Walker, A Marriage of Pleasure, TIMES (LONDON), Apr. 27, 1992, at 4. The Islamic regime's promotion of temporary marriages has been criticized by Iranians themselves: An article in Kayhan Havai criticized President Rafsanjani's speech promoting the institution, "saying they could 'justify purely pleasure-seeking acts' and the president should make permanent marriages easier rather than advocate short-term ones." Anti-vice March in Tehran After Rafsanjani's Call on Sex, The Reuter Library Report, Dec. 7, 1990, available in LEXIS, Nexis Library, Reuters File.
family and therefore contribute to social harmony. This Section illustrates the rationale behind this belief.

Islam, like most other religions, considers the family a very important institution, and its protection is critical to the preservation of social stability. The protection of the family is also an important goal of the current Islamic regime in Iran. Article 11 of the Constitution of the Islamic Republic states: "Since the family is the fundamental unit of Islamic society, all pertinent laws, regulations, and programs must tend to facilitate the foundation of a family and to protect the sanctity and stability of family relations on the basis of the law and the ethics of Islam."  

Islam perceives sexuality as "absolute because it is anchored in nature, it is instinctual, unchanging, and inescapable." As such, sexuality threatens the family and therefore society: Uncontrolled and unchecked sexual urges could lead individuals to engage in extramarital and premarital affairs that would threaten the stability of the family. Because of this threat, in Islam both extramarital and premarital sexual relations are strictly forbidden, and individuals engaging in such acts are punished: "The term zina denotes the illegal sexual act which could be fornication, adultery, incest or rape. . . . In the Koran it is stated that zina should be punished by flogging — a hundred lashes for both the man and the woman." Under the present Islamic fundamentalist regime, "[S]toning, flogging, crucifixion and amputation are among the legal punishments in Iran for people who indulge in sexual intercourse outside marriage[.]"

The goal of Islam in preventing extramarital sexual relations,
however, does not include endorsing celibacy. In fact,

Celibacy . . . is considered evil and unnatural. . . . [Islam’s] objective is to minimize human suffering and to satisfy not just the yearnings of the spirit but also the burnings of the flesh. Acknowledging the pleasures of the flesh, the Shi’i ulama simultaneously view it as dangerous and disturbing to the social order[, and believe that] it must be legally contained and morally guided.

In order to prevent the occurrence of extramarital relations in Iran, there is strict sexual segregation of males and females. This is enforced by excluding women physically or veiling them.
Khatib-Chahidi illustrates with examples the present situation in Iran:

Men and women in each other's company outside the home can be stopped by Revolutionary Guards and questioned as to their relationship. In one case the man and woman were first cousins but this did not prevent their being taken before the nearest komiteh to have their relationship further investigated. The headmistress of a bilingual English-Persian school in Tehran was heavily censored for not segregating the three-to-five-year-olds in the kindergarten class and was given a long lecture on the immorality of the West where co-educational schools were permitted which, according to the school inspector, encouraged such vices as homosexuality.164

Islam requires sexual segregation because it views human sexuality as dangerous to the social order, if not contained within an acceptable framework. The only men and women who are allowed to mutually interact are those already married to each other or "those between whom marriage is forbidden: they are said to be mahram to each other."165 The term mahram refers to a relationship between individuals who are linked by blood, marriage, or sexual ties.166 Initially, therefore, by limiting the constructed so as to subjugate the woman's power and neutralize its disruptive effects.

Azari, supra note 32, at 94–95. Zolan further illustrates the fundamentalists' fear of the societal effects of unrestrained female sexuality:

[W]omen are seen as being temptresses, and ... men are seen as possessing extremely weak wills, thereby being incapable of resisting the temptation created by women. It logically follows from these views that women present a threat to the smooth functioning of society and therefore it would be better if they were kept out of men's sights and in the seclusion of their homes.

Zolan, supra note 32, at 186. See also supra notes 77–78.

164. Khatib-Chahidi, supra note 2, at 132.

165. Id. at 114. See supra note 110 for text of Qur’an containing this prohibition. Haeri states that, "Islamic law conceives of gender relationships within the two categories of lawful, mahram, and unlawful, namahram. Men and women must not associate freely with each other unless their relationship is prescribed either by blood or by marriage." Haeri, supra note 6, at 76.

166. The Persian term namahram literally denotes any person of the opposite sex whose kinship does not represent an impediment for marriage. ... For the devout Moslem any sharing of space with na-mahram persons is to be avoided as it could lead to illegal sexual intercourse outside the bonds of marriage, which is forbidden to all Moslems.

Khatib-Chahidi, supra note 2, at 114. There are four categories of mahram persons: (1) Blood relatives, which includes "a man or woman and their ascendants or descendants in the same line, their full or half-brothers and sisters, and their maternal and paternal aunts and uncles of whatever generation.;" (2) milk relatives, which incur "the same rules as for blood relatives" and refer to such situations "where a woman suckles another's child.;" (3) relatives by marriage; and (4) relationships arising from illegitimate sexual relationships, where "the same prohibition as for blood relatives applies in the case of illegitimate sexual unions which result in the birth of illegitimate offspring." Id. at 116–17.
physical comingling of the sexes by segregation, sexual urges are supposedly suppressed.

In order both to accommodate the sexual urges of human beings and to maintain the moral fabric of the social order, the ulama (or clergy) offer as a solution the institution of temporary marriages as "alternative legal frameworks for making such associations easily attainable." Temporary marriage contracts, because the law recognizes them as legal, enable individuals to become mahram to each other, and therefore they are able to be in each other's company without the necessity of veiling. They can also legally engage in sexual intercourse, if they so choose. A modern Iranian scholar justifies this rationale:

Considering the fact that permanent marriage does not satisfy the instinctive sexual urge of certain men and that adultery and fornication are according to Islam among the most deadly poisons, destroying the order and purity of human life, Islam has legitimized temporary marriage under special conditions of which it becomes distinct from adultery and fornication and free of their evils and corruption.

As such, the institution of *mut'a* represents a mechanism by which the clergy seek legally to control sexual relationships between individuals, while preserving morality and preventing corruption. For individuals, "[t]he purpose of this form of *sigheh* 'marriage' is to remove the legal distance between a man and a woman by creating a fictive 'marital relation' . . . enabl[ing] the sexes to circumvent the law, to cross the forbidden boundaries of sexual segregation legitimately, and to interact more freely."

Despite the fact that the institution of sexual *mut'a* is criticized by both secular and devout Muslims as legalizing prostitution, it is argued that "*[t]he devout Moslem . . . is likely to make good use of the institution in its strictly nominal form to facilitate the sharing of space with *na-mahram* persons inside and outside the home in a legal manner." That is, the *mut'a* contract can be used fictively in order for devout Moslems to overcome the barriers to male-female interaction

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167. Haeri, *supra* note 6, at 5. The endorsement of temporary marriages is a recognition of "the nature of human sexuality." *Id.* at 65. *But see* Vieille, *supra* note 1, at 467 (noting that "[i]t is worth insisting here on a major contradiction of fact: this society that gives so much value to sexual activity is sexually unhappy.").


169. Rafsanjani reasons that "*[t]he struggle is that we must open the way, in a correct, orderly and legal way, so that the natural desires of our young are satisfied." *Rafsanjani Speech, supra* note 160.

170. Haeri, *supra* note 6, at 89.

imposed by the _mahram-namahram_ distinction. In these fictive cases, sexual consummation of the marriage contract is not intended.\textsuperscript{172} For example, even individuals such as servants are considered _namahram_ with respect to the household members they serve; this can prove extremely problematic because being _namahram_ means that the female servants must be secluded or veiled from individuals in the household of the opposite sex, which interferes with the efficient performance of their chores. Therefore, individuals form temporary marriage contracts between the servant and a younger member of the household; this changes the relationship of the servant to the other members of the household to _mahram_, because the servant is now linked by marriage to an individual who is linked by blood to other members of the household.\textsuperscript{173} The practice thus allows the female servant to circumvent the rules requiring veiling and seclusion from male household members.

Additionally, nonsexual temporary marriage contracts can be arranged by parents of men and women who are dating or who are engaged to be married.\textsuperscript{174} Arranging the contract for dating couples enables them to see each other legally. Where couples are engaged,

whereas most 'westernized' Iranian parents would consider the engagement (_namzad_) as sufficient proof of the boy's serious intentions and allow the couple to see each other alone, some religious parents insist either that they must conclude the permanent marriage contract (_aqd_) before they can enjoy this freedom, or arrange a temporary contract between them until the permanent one takes place.\textsuperscript{175}

The temporary marriage contract, therefore, provides a legal framework for individuals to overcome the barriers to male-female socialization. By legalizing the relationship in contractual form, the clergy are able to control these relationships in a legal framework. At the same time, the social problems that uncontrolled sexuality could cause, such as the disruption of the family, are supposedly held in check by legitimizing extramarital sexual relations. Yet, despite these perceived benefits, Iranians do not generally engage in temporary

\textsuperscript{172} Id. at 130.
\textsuperscript{173} Id. at 127. See also _Khaleghi_, supra note 7, at 312.
\textsuperscript{174} Institution, _supra_ note 121, at 236 ("A condition unique to _mut'a_ marriage is the possibility of agreement for nonsexual coexistence; the temporary spouses may agree to enjoy each other's company in many other ways without having sexual intercourse."). Khomeini sanctions the possibility of contracting into nonsexual temporary marriage. He states that the husband may then only enjoy the woman in other ways, unless she later consents to sexual intercourse. _Khomeini_, _supra_ note 85.
\textsuperscript{175} Khatib-Chahidi, _supra_ note 2, at 128–29.
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marriages. The disadvantages of mut'a, explained in the next Section, provide the reasons for the Iranian people's general repudiation of the institution.

C. Disadvantages of Mut'a

This Section illustrates the disadvantages of the institution of temporary marriages. These characteristics have resulted in the practice's rejection by the bulk of the Iranian population. First, the Section examines the problems with the form of the institution. Second, the Note illustrates how certain characteristics of the temporary marriage, which tend to disadvantage women, have led to its lower status in comparison to the permanent marriage alternative.

1. Ambiguity of the Institution

One of the most important purposes of laws and legal institutions is to provide a formal framework for individuals that yield a measure of certainty. Certainty in law is necessary because it enables individuals to gear their activities and expectations towards those laws and institutions. One of the fundamental problems with mut'a is that its lack of formal obligations renders it uncertain as a legal institution designed to govern relationships:

...Although there is a legal framework for temporary marriage—and this is emphasized by the ulama—legal loopholes and stratagems also abound. That the contract is private, requiring no witnesses or registration (despite efforts to change this), that men can leave their temporary wives any time they want to, and that legally men can deny their children without being put through an oath-taking procedure (required in a contract of permanent marriage), all are evidence of the ambiguity of the law and its blurred boundaries.176

For example, if two individuals contracted into a temporary marriage without a witness and without a proper registration, either individual could deny its existence at any time. Such a denial could prove problematic if the temporary marriage union produces a child because the father can avoid paying for the child's maintenance by simply denying that the marriage ever existed. Without witnesses and formal registration, the temporary wife could never prove that there was ever such a union in a court, and therefore, the child would be denied both legitimacy and economic maintenance.177

176. HAERI, supra note 6, at 202.
177. Haeri states that "[c]hildren seem to have been the real victims of unregistered temporary marriages. Legally, the children of a temporary marriage have the same status as
Because a *mut'a* contract can be formed by a simple oral agreement, uncertainty of contract terms often arises. If a dispute arises, the terms of the contract could be difficult to prove in a court. Therefore, by allowing oral *mut'a* contracts, the legal framework disfavors individuals who are not aware that these contract terms will probably not be enforceable.

The uncertainty and ambiguity that inheres in temporary marriage contracts is undoubtedly a significant reason for Iranians' weariness of the institution. In contrast, the permanent marriage "contract is endowed with greater legal rigor and rigidity of form and fewer structural loopholes than is the case with *mut'a* marriage. The reciprocal rights and obligations of the spouses are more extensive and enduring." These advantages make the permanent contract one that is more desirable than the temporary contract, which contains few guarantees. While,

[p]ermanent marriage bestows social prestige on the spouses, particularly the woman[,] . . . the looseness of the temporary marriage and the ambiguities inherent in it provide margins for alternative interpretations of behavior, greater manipulation of the institution, and improvisations of the content . . . . By the same token, although the institution of temporary marriage theoretically confers greater autonomy and decision-making power on women, at the same time it leaves them vulnerable to the stigmatization, personal ambivalence, and local gossip.

2. Disadvantages of *Mut'a* for Women

A second problem with temporary marriage is that it accords even fewer rights to women than those available under permanent marriage, thus outweighing any advantages which might be gained by women from the institution.

A variety of factors indicate that temporary marriages increase the autonomy and independence of women, both at the contracting stage and also within the marriage itself. At the contracting stage, women actively initiate and negotiate the terms of the contract, while in the

the children of a permanent marriage. Under the provisions of the new laws, however, the children of an unregistered temporary marriage have an illegitimate status." *Women, supra* note 163, at 228. The problem of unregistered temporary marriages contradicts one of the institution's objectives, to provide legitimacy for children born outside a permanent marriage.

178. *Haeri, supra* note 6, at 66.
179. *Id.*
180. For example, "[w]omen often take the initiative and negotiate the terms of the marriage contract themselves. . . . [S]igneh women are active subjects in control of the object of exchange (their sexuality), negotiating the terms of its exchange personally." *Id.* at 81.
permanent marriage these functions are usually reserved for the bride’s family and ultimately her father. Also, the temporary marriage gives women more autonomy. For example, in a temporary marriage, the temporary wife’s “degree of [] obedience is limited and is not as complete as that of a permanent wife; . . . She has greater freedom and personal autonomy to establish relationships,” and “[s]he may exercise her will as long as her activities do not interfere with her husband’s rights[.]”181 In addition, because the temporary wife does not have to live with her temporary husband, the woman is able to “preserve an independent household but have an extra income.”182

The independence which temporary marriages bestow on women is outweighed by characteristics of the marriage that disadvantage women and preserve the inequality between the sexes in Iran. These characteristics are evident when analyzing mut’a both at the theoretical and practical levels.

Theoretically, although women experience a greater level of autonomy in the temporary marriage, the institution was not initiated in order to achieve this result. The woman in the temporary marriage is specifically referred to as the object of a lease.183 Furthermore, the need to gratify men’s uncontrollable and unlimited sexual desires is the primary rationale for the institution of mut’a. Shi’a theologians believe that women contract into these unions primarily because of the financial compensation which women receive.184 Women’s sexual desires are not given serious consideration. Commentators believe that the Shi’a Islamic theologians are ambivalent to and misunderstand female sexuality. A female Iranian anthropologist states that “Shi’i law appears to be negating female sexuality by placing emphasis on reproduction in permanent marriage or financial compensation in temporary marriage.”185

A man’s legal right to have an unlimited number of temporary marriages simultaneously reflects mut’a’s primary purpose of meeting male sexual needs. In contrast, women may only contract into one temporary marriage at a time and must wait a certain period of time

181.  Id. at 59. Khomeini states that the temporary wife may leave her house without first seeking her husband’s permission. KHOMEINI, supra note 85, matter 2435, at 420.
183.  See supra note 120–21 and accompanying text.
184.  Haeri confirms this analysis: “In the ulama’s view, men’s prime motivation is sexual satisfaction. . . . Regarding women’s motivation, however, they have been ambivalent, never being certain of exactly what it is that a woman wants. Nonetheless, they have consistently and uniformly maintained that women’s motivation ought to be financial reimbursement.” HAERI, supra note 6, at 106–07.
185.  Id. at 72.
before remarrying. The rationale which theologians have traditionally advanced in support of the waiting period is the assurance of the legitimacy of children resulting from such unions; this reasoning, however, appears outdated, in light of present scientific advances such as DNA testing, which can be used to determine the parentage of children. Hence, the traditional rationale which supports limiting women to one temporary husband is no longer valid. However, because women are still limited in this manner, it is clear that the institution of mut'a creates disparate rights between men and women.

At the practical levels, mut'a disadvantages women, particularly when it is compared with permanent marriages. The temporary marriage grants women fewer rights and benefits than its permanent counterpart. The woman in a temporary union can claim neither inheritance rights nor maintenance rights, and she cannot institute divorce proceedings against her temporary husband. Further, Iranian Islamic society favors permanent marriages and reveres women in their role as mothers. Because mut'a is limited in duration, Iranians do not accord temporary wives with the same level of prestige as women who enter into permanent marriages.

These detrimental characteristics of temporary unions may explain why only a few women engage in such arrangements; most of these women are widows or divorcées of lower economic status. Therefore, despite any increased autonomy women may obtain through such arrangements, they are contracting into a marriage which their society does not respect. Finally, the institution’s rules fundamentally disadvantage women by granting them even fewer rights than those given to women in permanent marriages.

V. CONCLUSION

The legality of temporary marriages in Iran may seem incredible to a Western observer. However, Iranian historical and traditional
developments, in conjunction with the Iranian view of women’s role in society, explain the existence of the institution. Part V illustrated that the temporary marriage serves as a fundamental tool in the current regime’s efforts in controlling individuals’ behavior in a manner that is consistent with Islamic precepts. In order to reconcile the goals of supressing extramarital sexual relations and maintaining sexual segregation with the clashing inevitability of human sexual desires, the Iranian clergy promotes temporary marriages as a viable solution. Men contracting into these relationships can satisfy their sexual needs legally; children resulting from such unions are legitimized; and the sacred institution of the family is protected. Therefore, the institution represents just one of the pragmatic solutions that Shi’a theologians have found in order to address social problems in a manner that is consistent with the fundamentalist Shi’a view of morality. This “solution” is consistent with the manner in which the Iranian regime’s policies permeate people’s lives, and it is also congruent with the role of the shari’a as an ever-present code of legal jurisprudence which penetrates every area of Iranian people’s decisionmaking.

Furthermore, the characteristics of mut’a correspond with traditional Shi’a Iranian views towards women. The institution is a design which helps satisfy men’s sexual desires but fails to recognize the women’s needs and desires. The institution fundamentally disadvantages women, a characteristic which is consistent with Islam’s traditional treatment of women in Iran.

This Note suggests that two factors have prevented the general acceptance of the temporary marriage in Iran. First, the institution lacks legal rigor, a deficiency which causes uncertainty, deterring women from entering such arrangements. For any legal institution to gain acceptance and legitimacy, its characteristics must exhibit some degree of certainty and clarity. Second, the institution of temporary marriage gives women even fewer rights and a lower status than its permanent marriage counterpart. The temporary marriage’s limited duration precludes women from securing a permanent position in Iran’s most revered social institution, the family.

Nevertheless, the Iranian government may still find it possible to successfully promote the use of temporary marriages. Initially, the regime must increase the legal rigor of mut’a by perhaps requiring witnessed written agreements. Also, women must be given a greater incentive to enter into such unions. The rules of the temporary marriage must thus be modified in order to strengthen women’s rights vis-à-vis their permanent wife counterparts. Finally, the government must engage
in a more rigorous public relations campaign which promotes the institution. However, because the present structure of the temporary marriage is well entrenched, any such changes are unlikely. Iranian society is thus not likely to realize the purported benefits of temporary marriages without first altering the institution.