1 INTRODUCTION

The emergence of the Pahlavi dynasty in 1925 marks the beginning of modern Iranian legal history. In Reza Shah’s reign (1925 to 1941) important reception of foreign, mostly French laws took place. His son Mohammad Reza Shah succeeded him in 1941 and ruled until 1979. Both reigns were characterised by political despotism and dictatorship, but as far as legal reforms were concerned a secular and progressive line was pursued. In 1979 the Iranian revolution changed this direction. The 2,500-year-old monarchy was overthrown in favour of an Islamic Republic. Since then Iran’s legal system is being islamised with all laws subordinated to their compatibility with Islamic Principles, as inscribed in Principle 4 of the Constitution. The political changes of the last century have left their imprints on almost all aspects of the Iranian civil law, including the family laws. I shall examine the provisions of family

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

law as enacted in the Civil Code and the bylaws and their amendments in the past and in the present and give an account of the family law cases dealt with at the Tehran family law Court.

2 HISTORICAL OVERVIEW

2.1 Reza Shah’s reign 1925-1941

In 1925 Reza Shah was crowned king. Two of the most striking features of his reign were his will to build a strong, central power in order to modernise and control the country and his endeavour to eliminate the political influence of the Shi’a clerical establishment. Reza Shah had accepted the principle of secularisation and pursued this path with fervour. He had the clerical waqf or religious foundations confiscated, with the consequent loss of wealth, power and independence of the clergy. These endowments were transferred to the reorganised Ministry of Education, and the clerics who were retained in the administration of the waqf became state functionaries.³ Reza Shah was not contemptuous or hostile to religion as such; but he was opposed to it in so far as the religious blocked modernisation and were in a position to compromise the whole movement if not curtailed in power.⁴

Secularisation expressed itself in a number of norms. In 1927 a Code on the Organisation of the Judiciary and one on the Principles of Civil Procedure were enacted, introducing a state court system with civil servants as judges. In 1928 a Commission consisting of Iranian lawyers trained in Europe and of Shi’a clerics and theologians designed the first part of the Iranian Civil Code, qanun-e madani, enacted the same year.

In 1931 official surnames were introduced. This law paved the way for the Law of the Registration of Lands and Documents, qanun sabt asnâd wa amwal, putting an end to a chronic confusion of land tenure and innumerable contentions.⁵

In 1931 the Act on Marriage, qanun rage be ezdevag (Marriage Act), was implemented.⁶ The Act was the first step towards greater state control in matters of personal status. It introduced official offices for marriage and divorce, where all matters of personal status had to be registered. The non-registration of those matters meant that the marriage or the divorce, although religiously valid, had no state recognition. Sanctions, such as a financial penalty or arrest, are imposed.⁷ The clerics were still empowered to conclude the marriage, but without the registration in the official offices, the state would not recognise the marriage.

³ Young, T., “The problem of Westernization in Modern Iran”, the Middle East Journal, 2 January 1948, p. 54 (47-59).
⁴ Young, p. 54.
⁶ 15 August 1931.
⁷ Art. 1 ll. Marriage Act.