

Sex as a Weapon of Political Ideology:
Politicization of Sexuality within the Post Revolution Iranian Legal System

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Abstract

The legislative framework of the Islamic Republic of Iran includes specific components that are noteworthy when it comes to sexualizing politics or politicizing sex. I tried to identify the strategies and tools the Islamic Republic has been employing in its legal discourse to ideologize sexual conduct. By using discourse analysis methods and the insightful literature of radical feminists and poststructuralists on sex and power relations, I attempted to read legal texts in the Islamic Republic of Iran. Contrary to common assumption, denial of sex is not the primary strategy that the Islamic Republic of Iran has employed in order to deal with sexuality. The legal framework with all its specific equipment has contributed to advancing the version of sexual activity in terms of Islamic ideology. According to the status of sexuality in the primitive, yet ideal, early Islamic civilization, the ambition of transforming contemporary reality into that utopia places a huge load on sexuality. Establishing economic patterns on the wife and husband's sexual relations, advancing an Islamicized version of prostitution through the institution of temporary marriage, and reducing sex to patriarchal penetration are other positive policies of the Islamic Republic government toward sex; however, since ideology cannot embrace the chaotic variety of reality, negative policies should continue the politicization of sex within the Islamic Republic. It turns out adultery, sodomy, and other kinds of free sexual encounters posed great threats to the integrity of the Islamic Republic of Iran and even Almighty God. Criminal and violent mechanisms in the legal system abolished non-ideologized sex. All these negative policies are meant to preserve the sacred side of sex, the family, and the Islamicized sex in it.

Declaration

I hereby declare that this thesis is the result of original research; it contains no materials accepted for any other degree in any other institution and no materials previously written and/or published by another person, except where appropriate acknowledgment is made in the form of bibliographical reference.

I further declare that the following word counts for this thesis are accurate:

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X

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(name typed)

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And

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she was taken to be executed.

She made confession four times ...

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Introduction

The intersection of sex and politics in the Islamic Republic of Iran has undiscovered aspects that merit investigation. Politicizing sex or sexualizing politics in this system seems to contain complex and conflicting elements, which might lead to new directions in this area of study. My objective in this thesis is to explore the legal aspects of this subject. The Islamic Republic of Iran's perspective on gender and sex is very different from traditional viewpoints that may be found in some theocracies and even right-wing totalitarian regimes.

It first appears as though the Islamic Republic of Iran is pushing the approach of eradicating sexuality from every aspect of society and has assumed that sex does not exist. But a closer examination would reveal new way of dealing sexuality in this system. There are several examples from the structure of this system that might be used to demonstrate that sexuality has not been eradicated. The legal system governing families is one of the earliest indicators. It appears that the couple's relationship is being portrayed and imposed in a unique context by this legal framework. The core of this organization is the exchange of money and sexual favors, and another red flag is the institution of temporary unions, which has served as a prostitution institution and is strongly supported by the government. These facts, together with the Islamic Republic of Iran's suppression of some sexual behaviors like male homosexuality, convinced me that the government had a dual policy on sexuality that is incompatible with theocratic heritage. One conclusion that may be reached is that, under this system, sexuality is not something that is private; it is connected to politics both negatively and positively. And it is acting in both instances in a political and ideological capacity.

The political aspect of sexuality is a widely accepted belief, not anything unique to this system. However, it is important to note that the methods this system employs to politicize sex are specific to its characteristics. And I'm looking for these strategies in legal discourse and the political role of its components, like Islamic marriages, in the development of an ideological framework.

The outcome of the fusion of modernity and traditional aspects is the Islamization of sexuality. Ideological readings of Islam, which are only possible in the context of modernity, have paradoxical effects due to their intrinsic traditional components. And one of these bizarre outcomes was bipolar sex, which divided sex between sinful and sacred types. I'll categorize the ways that sexuality is politicized in the Islamic Republic of Iran into two categories based

on this entry promoting specific sex discourses that exercise positive control over sexuality and restricting other forms of sex that do the opposite. The Arentian definition of ideology may be used to understand the ideological character of this bipolarity. Ideology in this sense has elements that are totalitarian. It limits reality to its central idea and, as a result, defines every aspect of the world in terms of this core logic. And because of this, it is unable to accept anything that is contrary to their core element. (Farzankia, 2015: 15-16)

This thesis is divided into four chapters. The literature review will be covered in the first chapter. I aim to create a theoretical framework in this chapter to provide me the foundation I need to examine legal documents. Six concepts drawn from pertinent sources are used. The first is the link between sex and power relations. This has roots in Foucault and radical feminist theorists. The second idea is the exchange of women as a principle of sexualized politics, and Andrea Dworkin discusses the third concept, institutionalized penetration, which has a fundamental aspect of power relations. In the second section of this chapter, I will discuss native literature on sexuality and power within Islam and Iran. I have come up with two concepts: first, the sexual discourse in Islam; second, the Islamic republic and social and political aspects of gender and sex.

This part would be followed by my methodology section. In the first stage, I'll detail how I approached this issue using discourse analysis techniques, and in the second, I'll go into how I gathered my data.

All legal texts that discuss sexual behavior are covered in the second chapter of the thesis. Sexuality may cover a wide variety of topics, such as the right to reproduce and the hijab, but because of my main objective, I have focused on sexual activity. This chapter is broken into two sections: the first covers legal documents in a historical context leading up to the Islamic revolution and the second covers legal texts enacted after the revolution. I used a number of laws in both parts to determine what happened to sex in these eras. Although we cannot reduce the legal system to laws, I had little alternative due to the limited access to judicial records.

My research questions will be answered in the final two chapters. First, I structured this chapter into four sections to discuss the positive regulation of sex and how the Islamic Republic of Iran is advancing sex discourse on an ideological level. Sex is being Islamized in an effort to rebuild an Islamic society. The other three processes of Islamicized sex are the

exchange of sex for money in Islamic marriages, the operation of prostitution and sex businesses through temporary unions, and the significance of penetration as the exclusive definition of sex, which come in the other sections of this chapter.

The prevention of sex has two components, which will be discussed in the last chapter. The first is the condemnation of all acts of sinful sex, and the second is the justification for the criminalization—the infringement on God's rights. Following is the first chapter on literature reviews.

Chapter 1: Theoretical Framework and Methodology

For a long time throughout history, sex and sexuality were regarded as innate instincts. Despite the stigma that still surrounds it, various attempts were made to find out what sex is. Fields of biology, sexology, anthropology, and psychoanalysis, based on their components, tried to explain this phenomenon. What was common to all these efforts, in all these disciplines, was that sex is a truly natural impulse, and if it may have societal ramifications, it would be based on this naturalness. As a result, its repercussions are inevitable. This essentialist viewpoint has undergone a revolution. (Weeks, 2012: 4)

Different thinkers and theorists, including feminist scholars, have posited the notion that sex and sexuality can be understood as social constructs. In the words of Foucault, sexuality is a historical apparatus. (Foucault, 1979: 152) Sexuality is not an instinct, or at the very least, it cannot be exclusively attributed to innate drives. The concept of sexual activity, as understood in contemporary society, is not inherently or universally mandate of human being's nature. Its current manifestation is the result of historical developments, and alternative possibilities exist. In addition to having the power to influence society, social relationships and requirements have shaped sexuality. Consequently, the matter at hand cannot be seen as a purely personal one either. There are several ways to interpret the phrase "this is not personal." Given my topic, the literature review should begin at this point. In the following sections by reviewing the literature on this topic first I am going to design the suitable framework to advance my discussion. And after that I am going to explain my methodology throughout this thesis.

1.1 Theoretical Framework

As it has been said in that brief entry, when discussing sex and politics, there must be some sort of interplay between the two subjects. Sex in this sense cannot be considered a natural phenomenon; rather, it has evolved in response to political and social events, has taken on the forms we are familiar with. On the other hand, sexuality plays an important part in the connections that humans have with one another at all levels, beginning with the most fundamental level to the most advanced level in the process of political planning. I'm going to categorize the literature on this topic into two big sections. First section is concerned with

western literature which has pioneer role in this regard and the second would discuss the native literature on sexuality and politics within Iran and Islam. Both sections have subsection. I extracted the key concept I'll utilize to analyze my data. The second section regarding Islamic and Iranian texts I will examine the sexual discourse in Islam and Iran.

1.1.1 Western Literature on sexuality and power

There is a remarkable amount of literature on this topic among Western experts, but I have to design a theoretical framework, so I chose among these sources. The first part is the sources and theories that support the notion that sex is political will be covered first, followed by an examination of the theory that kinship acts as a sexualized political institution in a society and is the source of gender formation. The third section is focused on the importance of penetration, which is a crucial aspect of political sexuality in patriarchy.

1.1.1.1 Sex is imbued with Power Relations

There is a remarkable amount of writing that addresses the idea that sexuality is political. Feminist thinkers appear to take precedence in relation to this subject when compared to other theorists. One of the forerunners who focused on sexuality was the radical feminist thinkers of the 1960s and 1970s. They held the opinion that the intimate, and particularly sexual, relationships, should be looked at as a possible source of women's oppression. Kate Millet in her famous work *sexual politics* theorized patriarchy and proposes new definition of politics.

According to Kate Millet,

“Coitus can scarcely be said to take place in a vacuum although of itself it appears a biological and physical activity it is said so deeply within the larger context of human affairs that it serves as a charged microcosm of the variety of attitudes and values to which culture subscribes. Among other things, it may serve as a model of sexual politics on an individual or personal plane.” (Millet,1969: 23)

She believes this notion deeply depends on the way we define politics. She is of opinion that political theory can be reformulated to include all forms of power relations, including less conventional than of sexual ones. Millet explains in detail the power relation elements domination and submission which are characteristics of the interaction between men and women have been planted in gender and sex constructs. Passivity, docility, ignorance ineffectuality are females' personality components and aggression, intelligence, force, efficacy and agency are males' ones. sex roles like domestic service and attendance upon infant are as specific to women and the rest of human achievement are men's. She believes that all these constructed elements have received both sexes consent through socialization. Based on Millet's attitude biology has a little to do in this process. Based on these characteristics we can identify power relations even in feminine and masculine personalities. According to her, power disparity between the sexes has existed throughout history and because power is the fundamental core of politics, this relationship is a question of politics. (Millet: 24.). By this novel conceptualization, politics permeates various forms of human interaction and is not limited to political structures and their policies but is applicable to all discrimination categories.

Based on these premises, Millet, and many other radical feminists, draws the logical inference that the core of the power structure and patriarchy is the institution of the family, where intimate relationships between the sexes occur. (Bryson, 2003:175-176) Millet believes that family, as a chief institution of patriarchy, mirroring the patriarchy at the largest scale and mediating between individual and large society. She believes that conformity and adjustment of members of patriarchal society members can be achieved through patriarchal family. This institution can prepare people for the patriarchal state. Contrary to what has been acknowledged in the western political thought, this institution is not a natural unit bound by romantic love and respect, where the members' innate emotional and sexual needs are met. This is a socially organized institution that is the source of women's submission, and patriarchal dominance in the public sphere finds its origins here. Patriarchal state can rule its citizens and govern them through the family heads in such a society women should be ruled through family, and they do not have any formal relation to the state. Millet asserts that the existence of family and larger society depends on each other the state society and the family are interrelated. The family as a central part of patriarchal power sustains dominance in public sphere, and, in turn, political power is exercised through it. All patterns of power relations in public life can be traced back personal issues. She believes that Catholicism Judaism and even modern democracy they all are patriarchal with different appearances. It asserts that politics

and power are not limited to the government and the state, but it appears that the political organization in the classic sense is the ultimate target. For example in federalism the relationship between ruler and subject is parallel to that of father and children. Describes their components of patriarchal family and the rights of father over his wife or wives or children. This right includes physical abuse, murder and sale. In patriarchal system kinship is like property and it is acknowledged only by association with the male line. The strongest evidence for this notion is the Western liberal state's interfering with families through so-called family policies, such as measures of birth control or conditions of women's access to employment. (Millet: 40-48)

The connection between the private domain, the household, and the public one has several dimensions. This idea can be examined from various angles. Millet argues that socialization occurs within the family. A child's earliest exposure to gendered relations of power occurs in the family. Most of sexual stereotypes are internalized through one's upbringing and interactions within the family. (Millet: 33) A further manifestation of this intertwined link can be seen in the restrictions that have been imposed on women and prohibit them from taking part in society. As a result of the fact that women's principal responsibilities are organized to include taking care of men and children, they are not suited for pursuing careers in fields such as politics, warfare, and so on. A view that political dominance stems from sexual domination¹ is another thought which has been extracted from the connection between sex and politics. Political hierarchy is accompanied by familial hierarchy, which reflects the hierarchical structure of families in politics.

Furthering the understanding of its political aspect, sexuality has sparked intense discussion about the connection between the type of government and gender question, the political wings and the gender question. Feminist theory and practice have been drastically altered by the political aspect of sexuality, questioning the conventional theory of politics. One major change is concerned with the division between the public and private spheres of life, which is the cornerstone of western political philosophy. And radical feminists by arguing the political nature of sex they managed to challenge the western political mindset. Carole Pateman in another remarkable work targets this division and by discussing the famous theory of social contract concludes that this political pact was sexual one in reality but it is missing from the first story.

¹ . See "Deepening darkness: patriarchy, resistance and democracy future" by Carole Gilligan and David Richards.

Social contract is the famous political theory has tried to describe and analyze democratic political society. The political philosophers in Enlightenment era, proposed a famous theory named, social contract theory, lay grounds for state's authority and its binding power towards the members of political society. Based on these theorists, a new form of political right and a new form of civil society is created through an original contract because the only thing can justify and legitimize the government over free and equal human, but another human is through agreement and contract. There are different versions of this theory. The most famous interpretation is in the state of nature, human was free but because of the insecurities of this state they traded it with protection of a civil state, although they have lost the natural freedom, but, in exchange, they have received civil freedom which has been protected by a state. In the case of entering other contracts like marriage or employment, they replicate this attitude. Another interpretation is brothers were under the father's dominance to receive their freedom and equality they overthrew the father's dominance and gained freedom as a winner's prize. After this victory as an equal people replaced it with a civil government. These theorists believe that this contract is social pact and legitimize the government and civil freedom. It sounds perfectly convincing for legitimacy of the civil government, if we treat our society as if it had generated in a contract. But Pateman argues that the existence of civil society is not only preceded but also based on the private sphere which is operating through natural and not social rules. (Pateman, 1988: 39-41)

All social contract theorists presupposed the natural structure of the family. Brothers constituted the civil state and civil society through a contract, but the family sphere remained in a natural state and the freedom and equality which has been guaranteed through this contract are specific to man or brothers. In all classic texts, family is a natural union and women are naturally subjected to their husbands. As a result, despite the universal claim the social contract theory is not about freedom it includes subordination, too. Men are the ones who make the pact. They could not bear the conditions of the state of nature they make a rationale choice to make a deal and give up some part of their freedom to enter the social contract to be saved from the insecurities the natural status and be awarded by civil protection and civil freedom as well. Women could not enter this contract according to all theorists expect Hobbes, they remain in natural realm of family. Because women and men are not the same, they are naturally different. And this theory constitutes the masculinity and femineity. In this sense the individual who is entitled to have all those rights and freedom is not woman because she is naturally subordinated to her husband and does not have property in her own. There are two main components she argues can prove the sexual nature of the original

contract. The perception of natural differentiation between sexes which leads to natural women's subordination to men and the separation between private and public spheres and these two spheres have been constituted based on that natural divisions between men and women. (Pateman, 9_11) Private sphere has become feminine one and the public sphere is masculine one.

Another important point she proposed, and it is the missing part of the original pact is a male sex right which is guaranteed by the civil government. In the interpretation when the sons killed their fathers to free themselves, the motivation behind the murder of the father was not just getting free from his dominance but getting free access to women. Father is who became a father after having sex with a woman and who is the one monopolizes women (mother) and right to have sex with her should be eliminated and sons or now equal brothers is going to win this right alongside their freedom. Social contract with the preposition of the division between public and private sphere and natural submission of women to men can guarantee male right to women. It facilitated the male access to women's body and having sex with them. Pateman believes that all. These sexual aspects, in all interpretations, are missing but the reality is that this "repressed dimension of contract theory" she named it sexual contract is "an integral part of the rational choice of the familiar original agreement." (Pateman, 1) The manifestation of this sexual contract is marriage contract.

Based on these explanations she proposed the new definition of patriarchy which is continuing to existence even after all these theoretical and practical efforts which overthrow the paternal form of patriarchy which had mostly dominated the public sphere. The interpretation of patriarchy by classic theorists does not go beyond the literal meaning it is limited to paternal rule. Pateman proposes a kind of patriarchy which is fraternal. And it has been constituted through the social contract theory. The classic thinkers interpret the patriarchy only as a father's right and just consider it in a public sphere. They were not aware of the fraternal meaning of this term. They argue that the state does not possess the paternal kind of rights over members of political society, but they ignored the same situation about women in private sphere. After leaving the insecure nature state and entering an agreement they became free and equal individual in a civil sense. But women remained in the natural state they lacked capabilities of being free. In other words, after killing the father, brothers gained their freedom and equality, but they constituted fraternal bonds (a kinship type of bond) which required their equality but just masculine type of equality. After overthrown the father, the dominance over women left unchanged. The paternal patriarchy was gone but the

fraternal patriarchy emerged. The social contract theorists missed giving attention to this modern patriarchal nature of civil order which is the origin of political right, and it is not father's right, but it is fraternal. (Pateman, 77 -80 & 110-115) Men created the state, the civil society which is divided from a private domain to guarantee the sex right over women and the state was going to protect this right.

Pateman question the whole idea and argues for a counterpart theory. In her opinion, the private sphere is not politically irrelevant, and these two spheres are related. Even this form of patriarchy has impacted the public sphere. Prostitution and employment contract in capitalism are two public manifestations of patriarchy in civil society. The main points Pateman counts on are the sexual construction of individual and the interdependence of private and public sphere as a constituting component of civil society in social contract theory which has been forgotten and civil society has been reduced to public sphere and considered politically irrelevant. The private sphere has become nonpolitical, but the truth is the differentiation of woman and man is politically established and the essence of this political setting is based on natural difference between man and women. Sex and politics are intertwined, and this division is nonsense.

Based on the social contract theory, in natural state men are born free and equal and but women are not born free. They are naturally subjected to men. They lack attributes and features which constitute the individual. This sexual difference is political one. Men managed to transform the natural freedom to civil freedom which is secured by the civil government through this contract. Through this contract the natural right of men over women changed to a civil form of right and protected by this contractual government. But if women are out of constituting elements of being individual how they can enter the marriage contract. Pateman argues that this sexual/political difference is the foundational element of prominent liberal democracies and despite legal improvements, the exclusion of women from the definition of individual has legal expression and women are deprived from freedom over their body in relation to their male partners. Feminists and socialists who are using these concepts like individual and contract to broaden their scope and include women would be frustrated and further patriarchy causes. These concepts should be thrown away. (Pateman, 225) The whole structure of social society is patriarchal. and patriarchy is not something familial, but it has some important public manifestations like prostitution and employment.

Some part of radical feminist perspective overlaps with French theorist Foucault's conceptualization of power and sexuality. The famous notion, sexuality is a social and historical construct was a Foucault's confirmation on feminist point of view. And the role power has played in this process is another similarity between Foucault's thoughts and radical feminists. But there are differences in the rest of their theory. Foucault believes sexuality is one of the power vehicles in modern times. But despite the common view he believes the connection between power and sexuality is not repression but incitement. In his work on sexuality, the History of Sexuality, he rejects the hypothesis of repression and propose another connection and reality between power and sexuality. According to the new definition of power, sexuality stands at the core of it. This new type of power, he terms Biopolitics does not operate through the repressive mechanisms but takes new approach to sexuality. Believes that the position power has in relation to sexuality is not negative one but positive interaction with sexuality it means that power in modern time after 17th century hadn't repressed sexuality, but it has been trying to create new sexualities. Not just the concept of sexuality but even its term has been invented in relation to power. As a result, sexuality is it not something's natural or as it usually called instinct but a social apparatus. This concept of power and sexuality should be understood interconnectedly. (Foucault, 1978: 135-140)

Since the 17th century the nature of power in industrial societies has shifted from sovereign power to biopower which is obsessed with physical aspects of human life. This concept of power operates through two mechanisms; one way is a disciplinary power which is dominating people's body, and a second way is a regulatory power which is dominating population. It means that power does not repress life, but it takes charge of it. The obsession of power is with population's well-being. In preindustrial societies, the power was in form of sovereignty. The kingship can decide on life and death of its citizens. But after entering the industrial era, this arrangement went under changes and the power's means changed drastically. He believes new form of political power developed an interest in human being life and brought it into political calculation. The extreme form of exercising power before the 17th century in Western countries is taking away people life it was centered at public life. But after the rise of capitalism the power has being applied over life and its component. It is not specific to public sphere, but it is all penetrating and has been applied to every individual. That power exists everywhere (Foucault: 107) and should not be restricted to the state. Even in private affairs, like daily interactions, power relations can be seen to be dynamic. This form of power is not interested in removing life, but it is working on life to sustain, ensure and multiply life. Foucault asserts this process has nothing to do with humanitarian sentiments

and goals, but the economic necessity required the change. And because of this point the beginning of this process was the emergence of capitalism. Power in modern era tries to put life in order and normalize the society. The biological existence of population matters. Capitalism could not be born if biopower did not precede it. (Foucault, 141)

The mechanisms of this new type of power are twofold. One of them is tied up to individual body and the second is tied up to the population, disciplinary power over body and regulatory one over the population. The first mechanism which is centered on body sees it as a machinery could serve the state. It is looking for intensification of body. As a result, it does its best to improve body. What power does to the body is disciplining it, optimization of its capabilities and making a suitable thing for economic purposes. Body should be trained in the way a soldier should be trained, the posture, the stance not for a war but for an economic efficiency. (Foucault, 139) This power is operating through universities, secondary schools, workplaces, administrative and medical institutions. But. What is the second mechanism of power?! In the 18th century the governments realized the existence of population, not the subjects or citizens. What they must deal with was state of health, fertility, life expectancy. All these concerns need regulatory policies. In this form, power institution collects statistical information about the population and initiate the universal system of surveillance which develops a self-control among them. Foucault believes that through sex and sexuality these two forms of power get united. Sex has provided power with access to body and population. And through these mechanisms it has been interconnected with sexuality. (Foucault, 145-146)

These two forms of biopower does not require to encounter with sexuality negatively, but they need an affirmative position towards sex. They operate through various means, including political, medical and administrative institutions. All these communities are preoccupied with children, women and men's sexuality. All these means have been utilized to determine what sexual behavior is normal and what is abnormal and through this process, normalize society. Sex must be managed, utilized, regulated for the most function and efficiency. Based on this concept of sexuality is a social construct that has evolved over time. It could not be an intrinsic unity, which has mandated special rules for our bodies in relation to our sexual orientation. Power relations are present during this procedure. Because of this, there is no such thing as accomplished and unified sexuality in the real world. Instead, there is a construction that has been unified through a variety of discourses that function as laws, religious rituals, political practices, and educational systems. Four lines of attacks have been designed in this process and target four groups of people. These strategies have been

operating through the sexualization of childhood, the hysterization of women, the psychiatrization of perversions and socialization of procreative behavior. In all strategies, discourses and knowledge are means of power to operate through them. (Foucault: 107) Power with the assistance of strategies of knowledge are inventing new sexualities.

Discourses, in Foucault's thoughts, are collections of ideas and convictions that organize how we relate to reality and have the potential to distort it. Sexuality has been transformed to a discourse and people are encouraged to put sex into words. Discussion, analysis, science are the main strategies to define what is normal and what is not normal. And all four abovementioned groups are forcing to actively or passively participate in the transformation of sexuality to a hegemonic discourse which has been pushed on people. (Foucault: 146) Children are forced to talked about it. Women's role in procreation, bearing child and raising and caring them put their body in various discussion. Perversion was defined and normal and abnormal sexual behaviors were districted.

As a result, people in modern era people unequivocally classified as heterosexual, homosexual, masochists, sadists, or transvestites which can shape and establish a sexual hierarchy that is laden with power dynamics of dominance and subordination. On the other hand, since the eighteenth century, all these mechanisms have led to an exaggeration of sex and sexuality to the point that sexuality has become the "truth" of our being. (Foucault: 107 &146)

The definition of power that Foucault proposes is drawn upon by feminist thinkers. However, what he meant by the political aspect of sexuality and what radical feminist meant disagree to some extent. Foucault is not interested in the actual intercourse or the dynamics of a coital relationship, which I will cover later. This behavior is emphasized in feminist theories about sex and power. Although Foucault notes that hysterization of women's bodies is one of the tactics used to create knowledge-power mechanics around sexuality, greater attention needs to be paid to the significance of the gender component in the history of sexuality. Men's and women's sexualities have not always had the same history, argues. Another point is that, despite Foucault's assertion that power is not exclusive to government, it appears that there are still ambiguities surrounding its definition, leading us to interpret it as referring to political organizations, much like radical feminists did in the past. Another issue with Foucault's idea is that it appears he overstated his analysis to the point where psychiatric classification of

sadism or masochism is one of the techniques powers uses to control and get in line our sexual habits.

1.1.1.2 Women's Exchange as a Principle of Sexualized Politics

As previously sated, politics and sexuality have a long-standing link. Kinship is a form of sexualized politics in early civilizations that might be used to explain that the oppression of women is founded in the political deployment of their sexuality. In a noteworthy study, Gayle Rubin describes and analyzes the site of oppression of women and sexual minorities by rereading the anthropological and psychoanalytical literature and develops instead the "sexgender system" for explaining and exploring this aspect of social life:

"A sex and gender system is the set of arrangements by which a society transforms biological sexuality into products of human activity and in which these transformed sexual needs are satisfied." (Rubin, 1975: 159)

In ancient civilizations, kinship serves as the sex and gender system. The ancient social structure uses women's sexuality through exchange to achieve social coherence.

Rubin applies the Marxian concept of production to sexuality and reproduction. The term "economy" in the Marxian sense refers to the process by which elements of the natural world are converted into things for human consumption. Not merely food and clothing, which can be provided for through production, are included in these necessities. The human beings must also procreate in order to survive; consequently, sexual and productive needs must both be met. To turn natural objects into objects of desire regarding sexual demands, a new economy needs to be created. Kinship is such a new economy in primitive societies. Sex is sex, nature defines it in its purest form but what we have been dealing with in social life has already gone through the economic process, producing the socially contingent meaning of sexuality in a given socialcultural formation. (Rubin: 165)

What Rubin is proposing here is strikingly similar to claims made by Radical Feminists and Foucault. Sexuality is a social and political construct that has little to do with biological urges. Every society has created a system of sex and gender that has transformed a raw biological sexuality into something social that can suit its needs (this may be a part of Foucault's

discourse). In a prehistoric civilization, kinship is a type of sex and gender system that changes a person's natural form of sexuality into a socially organized sexuality.¹

In such a pre-state society, reciprocity, gift giving, and gift receiving were essential components of social relationships. Women were one of the commodities exchanged in addition to yams and pigs. In order to establish social connections, they share meals and receive female relatives from the opposing side. These transactions were carried out with the intention of promoting political status, peace, and solidarity. These exchanges held the society together in the absence of the specialized institutions of government. (Rubin: 169)

The most precious gift in this process was the women. Some restrictions and prohibitions were created because ties had to extend outside groups and widen the scope of relatives. Incest taboo was the most significant one. It was important for a man to understand that while he could not possess her own mother, sister, or daughter, he could own the women who belonged to the other men. This gift was valuable since it fostered kinship rather than merely reciprocity. This social structure might endow the man with power. Women's wants were not considered in this exchange; rather, it involved two groups of men, women were deprived of any control about themselves. (Rubin: 172 – 177)

The kinship system is a political and economic primitive framework that demanded the exchange of women, the organization of which is by the fundamental principles were heterosexuality and the division of sexual labor. A heterosexual unit that functions economically and politically was necessary. The two sides of this family ought to be reliant on one another and become completed through marriage. Kinship system turns male and female raw materials into genders that are basically separate and distinct in order to achieve this goal. In this process, nature did not play a significant part because the final results of this process are significantly different from what they were in the natural forms. As a result, the only absolute and limited required principles were heterosexuality, sexual division of labors, and restriction of women's sexuality. (Rubin: 178)

Because they could endanger this profitable partnership, incest and homosexuality had to be taboos. Rubin drew a logical conclusion from these premises, stating that attempts to

¹ . Or, to use Rubin's previous words, new economy for sexual needs.

promote economic interdependency imply a biological and hormonal imperative for required heterosexuality and that the taboo against incest does not function as it has been alleged by Levi-Strauss. Instead, financial affordability is the deciding factor in this system. The payment of bride wealth could alter many details and make these arrangements more complicated. Sometimes more specific heterosexuality—such as inter-cousin marriage or even transgendered institutions—was required. If a woman had a bridewealth, she could assume the function of the husband, and if a man did not have a bridewealth, he had to marry a boy. (Rubin:

181)

Gayle Rubin argues that throughout history, sexuality has played a political role. The politicization of sexuality is the primary cause of women's subjugation. The exchange of financial gain and female sexuality is not exclusive to the prostitution industry; it is the foundation of traditional marriage. The origins of women being objectified in the modern sense can be seen in this historical fact. This historical fact can shed light on how some Iranian legal frameworks came to be. The point about the financial exchange is very important when I want to discuss the wife/slut distinction in my research regarding the Iranian practice of Islamic marriages especially temporary one. The choice to sell women rather than men for political and economic gains has laid the groundwork for the exploitation of women. She also makes the picture more complex and makes references to the fact that women could take positions as exchangers when they possessed property and can afford bridewealth. I think the reason women were given the role of this exchange object was a misunderstanding of their vulnerability to penetration.

1.1.1.3 The institutionalized Penile Intercourse at the Core of Power Relations

The analysis of heterosexual intercourse will be the final piece of Western literature I use for my analysis. Radical feminists at the time criticized heterosexuality as a factor in gender construction. As the most typical form of heterosexual coitus, penetration became the focus of their analyses. Penis entering the vagina has been considered the purest manifestation of oppression. And because the Islamic conception of sex limited it to penetration, the radical feminist literature on it is incredibly useful.

According to Andrea Dworkin, skin serves as a barrier between a person's body and the outside world. This body is supposed to be inviolable (?). The initial indicator of identity in a culture and the first requirement for being a human is this. This barrier, however, vanishes during the course of penetration. The penis occupies a woman's body, severely violating her integrity and right to privacy. The fundamental human right to privacy is being violated by penetration, which has been considered acceptable and even routine in western political thoughts. A woman cannot get intimacy by invading her privates; thus, she longs for freedom, autonomy, independence, and individuality. (Dworkin, 1987: 22)

Even consensual heterosexual sexual activity is considered intrusive from this perspective. Through intercourse, the woman's privacy is invaded, and this could not lead to intimacy; she longs for freedom, autonomy:

"... something happens inside; a human forgets freedom; a human learns obedience: a human, this time a woman, learns how to goose-step the female way ..." (West, 1988: 33)

The essence of this criticism is that woman is defined in terms of passivity in this type of sexual connection, even when one is desired.

All of these critiques of heterosexual sex occurred concurrently with the discovery of clitoris' sexual potential, giving women additional options. Women negotiated with their male partners about changing their intimate relationships or turning to homosexuality as a sexual option. Lesbianism was a choice made by many feminists in opposition to the oppressive effects of heterosexuality, even as a political gesture (Bryson: 188): Clitoral sex has the potential to replace vaginal intercourse, change how women interact sexually, or even give them the option of choosing a partner from another sex.

There are significant ramifications to criticism of heterosexual relations of penetration. Other sexual choices are introduced as desirable activity, and women were made aware of the unintended consequences of penetration; but both of these approaches sparked a great deal of controversy. It is evident that many women choose to engage in penile intercourse and enjoy it. Without taking this point into account, these explanations would lose part of their credibility. (West: 46) However, some scholars think that these analyses and the parallels drawn between rape and desired sexual activity makes it difficult to identify true rape. (Bryson: 189)

Furthermore, the radical feminist criticism of penetration runs the risk of naturalizing sex, and in Dworkin's account, the body becomes the source of identity, which is at odds with the constructivist understanding of sex and sexuality. In order to avoid these problems and stick to the feminist notion of gender and sex as social constructions, we can interpret or modify Dworkin's analysis above regarding heterosexual intercourse. We may argue that this group of feminists attacked the most common forms of sexual activity and what we are seeing is a particular institutionalized heterosexual intercourse that is then recognized as such by this group of feminists. Given what society expects from women in terms of sex, this type of sexual behavior restricts the freedom of women because it occurs in a patriarchal environment. The effects of penetration on a woman's body and mind can be mitigated by awareness and an organization of sexuality around "interaction", including "reception" of the penis by the woman, which can see/organize the act as an act of freedom of choice.

Another crucial aspect that Dworkin did not consider is that scientific research has demonstrated that in addition to the clitoris, the vagina also contains active sexual pulses. (Rubin: 196) This means, I claim, that no sexual activity in the traditional sense should be outlawed as inherently coercive; instead, according to the Foucauldian framework, institutions that represent the meaning that society and culture have established should be altered. Sexual activity does not naturally involve either activity or passivity, but the dynamics of dominance and submission are woven into the "content" of physical activity. Although the biological form of penetration contributed to this misperception, it is possible to redefine it as a sexual partnership that takes into account the interests of both parties which can guarantee women's agency and control over their body.

I tried to create theoretical maps based on these writings in order to assess my study material, which studies Iranian legal system with a particular focus on laws on sex. The realization that there are political aspects to sexuality was my first inspiration for this research project., Radical feminists' idea on sexual politics and Foucault's thought on biopolitics help me better understand what is happening in Iran's legal system with regard to sexuality and politics. To understand the origins of Iranian legislation, it is important to examine the historical mechanisms of sexualized economy and power as proposed by Rubin to explore women's exchange. Additionally, the radical feminist critique of penetration from a perspective can expose the institutionalization of a 'private' sexual activity.

However, it's crucial to note that the majority of these discussions took place in the context of western modernity, which is politically and legally distinct from the situation I'll be looking into. As a result, after reviewing this literature on sexuality and politics which has been produced by Western authors because the context does matter, I am going to examine the native literature on sexuality and politics. Based on this reality Islam has played a huge role in the Iranian history and society and the main source of legislations and regulations in Iran is Islamic texts I have to address this literature.

An ideological system that embraces the political characteristics of a totalitarian government is what I'll be looking at. In liberal democracies, the state could not monopolize all sources of power. In the Islamic Republic of Iran the public-private differentiation is set up differently. Therefore, there is another relationship between sex and politics. I will apply the insights that have been stated before, but I must take into account all of the variations. This field of research can benefit from the unique manner that sex has become politicized in Islamic Republic of Iran.

We can end this part without addressing native literature about sexuality within Islamic literature.

1.1.2 Native literature on sex and politics

When we want to talk about sex and politics in Iran, we could not skip the Islamic point of view on this subject. This religion throughout Iranian history played huge role in shaping sexual aspects of Iranian society in different ways. Islam alongside the other features formed a particular history, sexual practices which has its own characteristics different from Western society. For understanding these practices and consequently the sexual politics especially after the constitution of the Islamic Republic we have to start from where Islam stands on sexuality.

By examining the Islamic texts and practice we will see a rich literature on sexuality to that extent it seems that we can say there is a discourse within Islam on sexuality. The first section is going to be this topic.

1.1.2.1. Islam established the discourse on sexuality

Islamic sources, regardless of their stance, consider sexuality and sex practices to be among the most significant topics within this religion. This is also one of the most significant topics that Muhammad, the Prophet of Islam, dealt with .

The sacred Muslim book "Quran" is one of the best pieces of evidence in this area, with numerous verses addressing believers, both men and women, regarding their sexual lives.

Baghara verse 187

“It is made lawful for you to go in unto your wives on the night of the fast. They are raiment for you and ye are raiment for them. Allah is Aware that ye were deceiving yourselves in this respect and He hath turned in mercy toward you and relieved you. So hold intercourse with them and seek that which Allah hath ordained for you, and eat and drink until the white thread becometh distinct to you from the black thread of the dawn. Then strictly observe the fast till nightfall and touch them not, but be at your devotions in the mosques. These are the limits imposed by Allah, so approach them not. Thus Allah expoundeth His revelation to mankind that they may ward off [evil].”¹

In Al_Ahzab verse 37

“And when thou saidst unto him on whom Allah hath conferred favour and thou hast conferred favour: Keep thy wife to thyself, and fear Allah. And thou didst hide in thy mind that which Allah was to bring to light, and thou didst fear mankind whereas Allah hath a better right that thou shouldst fear Him. So when Zeyd had performed that necessary formality [of divorce] from her, We gave her unto thee in marriage, so that [henceforth] there may be no sin for believers in respect of wives of their adopted sons, when the latter have performed the necessary formality [of release] from them. The commandment of Allah must be fulfilled.”²

Al Araf 81 “Lo! ye come with lust unto men instead of women. Nay, but ye are wanton folk.”

Al Shuara 165. “What! Of all creatures do ye come unto the males,”³

¹ . Sura Baghara Verse 187, Marmaduke Pickthall, Muhammad, The holy Translation of Quran, 1930, p. 13.

² . Sura Al Ahzab, Verse 37, Ibid, p. 200.

³ . Sura Al Shuara, Verse 165, Ibid, p.175.

Al Baqara 223.

“Your women are a tilth for you [to cultivate] so go to your tilth as ye will, and send [good deeds] before you for your souls, and fear Allah, and know that ye will [one day] meet Him. Give glad tidings to believers, [O Muhammad].”¹

An Nisa 24. “And all married women [are forbidden unto you] save those [captives] whom your right hands possess. It is a decree of Allah for you. Lawful unto you are all beyond those mentioned, so that ye seek them with your wealth in honest wedlock, not debauchery. And those of whom ye seek content [by marrying them], give unto them their portions as a duty. And there is no sin for you in what ye do by mutual agreement after the duty [hath been done]. Lo! Allah is ever Knower, Wise.”²

Al Isra 32. “And come not near unto adultery. Lo! it is an abomination and an evil way.”³

These verses present both positive and negative perspectives on sexual activity. At one point, this book recognizes that human beings need to have sex and, on the other hand, prevents them from engaging in sexual activities without boundaries.

The obvious assumption is that primitive society, like early Islamic society, witnessed different types of sexual relations without boundaries, and the Prophet of Islam could not be ignorant of this reality in encountering this situation. He had a project and agenda for this society that he wanted to change, but regardless of the goal, he had to deal with it. The Quran, Islamic history books, and other sources addressed his own romantic and sexual life in detail. Muslim feminist Fatima Mernisi suggests that Islam invests in sexuality and sees progress in this aspect of human life. (Mernisi, 1975: 17)

Historical reports from that era vary in their main facts. Some historians claimed matriarchy existed in that era, and some of those reported patriarchy, but it seems what was common in that era was not homogenous enough that we could put the name of patriarchy or matriarchy on it. The early historians reported the patterns of women’s sexual self-determinism (Mernisi, 1975, 17), but violence against women, especially sexual relations, which was prevalent in that era (Mernisi, 1982: 153), could not fit into a matriarchal context.

¹ . Sura Al Baqara, Verse 223, Ibid, p.15.

² . Sura An Nisa, Verse 24, Ibid, p. 36.

³ . Sura Al Isra, Verse 32, Ibid, p. 128.

These verses and facts constitute the tradition in which Islam, throughout its history, has been involved with sexuality and whatever is around it.¹ As a result, Islamic jurisprudence, which interprets the Quran and the Prophet's practice and transforms it into a legal system that has been perpetuated through history, is concerned with sexuality. Different chapters in it are dedicated to sexual practices, both allowed and forbidden. The family chapter, in the context of legitimate sex, regulates the married couple's sexual practices, and the criminal part, under the name of *Ketab Al Hodud*, prevents and sets punishment for forbidden sexual activities.² In another source named *Tooziholmasael*, the Islamic experts (*Foghaha*) delved even deeper into this topic and discussed it in detail, which is not law but recommended for Muslims.³ It contains a set of rules for cleansing your body, having sex, and even a recommendation on the suitable time for having sex.

The first point is that Islam, as a historical institution we are encountering, has been concerned with sexuality. It has not ignored it. This reality as an urge within this religion is not bad or good, but the goal it is being used for could be valued. If it is in the religious framework of marriage, it is positive and encouraged; we can call it heavenly, and if it were applied outside of this framework, it would be a great sin. As a result, sex is not necessarily and permanently negative. Based on this, Islam put sexuality into words and formed a thick literature on it.

Since its inception, this collection has maintained a regulatory element. A society existed 1400 years ago without a developed organization; bonds were familial and tribal, and personal relations were in their raw form. Muhammad, not only as a messenger of God but also as a politician, sought to organize this reality by regulating these relations and establishing a framework for them. Sex has been valued based on its goal, the setting sex is happening in, and

the partners; it means that something is accepted, or, in Foucault's words, normal, and something is unaccepted or abnormal. There was a determination to eliminate any confusion regarding newborn paternity. Procreation was a great concern, and there was a plan for it, so homosexual relationships cannot be tolerated. However, the Islamic rules on sexuality we are dealing with are more complex and distinct from the original ones. *Fiqh* or *Sharia*, which are

¹ . See Imam Ghazali, "The Revival of Islamic Sciences," published in the 11th century.

² . See Shahid Aval & Shahid Sani, *Sharhe Lome*, 14 & 16 century.

³ . See *ToziholmasaeL*, *Ruhoööhah Khomeini*, [www. Leader.ir](http://www.Leader.ir).

interpretations of the original text and practice, appear to have expanded these regulations over time without taking into account the context. In certain aspects, there are differences and the strictness has increased significantly.

Islamists and traditional Muslim scholars believe that these settings, or fiqh, are not interpretations or something specific to the context, but rather heavenly ordained and immutable. (Mirhosseini, 2010: 35) It implies that they should be applied without considering time and place. But Islamic feminists criticized this claim and argued that these scholars own mindset played a huge role in this process, based on historical facts, centuries after the prophet women's situation kept being deteriorated. These groups of scholars came up with new interpretations of holy texts, prophetic practices, and words, proposed a feminist-friendly interpretation of Islam, and changed many things regarding sexuality. But even from this point of view, they did not deny Muhammad's plan on sexuality, even with a different attitude, and even if they consider these rules in a historical context. Another point is that even if this huge collection, Fiqh, was a distorted version of Islam, or even if there are other possibilities, what we are encountering as the official account of Islam, especially in the Islamic Republic of Iran, is the Fiqh version of Islam and the discourse on sexuality it proposes.

Besides all these theoretical efforts within the Islamic context, which is completely connected to Iran and the Islamic Republic's view on sex, Iranian scholars are working on this subject from different perspectives, but what I chose as a concept that helped me in designing my theoretical framework is an insightful analysis that has been proposed by Janet Affary, an Iranian feminist historian.

1.1.2.2 The Islamic republic of Iran has invested in political aspects of womanhood and sexuality

Sexuality has a complicated history in Iran. Affary, in her work, *Sexual Politics in Modern Iran*, proposed an insightful study of the evolution of marriage and sexuality since modernity came to Iran. Throughout this period, power relations shaped sexuality, and this book reveals how political power, in particular, has approached sexuality in various eras since modernity arrived in Iran. Her study focuses on history, and she analyzes historical events and political measures from a sexual and power perspective.

Because of some contextual elements, the history of sexuality is different in pre-modern Iran. Because of religious hegemony, strict gender segregation transformed the public sphere into a homosocial area. And despite serious limitations on Iranian women, there was a huge amount of freedom for men in sexual and romantic relationships. However, these kinds of relationships were severely hierarchical. Political activists and intellectuals took positions on sexuality during the Constitutional revolution. Modern intellectuals saw a heteronormative society as a prerequisite for modernity, and women's public presence was one of the necessary tools to change this environment. After the Constitutional Revolution and especially since the first Pahlavi, modern states consider sexuality and use it in some respects to further political causes. (Afary, 2009: 3-6) But after the Islamic revolution, the relationship between the government and sexuality entered a new phase.

The Islamic Republic did not reanimate all outdated gender policies; instead, it reinvented some retrogressive gender policies and, through modern mechanisms, presented or imposed them upon society. It did not deny the social and political aspects of women's questions, but it believed in them and even used those aspects in order to further its own ideological goals. After the Islamic Revolution, most of the reforms of the Pahlavi era were shut down. Many retrogressive strategies, particularly in the family and private spheres, reemerged after the Islamic Revolution. (Afary: 265) However, it does not mean that the Islamic Republic of Iran divided the public and private spheres based on natural sexual differences and created a feminine private sphere and a masculine public domain. Despite common misconceptions, it does not insist on keeping women inside their homes, and it even facilitates traditional women's presence and participation in public areas. In other words, the Islamic Republic's sex and gender project was not completely rooted in a traditional point of view, but it was a complex combination of traditional and modern features.

They designed different policies regarding women for different reasons. From one point, which Afary limits to urban women, the Islamic Republic changes their rights drastically, and they lose many things they had during Pahlavi's era. Patriarchal rules in family like repudiation, polygamy, and temporary marriage (which were highly promoted by the government) weakened these women in private spheres, and compulsory veil denied their social freedom. (Afary: 277) But from another point of view, which Afary believes is true for traditional and religious women, the Islamic Republic frees them from patriarchal households and brothers and fathers. The Islamic Republic, through gender segregation and a compulsory veil, prepared and provided an environment in which these women could

participate in the public sphere. Another thing is that, before the revolution, Khomeini believed in the social aspects of womanhood and did not consider it something completely private. He encouraged women to join demonstrations against Shah and even hold their own children. He believes that this practice serves Islam and revolution. During the Iran and Iraq wars, he encouraged Muslim women to give their sons to this war. And it is the greatest participation they can have in this event, and it is enough. These women, by joining Islamic and revolutionary organizations, could gain power in their houses, and many gender stereotypes have changed about them. They could work in different communities with men, and through these mechanisms, they gained power in their household. (Afarry, 292)

But these permissions were granted due to strict rules. They should unquestioningly adhere to Islamic family law, which governs the relationship between married couples. The patriarchal type required the high objectification of women. But from the point of view of the Islamic Republic, this objectification cannot stop women from having a social and political presence. By means of gender segregation and a compulsory veil or hijab, it would be solved. As a result, women are still objects, but by these two means, they have been reduced or at least covered. Women's objectification is one of the most important bases for this system, which could be traced back inside the family as best as possible. But this public presence, even not equally with men, and with those two means and their premises, changed gender norms in the private domain as well.

Based on these concepts and explanations I am going to examine Iranian legislations after the Islamic revolution. Before that I will explain my methodology in the next section.

1.2 Methodology

The methodological approach I used for this project will be covered in this part. My objective was to conduct a legal discourse analysis based on the topic. In an effort to understand how the Islamic Republic of Iran utilizes legal discourse to politicize sexuality in the wake of the Islamic revolution, I tried to analyze legal texts. Legal discourses turned out to be one of the strongest tools for aiding this system in the politicization of sexuality. Legal discourse gave this ideological system powerful instruments with which to impose the political sex frame on the intimate relationship, disciplining women and, in some cases, men's bodies. The legal discourse in this system has been entirely ideologized and politicized, and as a result, it has constituted a unique meaning for sex that is utilized to support the Islamic Republic of Iran's political aims.

In order to achieve this goal, I used just qualitative methods to gather my data. I had to pay attention to the sources which helped me to fulfill this task. My earlier familiarity with sex and politics led me to come up with this topic. So the radical feminist literature on the power dynamic in sexuality was one of the first helpful sources in this area. On this subject, radical feminist literature offers a number of resources. However, Kate's Millet was one of the pioneers in this field, and I was aware with her viewpoint and line of reasoning, so it was one of the primary sources. The underlying rationale for the coitus's power-bound relationship is still valid. Carole Pateman and her ideas regarding the sexual nature of the social contract, the Western political theory, aided me to realize sexuality and power in the context of liberal democracy, and based on that, I could notice differentiations between sexual politics in the Islamic Republic and liberal democracies. Foucault's theory on the relationship between power and knowledge was insightful. And as has been brought out in the first paragraph, this thesis owes his thought a lot, but what he theorizes, which is based on the contemporary setting of western countries, should be cautiously applied to the case of Iran. Because the differentiations between Iranian context and the Western countries but because the Islamic republic has used those modern methods, I will use his analysis. The article by Gayle Rubin on this subject was incredibly insightful since it focused on the form of marriage which entails the exchange of women's sexuality and money, and it was strangely similar to the Islamicized marriages. She suggests it as a mechanism of sexualized politics, which was the source of the formation of sex and gender. Rubin begins this thesis by appropriately utilizing Engels' understanding. And Engels and his famous statement that institutionalized marriage

and prostitution are similar was one of the initial cues that convinced me to take this stance toward the Islamicized marriage. Based on the definition of sex in Islamic texts and the Islamic Republic of Iran, radical feminists, particularly Dowrkin, had a very explicit perspective on penetration. It appears that the intercourse Dowrkin is depicting and challenging is something like the intercourse in the Islamicized legal framework.

And in the second section, I incorporated texts from Islamic and Iranian scholars in this section, drawing inspiration from Western literature on sexuality and power. In Islamic sources, both essentialist and feminist points of view agreed on sexual discourse in Islam, with different interpretations. And finally, Iranian literature, in which I found Janet Affary's analysis highly useful about the contradiction in the Islamic Republic's sexuality project.

Iranian law was the second stage with relation to the sources. The most important regulations were those pertaining to families and criminal offenses since coital action was what I meant by sex. I made an effort to read and interpret these laws through the lens of the abovementioned theoretical framework and address them accordingly. I tried to identify the Islamic Republic's innovative mechanisms of sexualized politics and politicized sex, discuss these new ways, and pursue what this literature accomplishes in other contexts.

The biggest obstacle I encountered was the lack of judicial aspects in these legal texts. I looked for court rules and judicial procedure regarding civil and criminal cases on sex in order to become familiar with these laws in practice, but they are not available due to some political issues, on the other hand it needs some practical research and interviews with lawyers and judges and watching the procedures that is applied in this matter. Otherwise, the conclusion could not be evidenced properly.

Chapter 2: Iranian legal System on Sex

In this chapter, I am going to examine all Iranian laws that are concerned with sexual activity. What laws specifically address sexual activity, and why? For this reason, we need a starting point. In Iran, the modern legal system came into existence after the Constitutional Revolution in 1906. This era appears to be a suitable starting point for our discussion. The establishment of the legal system occurs when it codifies and implements laws through legal means. On the other hand, I must begin my discussion prior to the Islamic revolution in order to comprehend the changes regarding sex in Iran's legal system as well as the differences from the prerevolutionary period. In Iran, the Constitutional Revolution in 1906 led to the establishment of the Iranian legal system. Since my focus is on the post-Islamic revolution era, I am dividing this chapter into two subsections. The first one focuses on laws prior to the Islamic Revolution, and the second one discusses sex-related laws during the Islamic Republic. I try to make some sort of historical reference in each part to aid in our understanding of the laws. In each section, I found legislation and regulations that are concerned with sex and categorized them according to legal logic.

2.1 Sex in the Pre-Islamic Revolution laws

The Constitutional Revolution occurred because of the opposition of many politicians, intellectuals, and clerics to the Qajar monarchy's attempts to restrict the king's absolute and unchecked power. This revolution began a new era in Iranian history and in the lives of Iranians. The proclamation of constitutionality led to the establishment of the first Iranian Constitution and the first parliament, laying the foundation for the development of Iranian law. Prior to this revolution, the Islamic code of law, or Sharia, had served in this capacity. (Kazemi & Safaie, 2010: 147) Furthermore, the king's decrees and commands, particularly in special cases, served as a means of organizing society and political arrangements. Although, even after the revolution, the Sharia continues to be a significant source of Iranian legislation, there are vast differences between the Sharia and the laws that have been passed by Parliament. Because of this, the lack of governmental sanctions reduced the applicability of the Sharia laws. On the other hand, the judiciary in the modern sense was just beginning to emerge; before it, Shia clerics played the role of judges in the traditional sense. (Kazemi & Safaie: 156)

Before this event, the legal status of sexual activity was uncertain due to the complex nature of sexual relations. Sharia rules led to widespread gender segregation, excluding women from romantic relationships. Women were mostly reduced to procreation. Women were excluded from most areas, not just mentally and spiritually but even physically. In the public sphere, the veil completely covered women's bodies and faces, preventing them from being considered love partners, regardless of their differences. As a result of these situations, same-sex relationships, particularly among men, were widespread. Boys and young men could be playing the role of what women were deprived of. These relationships varied from abusive and statusdefined homoeroticism to romantic and, in a few cases, companionate ones. (Afary: 2-9) Even though Sharia strongly forbade same-sex relationships and considered them a great sin, it lacked sufficient means to prevent these kinds of relationships. However, the previously mentioned issue of inapplicability hinders respect for these Islamic rules. Another interesting fact that could be considered a reason for this not-applying rule is the existence of male same-sex relationships among clerics. (Afary: 6)

This entry highlights the contradictions and ambiguity surrounding sexuality and sexual freedom during the pre-modern era. Women and men faced restrictions in their relationships with each other, while most, but not all, men enjoyed extraordinary freedom. Many modern thinkers criticize this situation and think of normative heterosexuality, companionate marriage, and women's entrance into the public sphere. (Afary: 9) These criticisms coincided with the Iranian Constitutional Revolution and the emergence of modern legislation. The event led to the abolition of slavery and the shutdown of the Qajar Harem, a house of women (Afary: 109), which were important from a sexual politics point of view. However, what happened to legislation after this event?

Following the revolution, the first legal document came into existence. Given the historical context, the primary goal of this law was to restrain the king's power, necessitating its formalization into a written document. Citizens elected a legislative organ to pass this law, which should be general rather than specific. This logic led to the writing and enactment of the first Iranian Constitution, a key piece of political legislation that defines the form of government. Less than a year after the revolution, an amendment was enacted that addressed the rights of the people and is considered an integral part of the Constitution. This legal document is the first thing we are going to discuss.

2.1.1 The First Constitution (1906-1907)¹

This Constitution explains the organization of new arrangements and establishes the parliament as a new institution to represent the people's will in political decision-making.

This Constitution was completely gender-neutral and did not pay special attention to women. The Constitution does not specifically address this issue. However, a later amendment has introduced a clause pertaining to equality in general.

This amendment was concerned with people's rights and establishing equality among people before the law. Article number 8, which falls under the category of people's rights, states :

"The people of Iran will have equal rights before the state law."²

While the law acknowledges that equality for all people and includes both women and men, the subsequent civil law showed that equality for women is conditional.³

After achieving these huge goals, the proclamation of constitutionality and the passage of this law, the legislation process, which was going to be the outcome of parliament and constitutionality, was postponed. This led to the postponement of laws specifically addressing sex and family matters. The main reason for this delay was the contradiction between the two contributing partners to the revolution. There were two extremely different partners in the Constitutional Revolution: nationalist forces and clerics. The goals of these two were different.

Islam clerics, who had participated in this revolution, aspired to establish a more powerful

¹ . <https://qavanin.ir/Law/TreeText/39466>

² Article 8, the First Iranian Constitution, Laws and Regulation Portal of Islamic Republic of Iran (<https://qavanin.ir/Law/TreeText/174525>)

³ . In the Pahlavi era, this law considered the queen's right to a successor until her son turns 20 years old and obtains the throne. Compared to the Qajar era, female members of the monarchy may have enjoyed more political rights. (Article 38)

legal sanction for Islamic rules. They wanted a modern legal sanction for the traditional heritage of Sharia in order to guarantee the applicability of these rules. Conversely, the subsequent section drew inspiration from contemporary ideas, referencing Western precedents and the legal structure that surfaced within the framework of liberal democracy. From their point of view, modern means were not enough, and the content of laws should be inspired by modernism. The legislation appears to have taken into account the concerns of both groups. Sharia played a significant role in the enactment of several laws, particularly civil law, while modern ideas also contributed, leading to the adoption of numerous laws from Western nations. So the clerics' ambition did not completely come true, and western sources, as the other group wished, were taken into consideration, and the clerics lost some parts of their authority. (Kazemi & Safaie: 148) And despite the effort, the contradiction¹ persisted in different areas of legislation, including the provisions of later laws.

The rise of Reza Shah and the subsequent Iranian monarchy accelerated the legislative process and led to the creation of new laws. On the other hand, a number of significant changes occurred, all of which are crucial to understanding this thesis topic. After Reza Shah nullified the capitalization bill, there was a need for new laws that could fill this void, replace the capitalization bill, and function in this capacity. The body of Iranian laws, including the Civil Code and General Penal Code, came into being. (Kazemi & Safaie: 149) On the other hand, a new judicial system was established. Another crucial factor is Reza Shah's ability to establish the concentrated state in a modern sense, a feat that was unprecedented. This fact significantly aided the legislative process, enhancing the applicability of new laws. The state has the authority to enforce legal sanctions to guarantee adherence to the law and prevent its violation. Sharia served as the source of some legislation during the drafting process, but there appeared to be a tendency towards laicization. In certain areas, there was a successful fusion of Islamic jurisprudence and western legal system..²

Women's rights and sexuality were considered in these laws. Furthermore, the modernization project could not be indifferent to women's status; some political decisions had a direct impact

¹ . It seems that one of the areas in which these two groups disagreed was women's questions. The intellectuals were advocating for women's rights and public presence, but the cleric at the top, Sheikh Fazlullah Noori, was on the other side.

² . The important provision that was enacted because of the effort clergies had made regarding the authority to assemble clergies in order to veto Congress' legislation in cases of contradiction with Islamic rules was ignored.

on sexuality and women. These decisions are part of the legal system, which includes both laws and decrees from political figures. Reza Shah's famous decrees removing the veil and dress code targeted sexuality directly, as well as women's and even men's bodies. Some important policies in this era, including education and hygiene, changed women's lives drastically (Afary: 145) but This thesis is primarily focused on acts. We can find laws related to sexual activity in the main law, like the Civil Code, which contains marriage law. We can categorize these laws into two different sections. This categorization corresponds to the legal logic, and it makes sense for this thesis topic. I am going to categorize laws into two narrower sections based on their nature and means. The first is civil legislation, and the second is criminal legislation.¹ These two kinds of laws are different from them and even from this thesis point of view would have different consequences. In civil laws, there is not such a thing like punishment and there are other sanctions can guarantee the laws' enforcement. Based on this difference the next laws will be divided in to two big sections the first one would be the civil legislations it would follow with three laws and the second section would be criminal legislation which is just one penal code under the name of General Punishment Act. Before Iranian Civil code was enacted, there is another law named law about marriage which was passed in 1931.

2.1.2 Civil Legislations

This type of legislation is about civil actions, and the basic logic for this categorization is the public and private good distinction. The legal experts believe civil law is under private law and relates to private matters and private individual goods. But public law, which includes criminal law, is concerned with public affairs, and the whole society benefits. When a civil law is violated, an individual would be in danger of loss, but when a crime happens, even if it targets one person, the whole society would be in danger. Civil legislation cannot use criminal means, and they have a special nature.

Family law, which is governed by civil legislation, is one of the most important sources of sexrelated law. Legitimate sex happens in this framework, and it has been regulated in different aspects. The Iranian Civil Code embodies the main family law in Iran, yet its

¹ . These two branches fall under two wider categories. One is private law, and one is public law. The origin of this division could be traced back to ancient times, but it seems that it has been constituted based on Western political context and suited to public-private division in liberalism. Since the first legal experts were graduates from western universities, they applied that division to the Iranian legal system, which was far from a liberal context, and I wanted to argue against that. Although even in liberalism, this division has been criticized severely, especially by feminists.

drafting and passage, despite being one of the first pieces of Iranian legislation, took longer than expected. To fill this void, they passed another law specifically addressing marriage and, consequently, sex prior to the Civil Code. And it is going to be discussed in the following subsection.

2.1.2.1 The Act of Marriage¹ (1931)

Understanding the historical setting in which this statute was passed can help us better comprehend how it addresses sexuality. Marriage, the legal institution for sex, was organized by families during this time, and the bride and groom did not get to know one another before getting married. Women and girls consequently lacked much autonomy over their lives, bodies, and sexuality. Most of the time, marriage was the only avenue for them to engage in their sexuality. In this case, she wasn't the one making the decision. Although the groom's freedom of choice in regard to marriage was constrained, there were still other possibilities available to him. The girl's puberty marked the threshold for getting married and assuming many responsibilities. According to Sharia, this age was noticeably young. However, during the time this law was passed, which was after the Constitutional Revolution, women's rights were important, and a modernization initiative called for considering the position of women and children. The primary driver behind this action was the rise in the marriageable age of girls and even boys. (Hatami, 2019: 11-12)

Marriage was already solely a religious institution, but this Act makes it a legal one. It is the exclusive obligation of the man to register a marriage in one of the designated locations after it has been concluded; otherwise, he would commit a crime. The legalization of marriage took place, and this is the very important development in relation to what I'll be discussing in my thesis.

The biological ability to get married is once more underlined. If a premature girl passed away because of the liaison, her husband has committed a crime.² This consideration can be

understood in the light of the aforementioned setting and has undeniable impacts on women's lives and sexuality. However, it seems that the legislator only focused on physical readiness because early marriage could injure a girl or boy in other ways. This indicates that the

¹ . <https://qavanin.ir/>

² . Article 3, The act about Marriage, 1931 <https://qavanin.ir/Law/TreeText/84820>

concept of marriage is still primarily physical and sexual, and that it has not yet evolved into a companionate relationship.

The wife and husband's relationship as will be discussed in subsequent section, the reciprocity of Tamkin (obedience) and Nafaghe (maintenance), which are the foundation of Islamic marriage, were left out. It only said that maintenance is a woman's right and that it may be requested using legal and judicial channels.¹ Although there was a desire to enhance women's agency in the marriage, the husband's superiority was respected to a certain degree. Men were allowed to practice polygamy, but only if it was disclosed before getting married; otherwise, it was a crime.²

The availability of women for marriage and their impoverished status, particularly for women, were limited because of these restrictions, although there are some points to be taken. The political and national repercussions that women's and children's positions would have on the development of the nation were one of the factors that led to the passage of this legislation. Women needed to have access to education and health care. Young and illiterate mothers were unable to conceive and rear healthy children, which harmed nationalism, an essential strategy during the Pahlavi era. Politicians, intellectuals, and advocates for women's rights in this day and age believe that the status of women is important from a political point of view. Because of this understanding, the Pahlavi dictatorship interfered in family matters along with governmental issues, the economy, and culture to further its political objective of modernization. The government places a value on women's rights, which we cannot dispute, but sexuality and reproduction also have political implications. Women's role in procreation remained intact. This demonstrates that since the inception of the first legislation, coinciding with the emergence of the modern era in Iran, sexuality has been a political issue, and the government has employed modern methods to address it.

Despite the seriousness of the law and the efforts made by the government to enforce it, difficulties were encountered in its implement. Its enforcement was rendered challenging by

the absence of notaries and registries in all areas of the nation, as well as the gap between this law and the majority of the nation. (Hatami: 12-13)

¹ . Article 10. The act about Marriage, 1931, <https://qavanin.ir/Law/TreeText/84820>

² . Article 6 & 5. The act about Marriage, 131, <https://qavanin.ir/Law/TreeText/84820>

This law could fill the void of law regarding marriage and the relationship of man and woman to some extent in addition to the political mission it was supposed to fulfill. But the most important legal framework which was going to regulate this institution is the Iranian Civil code. Because the Islamic nature of that it has stayed through all these years and even after the Islamic revolution it stayed with minor changes. The Iranian Civil Code, which will be discussed twice, once before and once after the Islamic Revolution, has been the main tool for organizing familial relationships, which include sex.

2.1.2.2 The Iranian Civil Code (1933-1934)

The Iranian Civil Code has been hailed as the pinnacle of Iranian legal achievement because it was able to combine both Islamic and Western legal sources. Islamic legal doctrine forms its foundation, and it heavily relies on this source. Its first section, which deals with property, was passed initially (1926–1927), but its second section, which deals with people and their families, was written and passed later. The primary author of civil law cites this because, at the time— and even after the Constitutional Revolution—personal matters, including marriage, were decided by clerics. The family section was drafted and approved by Parliament seven years later.

There are three volumes in the Civil Code: the first is property, the second is people, and the third is evidence for providing a suit. The second volume contains a section on marriage, which encompasses the sexual relationship between a man and a woman. It follows the section on kinship, and within it, there are many clauses that declare it unlawful to marry siblings and other close relatives who are Mahram, which implies it is forbidden (Haram) to marry each other. This section begins with proposing, engagement, technical issues of marriage, the witnesses, the registration, and the statement that can conclude marriage. By examining these articles, what should be discussed from this point of view is the marriage of a never-married girl, the role of sex in the relationship of spouses, and the relation between sex and financial matters. This topic would be discussed in the full following articles.

" Article 1034: Any woman who has no barriers to marriage is eligible for a proposal."¹²

¹ . All the articles' translations are unofficial.

² Article 1034, the Iranian Civil Code, <https://qavanin.ir/Law/TreeText/178971> ³

Articl 1041. The Iranian Civil code ,<https://qavanin.ir/Law/TreeText/178971>

The legal marriage age was set at 15 for girls and 18 for boys, repeating the previous Act, but with the exception that judicial approval was required.³

The requirement that a girl's father give his permission before she marries is another crucial gender-related factor. This permission is unrestricted and none-negotiable after the age of 15 to 18.

"Article 1042: Females, who have reached the age of fifteen, until they have reached the age of eighteen, cannot get married without the permission of their father or paternal grandfather."¹

However, beyond this age, this permission is required for the first marriage; in the event of a dispute, she could then introduce her prospective spouse to the notary and get married. And the notary would then inform the father or grandfather. Marriage is possible after a particular amount of time.

"Article 1043: The marriage of a girl who has not yet married, even if she is over the age of 18, is terminated with the permission of her father or parental grandfather. If the father or grandfather refuses to give permission without a reasonable reason, the daughter may contact the marriage office with the full name of the man with whom she wishes to marry and the conditions of marriage and the arrangement between them, and the marriage office shall notify the father or grandfather, and after fifteen days of the date of notification, the marriage office may make the marriage."

It is possible to inform the father or the grandfather, by means other than the marriage office, but this notification should be definite.

However, the two significant reciprocities in the legal structure of this marriage are what my thesis is mostly concerned with. The first reciprocity is the bridewealth (Mahrieh) with initial penetration, which is typically timed with defloration, and the second reciprocity is the obedience, with maintenance, or the payment of money to women in exchange for their

obedience to their husbands. There are various hints in the law that can be used to determine the bridewealth.

¹ .Article 1042, the Iranian Civil Code, <https://qavanin.ir/Law/TreeText/178971>

"Article 1091: For the purposes of determining bride wealth, the status of a woman shall be taken into account, in terms of her family status and other attributes and status in relation to her peers and relatives, as well as her local habit and so on."¹

Various articles can be used to deduce the reciprocity between bridewealth and first penetration or defloration.

"Article 1085: A woman may refuse to fulfill her duties to her husband before receiving her bride wealth, provided that her bride wealth should be paid now. And this refusal does not destroy the right to maintenance."¹

Her duties are simply being fulfilled in a limited sense or engaging in coitus.

"Article 1088: In the case of the former article, if one of the spouses dies before the bride wealth is determined and before sex, the wife is not entitled to any bridewealth."²

"Article 1092: If a husband divorces his wife before having coitus, the wife shall be entitled to half the bride wealth, and if the husband has already given more than half that bride wealth. He may take back more than half."³

Several articles assert the second reciprocity, the interchange of obedience and money especial throughout marriage. Obedience, which literally means "the wife should be available for her husband." As a phrase used specifically in Sharia and Iranian law, it has two meanings. The first broad interpretation of obedience is saying that the wife should usually obey her husband and fulfill her marital obligations, while the second interpretation, which is more restricted, says that a wife should meet her husband's sexual desires. (Katoozian, 2004: 660) The first meaning of obedience is derived from the man's authority over the family.

"Article 1105 – In spouse relations, the family chairman is the husband's attribute."

Consequently, the wife should obey. In another article, the wife's right to maintenance is asserted.

¹ . Article 1085, Ibid.

² . Article 1088, Ibid.

³ . Article 1092, Ibid.

"Article 1106 - In a permanent marriage, the wife's maintenance is borne by her husband."¹

And the next article defines maintenance:

"Article 1107: Maintenance is housing, food, and household furniture, which are appropriate to the situation of the woman, and the servant, if the woman is accustomed to having a servant or her need arises through disease or loss of body members."²

And their exchange proceeded as follows:

"Article 1108: If a woman refuses to assume marital duties without legal impediment, she shall not be entitled to any maintenance."²

There are sanctions for this provision that require both parties to honor their obligations. There are civil and criminal penalties for refusing to pay the maintenance. There is a possibility that the wife will sue for the debt. And because it is a crime, she can also file a complaint in its penal sense, and there is a prison sentence. If a woman shirks her responsibility, the spouse will be eligible for a second marriage.

Another Important point from gender perspective is the institution of temporary marriage, which was prevalent in Iran and codified into law. This institution, which has been called Mut'ah marriage or pleasure marriage is unique to Shia Sharia³. This is a marriage contract with a duration that is valid, and children born in it are legitimate. But it should have defined

time and bridewealth is required in it. The spouses are disinherited, and there is no other reciprocal obligation involved.

¹ . Article 1105, Ibid.

²..Article 1107, Ibid.

² . Article 1108, Ibid.

³ . In Islam, there are two branches: Sunni Islam and Shia Islam. The division occurred following the prophet's succession. According to Sunni Muslims, the Prophet did not explicitly designate a successor. Muslims have chosen four successors in an orderly manner. Shia Muslims believe that the Prophet designated Imam Ali, his cousin and son-in-law, as the first in a succession of hereditary Imams from the Prophet's family to lead the community after him. Regarding marriage laws, there are some differences between these two branches. One of these differences is in relation to temporary marriage. The second caliph (Umar) nullified temporary marriage in Sunni Islam, leading to its discontinuation.

"Article 1075 – Marriage is interrupted when it is created for a certain period of time."¹

"Article 1076 – The period of interrupted marriage (temporary) must be fully determined."²

"Article 1095 – In a temporary marriage, the lack of bridewealth in the contract causes invalidity."³

This section has undergone changes that appear to be minor, but from the standpoint of this thesis, each of these changes is significant. Additionally, after the revolution, the approach to these articles altered. The second law which should be investigated in this field is the act of protection of family. Although the provision of the Civil Code was the main source of regulating family issues, another law which was challenging some of these rules came to existence in the next years. some of these laws provision was procedural or functioned as amendments but some of them were in contradiction with civil law which means they contradicted Sharia rules. It sparked a heated debate at the time. The next significant law of the Act of family protection.

2.1.2.3 The Act of Family Protection (1967 and 1976)

This act was enacted because of the efforts of the Women's Organization of Iran during the Pahlavi era. The Women's Organization of Iran was a government institution that managed to get the parliament to pass some controversial laws, such as this one and the Act on Abortion. This law was strongly opposed by clerics and religious legal scholars. (Afary: 211-212) These Acts and their regulations are mostly procedural. These acts' greatest accomplishment is transforming divorce from a personal and religious matter to a legal and judicial one. Before the Act of 1967, a husband could divorce his wife at any time, and only a religious ceremony was required. After the passage of this Act⁴, the husband must file a lawsuit and receive court

¹ . Article 1075, Ibid.

² . Article 1076, Ibid

³ . Article 1077, Ibid

⁴ . <https://qavanin.ir/Law/TreeText/115348>

approval.¹ The freedom of men to divorce their spouses was restricted, and the divorce rate decreased dramatically. (Afary: 212) In some instances, women were entitled to a divorce for some reason.² Consequently, men's exclusive authority over divorce (repudiation) was diminished. And polygamy must be authorized by the court; otherwise, it is a crime.²

All procedures in this law imply that marriage and divorce lost some religious aspects more than the past; they are now legal matters. This legal acknowledgment has different aspects. Religion and the clerics have lost some authority over marital matters. Legal procedures, including specific tribunals, documents, and judicial procedure, must be followed in accordance with this statute and its implementing regulations. The second point is that the state's authority over this matter has been established.

The Act of family protection underwent some modifications, and a new Act of family protection was enacted in 1976³, which caused a greater shock in Iranian society, particularly among clerics and other religious communities. Men and women are addressed and have the right to sue in court for the same reasons;⁴ since there is no such thing as repudiation, it appears this Act was an attempt to equalize man and women status in some areas. Men's reasons for divorcing have been counted, and there are also available for women. But this effort was insufficient and could not have been enough to challenge the reciprocity between obedience and maintenance. This law contained a reference to this exchange. Maintenance is something that should be exchanged for obedience and not paying it for 6 months could be a reason why women demand a divorce.⁵

This Act was attacked by clerics, including the prospective leader of the Islamic revolution, because it was in direct opposition to Islam and God's command. One of the initial actions taken by Ruhollah Khomeini following the Islamic revolution was to nullify this Act. (Afary: 260)

¹ . Article 8, The Act of Protection of Family 1967, <https://qavanin.ir/Law/TreeText/115348> ²

. Article 11, Ibid.

² . Article 14, Ibid.

³ . <https://qavanin.ir/Law/TreeText/84823>

⁴ . Article 8, the Act of Protection of Family 1976, Ibid.

⁵ . Article 8 & 12 & 16, the Act of Protection of Family 1976, Ibid.

These civil laws served as the legal framework for managing relationships between husband and wife, including their sexual aspects. But what about other types of sex that do not fit into this category? Was there anything in law that could embrace sexual activities that did not fit in the marriage? Other than marriage, laws did not recognize any other partnership. Marriage remained the only unit that was entitled to the legislature's protection. But there is another law with distinct features that addresses some forms of sexual activity, but in a negative way. Before the Islamic revolution, the act of general punishment served as the only criminal code, addressing prohibited and criminalized sexual activities. We will discuss this law in the next section.

2.2.3 Criminal legislation: The Act of General Punishment (1925)1

This law regarding crimes and punishment was enacted during Iran's first period of lawmaking. Despite reforms, it remained the sole penal code prior to the Islamic revolution. One section falls under the category of crimes against honor, dignity, and familial responsibilities, specifically pertaining to sex and sexual activity. Because of this, this law needs to be discussed in this chapter.

This Act adopted a hybrid strategy. In some cases, such as criminalization of incest, sodomy, and adultery, Sharia was considered¹. The ignorance of unrestricted sexual relations among single people as a criminal act, however, is based on laic beliefs; since society would not be harmed by these actions, the religious perspective did not apply.

Sexual offenses like initially, adultery, sodomy, and rape were criminalized² and subject to severe punishment if proven based on Sharia law. This article evolved into something lighter over time³. The main component of new crimes was force and compulsion. In some cases, such as those involving a married person, sodomy, or a victim under the age of 18, the action

¹ . Same-sex relationships were not merely a religious concern. Sodomy and pederasty were condemned by modern intellectuals as a national abomination and impediment of modernization. And these concerns were considered at the time.

² . The Amendment of the General Punishment Act, 1932, <https://qavanin.ir/Law/TreeText/112194>

³ Some legal scholars believe that the penal code included this provision to avoid clerics' disagreements.

was criminalized and punished severely, but the perpetrator was never intended to be executed.¹ It is not a crime for unmarried individuals to engage in sexual relations that are voluntary and consensual. Women's homosexuality was not criminalized. There was no such thing as an illegitimate relationship below the level of an intercourse.

However, there were two noteworthy aspects. The legislature could not disregard the significance of the institution of the family, which is tied to religion, but this concern was not limited to religion. Consequently, a married individual who commits adultery should be punished. In addition, a girl's virginity held a special position and defloration was illegal, even though it was not by force.² However, all these things underwent drastic change and had an impact on the society that had just through the Islamic revolution. It turned out that for the new revolutionary regime to Islamize Iranian society, criminalization of many sexual issues was one of the key focuses.

These are the written laws regarding sexual activity found in Iran's pre-revolution legal system.

But the legal procedure and case law are not accessible and based on the nature of the Islamic Republic of Iran, there is a will to hide these matters. There are some conclusions we can draw.

1. Sexuality, at least between married couples, has received attention since the first legislation.
2. It has had some political aspects since the first civil legislation. It was a topic of discussion within society during the constitutional era, as well as both Pahlavi periods after that. In the first one, it was considered a part of a modernization project, and in the second era, it was a heated discussion between the government and the opposition.
3. Legal measures have regulated it, based on the civil legislation and those articles in the penal code.
4. Despite the patriarchal nature and aspects of most regulations, efforts were made to equalize some aspects of marital relationships in the last decade of the second Pahlavi, such as the removal of repudiation, the criminalization of polygamy without the consent of the first wife, and the limitation of temporary marriages.
5. The final point, critical to this thesis, is that while the legislator protected a legitimate form of sex within marriage and criminalized some other forms of sex, laws ignored a significant range of sexual relations, such as sexual activity between

¹ . Article 207, Ibid.

² . Articles 208 and 208 (repeated), Ibid.

unmarried people. For example, the law did not recognize them as a free union, meaning it did not provide legal protection, but it did not criminalize them, thereby establishing legal freedom for individuals within this framework.

After the Islamic revolution, most of this law underwent drastic changes, and the aforementioned points changed remarkably. The revolutionary government made its best effort to Islamize the legal system alongside other areas, and sexuality was one of the most important targets on this path.

2.2 Sex in the after Islamic Revolution laws

The Islamic revolution took place in 1979, and sexuality had a role in every step of the process. Years prior to the victory, the Islamic opposition and leftist organizations were actively involved in gender and sex issues. This involvement is evident on various levels. Women played a significant part in the revolution, as they hoped for a better future that would ensure their rights in several sectors. Women's rights and the status of women were topics on which opposition thinkers and activists, Islamic and communist ones, took positions. These two sides exhibited certain similarities in terms of gender and sexuality despite some considerable contradictions. From a religious perspective, Islam and Islamic Iranian culture did not tolerate the promiscuity and family issues that were present in Iran and were brought on by the Pahlavi regime and its ties with Western powers. And the leftist who had made some efforts in women's equality but had called attention to the consumerism that was seen in Iranian women and was the result of Imperialism and it came under intense criticism. Different origins and causes led to the same conclusions, which became one of the bases for the alliance between these two factions.¹ The Islamic Revolution's origins in sexism and gender can be demonstrated by what happened following it. The analysis of events that occurred after the Islamic Revolution can yield valuable insights into the fundamental gender and sex dynamics that shaped their outcomes. The Constitution of the Islamic Republic of Iran, as the founding legal document of the new system, serves as the best evidence that the issue of women has been significant since the construction of this system. And precisely from

¹ See Afary, Janet (2009), *Sexual Politics in Modern Iran*, Cambridge: Cambridge University Press.

that moment, the political function of the institution of the family has taken into consideration.

2.2.1 The Constitution of the Islamic Republic of Iran (1980 /1990)¹

The Islamic Republic of Iran's Constitution, Unlike the former Constitution, is not gender neutral and pays especial attention to women. The Constitution's preamble acknowledges the role played by women throughout the revolution and notably highlights the mothers who engaged in confrontations with the armed Pahlavi guards while also carrying their children.² Within this introductory section, the legislature pledges to restore all the rights that were previously denied to women by the former government. They were severely objectified by consumerist culture, but they will now be emancipated from these ties. This restoration is dependent on the following updated definition of the family:

"The family, the fundamental unit of society and the main center of human growth and excellence, and the religious and ideal agreement in the formation of the family, which is the main ground of the evolutionary and developing movement of human, has been the fundamental principle and providing facilities for reach to this purpose is the tasks of the Islamic government. The woman, in such a concept of the unit of family, from the condition of (being an object) or (a working tool) in the service of the promulgation of consumerism and exploitation, has gone out, in addition to the recovery of the serious and precious maternal duty in the upbringing of the ideologized scout man and herself alongside men in the active fields of life, and as a result will be accepting more serious responsibilities and, in the view of Islam, will be more valuable."³

The responses to the woman's question over the whole history of the Islamic republic were, for the most part, succinctly encapsulated in these sentences. The significance of the institution of family in the formation of Islamic society cannot be emphasized more effectively than this. The explicit acknowledgment of the unity of the family serves as an ideological unit that requires ideological consensus during its formation. This institution serves as a platform where the societal and particularly governmental need to produce ideologically minded individuals is fulfilled. This significant responsibility mostly rests upon

¹ <https://qavanin.ir/Law/TreeText/38162>

² . The Islamic Republic Constitution, Preamble, 1980, <https://qavanin.ir/Law/TreeText/38162>

³ . Ibid

women, who are duly recognized and granted privileges of motherhood. But the value of motherhood depends on the outcomes. It is priceless if the task of producing ideologized men is fulfilled. This political mission and the ability for women to exercise their own agency alongside males (not necessarily equal with men) in a variety of spheres of life (the public sphere as well, albeit not entirely) would raise women's status in the eyes of Islam. The Islamic Republic of Iran recognizes the social and political aspects of motherhood. Women should raise their children like ideological soldiers. This is a precious duty, not a choice, and it serves the Islamic government. Another remarkable point is that although this duty (not just motherhood but raising politically useful children) is highly valuable, women can participate in all active areas of life in the public sphere, and these responsibilities are more serious than motherhood. This disproves another false assumption about the Islamic Republic's stance on women. This government will not forbid women from being in public areas. Additionally, the term "more serious" suggests that the Islamic Republic prefers these public responsibilities and supports them as long as they uphold Islam.

The sanctity of the family is reiterated in the 10th article.

"Since the family is the fundamental element of Islamic society, all relevant laws, regulations and plans should be designed to facilitate the formation of the family, to safeguard its sacrament and to establish family relations based on Islamic law and ethics."¹

The importance of family as a foundation in a society that is Islamic (or Islamicized) is restated. It is sacred, another special term that clearly has political merit; sanctity is something religious, and in this system, political. and it should be organized based on Islamic rules, which include ethics as well. It means the special kind of family, which is defined narrowly and many assumed options are excluded. And relevant laws should be looking at enhancing the formation of this type of family.

The Constitution's 20th article declares some kind of equality in legal protection and after that stipulates that both sexes are entitled to certain rights in many spheres of public life, according to Islamic law and precedent.

"All persons of the nation, women and men, are equally entitled to the protection of the law and enjoy all human, political, economic, social and cultural rights with respect for Islam's laws."¹

¹ . Article 10, The Constitution of the Islamic Republic of Iran, 1990, Ibid.

The Islamic Republic of Iran Constitution's author has chosen a vague and contradictory language, which creates several problems in the interpretation stage. Despite not asserting gender equality, it appears to be a trick to skip the passage phase. The term "equality" is simply misleading; it means that being protected should be equal, not equal in terms of rights and options. Islamic laws, which will be evident later, condition it and prevent equality. It seems that the Islamic Republic of Iran has a special definition of equality.

Women's rights are emphasized once again in Article 21. One of its clauses lays the foundation for the personal growth of women and the restoration of their material and spiritual rights. Although the language employed is ambiguous, this piece has ideological elements. The state pledges to improve something related to personality. What could be more evident than this clause that personal and public distinction has not been recognized in this Constitution? The state is required to uphold the institution of the family through designated family courts, according to another clause in this article. There are many family disputes that result in family breakups like divorce within these courts, but these courts should act with the aim of keeping families together; this is another indication of the significance of family destiny for this system, which asserts in the Constitution's preamble that it will arrange the government setting. But what kind of family does this rule refer to when it is so important and only uses the term "Islamic family"? This kind of family was previously represented in the Iranian Civil Code. The other legislation like the act of Protection of Family should be nullified and the old rules needed to be restored. But to fit within a new framework, some modifications had to be made. And, additionally, the previous articles are the same size as a new frame; only their functionality is going to alter. In the next section not just Civil code but also the other law in the field of civil legislation is going to be discussed.

2.2.2 Civil legislations

As it has been debated previously, civil legislation is different from criminal legislation. The legal means that are supposed to be used in this field are far from criminal ones. After the revolution, because of this law's origin, the civil code did not need to be put aside. But it did not mean there were no changes regarding the legal framework of family after the revolution. First of all, the act of protecting the family and what it had done as equalization, in some areas,

¹ Article 20, Ibid.

was gone. It was a setback in some important areas, like divorce and marriage age. Another point is that some seemingly minor changes have held significance from this thesis' point of view. The marriage age decreased drastically, even in comparison to 50 years before the Civil Law was initially passed. Another point is that some years later, another inclination toward conservatism presented another draft under the name of family protection, which was heavily criticized, and some years later it got passed with several changes. There are some regulations and debates around family, but the civil code was the main source and remained less changed, which can entail the strictness of these rules. In this section, we are going to discuss these two sources chronologically.

2.2.2.1 The Civil Code after Islamic Revolution

As was previously indicated, this statute underwent some contentious amendments following the revolution. They seemed minor but it could change many thing regarding women's sexual autonomy. The first thing is that the marriage age got changed.

The age of marriage is a crucial issue that affects not just women's sexuality but also that of children. For more than two decades, there has been no set marriage age, and a girl or boy can get married with the consent of their father or paternal grandfather even before reaching puberty.

In 1982,

"Article 1041: Marriage before puberty¹ is prohibited.

The note under this article: Marriage before puberty is legal, with the permission of the father or paternal grandfather, subject to the best interests of the child."²

¹ . According to Shia Sharia, girls reach puberty at 9 lunar years and boys reach it at 15 lunar years. Lunar year is shorter than Christian year and is determined by the motion of the moon.

² . Article 1041, the Iranian Civil Code, 1982, Ibid.

The availability of girls got increased and the legal system decreased its power on marriage decision and give more authority to fathers regarding their children marriage and consequently their sexuality. This point has significance for girls.

In 2001,

"The marriage of a girl before reaching the age of 13 full solar years, and of a boy prior to reaching a full solar age of 15, shall be concluded with the consent of the father, subject to interest, with the judgment of the court having jurisdiction."¹

In 2003, this article was confirmed by another legislation assembly.

The marriage age increased, and the absolute authority of fathers has limited.

The father line power over their daughters' life was more than their sons. Fathers gained more control over their daughters' lives, especially when it came to their sexuality. Prior to the revolution, after becoming 18 years old, the girl might introduce her future spouse to the notary and, after making a declaration, to her father, even if she needed his consent for her first marriage. Following the revolution, girls in this situation must file a lawsuit in court, and if the court grants permission, they may be married. Without the father's consent, the court would substitute its own.

Three years after revolution, the aforementioned article was changed as follows:

"Article 1043: The marriage of a girl who has not yet married even though she has reached adulthood is subject to the consent of her father or grandfather, and if the father or grandfather refuses to give permission without a reasonable reason, the girl may refer to the special civil court with the full identification of the man who wishes to marry her and the conditions of marriage and the bridewealth between them and be informed by the arbitral court of the father or parental grandfather and after 15 days from the date of notification and intentional nonresponse, but the arbitration court may grant permission for marriage"²

Nine years later the article underwent new changes. The phrase of "not yet married" changed to virgin girl.

¹ . Article 1041, the Iranian Civil Code 2001, Ibid.

² . Article 1043, the Iranian Civil Code, 1982, <https://qavanin.ir/Law/TreeText/178971>.

"The marriage of a virgin girl, even if she has reached adulthood, is subject to the permission of her father or parental grandfather. And if the father or the grandfather, for no reason, refuses to give permission, his permission will be discontinued, and in this case, the daughter may, after obtaining permission from the special civil court, go to the marriage office and proceed to register marriage with the full identification of the man with whom she wishes to marry and the terms of marriage and the bridewealth marriage contract placed between them."¹

As to the Supreme Court's ruling, which consolidates established legal procedures, virginity is defined solely as the absence of penetration. (Katoozian: 643) The distinction between illegitimate and lawful penetration is inconsequential. Virginity and penetration have gained new prestige, which means that women's bodies and sexuality will be subject to more scrutiny.

Before the revolution, males had the exclusive legal authority to practice polygamy. There is no numerical restriction regarding the temporary marriage; thus, they are allowed to have four wives in the permanent marriage. Prior to the revolution, taking a second wife was criminal in specific circumstances, and in the final decade of the Pahlavi era, it was a crime if done without the court's consent. Even if the first wife's consent is required after a revolution, the sole penalty is the wife's right to divorce.² This privilege is forfeited if her refusal to follow her husband's orders led to this second marriage.

It must be said that polygamy and temporary marriage, which existed before the revolution, were highly encouraged. Many efforts have been made to increase these two institutions.

The second law we must examine is the act of protection of family which was proposed in 2007. It just went to more details about family and the importance of permanent marriage and some provisions about temporary marriage. The name was the same as the act before the Islamic revolution, but the content was different. It intended to protect family from the Islamic Republic point of view.

¹ . Article 1043, the Iranian Civil Code, 1991, Ibid.

² . Article 1129, the Iranian Civil Code 1935, Ibid.

2.2.2.2 The Act of Protection of Family (2013)¹

Another Act of family protection was started from the perspective of Islamic ideology after the revolution in the fourth decade of it. There was a significant discussion on this subject in 2007 when a draft was proposed to the Islamic parliament but was rejected due to opposition. But some years later, it got passed by some changes which had been applied. The most significant aspect of this law is its declaration that permanent marriage is the cornerstone and essence of the Islamic family. Due to this, this kind of marriage must be registered, and in some circumstances, a temporary marriage must also be registered. When the woman becomes pregnant or when the marriage contract has a clause stating that it should be registered.² We can conclude that the function of the temporary marriage is not to form a family, and it has to operate for another goal.

Article 23 of this Act that deal with a couple's sexual interactions within the context of a permanent marriage mandate that the man and the woman be tested for the presence of any sexually transmitted diseases.³ It is just another indicator that the legislature does not see these two marriages in the same manner.

After describing these civil legislations, we must go for criminal ones. The criminal dimension of the legal system and judiciary underwent significant transformation after the occurrence of the Islamic revolution.

These regulations allow me to distinguish between two approaches to sexuality in the Islamic Republic of Iran: one is the promotion of legal sex and the other is the abolition of illicit sex.

2.2.3 Criminal legislations

One of the criticisms frequently raised against the Pahlavi regime was the prevalence of sexual promiscuity, which was deemed necessary to eradicate. It was the greatest obstacle in the way of the creation of a new Islamic society that aimed to embody a heavenly society. For this

¹ <https://qavanin.ir/Law/TreeText/187568>.

² . Article 21, the Act of Protection of Family, 2013, <https://qavanin.ir/Law/TreeText/187568> ³

. Article 23, Ibid.

reason just the criminal means of legal system could be used which had roots in Sharia or Fiqh. The implementation of Islamic laws and the establishment of an Islamic Judiciary were seen necessary for the functioning of an Islamic society. The initial measure undertaken by the Islamic administration was the implementation of the Islamicization of the judiciary. Based on the legal and judicial aspects of Islam and the responsibilities its personalities have carried out, the claim on the judiciary by Shia clerics predated the claim on politics. After the Islamic revolution, this usual claim was fiercely pursued¹, especially in response to the laicization of the courts under the Reza Shah era. Criminal law and procedure was one of the key steps in the Islamicization process. The unprecedented legal draft was brought to the Iranian legal system in 1982, and subsequently to Iranian society. It was a big shock given not just to the intellectual elite but to the ordinary populace.

2.2.3.1 The Act of Hodud and Ghesas (1982)²

In the Sharia, there are two distinct sorts of punishment that are incredibly significant. All Abrahamic religions mention Ghesas, which is associated with certain types of crime like murder or assault. In these types of crimes, the people's rights have been violated and the punishment the delinquent receive must be equal to his crime. And Hodud means limitations, are associated with crimes like adultery, and they are crimes which are breaking God's limitations. Their punishment has been determined by God and they could not be changed to another form of punishment. One of the key figures in the Islamic revolution, Mohammad Beheshti, drafted the Hodud and Ghesas legal text and passionately defended it. Some politicians and legal experts criticized this strict legal draft.³ Before the Islamic Parliament could pass this draft, Beheshti was assassinated but it got passed and revolutionize many thing including sexuality. According to this act, all forms of extramarital sexual activity were tightly criminalized by this penal code.

¹ . See official website of Mohsen Kadivar, on "the Draft of Hodud and Ghesas" 2017.

² . <https://qavanin.ir/Law/TreeText/87694>

³ . See official website of Mohsen Kadivar, on " the Draft of Hodud and Ghesas", 2017.

Since the passage of this Act, there are now two categories of sex: lawful sex and illegitimate sex. Legitimate sexual activity has taken place throughout both permanent and temporary marriages. The remainder of sex is unlawful and severely criminal.

The section of the Hodud legislature begins with the fornication.

"Article 81: Fornication is defined as coitus between a man and a woman, to whom it is not permissible even if it is through anus."¹

Based on this article, the scope of not just illegal but criminal heterosexual activities is extremely wide. All these actions are going to be counted and defined in detail. The other point is that the article, which is translated from Fiqh texts, names different sexual positions. And it demonstrates the intrusive nature of this law. This clause establishes the criminality of all sexual relations that are out of two marriages in the Civil Code. The following articles will go forward.

There are some spaces for mistakes, and under this circumstance, the offender would not be included in this crime, like making mistakes about the partner.

"Article 99: Punishment for fornication (Had) is death in the following cases: a.

Incest fornication

b. with the father's wife

c. A non-Muslim man with a Muslim woman

d. Forceful fornication and unwillingly fornication are the causes of an abominable murder."²

"Article 100: The fornication in the following cases causes death by stone:

¹ . Article 81 ,the Act of Hodud and Ghesas, 1982, <https://qavanin.ir/Law/TreeText/87694>

² . Article 99, Ibid.

a. Fornication by a married man, i.e., a man who has a permanent wife and has had coitus with her and can have coitus with her whenever he wants, causes a stone.

b. Fornication by a married woman who has a permanent husband, has had sexual intercourse with him, and has the possibility of coitus with her husband causes a stone."¹

"Article 102: The punishment for fornication between a man and a woman who are not included under adultery is one hundred whips."²

Based on these articles and the punishments that have been determined, criminal fornications fit into three categories. The severest one is adultery, which is committed by married women and men and has the hardest punishment in Fiqh, stoning. Delinquents in this crime are committed to other people and have means of getting sexual satisfaction but use other means. The second degree of fornication and its punishment are incest and rape. And the last one is sex between a single man and a woman. It seems that the most important criterion in this hierarchy is breaking the family. Just in the case of rape, which is in the category of second severity and has been done through force and denied the free will of the other person, this criteria has not been met. So the point is not violating another person's right but something else, which the title of this type of crime suggests is the right of God, and this concept is tied to family protection.

"Article 139: Sodomy is sexual intercourse among men."³

"Article 140: Both the penetrator and the penetrated shall be punished."⁴

"Article 141: The punishment for sodomy is murder, and the quality of it is in the possession of the Sharia judge."⁵

¹ Article 100, Ibid.

² .Article 102, Ibid.

³ . Article 139, Ibid.

⁴ . Article 140, Ibid.

⁵ . Article 141, Ibid.

Male homosexuality, or the religious term "sodomy," which literally points out anal sex, is another activity that is substantially important for the Islamic Republic.

Along with coerced relationships and behaviors, consensual sexual activity was criminalized and, in certain situations, like adultery, was punished harsher. Although adultery and sodomy were considered crimes under the pre-revolutionary penal code, compulsion was the main emphasis of sex offenses. Criminalizing female homosexuality has become a thing. Tafkhiz, a particular act that involves inserting a man's penis between another man's legs, was made criminal. Other behaviors like kissing, caressing, and even strolling side by side were considered crimes and subject to the Ta'azir penalty in Islam, which is another type of Islamic punishment.

Mentioned in detail was the punishment for male homosexuality and adultery. Stoning must be carried out as a formal ceremony, with the methods of proof being carefully enforced. The main point is that sex could not take place in an unrestrained manner. When the Islamic concept of family was violated, it resulted in severe punishment, such as the throwing of stones. Another point could not be ignored is that all these crimes had a special categories among crimes in the penal Islamic jurisprudence. The title of these crimes and the type of them were Hodud. The Islamic legislator believes that these kinds of crimes are violating God's right.

2.2.3.2 The Act of Islamic Punishment (1992)¹

Most of the articles and provisions from the previous Act were duplicated in this one in 1992. It appears that some of the specifics on applying the aforementioned penalties that were included in the previous law were overlooked in the current one. Adultery and having sex outside of marriage marked the beginning of the Hodud section of the Act. Most forms of sexual activity have been shown and severely punished. The Sharia judge possesses the

¹ . <https://qavanin.ir/Law/TreeText/83452>

authority to render judgments based on personal assessment, although he requires to bring a reference for his view.¹

2.2.3.3 The Act of Tazirat (1995)²

This Act, which was passed five years after this Act and is still in effect, has criminalized what this Act neglected to make unlawful in relation to sex. T'azirat is another Islamic punishment that has not been determined within the Islamic text, but the Islamic clergy has the authority to determine this punishment. This Act makes it a crime to engage in any sexual behavior other than coitus, like sleeping next to one another. The distinction between sexual activity that is legitimate and illegitimate has been clearly and firmly established.

2.2.3.4 The Act of Islamic Punishment (2014)³

There are certain significant revisions that are controversial in the final version of the Islamic criminal code, which was adopted in 2014. The first is that every sort of sex offense has been explained in depth. Sex is explicitly defined, and a criterion for coitus to occur is indicated as to what degree the penis must penetrate the vagina.⁴ The sodomy sentence now specifically targets a person who has been penetrated.⁵ Sex has been limited to penetration in all forms of sexual crimes, demonstrating that lawmakers do not have another understanding of this activity.

These are the laws we can find in the Islamic republic legislation which is regulating sex in different ways. Based this section we can draw some conclusion which can be compared with the previous section conclusion points.

¹ .Article 105, the Islamic punishment Act, 1992, Ibid.

² . <https://qavanin.ir/>

³ . <https://qavanin.ir/Law/TreeText/198907>.

⁴ . Article 222, The Act of Islamic Punishment, 2014, Ibid.

⁵ . Article 234, Ibid.

1. Before the Islamic revolution, sexuality was at the center of political battles, and after the revolution, it was one of the main targets of the Islamization agenda.

2. The bifurcation of illegal sex and legal sex became absolute, and nothing was left out of these two categories. This strict distinction had special consequences that could be discussed afterwards.

Chapter 3: Furthering Ideologized Sex

The preceding chapter suggested that the dual approaches to sexuality appear to have been adopted by the Islamic Republic of Iran. It has helped advance the discourse on sex and sexuality in one manner. Contrary to popular belief, the Islamic Republic of Iran promoted sex as one of the fundamentals of its political structure, which also happened to be the Islamic manner of administering and organizing a political society. However, this can work if sexuality fits within its ideological framework. As soon as it crosses the ideological line, it will crumble in the depths of hell, thus punishment must be meted out on the earth. These two, at first seem, diametrically opposed elements of the sex phenomenon in the Islamic Republic of Iran have been politically satisfying to this system. There are some mechanisms have been representing these dual approach. The first is the Islamicization of sex, which is a crucial prerequisite for an Islamic society. The concept of "Islamicized sex," refers to the exchange of money for sex, the emphasis on penetration as the only genuine form of sex, and the Islamicized forms of prostitution and sex trade, but each one needs to be examined separately and along the first section. These four mechanisms fall under the heading of advancing ideologized sex or exercising positive control over sex. The next section discusses the first strategy for fostering ideologized discourse on sex.

3.1 Islamicized Society; Islamicized Sex

It seems what Iran has been dealing with since the 1970s can be defined as an ideological reading of Islam. The repercussions of what was happening in Iran and even the rest of the globe at the time made it usual to approach Islam with a revolutionary mindset. Following revolution, this Islam's ideological characteristics became apparent. The new political wing claimed that Islam can cover all facets of life and has specific prescriptions for all of them, from daily affairs like hygiene to political arrangements.¹ Islam, and even its sacred book, the

¹ . It seems that the first collection of works in this field belongs to Ali Shariati (1933–1977), who has been recognized as the Islamic revolution's ideologue. These are speeches he gave in the Hosseinyeh Ershad, then changed into books by the cultural foundation of Ali Shariati. (drshariati.org)

Quran, have its ideas for handling the economy, politics, culture, law, social sciences, and family; everything may be managed in accordance with Islamic principles. This claim fits within the Arentian sense of ideology. Based on its central tenet, this Islamic ideology asserts that it can explain every facet of reality, and that reality itself is what it is explaining and nothing else. It has a unique utopia that is moving ahead, but it seems that the idea of the utopian future and the present are not completely alike, and major attempts are being made to bring it about. There is a bunch of evidence and facts that can prove the abovementioned point in the speeches and operations of Islamic Revolution figures and in the laws and regulations. The claims of the Islamic government, Islamic nation, Islamic society, Islamic economy, Islamic university, Islamic medical science, Islamic psychology, and Islamic human sciences are deduced from this fact. Islamic government with the supreme leader, Vali Faghih, at the head of that is going to guide this Islamic society according to the rich Islamic legal heritage to the ultimate aim of unification with God.

This ideology was derived from Islamic sources, the Quran, the Prophet and Shia Imams' practices, the consensus of Shia clerics, and the rationale. (Kazemi & Safaie: 129-130) These four sources have formed the basis of Islamic law, or Sharia. Sharia has many chapters on various facets of Muslim life, and during the course of Islam's history, other sections like those on politics have been added. The most prevalent areas of Sharia are related to Muslim praying and Muslim trades and criminal issues. Many of the rules in this framework were used to resolve actual issues during the time of the prophet or Shia Imams, which was a unique circumstance. It appears that Sharia reflects the realities that existed in that primitive society. The family and sexual issues were therefore one of the most important aspects of that civilization, and because Mohammad had to deal with this reality in order to accomplish his mission, they were included into his teachings, Islamic sources, and subsequently the Islamic

Islamic Studies, 1972 in Hosseinyeh Ershad, published as his body of works, numbers 16, 17, and 18, by his cultural foundations of Dr Ali Shariati Mazinani.Hosseini,

The Heir of Adam, 1970 in Hosseinyeh Ershad, published as Body of His Works Number 19 by the cultural foundation of Dr. Ali Shariati Mazinani

Fatima is Fatima, 1971 in Hosseinyeh Ershad, published as a body of his works number 21 by the Cultural Foundation of Dr. Ali Shariati Mazinani

legal system.¹ All Islamic thinkers have devoted significant portions of their texts to topics relating to family and sex centuries after Islam first emerged. Since its beginnings, the discourse on sex has been established in a good way as well as a negative manner.

This aspect of Islam was not discarded in the process of revolutionizing, politicizing and ideologizing it; rather, it emerged as a fundamental aspect of ideologized Islam and one that should be granted ideological power. The prophet and God's directives—all methods that appear to have been employed to deal with the reality of early society—may be applied to the current reality of Iran, regardless of time or location, the early Islamic civilization was seen as the most pleasant in human history and needed to be recreated as the ideal type of society. The ideal of the early civilization of Islam, or the idealized early civilization of Islam, seems to represent the utopia of Islamic ideology.² Due to the origin, the way in which families and, more especially, sex are approached turned out to be one of the most, if not the most, significant elements in this recreation.

The centrality of the family in the development of Islamic society was emphasized in several parts of the Constitution, which were discussed in the last chapter. However, the family, which serves as the pillar of the Islamic community, must be constituted precisely in accordance with Islamic law through Islamic marriage. When the Supreme Leader, Roohollah Khomeini, repealed the Act of Family Protection during the early days of the revolution, the Civil Code became the only official document for structuring the family unit. Existing provision in the civil code have to be given new meaning and purpose in the new political climate. Based on what transpired in the previous chapter; other types of intimate relationships that are not preceded by the Islamic contract of marriage are endangering this Islamic union. This distinction between familial intimate relationships and non-family ones separated sexual encounters into legal and illegal sex. The first stage in the Islamicization of sex in this system was the dichotomy illegitimate and legitimate, which corresponded to sinful and sacred sex. By excluding all other options for having sex, such as all extramarital affairs, homosexuality,

¹ . This is one of the most challenging ideas about Islam and its legal system. I am of the opinion that these Islamic arrangements should be understood in their historical context. See Soroush, Abdolkarim (2001), *The Ethics of Gods*, Tarhe Now Publication, First Edition.

² . This utopian goal can be inferred from the introduction and the articles of the Constitution of the Islamic Republic of Iran, which were mentioned in the last chapter. And utopian element is one of the components of ideology. (Farzankia, Partow (2015), *Ideological Politics and Gender Equality (case of Cuba)*, Master Degree thesis, Shahid Beheshti University, 15-16)

and adultery, Islamic marriage became the sole means of satisfying one's sexual demands. Islamic marriages, whether long-term and short-term, were therefore approved, promoted, or even mandated.

The diverse realities of the society had to be accommodated within this constrained ideological framework, necessitating imposition and violence that led to the policing of personal matters.

The Islamic government has been using a variety of modern tools to accomplish this. (Afary: 267) However, married couples' legal sex was not left alone and was strictly regulated. Imposing a financial framework on legal sex inside the holy family is another technique of Islamicizing sex and expanding the discourse on it.

3.2 Sacred family: The Exchange of Sex and Money

The foundation of the Islamic family is two reciprocities, which were illustrated in the previous chapter. Money is an exchange of sexuality in both situations. To cover the initial penetration, bridewealth must be paid. Defloration is typically used as proof of sexual activity. We may draw parallels between Rubin's depiction of that culture and what Islamic Sharia reflects.

The family is a heterosexual organization which is hierarchical and divides work by gender. The family's head is the husband. Above the wife and the kids, he is in command of this unit. He is entitled of numerous rights: the right to sexually satisfied, the right to take as many as wives he wants, the right to divorce his wife, the right to his children's life, the right to monopolize his wives and the right of safeguarding his daughter's hymen exclusively belong to him. And his authority is guaranteed by God's command and legal power. After revolution, this power was ideologized and found ideologized meaning.

Women and children need to be greatly objectified in this situation. The second step of this objectification for woman occurs when they might receive double compensation in return for their sexual services. Once in exchange for first being penetrated, which typically coincided with losing one's virginity when one's hymen was damaged or entirely removed. The father or the parental grandfather is supposed to safeguard the virginity and the right of man to

defloration. Until one of them delivers the hymen to another man, he has been protecting that. In this process, virginity and the hymen in particular have prestige. Even she would not require her father's consent if she lost her hymen due to illegitimate sexual activity¹. She is entitled to a particular sum of money under the names MahrAlmesl or Arsh Albekare in some other scenario, including rape or not consenting being penetrated.² The sanctity of a woman's vagina and the cult of virginity both demand admission fees. The reciprocity of first penetration and bridewealth operates in both permanent and temporary marriages. However, this is not the entire story. There is now an additional monetary penalty for the remaining penetrations, which is specific to permanent marriage.

The wife is already exposed and her hymen has vanished, but she is still eligible for payment under the name of Nafagheh. She is in charge of crucial duties. First and foremost, she must fulfill her husband's sexual needs, but Tamkin has other aspects that extend beyond sex. She is in charge of providing care, cleaning, cooking, and other duties. Specific to all she must accomplish in accordance to her husband, this second payment. Her basic requirements, such as clothing, food, a place to live, and furnishings, should be met, but not because she must have them in order to exist, but rather because she is carrying out her obligations. If she disobeyed, she would lose access to all of these. Although her husband has the right to divorce her at any moment, adding another woman to the marriage would be a heavier consequence. As stated before, not paying Nafagheh has criminal and civil sanctions, which entails the importance of this reciprocity. Nafagheh is supposed to meet the wife's needs, but what about her sexual needs? They could be met as well?

Given the historical context of these laws, it appears that the physical characteristics of a woman and the absence of a penis—which can perform the penetration mission—have contributed to the idea that this lovely and delicate being is asexual and maybe castrated.³ She was now eligible for compensation. In the primitive context, perhaps we can see some advantages for women in these arrangements in other contexts. She receives something in return for her generosity—money—and being a selfless donor is not expected of her. She may keep the bridewealth her husband gave her and not share it with anybody else. But

¹ . But in this case, she committed a crime, and her father could complain against her. Additionally, she would lose the status of a virgin girl, and the amount of her bridewealth might decrease.

² . See the article number 658 of "The Act of Islamic Punishment"

³ . It seems that there is some confusion regarding this point. In some cases, women are capable of sexuality. There is an option for women to get divorced if they get into difficulty for some reasons, including sexuality, but there is not equal status with the importance of the husband's sexuality.

removed from that setting and after all these centuries, this arrangement becomes nothing more than the commodification of women and prostitution. The exchange of money and sex is more obvious in a temporary marriage.

3.3 Islamicized Sex Business

Shia Sharia is unique in having a temporary marriage institution, and another branch of Islam has revoked it. Bridewealth is a requirement of this institution, which should have defined time, and omitting it would render it illegitimate. There is nothing comparable to a Nafagheh in this marriage, the dependence of bride wealth upon first penetration still holds true, but there is no additional obligation. There is no requirement for registration and no divorce is necessary. It may simply start and conclude with only words. The child who is born there is not a bastard and is entitled to all the rights that an illegitimate child does not, although it would be difficult to show that the kid is linked to the guy who once was the baby's mother's spouse. It may pave the way for more sexual freedom. It has been used in this manner, and engaged couples and fiancés frequently use it before to weddings and permanent marriage. For devout men and even some females, the legitimacy of this institution gave it a respectable space for sexual freedom.¹ But based on all of these legal arrangements and, more importantly, the reality it has had for decades, this institution operates as religious and legal prostitution.

The pre-revolutionary Civil Code permitted temporary marriage. It was typical between clericals and ordinary people in pre modern Iran. There were certain bazars with such a system, and many women worked there and earned money through short-term unions. (Afary: 9) After the revolution, this institution took on new roles that matched the new system and developed a unique Islamicized sex business, Islamicized prostitution, and Islamicized procurement.

As was indicated in the preceding section, the temporary marriage is a unique institution. Regardless of its origin or other potential uses, it has been exploited as a kind of prostitution, but not the traditional kind. It appears that the Islamic Republic of Iran was the first to give

¹ . These facts are based on my own observations. Unfortunately there is no source on this.

prostitution a religious component in the sense that the girl or slut is performing a form of prayer by providing a sexual service and would receive reward from God in heaven.

This institution has been promoted throughout history since the revolution. In recent years, this genuine Sharia institution that was legitimate evolved into a legal sex industry. There are specific locations that are run by religious individuals who may be referred to as Islamicized pimps who are providing sex services. Some marriage notaries operate close to holy sites and engage in this activity. They really feel that what they are doing is rewarded from an Islamic standpoint. These businesses all have connections to the Islamic regime. These relationships are praised and females are invited to provide sexual service in the guise of temporary marriage in Islamic officials' speeches.) Afary, 269)

3.4 Cult of Penetration

The entry of the penis into the vagina has a particular position, despite the fact that it does not result in orgasm and male sexual ejaculation. In all articles, whether they are civil or criminal cases, sex is evidently just penetration. Legislature fixates on penetration as the only authentic coitus, even in same-sex relationships, despite their efforts to prohibit and frighten them. As a result, he is institutionalizing the idea that penile intercourse in the vagina or the anus is all there is to it. The institution of penetration, not simply the biological form, is what matters in this penile interaction.

Men are capable of engaging in this type of sex voluntarily and actively. Women cannot accomplish it because they lack sexuality, despite the fact that this is precisely why they are entitled to compensation. This is a genuine power relationship, because it requires a woman's submission and a man's superiority. One of the reason is that being penetrated is a uniquely feminine trait, which is evidence that this type of penetration is patriarchal. Let us consider case of male homosexuality, if being penetrated occurred to males, it would be a terrible catastrophe. After the Islamic Revolution, the two first penal laws mandated the execution of both homosexual partners; however, the most recent penal code modified this requirement and limited execution punishment to the person who had been penetrated. Although the perpetrator of a gay relationship would still face punishment, Male homosexuality is important, even if the perpetrator of a gay relationship would still face punishment, but being

penetrated is more important than same-sex relations because it emasculates men. They are required to be penetrators at all times. This makes it impossible to comprehend female homosexuality or female-initiated rape of males. When female homosexuality is committed with female genitalia, it should be penalized. However, since there is no penis present in this action, intercourse cannot occur.

Discussions about the marriage's fixation on penetration were place. The penile intercourse is meant by all references to sex in the Civil Code. This focus has led to the dichotomy of penetrated and non-penetrated women. Due to this, the virginity test is conducted in the majority of divorce and bride wealth cases. In legal counseling, the kind of women's hymen is a topic of discussion.

This focus on penetration and the characteristics discussed, even when it is criminal, is institutionalizing this unique sex format, which I will refer to as the "cult of penetration. It is a huge journey that has the potential to change a lot.

These processes are intended to further ideologized sex discourse, but the ideological nature of the Islamic Republic of Iran cannot accommodate all forms of sex. All sexual conduct that is not part of this ideology should be prohibited. As a result, the Islamic Republic of Iran has not abandoned repressive mechanisms, which will be covered in the next chapter .

Chapter 4: Preventing Non-Ideologized Sex

All sexual interaction, which this ideological framework does not recognize, should be harshly condemned. It was discussed how this method of approaching sex creates a dichotomy that contrasts sacred sex with the other, sinful kind, like two sides of a single coin. One of the political locus of the Islamic Republic of Iran has been the suppression of immoral, or more accurately, non-ideologized, sex. This subject is covered in the chapter's first part. The justification for criminalizing these behaviors and imposing a unique form of Islamic punishment is that they violate the rights of the Almighty God.

4.1 Bipolarity of Sex: Sinful Sex versus Sacred Sex

The holiness of sex in two Islamic marriages was discussed. But the other side of this sacred sex needs to be debated. According to some, the most impure sex is adultery, which is punished by being stoned. Adultery is penile intercourse between two non-single people who are already married to someone else. There is a particular requirement for this crime: in order to be stoned, these two people must already have sexual access to each other.

Adultery was made illegal from the very beginning of Islamic law. This offence is described in more depth in the most recent criminal code. It is expressly stated that the penis must penetrate the female anus or vagina to a certain depth. The intriguing aspect is that Sharia's four-time confession rule or four reliable witnesses are still the customary methods this offense may be proven. The restricted ways of proving this crime do not exclude the employment of modern methods, however. During the first decade of the Islamic revolution, one of the most significant political activities was the stoning and killing of individuals, including men and women, for adultery. (Floor, 2010: 317) Although it is still a mystery how many people have been stoned or killed for adultery, several witnesses¹ have been reporting on these brutal

¹ . My father was a political prisoner in the first decade of the revolution, and he keeps telling stories of men and women who were stoned or executed because of adultery or other sexual transgressions. They were kept in the prison together, or at the time of court sessions, political prisoners encountered these persons.

punishments. Many men and women are detained, tortured, and slaughtered (Floor: 317) alongside political prisoners and activists in an effort to reconstruct the Islamic society that was meant to reflect the early Islamic society in the time of Mohammad. Modern tools were utilized to find these suspects. Surveillance and spying, even by ordinary people, among family members and relatives, and even at private gatherings, took occurred. (Afary, 226) Many judges employed contemporary techniques to get the accused to confess four times.

According to what mentioned earlier, same-sex relationships have a long history in Iran. However, after the Islamic revolution, even though this phenomenon had been observed among clerics, sodomy was harshly condemned and criminalized. Male homosexuality, also known as sodomy, was another serious crime that was one of the political foci of the Islamic Republic of Iran. As previously stated, in the past ten years, only the partner who has been penetrated should receive the death penalty, while the penetrator must endure 100 slashes of whipping because he did nothing to violate masculinity; rather, the penis' intended target should have been a female hole, anus, or vagina not male one! Over the years, numerous males, including minors, have been put to death for sodomy. (Floor: 317)

Another offense that has to be tackled is having sex with a single person of a different sex. Even if this sort of sexual misconduct is less frowned upon than earlier ones, it is nevertheless against the grain of ideology. If two people of different sexes penetrated each other, they must each receive 100 wipes as punishment.

Other sexual acts, including as kissing, inserting a man's penis between his legs, and anything else that less than intercourse, are illegal. If they were to cross paths on the street, it may be possible to find them there together on a common ceiling. Although it is still illegal for women to be homosexual, they only face a whip to the hundredths if they use their genitalia.

Following the revolution, specialized committees were created to oversee citizen interactions and conduct. It was strongly encouraged for common people to spy on one another. (Afary: 267) These committees were provided with cutting-edge informational tools to identify antirevolutionary acts, which included all of the actions listed above.

It seemed the philosophy behind criminalization of these crimes is the institution of the family. All of these behaviors were criminalized because they posed a danger to the patriarchal family, which is required to be heterosexual, legal, and to distribute its

responsibilities along sexual lines. These actions can serve as alternatives to this institution and reduce its appeal. With the exception of adultery, none of these behaviors may cause harm to anybody involved, but even in that instance, third-party rights are irrelevant as long as the family structure is not violated. This point affirmed the institution of family as the core element of this ideology. The violation and threatening it has been claimed ethic and in further step societal coherence would get in danger but the truth is that ideological status of that would get in trouble. This subject will be covered in the second portion of this chapter.

4.2 Adultery, Sodomy, and Affair: God's Victimization

In the Islamic Republic of Iran, the link between God's right and these sexual offenses is one of the innovative aspects of the politics of sexuality. All of these crimes are subject to the particular punishment that Islam prescribes, Hodud. There is no room for negotiation because Sharia details have determined this unique and contentious classification of Sharia punishment. Although Islam has always included these penalties, which are all God's mandates, there are some controversies over them.

First of all, many theologians feel that due to the severity of these penalties, they should only be carried out in the presence of the prophet and the 12 Shia Imams. (Khomeini, 2013: 433)¹ However, some other theologians, such as the founders of the Islamic Republic, such as Khomeini² or Beheshti, who initiated the first Islamic criminal code, hold the idea that these penalties can still be carried out by the descendants of these early Islamic luminaries. The Islamic Republic of Iran argues that it is the legitimate successor to the original founders of Islam and is hence qualified to impose all of these penalties.(Khomeini, 2013, 771)

Another important distinction is that in Islam, original crimes fall into two categories: Ghesas and Hodud. The logic behind Ghesas is that people's rights have been violated but about Hodud

¹ . See Khansari, Ahmad (1984), "The Orbit Collector as an Useful Abbreviated Explanation"(Jameolmadarek), Volum 5, Tehran, p 411-412.

God's rights have been violated. (Khomeini: 501) Although rape is included in this category of punishment, we are not talking about that right now. These crimes are committed in the context of consensual relationships without the involvement of a victim. Both parties to these events knowingly engage in criminal activity, but because they have disobeyed god's orders, they are also infringing on his rights.

This argument, its premises, and its conclusion are all subject to several objections. But the issue is, as I mentioned before, that the Islamic Republic of Iran asserts that it is the continuation of the original Islamic Icons and that God and these Icons have granted it the power to establish a government. The Constitution of Islamic Republic of Iran states that God, known as Allah, has a political office and that he is the source of all political authority, which is then assigned to the nation and then to the Islamic government. The government's right is breached when the right of the all-powerful God is as well. The government may ruthlessly protect its rights in non-ideologized sexual human interactions by torturing or executing those involved.

Conclusion

Based on the topics that were covered in this research, the Islamic Republic of Iran's legal system has used sexuality, and especially sexual conduct, as an ideological tool. This ideological movement sought to recreate an Islamic ideal, and in order to do so, extensive use of sex was required. The Islamic Republic is an authoritarian system that shares some characteristics with totalitarian systems. The way it instrumentalizes sex differs from how sex is politicized in western countries.

This system's ideological goals required it to rebuild the Islamic ideal, which included a huge investment in sexual activity. As a result, if it has been employing the exchange of money and sexuality, it is not for the same purpose Rubin's primitive society example employed the women exchange policy. This government, which incorporates certain modern elements, is not required to create social coherence in the same manner that pre-state society did. The Islamic Republic of Iran continues to employ this mechanism because it was common in early Islamic society, and to rebuild that society, it needed this element. The Islamic ideology transformed the current reality into a phantasy of early Islamic society as an ultimate goal. And all these sexual policies are needed to recreate that age. This transformation, which is the main task Ideology carries out, could not be imagined in a pre-modern era, and it needed modern tools. The legal system is one of the best means in this process. On the other hand, liberal democracies could not use legal means in this capacity.

The dual regulation of sexual activity—both positively and negatively—has had a significant impact on people's sexual behavior. The importance of sex in Iranian society is exaggerated as a result of the bipolarity between sinful and sacred sex. Sex succeeded to impede all facets of Iranian society by the radicalization of its senses. Because sex has become an obsession and is administering Iranians' lives as a result of this fixation, the pervasiveness of sex in Iranian society has gone unnoticed.

The parallels between Islamicized marriages and prostitution, the cult of penetration, which disciplining people's everyday relationships and even their bodies, are the secondary characteristics of politicized or Islamicized sex. The significance of penetration and the legal processes that support it are influencing how Iranian young people who engage in sexual behavior outside the bounds of Islamic culture relate to one another sexually. They choose sexual freedom, but since they are concerned about losing their virginity and facing the legal

repercussions, they engage in particular types of sexual activity such as anal sex, oral sex, or sex without penetration to get around the idea of virginity, which is defined as not having been deflorated.

The intricate Islamic Republic of Iran's view on sexuality is evidence that we are dealing with a distinct religious dictatorship that does not fit the in the categorization of typical theocracy. In the Islamic Republic of Iran, there has never been a private-public split that is more logical under liberalism, and liberal states could not use legal mechanisms, especially criminalization, to prevent many private sexual activities. Politics in the Islamic Republic of Iran is sexualized and could not be defined the way many legal and political scholars¹ have been thinking, and exactly because of this point, the movement of women, life, freedom is the biggest threat to its integrity.

All the facts mentioned may be taken into account to fully comprehend the movement of women's freedom of life. By all indications that we have seen, women are an important part of this movement. For example, the removal of the hijab requirement (which should be understood as a suppression mechanism against sexuality) will break down sexuality's ideological boundaries and pose a threat to the system as a whole because it has gone after its foundation. These conceptual frameworks are what its three components—woman, life, and freedom—are aiming towards.

¹ . See Katoozian, AmirNaser (2009), *The Family Law, Nekah and Talagh*, Volum 1, Publication of Sherekat Sahami Enteshr, Tehran, (Especially the Introduction).

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