

Comparing the laws of adoption in Iran and France

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Abstract: Child adoption is a legal entity based on which there would be a special relationship between the adopted child and the adoptive parents. This phenomenon has a long history throughout the history of law and has always been cared for in various periods of time for different purposes. This legal foundation has been recently accepted in western countries laws in complete, incomplete, or simple forms with different results and after some developments. In spite of accepting this institution in Iran during the Sasanid dynasty and its validity among the Zoroastrians, it was abolished through the influence of Islam; however, due to individual and social benefits, and the crucial need of the society to establish justice and in order to protect the unprotected children and orphans, it was revived under the title of protecting unprotected children with certain legal requirements. In comparison to Iran, child adoption has a long history in other countries and it has different conditions and requirements in various periods of time and in different law systems. With regard to different perspectives and various methods, adopting a child within a family will lead to the creation of some legal relationships in law. Therefore, this paper aims to study child adoptions rights in the laws of Iran and France.

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1. Introduction

Child adoption had faced many ups and downs until the 19th century but its climax goes back to the post World War I in 1914-1918 in which numerous children and women were displaced, children in search of their families, and families in search of their children were sent from cities to cities and from countries to countries. European diplomatic and benevolent thoughts all together supported child adopting institutions more and more, both to protect the victims and to continue the political life of Europe. Therefore, lawyers believe that child adoption is a concept which has not been ignored by the political goals of the governments (Nurser, John. 2005). Child adoption is an entity which has almost a long history in various societies and civilizations in different forms. Researchers have mentioned different reasons for its emergence. Most researchers believe that child adoption is rooted in military and economic needs and sometimes spiritual or emotional factors have lead to its emergence and at the moment it rests on the spiritual needs of the families and unprotected children.

1.1. Child adoption definition

Child adoption has been reflected variously in the law system of different countries and different definitions have been offered for it; for instance, some scholars of Iran civil laws have defined child adoption as: "Child adoption means to adopt another person who is not one's biological child. If child adoption is recognized, it will create a kind of bond which is just legal but not natural. In other words, through child adoption, the law creates a fake father-child or mother-

child relationship between two persons (Raynor L.1980).

2.1. Child adoption in ancient Iran

Child adoption was common in ancient Iran especially in Sasanid era. Considering the role of Zoroastrianism in those days and the Zoroastrians' beliefs in child adoption, they considered the adopted child as the real birth child which involved the father-child relationships; therefore, child adoption institution had a great status and the Zoroastrians who made up the majority of Iran believed that everyone's child is as a bridge through which they would walk to the paradise and people who had no children wouldn't have a bridge on the resurrection day and in the life hereafter, to enter the Paradise. Such infertile couples could make a bridge to enter Paradise by adopting a child. Three kinds of child adoption were common in Iran: First, selective child adoption which included the adopted children that the adoptive parents adopted in their lifetime. Second, forcible adoption in which the adopted person was the wife or the only daughter of a deceased who had no brothers or sons. In this case the wife or the only daughter of the late man was involuntarily and forcibly considered as the adopted person of the deceased. Third, adopted children who were chosen by the heirs of the childless deceased after his death. The adopted child, of any kind, would perform all the religious ceremonies as the deputy of the deceased and all the authorities of the deceased were transferred to him.

3.1. Adoption in Islam

Child adoption was common among Arab tribes and the ethnic groups of Arabian Peninsula before the emergence of Islam and the adopted child was called

“D’aeie”. Primitive tribes of Arab were living in the tents in the hot weather of Arabia desert and most of them didn’t have a comfortable life in that hot dry desert. Pillaging and murdering, particularly attacking the caravans and plundering their properties were common ways of livelihood for Arabs and as tribes, caravans, and families were subject to attack and plunder, it was necessary for them to have offensive and defensive forces. To meet such needs and to provide the necessary authority, a boy was of great values as a fighting force among the tribes, but a girl was a helpless creature who neither had a defensive power nor was able to attack a tribe or caravan to loot their properties to earn a livelihood; on the contrary, in that conditions she was subject to being raped by the invaders. Therefore, the members of the tribes had to devote a part of their energy and strength to protecting the girls and thus were not able to earn a livelihood. To the Arabs, girls were really annoying and the girls birth not only didn’t make them happy, but also made them very angry and frustrated, and the innocent and helpless girls were buried alive because the Arabs were afraid to lose their face and dignity in case of their daughters’ being abducted and raped. However, when a boy was born, they were celebrating and having fun. The more sons they had, the more powerful they would be and if the families didn’t have any sons or if there were few sons, they compensated for it through child adoption. Therefore, having a foster son was considered quite well and there were certain relationships between the adopted son and the adoptive parents based on old traditions. For example, the adopted child inherited from the adoptive parent and the wife of adopted son was considered the daughter-in-law like the wife of the biological son so the adoptive father was not permitted to marry the wife of adopted son. Thus, if a foster son divorced his wife or passes away or was lost his life in an accident and his wife became a widow, then the adoptive father was not permitted to marry the wife of his adopted son and this way of thinking was very common among people and was observed seriously and fanatically at the beginning of Islam. However, with the development of Islam there appeared some changes in different social aspects including child adoptions and according to some people child adoption got demolished. Islam and the holy prophet (peace be upon him) basically tried to destroy the ego idols and to eradicate lots of wrong criteria during the time of ignorance and to replace the tribal dubious figures with real values and human dignity. Moreover, Islam tried to consider piety and righteousness superior to material and superficial power and also tried to establish justice and eradicate social differentiation. To achieve this goal, the holy prophet tied various methods and applied different tools including his efforts to stabilize the idea that the dearest humans before God are the most

righteous ones.⁴ Therefore, it could be said that first of all, in Islamic laws, child adoption is not forbidden and there isn’t any evidence to approve of its prohibition. Second, verses 4 and 37 of Ahzab (parties) Surah expresses the facts to clarify and distinguish what is true from what is in the minds of people about the adopted children and the biological ones and the difference between them. Therefore, Islam had not been trying to demolish child adoption. Third, considering the abovementioned verses, if there is any doubt about the permission or respect of adoption, based on mental intellectual and religious rules, it is permissible to adopt a child. Fourth, changing the legal effects of adoption in the era of ignorance does not imply that it has been entirely demolished. Fifth, mentioning the name of adopted child and the permission of marriage for adopted girls in the verse of 37 of Ahzab (Parties) Surah which was revealed after the 4th verse of the same Surah indicates the survival of adoption. Otherwise, it was not true to be mentioned again in religion if adoption was abolished. Besides, the meaning of the verse 23 of “Nesa’e” (Women) Surah indicates that it is forbidden for a father to marry his son’s wife and it implies that child adoption has survived. Sixth, When the verses of Quran related to adoption were revealed to the holy prophet (PBUH), he didn’t ostracize Zaid from his own family and there wasn’t any trouble in emotional ties between Zaid and the holy prophet (PBUH) as long as Zaid was living and this again indicates the existence and the survival of this legal entity (Rivzi Sayyid Muhammad.2010)

4.1. Adoption in Iranian laws

In Iranian civil laws, there is not any child adoption. However, since it is highly recommended to keep custody of orphans and children without any custodians, many families willingly accept to keep custody of such children and thus devote their wealth to achieve this goal, but it was a moral commitment and was not compulsory. Therefore, a law was passed in March 31, 1975 to protect unsupervised children and it was the first step to organize moral relations between these children and certain families. The term “custody” was applied by the legislator for this purpose which indicates the possibility of adopting a child in a family. to avoid the illusion that the adoption of non-Shiite Iranians is also subject to this law, the legislator has even frankly stated that “ the law of adoption for the affairs of non-Shiite Iranians still remain valid”. However, this law seems to be a new concept in law and now about 30 years after this law was passed, it seems like it needs to be modified. Therefore, by admitting the fact that child adoption is a personal manner, child adoption is quite accepted and permissible by referring to the articles 6 and 7 of civil law which discusses about child adoption as a voluntary personal affair. It is observed that there are different

ideas and opinions about the mentioned subject and each idea which is focused will have various results in terms of child adoption and custody. For each of the above ideas certain reasons may be invoked. For example, to prove the theory of prevailing law of Iran in this case, it is argued that “single article applies only to non-Shiite Iranians but it does not include foreigners who are residing in Iran and article 5 of civil law is applicable in this regard which includes all the inhabitants of Iran whether Iranians or foreigners unless there are some exceptions. And since other articles such as articles 964 and 965 are exceptions, and in exceptions we should depend on what is sure and certain and since in this case we face the silence of the law, therefore, Iranian law should be considered as the criterion.⁸ But the problem is that adoption is not recognized by Iranian law and thus does not include legal rights such as inheritance. And if the above theory is accepted, an adopted child who has truly got this right in his own and his adoptive parents’ country, might face some problems in Iran including the invalidity of such legal entity if he wants to take advantage of the legal rights of an adopted child such as inheritance and this is against the justice and against the principle of the validity of acquired rights. Child adoption is not basically recognized by Iranian laws and according to Islamic jurisprudence an adopted child is never considered as a biological child and does not include a father-child relationship and its consequences such as inheritance and etc. (except the requirements that the legislator has foreseen for unsupervised children), therefore the law of the country to which the adoptive parents belong is not considered a prevailing law in relation to this matter. Therefore, it could ultimately be said that since child adoption is not recognized by Islamic jurisprudence and Iranian laws and Iranian legislator has established an independent institution as the custodian of unsupervised children, and has made it applicable for any couples who are living in Iran and who are willing to keep the custody of a child, the main Iranian law is prevailing over creating such a relationship. But in response to this possible objection that child adoption correctly exist in foreign countries, and in Iran just some of its effects are invoked, if we consider that the Iranian law prevails over this matter, then we should stop to identify such a relationship and agree that the adopted child has no rights. This is not just or fair and is against the principle of the validity of acquired rights. It must be said that in this case a distinction should be made between the right and the effects of the right. That is, if we are at the beginning of this relation and want to create a right in which for instance foreigners from other countries want to adopt a child in Iran, it is quite different from the effects of the right in which some people want to apply

the adoption relationship, which correctly exist in foreign countries, in Iran and to invoke to its effects.

5.1. Child adoption in French laws and its conditions

There are various regulations about the dominant laws of adoption in different countries. In their laws, some countries have separated establishing an adoption entity from taking advantage of the effects of adoption. In Egypt and Kuwait, the laws of the country of both adoptive father and adopted child are considered important in the issues of validity of child adoption but in terms of the effects of child adoption, only the law of the country of adopted child is prevailing. In French laws, the regulations related to child adoption didn’t change, in spite of passing some laws in January 3, 1972, and French supreme court, after a long hesitation and debate, in relation to a case called Torlet passed a law based on which child adoptions depends on the national law of the applicant or applicants of an adopted child, but the conditions related to the adopted child consent depends on the national law of the adopted child. The first glimmers of child adoption can be searched in the Great French Revolution (<http://www.adoptionpolicy.org/pdf/eu-france>).

The legal background of adoption in modern laws of France goes back to the law of June 19, 1923 which was raised with the law of June 29, 1939 as the family law and finally became a civil law with the law of December 23, 1958. In France, like other Roman and German states, child adoption is realized through issuing judicial verdict by family court judges in provincial court. There are two forms of adoptions: full adoption and simple adoption. French Jurists describe full adoption as legitimate child: “Full adoption is a complete separation of a child from his original family (except in-laws and spouse) and joining another family”. Moreover, “full adoption transfers all the relations of the adopted child with his biological parents to his adoptive parents except the biological and family relationship”. As mentioned before, simple adoption depends on the agreement of both sides but its principles must be within the framework of the law; on the contrary, all conditions of full adoption are explained in law. In France full adoption is also possible for children younger than 15. Under paragraph 1 of article 343 of French civil code, child adoption is possible for those couples who have been married for at least two years or who are both over than 28 years old. Moreover, child adoption is forbidden for those who are interested in each other and want to get married, unless the child is their biological child or those who are separate from each other can adopt a child. Besides, it is not forbidden for the spouse to adopt a child. In French laws, single persons are forbidden to adopt a child even if the child of the spouse is considered to be adopted. Under paragraph 5 of article 348 of French civil code, children fewer than 2 who are protected by the ministry

of “the social welfare of children” are proposed to couples as adopt children. The age of adopted child differs according to his country. The minimum age for French children is 3 months and for foreign ones is since their birth. In spite of French government emphasize and care for adopting French children, foreign children are adopted more than French ones in France even though under the law of November 7, 1984, department of social and sanitary activities of children has determined heavier taxes for adopting foreign children (Hamilton, L. (2012).

6.1. Child adoption organizations in France

DAASES (organization of sanitary and social activities of children) is the most important institution in France which tires to do research, investigate, and introduce this legal entity. Under the law of April 15, 1943, earlier files are also kept in this organization and its experts are fully accredited by the French courts to address the issues of adoption. In addition to this state organization, French government has also provided the chance for other private agencies to do research, investigate, and introduce adoption. Of course DASES supervises the activities of private agencies. Public donation organizations also have active roles in these regards. Like in Germany, there are two periods of taking care of the adopted child and supervising the adoption relationships in France. The only difference is that in the second stage two sides of adoption are completely identified. Under paragraph 3 of article 348 of France civil code, the initial period is 2 months and the trial period lasts 6 months.

2. Discussions

In recent conditions and in today’s societies child adoption has a remarkable and useful role in strengthening and warming up the families who have no children and in improving the society and solving the mental problems of children who have no guardian and also in reducing the abnormalities of the infertile couples. It also reduces the burden of the responsibility of the governments. As it was observed in the laws of Iran and other studied countries, and as it is emphasized in the convention of children’s rights, all lawyers, judges, and legislators in different countries try to support and take care of children’s interest not only in terms of economic and social interests, but also in terms of emotional and mental issues which are manifested in

different ways such as the issue of birth certificate and identity papers and documents of the adopted child under the name of new adoptive family. It is obvious that when these efforts are combined with religious and cultural heritage and traditions of different societies, they generate various results in the laws and regulation of different countries. In the laws of studied countries, the legislator or the legal trend has passed the adoption laws of the foreigners in terms of the similarity and the difference of the laws of the country of the adoptive father and the adopted child while in Iran there isn’t an evident law or legal trend in this regard even though the scholars and the lawyers have tried to solve this problem and to offer a solution which is in accordance with the Iranian law system and the society’s requirements

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References

1. Gauthier, L., Stollak, G., Messe, L., & Arnoff, J. (1996). Recall of childhood neglect and physical abuse as differential predictors of current psychological functioning. *Child Abuse and Neglect* 20, 549–559.
2. Hamilton, L. (2012). Adoption. In *Blackwell Encyclopedia of Sociology*. Retrieved from.
3. <http://www.adoptionpolicy.org/pdf/eu-france>.
4. Michaels, Ruth, and Florence Rondell. *The Adoption Family Book I: You and Your Child*. Page 4.
5. Nurser, John. 2005. "For All Peoples and All Nations. Christian Churches and Human Rights.". (Geneva: WCC Publications, 2005).
6. Raynor L. 1980, the Adopted Child Comes of Age.
7. Rivzi Sayyid Muhammad. 2010. "Adoption in Islam," 9 April.
8. Magurran AE. *Ecological Diversity and Its Measurement*. Princeton University Press, Princeton, New Jersey, 1988;179.

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