

## Child adoption from Iranian law view

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### Abstract

*In this research work, efforts has been made to illustrate the legal aspects of child adoption under Iranian law and to knew its legal effects in areas like lineage, inheritance, obligation and the rights of child towards the parents and vice versa. The topics relating to identity of an adopted child will be discussed. So in the case of migration to other countries, the rule of law applicable to and the mutual rightsand obligations between an adopted child and the parent will be more clarified. In summary, the outcome of this research is to know the law and legal obligation that is upon the parents and adopted child in respect of obligations related to custody, training, payment of lively allowances of the child and their bilateral duty to respect each other, until the childreaches 18 years of age. However, there is no inheritance between them and it is only through settlements and wills that the possibility of owning property through one another could exist. Under Iranlaw Special rules also exist that is discussed in this article.*

**Key Words:** Child Adoption, Guardianship, Kinship, Lineage, breastfeeding.

### Introduction:

One of the most important topic that is been discussed under the legal systems, is the issue relating to affinity among individuals. Affinity from some perceptive have legal affects such as marriage restrictions, inheritance, and the obligations arising from this relationship, such as custody, ward ship and guardianship. We knew that one of the most important types of socialrelationships is the relations between parents and children. This is a natural relationship between the child on one hand and the parents on the other. Besides this natural affinity is child adoption that is greatly paid attention to by the community.

This work seeks to know the characteristics of this institutionunder the Iranian law and as to what has been mentioned so far, what are the standard and rules available in this legal system. The outcomes of this research is useful to explain this institution and legal status of these persons is made in such a way that it could be applicable to them in case of migration to other countries. With enough understanding of the legal relationship, one would be able to identify the relationship of an adopted child and their parents from the perspective of the enforceable rules of law.

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### **1- Methodology and sources of identifying family bond under Iranian law.**

Under the Iranian judiciary system, the rules of law must be searched for in parliament acts regulating the issue under discussion. In a situation where there is no explicit legal rule for solving a legal issue; the court must search for a reputable and well known rule in Islamic sources.<sup>1</sup> In a number of cases, a direct reference to reputable Islamic sources is directed by the courts.

However the judicial system of Iran for inference a legal rule from the acts follows the method of Roman and German legal systems. It means that the way for resolving issue must be through search for an act. So the origin of every rule of law is inferred from the regulations not the decisions of courts. Previous decisions of courts of justice are not recognized as a form of precedents and direct source of deriving the rule of law.

The function of court's opinion in this situation is at least, a machinery of producing the necessary legal logics needed in explaining the evenness of acts and uniformity of its legal application. Elucidation of court in a country may be less effective when compare to another country. This is a relief for the scholars of law of various countries in civil law systems.

Meanwhile, the law scholars of the countries that follow common law, may have expectations that, the laws of every country should be known through the investigating the decisions of courts; analysis and explanation of regulations by the tools of legal logic for knowing of what is the law is not enough in line with their views. So in this research I presented one of Iranian court verdicts to illustrate an real example of what is implemented in the society as the law.<sup>1</sup>

### **2-Legislative sources:**

The Iranian law with the special regard to orderliness in community and family relationship follows the Islamic standard. This approach was first put into consideration at 1934 when the Iranian civil code was codified and came to force. The principle 4 of the Islamic republic of Iranian Constitutional Act 1979 followed the approach. In summary the administration of family under the Iranian law is completely based upon Islamic law.

### **3-Causes of kinship relation under Iranian law:**

Family kinship under the law of Iran is of different categories: one of it is through lineage, which is further divided into two categories; lineage arising from birth by the parents, and lineage as a result of breastfeeding. And the other form of lineage is by causes.

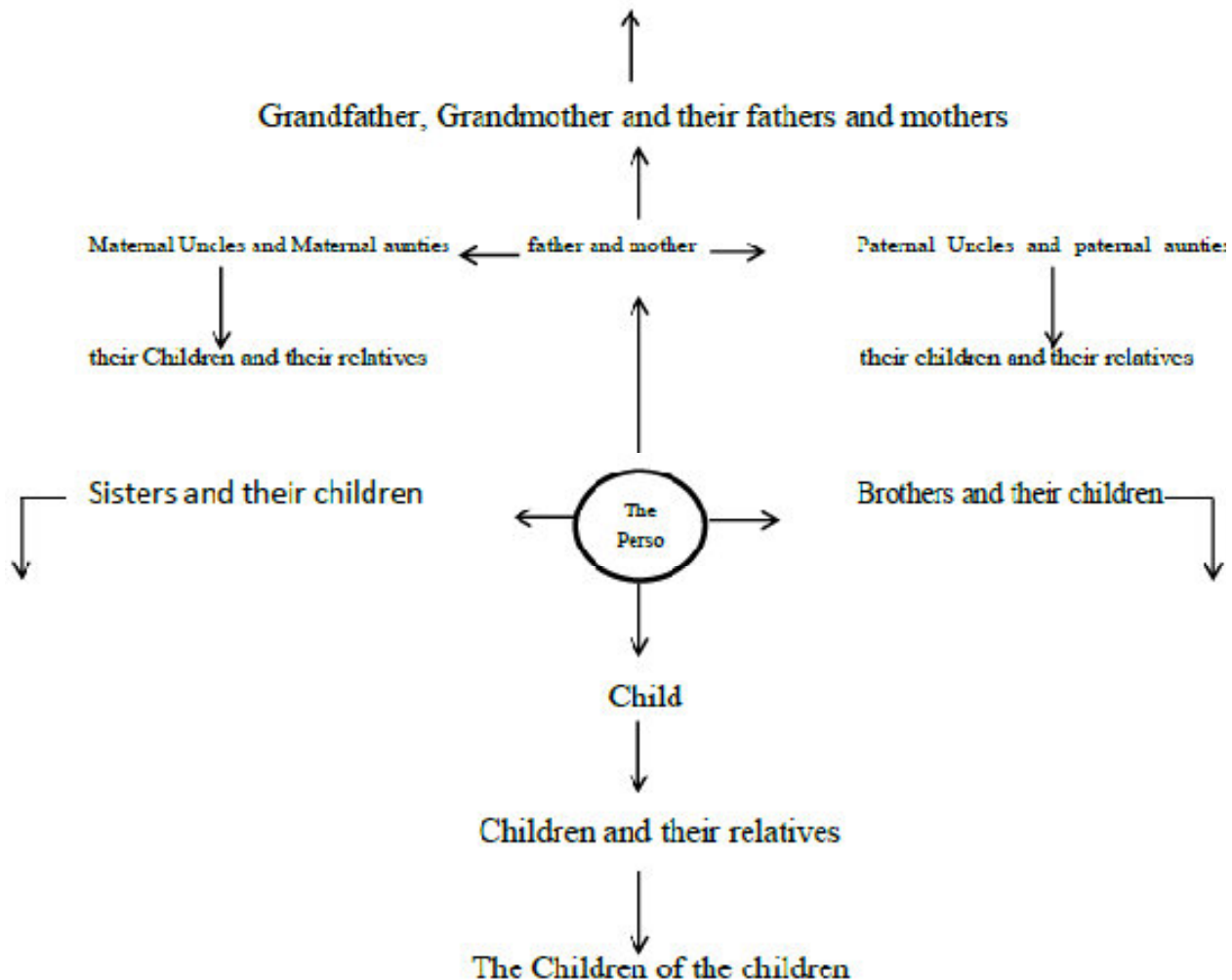
Lineage that is of natural causes, this is based upon birth, which has two main natural directions. Those are Vertical and horizontal directions. The Vertical direction has two sub directions those are up and down directions. The first is the direct relationship of descendant ship that is: parents, child, and his children descendants and the other is that of ascendant ship which includes the father, mother, grandmother and grandfather and their fathers and mothers.

The horizontal directions arise from surrounding causes; this includes affinity relationship of a person and that of his brothers, sisters and their children that is of the same line, and between him and his paternal uncles, paternal aunties, maternal uncles and maternal aunties and their children.

Lineage has been defined by one of the religious scholars as: «Lineage include to conclude the delivery of person by another, like father, mother and son or to conclude the delivery of two persons by a third person like two brother in relation to the father. »<sup>2</sup> (Najafi Mohammadhasanjavaherelkalam 1980). We can see it as it is shown below:

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<sup>1</sup>Page 12 number 13



#### 4- The kinship relationship as a result of infant breastfeeding

One of the occasions through which a form of child relationship and prohibition of marriage occurs, is the breastfeeding, the notion of breastfeeding, is the actual suckling of the child from the breast milk of a woman other than the biological mother. With the condition that the suckling is repeated several times to the extent that the child's flesh is grown and the body bones become firm from the breastfeeding. So special kinship is created between the child and the husband of the woman, hence, a so-called father-child relationship is created, so that the child becomes like the biological child of the man.

Lineage through breastfeeding is established with the father, under the condition that if the said child breastfed the milk for a number of full ten times consecutively.<sup>3</sup> (Sheikhe Mofid 1990)

Lineage by breastfeeding is only established before the age of two years of child. The suckling of the child must be consecutively, in a situation where it is not in sequence, it must be at least one complete day of breastfeeding (24 hours).<sup>4</sup> (Sheikhe Toosi 1990)

With the situation that the above-mentioned conditions are met, the child gains the position of lineage, consequently, becomes like close relatives who are prohibited for marriage to the foster parents. Meanwhile, lineage arising from breastfeeding is only observed from the side of the father.<sup>5</sup> (Sheikhe Toosi 1990)

The implication of this word is that if a woman used her breast milk that is the result of birth of a child from her husband to feed a child and the husband has other children from another woman, her children and her husband's children gotten from another woman are in marriage prohibition with the foster child. Also there

is prohibition between the children, brothers and sisters and the foster child and the father. In summary all the children and the breastfeed child of this man are in degree of marriage prohibition.

In summary, woman who breastfeed a child is the mother of the child, and her husband, is the father of that child; the mothers and fathers of these husband and wife are the grandfather and grandmother of the foster child, the children are the brothers and sisters of the foster child, the brothers and sisters of the foster mother, maternal uncles and aunties; and the brothers and sisters of the foster father, paternal uncles and paternal aunts of the foster child.<sup>6</sup>(*Mohaqqe Helli 1990*)

### **5- Kingship as a result of marriage:**

This is a form of family relationship that has some specific legal implication and the most restricted in relation to relation arising from lineage, its consequences will be explained later.

Marriage ceremony which is a kind of agreements, in its conditions brings into existence a family, which is a specific unit of the community. There are two types of marriage under the Iranian laws; these include permanent Marriage and marriage for specific period of time i.e. temporary marriage.

Temporary marriage is a specification of the Shiite belief under the law of Iran; because of the majority of Iranian are Shiite Moslems, this form of marriage gains the official recognition.

Each of the two forms of marriages, permanent and temporary are official, each one of them alone is capable of producing family unit in the community. However, from the legal point of view there is differences between these marriages, in the area of the couples inheriting from one another and the necessity of the husband to secure joint spending and whether to be obligated to specific time or not. But as far as the issue of family relationship arising from the marriages, which is our area of discussion, there is no difference between the two forms of marriages; it is worth mentioning that; temporary marriage has not gain full gesture among Iranian women. Iranian women are biased in showing themselves about it and it is usually a kind of secret functions and when a secrete wedding is used but it is lawful. Even though, this form of marriage is well recognized officially and the children which may subsequently result from it has the recognition of the law as the child of the couples, and there is no any differences in the status accorded to the child arising from permanent marriage than the one from a temporary marriage.

### **6- Consequences of kinship relationship through marriage**

The kinship relationship arises from two forms of official marriage, compared to the lineal relationship, has the most limited effects, which could be treated under three major grounds:

First As for inheritance, in no circumstance could there be an inheritance relationship arising from this kinship, except between the couples. Secondly, there is no necessity for economic reliance in this type of relationship, except between the woman and the husband. Thirdly, restrictions in relation to prohibited marriage laws as regards to kinship arising from marriage, is an exception, to the degree of close relatives. Presently, this is not the place for the discussion of this, but the only point that is related to the child relationship through marriage shall be discussed.

In Iranian civil law, all kinship relatives of every single of couple is regarded in the same degree of kinship relationship with another, therefore the wife's mother, is a mother in law and the wife's child is also a daughter or son in law, due to this analogy in every respect the family relationship through marriage spread just like family lineage.

### **7- Special Child adoption arising from the marriage**

How can this child's adoption be established? Under the law of Iran, the adoption of a child as a result of marriage is in special circumstances where one of the couples had a child from another wife/husband other than the present wife/husband. For example, a woman that has a child previously with her marriage to

another man, this man has the right to call the child his step child. In this situation, the relationship of the child to the mother is genealogical and that of the child with the mother's husband is step. The reverse is the case in a situation where the man has a child, and he marries the woman, the relationship of the child to his father is genealogical, while that of the father's wife is a step relationship.

### **8- Legal effects of this type of child adoption**

As we said, in this step child relationship, one of the couples is either the biological father or the biological mother, and consequences of law is clear in this regard, that is, the standard of law related to biological child relationship is favored. But in respect of the other couple (the man or woman) whose relation is as a result of marriage, will be a step mother or step father as the case may be. What is the effect of law derived from this? In answering this, it must be stated that this type of foster child relationship (step) there is no effect as per inheritance, that is, any of them, the step mother, step farther and step child, inherit from one another. However, in form of Wills, any of these categories of people can leave some portion of his/her estate to the other, but in absence of Will, no one of these parties is a legal inheritor of another. However, the biological relationship of this child to the mother or to the father on itself remains valid. Another consequence of foster relationship is the restrictions or non-restriction under marriages, the restriction that is discussed in some degrees and steps of relationship. For example; a man cannot marry his mother in law (wife's mother) but he can marry the daughter of the uncle in law (that is the daughter of the uncle to his wife). Based on this, as a marriage right, between an adopted child and father; in a situation where the step child is a girl or in case of the mother and the adopted child, where the step child is a boy, under Iranian legal system, this standard has been provided.

Under the first degree, with the accomplishment of marriage rites and sexual relationship between the couples, none of the couples can marry the child of another that is by law, a step child of his. However, there is an exception, where there is divorce before sexual relationship between the couples. There is no barrier for the man to marry the daughter of the divorced wife. (*AL Qur'an 4 verse 28*).

As to other obligation and rules of law, for the relationship that exists between the parents and their biological children does not exist in this type of step child relationship. Therefore, there is no right of custody of stepfather, by the child or step mother, in the same way duties of custody or tutorship in Iranian law is a right as well the duties of parents, which is a condition connected to the mother (before 7 years of age) and in a situation where it is given to the father it remains with him to the age of maturity.

In this form of child foster ship; there is no duty of allowances whereas in case of biological children Iranian law makes it mandatory upon the parents, that the daily expenditure of the children up to the moment that there is no wealth allocated to them in which they could use to procure themselves. Priorities of this obligation rest on the father first, then the mother.

### **9 - Child adoption under the Iranian civil law.**

In summary, adoption of a child as choice is not acceptable in Islam, and for the Muslims it does not have legal effect, but it is recognized for non-Muslims if they believed in it. But with attention to the needs of the community, in some special cases, it became important for the law to assist the children who does not have guardians, so some of the legal consequences of such relation are placed by the law. Of course, this type of child's adoption relation, instead of the parent choosing basis, is derived from the rule of court judgment. That is according to the general rules of Islam The courts have the authority of guardianship over so children, and can pass this authority to persons to act as guardians or appointed parents.

However, we cannot say that the agreement basis adoption is in contrary to the standard of Islam. It is possible that, the court ratifies adoption of a child by a couple, if the child real parents are unknown and the child is without guardianship. The child could be given by an authorized judge to the couples who

made the application. However, the Lineage relationship of this child with his original parents is not to be legally ignored and severed. Accordingly there is no inheritance between these children and foster fathers and mother. It is only through Wills that they could leave some part of their property to each other and under the Iranian law the allocated amount of Will should not be more than of one third of the total estate of the deceased person.

Secondly, the consequence of choosing a foster child does not bring about restriction in marriages. More so, this is not a natural relationship but a relationship of agreements. The restrictions related to marriages limitations in birth and child, and reduction of the possibilities of marriage. That must be enclosed to legal situations under the Iranian law.

In Iranian law, according to Protection of without Guardian Children Act (1975) every Iranian couple can agree and the court will accept their guardianship of a child (Article 1). This guardianship is to make preparation for necessary interests to the child, this will not in any way lead to inheritance (Article 2). Therefore, under the law of Iran, the expression "adoption of a child" is not used of; the view of the legislature is that, the legal status of these children is completely deferent compared to biological child of the parent. However, some legal effects and social functions of adoption are created by this Act. Article 2 of this Act stipulates that guardianship does not necessitate inheritance. In spite of this Article the Act impose duty to those who seek guardianship to ensure the court that in case of their deaths, the preparation of the expenditure, custody and education of the child should be taken for until the attainment of puberty. However, the guardian can from his or her own side as a form of arrangement give some wealth to the child to satisfy the court to establish confidence. However, in case of the child death while the guardian is alive, his deposited wealth of settlements will be return to them by the government, and is not regarded as the child estate; the child is not to be regarded as their descendant from whom they could inherit (Article 5). This rule is a clear explanation of the issue that the guardian is not a legal inheritor of the deceased child. It is only the wealth used as settlement that is to be returned to him. In a situation where the guardians or anyone of them dies while the child is alive, nothing of the settlement wealth will be taken from the child's wealth to the surviving couple. Because, under the Iranian law, settlement is abidding contract, that none of the parties involved can singularly set it aside.

### **10 - Requirements of couples applying for guardianship**

Under the Iranian law, as discussed earlier, the status of so guardianship is established by the order of court and the consent of the couples and their choices without the order of court, does not have any legal effect. The court must lay down the conditions for the child and the applicant couples for the guardianship, this will decrease the possibility of this type of foster child relationship. The couples in addition to be of good moral character, economically balanced and of sound health must prove through medical report that, they cannot own a child or has been married from long time and have no child. Article 3 stated a period of five years from the date of their marriage and one of the couples having completed the age of 30 years and is unable to produce a child, for such couple the conditions for guardianship is said to have been established.

### **11- Requirements of the child whose guardianship is been sought**

The child, whose guardianship is sought, must not be more than 12 years of age. In addition no one of the parents either mother, or father or his grandfather must be known or to be alive; or the child is under the custody of one of the institute of general welfare, and no one of his mother or father or any of the grandfather had a visit of him. This type of child is a typical example of a child without guardianship. Moreover, the possibility of return from real parents of child is a nightmare that is always disorganizing the guardians and it is possible that the child himself may also cause some emotional hardship to them when they returned; and



the child that is newly handed over to a new parents and is unexpectedly visited by the actual parents, it might cause him some emotional harm.

Applicants can with the fulfillments of the requirements of law take a number of children under guardianship. Based on the provision of Article 11 of the Act, the duties and responsibilities of the guardian and the child under his guardianship in respect to protection, training, allowance and respect in the view of the law are duties of the father and mother (Article 11). According to Article 1167 of the Iranian civil code, the duty of protecting the children is the duty of the mother and father, and a right for them. This right is known as custody. However, the court can denied the irresponsible parents this right and give the child to competent person. (Article 1178 of Iranian civil code)

The Guardians legally represent at the child, and make order for his properties, except if the court makes a contrary arrangement. These two articles placed all the responsibilities of the parent towards their children upon foster parent. Protection, training and allowance are all considered by law as necessary in respect to guardianship of a child, that the legal parents also have these outlined. Article 12 of, Protection of without Guardian Children Act (1975) also placed the duty of representation upon the child upon guardians.

### **12- Characteristic of affinity relationship under Iranian law**

One of the problems that is faced by the function of the system of child's adoption in the Iranian law is the bringing into existence the characteristic of restrictions, i.e. intimacy between an adopted child who is male and the mother or where the adopted child is a female between her and adopting father. The characteristic of intimacy must be explained. Intimacy under the Iranian law is a form of community moral feature that is, a kind of prohibition from marriage and in the same situation, from the social point of view the two opposite sex are intimate and does not have the tendency of sexual relationship between one another and must not exist between them. Therefore, between mother and son, and in the same way between father and daughter, brother and sister there is the existence of intimacy. Therefore, the room for the feeling of security/safety and healthy family living is ensured.

Under Iranian law, in order to bring into existence, this type of intimacy between adopted child and one of the parents who is an opposite sex to the child, the only provision of law of ensuring is limited to infant breastfeeding. The mechanism of infant breastfeeding must be used in a way that a relative of the father or mother breast the child in accordance with the provision. so that the child is breastfeed before the age of two years, to the extent that the body flesh of the child is grown and bone becomes firm from the breast milk. For example, the mother or the sister of the adopting father should breastfeed the child. In this case, the feature of intimacy will be established between adopting father and adopted child.

Relationship of adopted child and the parents is almost the same as the relationship of a child to the actual parents. Making of this homogeneity is to bring about the necessary foundation for easy and comfortable living together of the whole family.

### **13- An Example of court's verdict on child's adopting**

To make clear with what is known with reality of order, here I present an example of the ruling of the court of Iran about child adopting.

The public court in *Kreman province*, with the reason of verdict NO: 9109973410100460 in September 2012 gave the following verdicts:

« in the name of god, in respect of joint application of Mr. J.A and madam Z.S. based on custody of child with the child given named *Laaia*, The court having observed the words in the wedding certificate No<sup>2</sup>.... that indicate that a period of five years past from the date of marriage of the named persons and also with the observation of the identification letter of the applicant that shows that the age of the named person has exceeded thirty years, and attestation No.... and .....showing the fact that they bear no criminal records and attestation No.... of legal medicine of *Kreman* that the mentioned lacked previous addictions to drug or alcoholic drinks and are free from psychological disorder, except for the fact that they cannot conceived a child they have a sound human relationship, therefore, in consideration to the sitting dated of the like family committee that confirmed applicant's competence for the child 's custody and according to article 3 of Protection of without Guardian Children Act (1975) the court rule temporary custody of the child to the applicants for a period of 6 mounts.it is clear that permanent custody is conditioned to confirmation of applicant's competence during the temporary custody period by legal authorities and then by the court...»

#### **14- Some aspects of the Convention on Child's Right 1989 in Iranian law**

Article 7, of the convention on child's right 1989 (CRC) that Iran ratify it at 1994, recognized the right of awareness of a child of his parents. There is different views about the interpretation of the word "parents" from this view that if include both actual parents and biological parents. This right is expanded by some to include the right to know the biological parent. In their view, this right includes knowing the parents, grandparents and the family's name and information on the genetic of the grand parent and the blood relations.<sup>7</sup>(George A Stewart, 1992) In the same way, it was stated that the right to know the origin is the same right to know the one's actual parents and family. Knowing the Biological family and condition through which a person came into the world is part of this right.<sup>8</sup>(Samantha Bassoon, 2007) By consideration to Article 7 of the convention, to the extent that it is possible, the child's right in relation to knowledge of his parents must be recognized, and the meaning of parents must be given a wider explanation and must include the parents who brought these children to life.<sup>9</sup>(Rachel Hodgkin and peter Newel, 2007)

The UK government recognized the person who provides for the child as the parent of that child. it mean that there is no interest for child to be entitled the right to know his origin.

The conflict between the adopted child's right to know his origin in one hand and his actual parents' right who want the child origin to be secret and hidden in another hand, how could be resolved? Iran is one of the countries that don't follow the policy that expressly entitle the children to get information relating to their biological parent where they don't have the knowledge. This policy is under the influence of the cultural and social condition of the country.

United Nations declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Referenceto Foster Placement and Adoption Nationally and Internationally, With gesture to the position of child's adoption in the societal realm and between the international societies, the need of the child's right as regards guardianship to know his background is recognized, except where the prudence and best interest of the child is contradicted.<sup>10</sup>(U.N general assembly, 1986)

The Convention on Child's Right does not point at the prudence of the child, and the phrase "where it is possible" is make use of. One can infer that the phrase must not be explained to contradict the prudence of the child.

Under the Iranian law as a member of the convention, this phrase must also have this explanation. From the cultural and societal point of view, the prudence of the child an Iranian adopted child is also that the actual identity of his genetics be kept hidden, and it is only when he has reached the age of competency, that the

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<sup>2</sup>Some information related to applicants privacy has been omitted



right to know the biological parent could be discussed. In Iran the families that accept the guardianship of children by adoption have much tendency in denying this order. In all of countries where biological and blood relationship is very important, the tendency of disclaiming true identity of adopted child is very high. According to Protection of without Guardian Children Act (1975) it is mandatory to issue identification card of the child under the family name of the adopting parents. Adopted children after reaching the age of competency also, have the tendency to hidden their biological identity to others and if one does not respect this tendency, this is known as an attack on their own privacy.

The point that must be remembered at the end is that, by consideration to the approach of the legal assistance agreed upon, the duties that is offered to the children without guardianship is limited to the period of their incompetency and this come to an end with the attainment of age of competency.

### Conclusion

The word guardianship in comparison and correlation with other system of law in Iran is an equivalent of child adoption. The Iranian law in order to separate this concept from biological child, made use of this word "guardianship" but the inheritance and the other restrictions of law in relation to biological family in this particular case is not applicable. The child becomes a member of family. The rights and duties of parents in relation to adopted child is the same as that, which exist between biological parents and their child. Of course, inheritance between adopted child and the father or mother does not exist. Properties could only be received through arrangement of settlements and Wills. The rights, obligation and reciprocal respect between an adopted child and the foster father and mother is like of real parents.

Under the Iranian law, the status this relation is established by the order of court and the consent of the couples and their choices without the order of court does not have any legal effect. The court must satisfy the conditions for the child and the applicant couples for the guardianship, this will decrease the possibility of this type of foster child relationship. The couples in addition to be of good moral character, economically balanced and of sound health must prove through medical report that, they cannot own a child or has been married from long time and have no child. Article 3 stated a period of five years from the date of their marriage and one of the couples having completed the age of 30 years and is unable to produce a child, for such couple the conditions for guardianship is said to have been established.

According to Protection of without Guardian Children Act (1975) it is mandatory to issue identification card of the child under the family name of the adopting parents. As a social fact, adopted children have also the tendency to hidden their biological identity to other seven after reaching the age of competency.

The End

### Endnotes

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<sup>1</sup>Section 167 of the Iranian Constitution Act 1979 and Article 3 of the civil procedural act 1999

<sup>2</sup>Najafi Mohammadhasan javaher el kalam volume 39 Beirut darehia-ettorath 1980 p7

<sup>3</sup>Sheikhe Mofid as cited in Morvarid Aliasgharalyan abiea-elfeqhie vol 18 Beirut darehia-ettorath 1990 P34

<sup>4</sup>Sheikhe Toosi as cited in Morvarid Aliasgharalyan abiea-elfeqhie vol 18 Beirut darehia-ettorath 1990 P103

<sup>5</sup>Op.cit P102

<sup>6</sup>MohaqeqHelliSharaiealislam as cited in MorvaridAliasgharalyanabiea-elfeqhiehol 18 Beirutdarehia-ettorath 1990 P478

<sup>7</sup>George A Stewart, interpreting the child's Right to identify in the U.N convention on the Rights of the child, family law quarterly, volume 26, Number 3, 1992, P. 223-224.

<sup>8</sup>Samantha Bessoon, enforcing the child's right to know her origins: contrasting approaches under the convention on the rights of the child and the European convention on human rights, International journal of law, policy and the family, Volume 21, 2007, p140.

<sup>9</sup>Rachel Hodgkin and peter Newel, Implementation hand book for the rights of the child prepare for UNICEF, 2007, plo 6

<sup>10</sup> U.N general assembly, Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally A/RES/41/85 December 1986

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- 4) Iranian Constitutional Act 1979
- 5) The U.N. Convention on Child's Right 1989