



A Study on the Pros and Cons Viewpoints of Marriage with the Adopted Child in Iran

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ABSTRACT: Adoption is a legal entity whereby a specific relationship is created between the adopted child and the adoptive father and adoptive mother. This has existed in law history as one of the ways to protect the orphans. In Islamic legal system lineage is created solely through legitimate birth. So Adoption creates conventional lineage. According to Orphans Protection Law, families without children can adopt orphaned children under some standards and conditions, without the formation of any impacts resulted from lineage, such as inheritance and marriage reverence between them. It must be noted that some of the duties and responsibilities assigned to the real parents by Islam, such as alimony and tutorship can be considered for supporting orphaned children. However, the approval of an emerging legislation such as marriage with adopted child has created great deal of debate in our society and confronted families with scepticism to adopt children. So with such a legislation how can we provide better future for this segment of society who are deprived of family support? This paper is organized in four chapters. In the first chapter the general discussion is presented. The second chapter explains the related concepts and investigates the essential conditions in child adoption and its denial from Law and Jurisprudence point of view. In the third chapter the conditions of marriage with adopted child and how to communicate with family members (natural and legal) are reviewed. The fourth chapter will complete the discussion by presenting recommendations and conclusions.

Keywords: Pros and Cons Viewpoints, Marriage, Adopted Child.

INTRODUCTION

If the adopted child wants to marry while she has not reached the legal age, and her father and grandfather can also conclude a marriage contract with her, the marriage without the permission of the child guardian is invalidated and does not cause privacy. "Of course, if Sharia Ruler deems such a marriage, the marriage of the minor whose father and grandfather are unclear, advisable, he will issue its permission. Therefore, the result is that the adoptive father has no authority to adopted child marriage. This can be the reason for denial of the adopted child as a real child. When the child reaches puberty, she can detect her best interest in marriage. The majority of jurists consider the permission of father and grandfather as the condition to marry¹. If her father or grandfather is unknown, or died, she can decide about it and religiously does not need parental permission. Thus, legal age has the same meaning, that is to say, the child could identify her/his interests and corruption in financial and other affairs, so that the probability of heavy-handed treatment is poor.

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MARRIAGE OF ADOPTED CHILD WITH PARENTS ACCORDING TO JURISPRUDENCE

Islam has declared explicitly that the adopted child is not real child and there is no Mahramiat in the ordinary form between adopted child and parents. This point indicates the lack of marriage reverence between them. According to the Note of Article 27 of the constitution, protection of orphaned children and bad guardian children is incompatible with the principles of Jurisprudence. Why? Because the law has depended the marriage of the adopted child with parents after reaching puberty, on the permission of the court. While according to Jurisprudence there is no marriage reverence between them, it will be in conflict with willpower and the fact that each individual has the natural civil rights².

Although the adopted child is not Mahram of the adoptive mother or father and marriage between them is religiously permissible, this permission is never recommended. It can be compared with retaliation. Vindication of retaliation right is permissible. But Islam did not emphasize it. We see only its license.

It must also be noted that in the provisions that there is no exigency to be done or exigency to leave them, and there is only its permission in law, the society variable situation and norm will be crucial. In other words, it can be said that there are many laws in Islam, which are permissible, but in the norm they are bad. For example, Jurisprudence puts no obstacle to marriage of couples with a large age difference and this type of marriage is permissible, but it not pleased in norm. Time is very impressive. About this case in the past, such a marriage would have not been absurd, but it will not be in the norm today. Marriage with adopted child is prescribed on the basis of interests, and if not, depravity maybe created. Sometimes it is beneficial to the adopted child. In addition, this type of marriage is not mandatory and the parties, such as other marriages, can be married with a qualification. This prescribing does not mean that Islam does not consider the norm and ignores the values of the community³. Accordingly, to avoid the emotional and social damages that the adopted child may be faced with, while she/he has not reached puberty, the permission of Sharia Ruler and obtaining interest are the requirements. This means that the Sharia Ruler (judge) to prescribe such a marriage, should also consider the characteristics of the individual and the adopted child social conditions to determine such marriage as expedient. It is very difficult to achieve reliability and meet the interest and the realization of this type of marriage is rare⁵.

Defenders go on to say that every sentence that in the norm view is bad and exists in religion cannot be banned. Since this weakens the Sharia. However, there is the possibility of putting constraints to maintain security and stability of such families. Iran's civil law, following the religion of Islam, did not accept this symbol of "adoption". The couples who have no children, with the presence of some requirements that are stated in the Orphans Protection Law can adopt child. The adoption in Islam is not as it is in the West. In Islamic legal system lineage is created solely through legitimate birth. So Adoption creates conventional lineage. In Quran it is possible and the dominant religious judge can make an appropriate decision.

PROPOSERS OF THE THEORY OF MARRIAGE WITH ADOPTED CHILD

New law of Family Support although disagrees with strong reasons, it must be understood that in the rejection of this law there should be robust and defensible reason. Some critics even argue that this kind of marriage is illegal. However, this bill has many proponents that defend it and offer a number of reasons to support it. They consider the illicit aspects of the legislation strange and know this law in favor of the adopted child expedient. In the explanation, it can be

told that from several angles, we can consider the case of adoption. Advocates argue that opposing views are mixed with extreme suspicion and are investigated from one point of view, not from different perspectives. In the issue of adopted child marriage with the parents, should only the sexual issues be considered? The proponents group believes that the legality of this issue will prevent abuse. Because in reality, when a man and woman want to be responsible for supervision, their qualifications will be investigated from various perspectives⁶. Secondly, if the adoptive wants to marry the adopted child, not for evil-doing, but for the real interests, ignoring some interests and supports generally is not correct. This issue should not be absolutely rejected. Is it really impossible, as the opponents of the bill state, to consider any kind of convenience for the case? On the other hand, in the issue of marriage, the adult cannot be forced. The court examines the issue for more accuracy and reliability.

As stated in the definition of adoption, it creates a legal kinship, not natural. We must accept that legal child is different from the natural child and its effects are different. Considering the Islamic law of the adoption, the adopted child cannot be known as the actual child. Therefore, adoption sentence transfers the authority of natural parents, regard to training and taking care of the child, to the guardians, but other effects of kinship are not transferred⁷. The result is that: (a) the kinship of adopted child with consanguineous and foster relatives is preserved and there is the sentence of marriage reverence between them³. (b) Adopted child inherits from her/his real family and her/his bequest is subject to them. These two results are in fact the derived effects of the accepted result that the adopted child is not the real child. In the case of Prophet's marriage with his adopted son wife, which is discussed in Ahzab Surah, it is clearly seen that although adopted child is the legal child of parties, and of course marrying with her/him is normally not acceptable and there is possible corruption, Islam has prescribed it explicitly and not necessarily². This type of marriage, except in special cases and for the interests of the parties will not be prescribed. So to summarize, it can be said that there is sometimes expedient. Furthermore, the qualifications of obtaining adoption jurisdiction and intervention of the law prevent the abuse. More importantly, we get from Sharia the parties lack of being Mahram. This is also reflected in our law. Based on the above issues, the concerns can also be overcome.

Note: Although Grand Ayatollahs consider this type of marriage abominable, they emphasize the lack of parents being Mahram at the child. Grand Ayatollah Sanei only refers to the Mahramiat of the parties. The proponents reject the mentioned traditions by the opponents and consider it weak and just for analogy.

In Shia hadith books, Mahramiat between the parties is not mentioned and consider Mosahereh, including mutual interest, as a result of the relativity and marriage, not adoption. The study of the showed no mention of inaccuracy of the stated content. Therefore, there is no insistence on making the issue non-religious (although some proponents accept the reluctance claim). As it was told it is investigable and accountable from other sights. The positive points of the law should be seen and regard to the marriage issue, it cannot be said that there is no discretionary.

OPPONENTS OF THE THEORY OF MARRIAGE WITH ADOPTED CHILD

Opponents believe that the law has not addressed this issue until 1974 and it has been banned. The procedure in Welfare Organization was the same. From the Act of 1974 up to date,

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three Marriages have occurred that psychologists know it emotionally very wrong. While some "minority" jurists know adopted child as Mahram, most today jurists do not know the adopted child as Mahram. However, most jurists have emphasized on the negative aspects of such a marriage reception. Among the drawbacks: the marriage is contrary to norm. In terms of emotional connection between the child and the parents, the marriage can affect the adopted child morale. This law could provide the way to abuse children. It may even be contrary to public order and conscience of society. It is expressed that the conscience of the society will not accept it⁸.

As one of the conditions and requirements for child adoption is having financial ability, adherence to ethical principles must also be considered. This can disrupt family security. Furthermore, the orphaned children who are deprived of effective guardian, are taken care by four ways of orphanage, pseudo-family, volunteer family or adoption. Adoption has a legal definition. That is to say, the adopted becomes the legal and lawful child of the parents and a birth certificate is given to her/him. In addition, adoption is usually done at a very young age.

So how can the adopted child marriage with parents be permitted? It is worth noting that some researchers believe that marriage with the adopted child is an abomination and to argue they adhere to traditions, in which the individual marriage with his midwife is prohibited. Especially where the midwife is also responsible for his training. The jurists perceived reluctance from this tradition. Argument to this tradition for the reluctance of the adopted child marriage with the godfather or godmother in an early look was for analogy, which is void in Islamic Jurisprudence. Unless the definitive reason for reluctance of marriage with midwife can be discovered by referring to religious texts and other evidence. Then, if the existence of such cause can be also established in the marriage with the adopted child, the reluctance sentence is also extends to it, which can be investigated⁹.

It is important to note that in the Ministers Council bill of 4.3.2008 the marriage bill has been silent, but not prohibited. By this law, for the marriage of the adopted child and the godfather, the permission of the court is necessary. This point is stated by the defenders of this law. But opponents say that this possibility and even the proposal of the issue will be a hazard for public opinion⁵.

THE ADOPTED CHILD MARRIAGE WITH PARENTS

Lawyers believe that the issue of the adopted child marriage with parent shows the legislator carelessness in some aspects of such a marriage. This proposal in the first place, destroys the institution of adoption. The lawyer, Bahman Keshavarz says that in Orphans Protection Law passed in 1974, the principals are expressed, based on which couples can apply for adoption of children. Expressed. The law has mentioned nothing about the relationship between the child and the godfather and godmother legally and in terms of Mahramiat. In Article 11, it had merely mentioned the duties and responsibilities of the guardian in terms of taking care, training, support and respect. The result of lack of Mahramiat is that if their marriage is no obstacle to another person marriage, has no problem. In other words, the godfather is religiously permitted to marry with his adopted daughter who is more than 13 years old, and the adopted son can marry with his godmother, if she has no marriage obstacles. Lawyers know Article 27 of Law against the rights and safety of a child and believe that family tranquility goes through with this amendment. In addition, Article 22 of the Law and inserting being adopted child in her/his birth certificate, undermines her/his psychological security. In general, lawyers believe that this rule will not be able to properly protect the rights of children

and sometimes it would endanger some of them and tarnish her/his safety. Furthermore, supporters of the law say that expedience demands it, which is not convincing. At first Act, the marriage of adopted child with the parents was totally banned. But in the second Act, adopted on 14 February 2013, the Note was: marriage at the adoption time and after that, between the guardian and adopted child is prohibited. Unless the court, after receiving an advisory opinion of the Organization on the best interests of the child, would recognize. Despite of the presence of the court and law in this sentence, the sense of security has been endangered due to the negative charge of such marriages⁷.

The key question is that: what is the measure of expediency? What is the sanction? If a guardian performs such marriage without the court marriage, what is the ruling? Lawyers, with regard to these issues, consider the presence of such law as a threat to the institution of adoption, which will severely damage it. Unlike the main purpose of this law, which tries to increase adoption, there will be a suspicion of abuse.

Article 28 of Protection Act: if the guardian is trying to marry, she/he must notify the competent court of the person identifications. In the event of the marriage, the organization is required to report the marriage to the court. Then, by the attainment of this Act conditions, the court makes decision in relation to continuing or terminating the joint adoption.

Note: Marriage of the guardian and adopted during the adoption course and after it, is prohibited. Unless the court, after receiving an advisory opinion of the Organization on the best interests of the child, would recognize. As can be seen, the adopted child marriage with the parents is forbidden, unless the competent court orders². Guardian Council considers the rejection of such a marriage generally illegal. Because, as noted earlier, adopted child is not real child and this issue is clear in Sharia. In the new law, its probability is not excluded in general, but it is restricted and limited to the Court opinion. As noted earlier, a group for reasons, is hard against this type of marriage and its devastating consequences. Another group agrees it (agrees the law) and in response to opponents says that the marriage should not be questioned, in addition, the Court considers it expedient. Opponents again answer to the lack of convincing. Among the proponents of the marriage, a group considers the Note as an excessive. They believe that no lawful should be forbidden (Guardian Council opinion)⁹. Then, the Guardian Council announced its opinion with respect to the provision (referring the forbidden mentioned in Article 27 to the case that after reaching the age of puberty, the marriage is to her/his best interest, is contrary to Sharia law). It seems that here, unlike the apparent announced opinion, it considered the expedient and considers the case that the marriage applicant is the adopted child, her/himself. Therefore, why should this interest be removed from the root?

This question can be studied in its own right and defenders of the law should respond to it. However, here's the Guardian Council's opposition is not based on an inherent conflict of Sharia, but is due to neglecting the interest. As we all know, counseling is the duty of representatives of the people, and the Guardian Council reviews the compliance of Sharia with law. Therefore, Guardian Council criticizing is not correct and it commented outside the scope of its authority⁷.

CONCLUSIONS

Emotional loss of adopted child, possibility of guardians' abuse, putting the humanitarian action of adoption in suspicion and hurting other family members can be the consequences of the adopted child marriage with parents. Society will have suffered from these marriages, as

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well. Security of families will be lost and adoption symbol becomes controversial. It seems the Fatwa on adopted child marriage license with parents is consistent with legal texts apparently, but not with the spirit of legal rules. Therefore, more attention must be paid to the issue.

On these social issues both in the law and Jurisdiction is not an individual, but typically. That is to say, one person may be in particular situation that is not hurt by this relationship. Nevertheless, as the damage is typical, sanctions are also common. On the fatwas and the law both damages should be considered. For example, driving with a certain degree of alcohol in the blood is prohibited. Though some people do not reach intoxication by that degree of alcohol. Therefore, the sanction is imposed, considering typical situation. Thus, regard to the adopted child marriage with parents, ruling on the permissibility or prohibition should not notice the personal state of the individual. Instead, typical situation must be considered. As a result, due to those harms, the general prohibition of it is undoubted.

According to the Parliament approval, these marriages are possible only by the court sentence (Article 27). However, these restrictions and limitations that the Court should issue such permission, offsets (partly) the damage to those who wants to marry. Noticing the expedient of such marriages, the damage to other family members are taken into consideration to some extent. However, the question is that how it can solve the damage to society. As the norm does not accept this kind of marriage, if it takes place, the society suffers and the good practice of adoption will be in doubt in the public opinion.

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