



The Challenges of Supervisor Marriage with Adopted Child in Iranian Law

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A B S T R A C T

The article is divided into three topics, the first devoted to the argument of the dissenters and the second to the arguments of the proponents of such marriage. Legal and extra-legal challenges will also be presented when presenting the first point of view. And in the third issue, the position of the orphaned child protection law adopted in year 53 and the orphanage and child protection law adopted in 2013 expresses the marriage of the guardian with his adoptive child. , The media space created in violation of Article 26 of the Law on the Protection of Homeless Children and Adolescents, adopted in 2013, is far from scientific, legal and jurisprudential and based on melancholy, overwhelming emotions and emotion, which is itself It is an unfavorable situation in scientific discourse. The atmosphere in question is such that it dares to dismiss scientific commentators and put them in a passive position, while many of these claims lack sufficient scientific basis. It should be noted that even in the light of the above remark, many adoptive families have been engaged in their daily lives without concern, but many have become involved and focused on this issue with the creation of untruthful falsehoods. So if there is really a concern for adoptive families, the role of such media is no less than the approval of the aforementioned, but this emotional space seems to be slowly getting out of the way and things are back to normal.

Keywords: Guardianship, Adoption, Marriage, Jurisprudence, Subject Rights, Child.

INTRODUCTION

There is a serious problem with the customary prescription of the disputed law concerning the marriage of a guardian with an adopted child. The custom, which is one of the legal sources, is defined as: "An unwritten law established by universal agreement and a rule that is gradually and spontaneously established among all peoples or groups as a binding rule(Besson & d'Aspremont, 2017; D'amato & Falk, 1971; Koskenniemi, 2017).

There is no doubt that Iranian society and social customs are not receptive to this phenomenon(Shafiei Fini & Bouzari, 2017). From a social point of view, childbearing with an adoptive parent and adoptive mother is as damaging as a child's marriage and relationship with her or her primary parents. It is true that God's law cannot be forbidden, but societal judgment does not allow for religious citation and reasoning. Perhaps a limited field survey and census would clarify the validity of this claim(Ghadiri & Esmaeili, 2017).

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Now, the question is how the Islamic legislator intends to change or abolish the culture or custom of society by passing the law and prescribing such marriage over time. What expense lies in this transformation? Adoption or guardianship or community benefit?

Here we need to first give a brief description of the principle of "disrespect for religion" before addressing the challenge at hand. The provisions of the principle of hatred of religion can be stated as follows: "Any act that causes hatred and hatred of people is forbidden, even if the practice of a mandatory religious injunction may cause people to flee from religion, but it must be done. He refused to do so, except for decrees which the Holy Prophet was never satisfied with leaving. "

Compliance with the rule of law that has been adopted has never meant that religion is in conformity with common social customs and preferences. Religious teachings, whether they are religious doctrines or revelations, have validity and legitimacy (Chehabi, 1990). They have value and validity regardless of people's acceptance. Religion is not the undisputed pursuit of the prevailing custom of the people, in contrast to the mission of religion in many cases, the interpretation and conversion of current customs, and even the prevention of the formation of certain customs and habits (Thio, 2017).

In other words, the provisions of the principle of abhorrence of religion, rather, imply restrictions on the application of Shari'a law. In fact, it is always necessary for the people to exercise their religious acceptance. In the absence of such a context, instead of insisting on the implementation of the Shari'a decree, it should be prepared to do so. In other words, and in short, the rule of hatred of religion, it is forbidden to practice acts of worship once it has disgusted people. In fact, the hatred of religion is a secondary one such as "haraj" and "harm" which alters the title of the first titles, so it seems that prescribing marriage with an adoptive parent would make people hate the religion of Islam and therefore it is better to do so. Marriage is forbidden to maintain the sanctity of Islam and the positive values and attitudes of people and society towards this dynamic religion (Algar, 2015; Tamadonfar, 2001).

Great age difference

The first natural right of men and women to marry each other is to enjoy the bond that the two mystics of a slightly older age can coexist and not be halfway coerced into, and it is more natural and reasonable for one to He should live with his wife for a few years and more than his wife. However, this right is a matter of personal rights, not a judgment, and personal rights may be waived and withdrawn for the benefit of others. On the other hand, in some exceptional cases, the supreme wisdom of forty-year intermarriage marriage with Twenty years of generosity has justified, but let's not forget that these kinds of wise exceptions cannot be permitted to propagate and promote abnormal and abnormal marriages (Shafiei Fini & Bouzari, 2017).

The fall of the personal rights that have been said and the adoption of new adult children to marry with the elderly must surely come from a free will and a ruling that is free from any compulsion, intrigue or deception, meaning that one should not declare an apparently free will to this kind. Marriages assured. The extent to which this trust is recognized is installment and justice in the couple's relationship, as the divine book of Islam states in verse 3 of Surah Nisa: "And in my honor, al-Taqtva, in our al-Fankhwa, our trumpet ..." "And if you fear that (when marrying orphaned girls) disrespect for justice, (marry them) and marry your (clean) beloved women ..." You cannot marry an orphan. Now, if the community and its legislators are frightened of justice in orphanage, they have no choice but to trust and declare their consent to the marriage and to appoint a competent authority to do so (Ghamari & Zadeh, 2018).

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Examination of the orphaned and ill-mannered child protection law of 2013 shows that after the enactment and enforcement of the law of 1974, there were a number of individuals who, as guardians, adopted a child from the relevant centers with the intention of fostering their future marriage. It is accepted that such a child's mental upbringing does not detract from the loss of his or her child and, despite their material and spiritual interests, is unknowingly inclined to marry their guardian, which in practice is not only detrimental to life. Adoption and deprivation are natural, but with the birth of children of this kind Heterogeneous couples, deprived of the birth of more unhealthy children than their peers, precisely these infants in adolescence and even adolescence will be deprived of their parents and their primary caregivers, and the number of orphans without qualified mentors will increase daily. The effects of the multiplicity of orphans in society are on the legislator and on no one(Shafiei Fini & Bouzari, 2017).

Sexual Abuse and Reduction of Parenting

The issue of guardian-child marriage is more a sociological problem than a purely jurisprudential one. As we know rightly, the family is the most important center of human life that encompasses all aspects of human existence.

With a simple premise it can be said that the adoption of a guardian marriage with an adoptive parent only takes into account the sexual dimension of the matter, while another family incorporates other aspects including mental and affection issues and affection and solidarity. And nothing like family health can sustain society. Therefore, the marriage of a guardian with his adopted child is a new kind of invention at the family level, and this very important issue must be seriously considered in order not to harm the community(Noori & Torabi, 2019).

In other words, this approach and the legislator's position is a deviation from society's norms.

Shouldn't the perpetrators of this marriage be held accountable after spending the time needed to interpret a social norm and turn it into a deviation?

Also in this destructive and anti-value approach of family relations, what institutions or institutions do the burden of responsibility for "disrupting roles in the family and interfering with the role of parent and spouse" ?!

When caretaking is accomplished, this action must be fully human, with a full spiritual and spiritual state between the adoptee and the caretaker, and the day-to-day emotional relationships between them should be strengthened and deepened until the child is adopted when in the loving circle of those of a parent. , Begins her life, based on the emotions and interests of mothers and fathers and the proper upbringing of her guardians, her personality evolving from her fatherly and maternal love and her childish joy to her stepfather, who made her the true and real father. She thinks, gives a gift, and the godfather enjoys this joyful and joyful childhood Of LTC. So how can one play such a child's psyche and make him sexually exploit like a slave, and by peddling marriage between him and his guardian, pave the way for carousing and sexual abuse. And it is the child who needs the supervisor and will inevitably give in to such exploitation. And in the meantime, the way to abuse the supervisor is smoother. In other words, such a law would make some of these orphaned children and adolescents sexually abusive to caregivers who have a lot of money and sexuality. That is, such a law is in fact a tool for abuse and opens the door to abuse for lovers. It's like sending a kid and a kid out of the pit(Ghadiri & Esmaeili, 2017).

In addition, the negative effect of this explicit prescription will undoubtedly be the decline in adoption by young girls, and this reduction may be true for boys as well. As much as women are confident in their spouse, they will be wary of adopting a adopted daughter, and men will be reluctant - given their masculine zeal for adopting a adopted son, to the point that they will not compete after their death or separation from the adoptive mother. Let go of other thoughts that may come to their minds.

Contrary to public morality and order

As we know, good ethics and public order in any society, especially Islamic society, are of equal value to the rules of the law, and perhaps even far above the rules of the law. At a time when the morality of society is being pushed aside and some of the instinctual and animalistic behaviors of adoptees are taken care of, the expectation of morality is no longer minimized, and it must be believed that true ethics will soon be removed from the fabric of society. It lends itself to a fictitious, fabricated ethic that supports such embarrassing laws.

A helpless and helpless child, deprived of the compassionate care of her parents and relatives and subsequently entrusted to welfare centers, is handed over to her lustful guardians who use them as sex tools tomorrow and tomorrow. Although from the religious point of view, as we will say later, there is no religious prohibition for such a marriage, this does not imply acceptance of it in the context of certain social morality. Ethics, that is, the internal force of society that makes us behave as citizens of some good behavior and deter some of the wrongdoing, some of these behaviors cannot be accepted even in legal and legal environments, and such a law is one of them (Noori & Torabi, 2019).

In other words, morally, such a marriage is as ruthless and immoral as a parent's marriage to their scapegoats, to the point that lawyers have dismissed it as incestuous, even extolling the legislature's legalization of rape. They know the baby girl. And the result is a sacrifice of trust and morality.

Children are the purest and noblest creatures in the universe created by divine nature, and we have a duty to preserve their purity and excellence. Children who are the future of their community will be a useful person for the community when they are raised in a healthy family. Today, there is no doubt about the basic role of the family and its positive or negative effects on the children they grew up with, no doubt childhood. It can be most effective in the future of his country, having spent his childhood and adolescence in the warm embrace of a faithful family that believes in ethical principles and familiar with social norms. Some have attempted to show that the issue of adoption or guardianship of orphans in our time has fundamental differences with the issue of adoption in the time of the Prophet. Therefore, in his view, verses from the surah of the parties - which seem to have passed - that the Prophet's (S) and Prophet's (Za'i) surname was purely virtual, not real, and allowed the Prophet (peace be upon him) to marry After separating, he considers them disproportionate to the issue of adopting orphans in our current society (in spite of the similarities) and, therefore, ruled that the possibility of marriage with an unborn child was invalid. His insistence on the essential differences between what is now called adoption and the case of Zayd (the Prophet's step-son in the old sense) stems from the fact that they too have accepted that if they could be The unborn spouse gets married so the adoptee can also be married. If that is the case, then either we have to approve the Guardian Council ruling or, like them, claim that these two issues of adoption (yesterday and today) are fundamentally different. The claim is insufficiently written because Zayd ibn al-Harith, the Prophet's adopted son (sallallahu 'alaihi wa sallam), had been nurtured by the Prophet (SAW) at the age of ten.

Iran's position on guardian marriage with adoptive child

In this regard, we intend to compare the position of Iran's legal rights regarding foster marriage with the adopted child in the orphanage law of 1353, despite its explicit version and the orphanage and juvenile or child protection law of 2013 in two separate words. And in the third discourse, the position of the rights of the Iranian minorities is specifically addressed to the Zoroastrians and Protestant Christians (after we have considered the rules to be non-domestic law),

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which have rules in the field in question (Noori & Torabi, 2019; Shafiei Fini & Bouzari, 2017; Tamadonfar, 2001).

The Position of the Law on the Protection of Orphans

The law on child protection without a former guardian had generally silenced the issue of marriage in the relationship between the adoptive parent and the guardian. This silence led to different opinions on privacy (Ghamari & Zadeh, 2018).

The root of the disagreement must be traced back to the dual approach of the legislator: on the one hand, the name of the law is 'guardianship', with emphasis on ensuring the material benefit of the child as one of its goals, ensuring that the child can be safeguarded. He was expecting privacy. But, on the other hand, it did not fulfill its purpose and went beyond the limits of institutionalization such as vesting in the determination of works;

The position of religious minorities

In this regard, the Code of Personal Conduct of Zoroastrians of Iran, approved in 2007, in Article 20 (e), which defines barriers to marriage, states: "Adopted child with adoptive parents, adoptive brother and sister and adopted child and spouse the lower it goes. »

According to the personal regulations of Protestant Christians of Iran approved in 2007, the guardian's marriage with the unborn child is expressly forbidden, as provided in Article 180: "If the adopted child is a daughter, her marriage to the stepfather and the stepfather or stepfather's children or mother. If the son is adopted, the marriage will not be possible with the adoptive mother and the offspring of her adoptive mother or stepfather. "Therefore, as noted, the regulations make the adopted child as a real child and not only forbid the marriage of adoptive children, but also forbade the marriage of adoptive and real children with adoptive children. However, the new law adopted in 2013, on the basis of what has been stated, permits the marriage of the guardian with his foster child on the condition that the foster child is fit; therefore, he does not, in the first place, make the marriage of the guardian with the foster child unlawful (Ghamari & Zadeh, 2018). The law authorizing the observance of the personal status of non-Shiite Iranians in the courts of 1312 provided that the courts were bound to observe the religious and common rules and practices of their religion that were not contrary to the provisions of public order, including the provisions of Articles 12 and 13 of the Constitution. Come. In fact, observance of these laws is to some extent permissible with internal public order and good ethics. So it may be argued that observance of the Zoroastrian and Christian Iranians' personal rules is contrary to public order and good morality and offends public sentiment. Before responding to this suspicion, it should be said that the laws of public order " "The laws are intended to protect the public interest and violate the order that requires good administrative, political, economic, or family protection." "Good ethics is also a special form of public order, part of the ethics that has not yet infiltrated the laws and enforces only social conscience." In this sense, what contradicts good ethics is also opposed to public order. But what conflicts with public order may not sound morally wrong. Adding good ethics to barriers to influence and enforcing the laws has the important effect of allowing the judge to go beyond the texts of the laws as a matter of public interest. In response to this suspicion, it should be said that the personal status of non-Shia Iranians does not favor public order and ethics for two reasons (Noori & Torabi, 2019).

CONCLUSION

Today, it is possible to eliminate confidentiality between foster careers and adoptive parents to address possible abuses of this religious law and to address concerns about it. Restrictions on marriage are exceptional and the principle is that individuals are free to choose their spouses,

except in cases specifically restricted by law. The principle of freedom of choice in marriage is an accepted principle that even those opposed to adoptive marriage have acknowledged. According to this principle, preventing a child from marrying a foster parent is an unlawful act contrary to the right to choose a spouse. Those who adopt a frequently emotional approach to the issue of the adopted child should also bear in mind that knowing the adopted child as a real child will not always bring him or her benefits, but sometimes the benefit of the adoptive parent is that he or she is not a real child. For example, if a father deliberately kills his real child, the real child has no right to retribution but the adoptive child has the right to retribution. Likewise, if by chance of the devil, the unmarried child commits adultery with his adoptive mother or stepfather, his sentence will not be a murder, while adultery with a real child incurs the death sentence. Other legal issues also apply to the adoptive parent, for example, for the sheer error that relatives of the relative male offspring are responsible for paying the Diyat in circumstances where the adopted son is exempt. Those who prohibit the marriage of orphans with their guardians believe that their marriage is in the best interest of their adoptive parents and that they are in favor of supporting it, and thus oppose the provisions of Article 26 of the new Law. While this provision seems to be fully in support of the child because according to that note, the marriage license will be granted in circumstances that are in the child's best interest. Therefore, if the marriage is not in her interest, she will not be permitted. The claim that the marriage of a foster child with a foster child is not a marriage of the same nature cannot be a flawed claim because many of the emotional relationships between individuals are due to companionship and self-sacrifice. Therefore, simply taking care of a child until he or she grows up will naturally lead to the emergence of emotions, and this relationship has no strong and lasting connection with the possibility or not of marriage between individuals. As a person grows up in a family environment, he or she will automatically create dependencies and interests. This proximity and interest - especially when it comes to supervising a child from an early age to adulthood - greatly diminishes the desire to marry him. As such, marriages between a foster child or a foster parent (actual foster children) are rare and rare. Marriage between a guardian and an adoptive parent is a rare occurrence, and according to the head of the Welfare Organization, only three cases of child marriage have occurred since the adoption of the Law on the Protection of Orphans in 1973. Adoption has been registered. It is unclear now what is causing the legislator to ignore and respond to jurisprudential sensitivities and social reactions on the one hand. It would therefore appear appropriate for the MPs or the Cabinet to request a draft or bill to remove this provision. Just as it is possible to abuse the supervisor through adoption, there are other ways to abuse it that are far worse and inappropriate. Rather, it seems that what is currently reflected in Note 26 to the Article, despite the criticism that is unnecessary, has at the very least minimized the potential for abuse, since the issuance of a marriage license between the guardian and the adoptive parent is subject to consideration.

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