

Effects of Supervising Orphaned Children in Iranian Legal System

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Received: 20th December 2016, Accepted: 30th December 2016, Published: 1st January 2017

Abstract

Children as a group of human society are always in need of protection due to the lack of physical and cognitive development. Supervision is an issue about a group of children. Institution entitled "*Supervision of orphans*" has been rehabilitated with certain legal effects according to Islamic emphasis on the need to reach orphans and altruism, personal and social benefits and troubleshooting the problems of children orphaned. Iranian legislator passed the law called "protection of orphans" in 1974. This law does not meet the expectations of current need. How and when to get the supervision of child is a legal issue and it depends on social condition on the one hand, because the legal nature determines the shape and the circumstances. Present study talks about the substantive conditions (inheritance, alimony, guardianship, custody, extended family name, the sanctity of marriage, succession, etc.). Genealogy in Islam is the foundation of stability in the family. In this article, substantive conditions and the works associated topics are discussed wrt the Iranian legal system. The author of this study has used analytical method and library records and after checking the sources tries to explain effect of supervision of orphans in the Iranian legal system in order to enrich the legal system and fix problems associated with this issue.

Key words

Supervision, Orphans, Adoption, Adopted child, Family

Introduction

Adoption is not recognized in Islam and adopted children do not have legal relationship with father like real children. Of course, the problem of orphans and abandoned children is highly regarded in Islam. So in different parts of life of Imams and Islamic history this subject is much seen. In Iranian law, adopted children are not accepted like real children. They are not accepted and essentially adoption is not recognized in Iranian law but there are regulations about supervision of orphans and execute these laws. Due to this fact that altruism and helping attitude are the major elements of Iranian culture, Islamic teachings emphasizes on reaching out orphans and unaccompanied children. As seen in Iran and other

Countries rights, Conventions of 1989 in order to comply the rights of children accepted adoption and expected that countries party to the convention accept this in their domestic laws. Iran accepted the convention with reservations. In some cases its not accepted where the provisions of Convention are contrary to Islamic principles. According to Islamic law, adoption do not accept (Adoption in the Convention on the Rights of the Child in 1989 and compared it with Iranian law 2009) adopted children to be called adopted child through legal relationship [1]

Today, the efforts of lawyers, judges, and legislators in different countries focuses towards protection of the rights of children. In addition to the economic and social aspects these include respect for the emotional and psychological aspects. This study is conducted in domestic law, supervision of orphans and literature of domestic legal system (both book and articles and thesis). Current paper is targeted to try to solving humanitarian problems of these children and supporting the orphans along with helping the legal community

Effect of Supervision

In general, the scope and validity law of supervised family is more limited towards the scope and validity of the real family. Article three of the bill to protect children and orphans are poorly supervised and accept supervision only by the court verdict. Supervision of Iranian children and foreign children only by the court verdict is accepted. By the court verdict, Rights and obligations arise for supervisor and children under supervision. In some aspect same rights and duties of real parents and children are a major challenge. These rights and obligation (effect of supervision) describes as following: The main purpose of this subject is to offer description of such supervision and its effects. In this section, two words "scope of effects" and "end of effects" are discussed. In "scope of effects" section, we describe "financial effects" and "non-financial effects":

Scope of Effects:

The First Discussion: Financial Effects

Financial effects are legal relations, which is directly related to property and financial rights. The financial

effects resulting from the supervision of orphans are "commitment to alimony" and inheritance".

1-Commitment to alimony

Given those children under supervision are not legally included (property, family, couple, married) this seems to be the obligation of their supervisor because they have initially accepted supervision. So, the rules governing the charity of relatives is accepted automatically

The Article 17 of bill which mentions about relationships between child and supervisor families' states:

Rights and duties of a child or adolescent under the supervision in terms of training, alimony and respect are rights and duties of father and mother and their real children. According to article 1119 of the Civil law, the alimony is under obligation of adopted father and after the death of his father or inability to receive alimony from adopted father, the alimony received from the adopted mother and fathers of adoptive father due to the lack of inheritance and no real relations do not have the duty of charity [2] Now the question is: The obligation for alimony is reciprocally or just the part of the supervisor's authority?

We should answer that the authority of alimony of supervisor is an exceptional rule for protecting the child and they are provided material and spiritual rights and the law does not state the reciprocally of this law. Adopted children against supervisors need an explicit provision.

In addition, this authority do not deduce from the existing regulations. In this case, there is no obligation for the adopted child. [3]

2- Inheritance

In support of orphaned bill changes which is applied against the protection of orphan's law there are two valid issues.

First, Article 2 of the law that rejects inheritance relation between the supervisor and children is not in bill.

Secondly, to avoid problems related to the liquidation of peace and comply with the general rules of contracts, life insurance replaces the institution. Insurance obligation, in case of death of the insured (supervisor) is awarded to children .Death of child before the supervisor solves the problem of the return of property by itself (see article 15 of bill).

Third, the bill states supervision of sentencing subject to ownership of the property or part of the property during the life of child (see article 15 of bill). And most important of all, in the field of pensions paid by pension funds, the children is one

of survivors of deceased (see article 19). All these regulations have established due to the need to establishing inheritance and similar structures and they sometimes act based on the ruling system of inheritance [4] Of course, any right to a child with this condition is associated with an implicit that the issue of ownership is to use this person and in case of his death, it is automatically dissolved.

The second discussion: non-financial effects

Most of the impacts of the adoption are non-financial. That is because of family relationship. Non-financial effects of adoption are:

1- Administration of property and legal representation of the child under the supervision

The bill to protect children and young orphan's state that guardian of supervisor is only "the administrator of properties of minor children" and clearly state the participation of men and women on this side.

According to article 16 of this bill, "Administration of properties of children until legal age with supervisory of organization will be under obligations of supervision (unmarried women) or supervisions and they should to purchase and transfer of properties to child or adolescent in their name, unless the competent court states the management of property of such children in different way. If it is changeable, it means that this authority is not fixed and non-transferable. While sentencing the court can grant administration of property to a third party.

2- Custody

Custody means educate and train. The first and main effect of supervisory of orphans is custody. This means that supervision cannot be achieved without the right and duty of custody. In case of supervisory by the court, orphans accepted as a child shall be educated by husband and wife and they shall be train their child like themselves. They should also accept the cost of living and education. Article 17 of bill states: Rights and duties of supervisor and the child in terms of training, support and respect are the same as such rights of parents and their real children. It can be inferred from article 1172 of civil law that the expenses of custody is under obligation of adopted father and in the case of death of father, is under obligation of adopted mother. The adopted father and mother while carrying out the task and duty of custody cannot pay claim and their actions are free of charge.

3-Family name

If father and mother successfully pass the duration of test, then the court gives offers final judgment upon their request. After that for the protection of the identity of the child in the civil registration offices birth certificate, article 22 of bill state:

" After the issuance of final judgment by the Court, Register Office is obliged to issue a birth certificate for the child or adolescent with supervisors by maintaining the identity and their true ancestry in the headquarters of the Organization for Civil Registration and information without having to insert them in the birth certificate. Also Article 33 states that "The evidence of information of child or adolescent is possible only if necessary and in accordance with the best interests of the child or adolescent". These information are confidential for the third parties. Of course, these certificates do not cause parentage and inheritance (Adoption in the Convention on the Rights of the Child in 1989 and compared it with Iranian law 2009)

4- Sanctity of marriage

"Marriage between a supervisor and a person under guardianship is similar to the status of marriage of Iranian women with foreign nationals"(see article 1060 of civil laws). But this initiative is contrary to what appears is a step backward in order to negate the relationship between the child's privacy and supervisors [5]. The possibility of marriage of supervisor with children under their supervision show the non-recognition of their privacy and conflicts with the supervision of orphans in order to create an environment similar to natural family. Therefore, bill have reiterated their negation of respect from the law in support of orphans. Of course if in the view of the law and society, orphans and supervisor become immorality, then it is suggested that legislator can cancel the law on marriage between supervisors and child and state their illegal registration of their marriage.

5-Executorship

According to article 1188 of civil law: Each of the father and paternal grandfather after the death of another can appoint an executor for his children under his supervision. Until his death he shall care them and administrate their property and train them. Therefore, this right is for forcible parent and supervisor and guardian do not have this right. Article 16 of law indicate that guardian is only for godfather and godmother and this is a special guardian. It differs with forcible guardian, and godfather and godmother do not have any guardian related to their adopted children and cannot determine an executor after their death [3]

The Second Dissection: End of effects

Before the issuance of supervision repeals judgment, the court tries to take the necessary actions in order to survive the supervision, in case of failure to maintain the condition the court orders supervision repeals. Legislator has predicted some cases for supervision repeals to support the child and follows

the main family interests and supervisors. Article 27 is:

Sentence of supervision after attracting the attention of experts terminated in the following cases:

- A) Rule out any of the conditions stated in Articles (3) and (6) of bill.
- B) The request of supervisor or supervisors if the behavior of child or adolescent is intolerable for each of them.
- C) The agreement of child with the supervisor or supervisors.
- D) Identifying the father or mother of the child or adolescent and their request to terminate the sentence.

If the supervision repeals due to identification of father and mother and their request for termination (Paragraph (D) of Article 27) then custody separates from effect of supervision and "the court should determine the custody of children and if his parents are ineligible then their former supervisors will be prioritized"(article 27). Termination of supervision as well as its realization by verdict eliminate the opportunities. The death of one of their supervisor or divorce and separation are not only the reason for liquidation of supervisory (Article 20 of bill). But death of both of them (or death of supervisor) also remain the effects. Article 19 of bill state: "In case of death of supervisor or supervisors who have been financially supporting assurance to entitle benefits of pension is mandatory until finding out the new supervisor. The objection of this person should not be accepted because accepting that may cause abuse of actual parents and an unfortunate conflict between parents and supervisor [6] or give authority to magistrate to refuse the objection if a child is deemed to be at risk [5].

Various type of adoption in Iran

1- In paragraph (h) of Article 6 of the bill about supporting orphans, one of the conditions for applicant is "Believing in a religion explained in law of the Islamic Republic of Iran" and on the other hand, in accordance with the provisions of this Article " observance for religious commonalities between supervisors and child is necessary and transfer of non-Muslim children to Muslim applicants, in the absence of their fellow applicant is allowed".

So authority is given to non-Shi'a Iranians according to bill of "protection of orphans "has been withdrawn and all believers of religions mentioned in Constitution of the Islamic Republic of Iran are under this bill. So possibility of non-Shiite of supervisors is not only for Iranian and extended to all foreign nationals living in Iran. However, in Article 25 there is a similar text of the law of "protection of orphans" and this complicates the bill. Article 25 states that: " All rules and regulations relating to personal status of non-

Muslim Iranians who believe one of the official religions is stipulated in the constitution of the Islamic Republic of Iran regarding adoption continue to be valid". The purpose of bill was establishment of harmonized rules for supervision of all Iranian children and article 6 and paragraph (H) has the same intentions that are subject to non-Shia. In this case, article 25 is against the purpose but by regard to article 25 and paragraph (h) we can conclude that all non-Shia (which religions are mentioned in the constitution) will be also included in bill exception-Shi'a Iranians which is still subject to personal status law (the law of nationality and religion) . Nevertheless, if the adopted children or supervisors were foreign, then they can make the inheritance according to the law of country of child or the law of country of supervisors. When the supervisor of of Iranian child are foreign, acceptance of the Iranian rules is more appropriate than others. If the supervisor of foreign children are foreign, then it is not required to apply the Iranian law.

For the impact of the adoption relationship that is created abroad correctly, there is less doubt. For example, If adopted child (whether foreign or Iranian) has mandates and the adoption from foreign courts wants to invoke the impact of the adoption relationship (such as a claim of alimony, inheritance, adoption, termination of the relationship) in Iranian courts, in those cases, according to Articles 7 and 964 of civil law, after the enforcement of foreign judgment, the Iranian judge eliminates the hostile according to the country law of godfather or godmother. Therefore, if the adopted child (whether Iranian or foreign) claim the inheritance against their adoptive father or mother when they die in accordance with the law of death of person do not have any rights for inheritance, because the relationship between the adoption of the causes of inheritance is not in Iran's rights by acts of violation of public order and the rights of children they deprived of their inheritance.

Of course, we should notice that when two Iranian from the officially recognized minorities adopt a children in abroad, foreign court in this regard issue the verdict of adoption in this case and the foreign verdict adoption signs only in the scope supervision of orphans. Enforcement of the verdict will not cause a relativity for heritage [7]

Conclusion

The adoption of orphan addition to the benefits for orphan is very effective for strengthening the family and removing overt and covert anomalies of parents who are childless and this will help effectively for healthy family. Adoption of orphans also have social benefits because when orphan grow in family

environment they enter the community away from mental problems. Orphan becomes like a citizen who is in need of moral and material support. Under Iranian law, Child will not inherit from supervisors and supervisors will not inherit from child. There is no relativity with the supervision verdict and the effects of law for relativity is not applicable for adoption unless the law permits expressly. About forms of adoptions in Iran, the law for foreign adoption in case of unity or differences of nationality of godfather and child is based on the separation of two stage, the first is creation of rights, and the second is effects of rights.

In the process of creating the right, at any time, whether unity or differences nationality of adoptive parents and adopted child, Iranian law governs the issue. In this stage, legislators have violated the general principle of national law about personal status of aliens (Article 7 of the Civil law), and it is under the Iranian law. Acceptance of effects of adoption for foreign nationals in Iran will not encounter with public order and good morals. Finally, it is worth noting that, nowadays the supervisor of orphan accepted as a norm in most societies and internationally brings many societal and legal responsibilities. It is necessary that all humanitarian conscience apply their efforts to institutionalize value of adoption for adopted children and help removing perverse ways of orphans support.

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