

Protection of Natural Children and Iranian Religious Jurisprudence (Fiqh-e Imamah) and Law Approach to It

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Abstract: In Iranian Religious Jurisprudence and Law, there is serious doubt on acceptance of natural children rights and parents obligations to take care of and protect them. On this basis, it seems necessary to pay profound attention to these innocent children's problems as society members. using jurisprudent and legal works, it is found that these children are also subject to generalities of canonical and legal proofs and their parents, like other legal parents, are required to fulfill such legal and canonical duties as guardianship and custody in relation to their normal children. Although inheritance between them is ruled out due to traditions and legal explicit orders, judicial procedures believe in it. In assumption of acceptance of canonical lineage negation, secondary rules removing legitimacy condition order are weak and unable to give effect to the lineage (natural and canonical) of such children. Adoption by government of Islamic Republic of Iran of Child Rights Convention and its required implementation by observing indiscriminate principle allows for natural children's entitlement of the same rights as legitimate ones contained in Convention.

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1. Introduction

In cases where a child's lineage to the parents is illegitimate, although such a lineage is not lawful, there is a blood and natural relationship between them and Common Law, of course, relates the child to parents by ratifying this natural relationship. On this basis, adultery-born and, in general, illegitimate children are called natural and, in relation to parents, such a child is considered their natural child.

As we know, in holy Islamic Canon Law, hence in Iranian Law, legitimate children enjoy rights ensuring mental-physical health and growth of and supporting future of them. Here, a question is whether natural children are also protected by canon law and legislator or not. In this paper, mentioned question is studied by Iranian Religious Jurisprudence and Legislation approach, on one hand, and by doctrine approach, on the other hand.

2. Natural children's lineages (basic discussion)

Lineage is an abstract matter the origin of which is a material phenomenon and a true and external matter; this external origin (abstract origin) is their very relationship between parents and children (birth). When the mind compares and matches a person being sperm giver and a child being born by his sperm as two actual things, or the mind perceives growth and development of an embryo and its organs from male/ female eggs, it abstracts and recognizes lineage relationship between eggs' owners and the

child created by them in addition to Quranic verses (Forqan: 54; Ahzab:4 and 5) rejecting mere validity for creating lineage, states of regulations and laws of most countries of the world (usage and biographies of the wise) are also evidence of this view accuracy. With a few differences, these regulations attribute title of abstraction lineage and give effects to existing natural and actual relationships. Therefore, lineage can be defined as a relationship being abstracted from a human being's creation from another one and being given effects to by common law. This definition indicates that lineage is abstract by nature (having an external origin) and is not merely a validity- related matter, hence not being removed by canonical removal (Bojnourdi, 1998, vol.5: 366). Moreover, Holy legislator has established some usage criteria for issue of lineage; and since there is no but one criteria of birth in common law for accepting lineage, its validity and effects giving, there is no distinction between different types of lineage (legitimate and illegitimate).

There exists no explicit and solid reason for this belief by examining well-known reasons believing in not relating natural children to parents, on the other hand. Narratives like Farash Hadees poorly signify this claim, and quoted consensus is evidential with no arguments (Bojnourdi, 1998, vol.43-44; Gheblehee Khoée, 2008: 137-138). So, it appears on not attributing adultery- born and other illegitimate children to parents as well as on not giving them title

of child while its opposite consensus is preferred, that is, to relate such children to natural and usage parents.

Although Article 1167 of civil law providing that "Adultery- born child is not related to adulterer" has accepted well- known view of Islamic Jurists, this appearance is not reliable and attention needs to be paid to signification of other Articles:

First: reference to and emphasis on the existence of relationship (meaning general lineage encompassing specific one) for adultery- born children regarding marriage and to base marriage reverence rule on this relationship (Article 1045 of civil law);

Second: division of lineage into two types of legitimate and illegitimate (Article 1166 of civil law);

Third: exclusive negation of inheritance as one of lineage effects (Article 884 of civil law);

Fourth: emphasis on individuals' equal enjoyment of civil, political and other rights (principle 20 of Constitution); right to enjoy lineage and parents' identification is considered one of these civil rights.

Therefore, not relating intended by legislator is not exactly the same as well-known intended one, rather it means no relation in terms of inheritance subject (inheritance negation) rather than absolute non-relation (lineage negation) considering soul of law and in combination with other Articles explaining legislator's will and object. So, it seems that in Iranian Law, illegitimate children are related to parents legally.

3. Iranian Religious Jurisprudence and legislator approach

3-1. Natural guardianship and illegitimate children

Subject of natural guardianship within relationships between children and their parents has been developed in canonical law works, but Islamic Jurists (Faqaha) have not objected to the subject of illegitimate male parent's guardianship. This may be due to the fact that they consider his non-guardianship as an obviously known matter (Najafi, 1999: 257-258). There are many people who consider acceptance of any rights within natural parent-child relationship such as natural guardianship as an implicit confirmation of absence act parents committed. Such imagination is not considerable because many of these rights or obligations are regarded as these parents' social duties which, of course, have no appropriate alternatives.

Under proofs and traditions (narratives), some domination has been created for male parents and paternal ancestors, which gives them power of possession and management of all financial and some

non-financial (e.g. marriage) affairs of their children. It must be noticed that considering an under-guardianship person's envy-free emulation and interests, guardianship creates no other rights but its subject, that is, managerial possession and governance. Thus, guardianship contains no material/ non-material privileges and benefits to a male parent or paternal ancestor, rather it is a religious artifact being authentic only to observe under- guardianship persons' conditions and to protect interests of children (Minors), lunatic persons and insane persons. Moreover, guardianship includes a social and familial duty which is not transferable or dischargeable and, on this basis, guardianship is referred to as natural and, sometimes, forced guardianship (Hosseini Maraghi, 1997: 558). According to this introduction, it seems that guardianship rejection does not lead to impose any punishment on adulterer/ adulteress. On the other hand, guardianship is among matters which are fore seen and legitimized for maintaining social order and organizing incompetent persons' affairs. Therefore, to negate male parents' guardianship is to impose on government and society duties of guilty male parents, which seems not to be reasonable. Of course, some arguments have been developed to not prove guardianship of natural male parents, as dealt with below:

First reason: Holy legislator refused to accept lineage caused by adultery, therefore, natural male parents are not considered as father legally religiously, hence guardianship which is an effect of fatherhood would be negated (Emami, 1970: 258).

In order to criticize this reason, it can be said that true lineage is conventional (usage- based) and Holy legislator has established and accepted lineage conventional meaning. So, natural and conventional lineages have no reality different from religiously lawful one, in other words, Holy legislator has also accepted adultery- caused lineage although it had distinguished legitimate from illegitimate lineages in relation to their effects and negated some effects of the latter. In interpretation of non-relation set forth in Article 1167 of civil law, it was said that this Article's rule is regulating inheritance merely and cannot be taken advantage of to negate other effects of lineage like guardianship.

Second reason: Assuming that adultery- child lineage is accepted, however, it is not lawful religiously while guardianship is one of effects created by religiously lawful lineage (Emami, Ibid).

This reason is also criticizable. Despite of that Islamic Jurists have recognized guardianship as a right for male parents and, seemingly, for paternal ancestors among relatives (Tabātabā'ee, 1989: 118; Tabātabā'ee Boroujerdi; 1991; 139) unanimously, no clear reasons have been claimed to demonstrate this

matter. Traditions referenced to in this regard fall in five categories, none of which has explicitly strong reasons for such a claim. But signification of intellectuals' biographies (usage) referred to as one reasoning for such guardianships (Abbassinejad et al., 2006: 197-198) is stronger than that of traditions in this regard. From some Islamic Jurists' expressions (Mousavi Bojnourdi, 2007: 66), it is understood that ancient times and the true Islamic religion signed this custom after it had emerged in Saudi Arabia. However, guardianship does not seem to be a religious foundation because it had been accepted by custom prior to emergence of Islam, rather it became a signed rule after Islam emergence, in which conventional norms have been confirmed. Clearly, in viewpoint of custom, accurate this effect (guardianship) and Holy legislator does not impose any rejection or prohibition on guardianship rather to such a lineage. Guardianship proofs such as verse Al-Naas absolutely supervises minors and incompetents, indicating no terms and conditions on their lineage legitimacy/ illegitimacy. So, demonstration of guardianship for natural parents is acceptable.

Legally, legislator points in Articles 1180 and 1181 of civil law to demonstration of guardianship only for male parents and paternal ancestors; and attribution of these Articles is extended to include natural fathers. Articles' claim on withdrawal of natural male parents can be rejected through ruling of disjoining with the basis selected previously. In any case, natural male parents are fathers literally and conventionally, for whom, like religiously lawful fathers, guardianship is demonstrated.

Third reason: Imperative guardianship is against principle, in other words, principle is no guardianship of one person over another, based on which rule of no guardianship demonstration should be awarded on adulteress because there is some doubt about presence/ absence of guardianship.

This reason is also problematic. Reference to practical principles such as absence principle is made through religious jurisprudence (Ijtihad) proofs at the position of discovering ostensible order and in case of frustration in discovering true order. On this subjects, demonstration of male parents' guardianship is based on certain (Holy Book and Tradition) evidence, attribution of which includes adulterer male parents. This statement may be criticized that father natural ones who have no relation with children. To reply this criticism, it should be said that to demonstrate conventional truth for lineage and such lineage titles as father means to accept common law view by legislator as well as to accept validity of conventional criteria. Therefore, what is understood about male parents from usage and words is the same criterion for religious law and, in case of doubt, there

is no problem with application of two valid principles, that is, no quotation in words and no religious truth demonstration. Claim, of quotation or bond is also reasonless (general assignment), hence unacceptable.

Fourth reason: Adulterer male parents are lacking justice, therefore, their domination over incompetent children's affairs results in corruption.

The problem with this reason is that there is no inference between fathers' former adultery commission and their treachery to incompetent children's affairs since they may be honest with regard to such affairs and/ or may repent after committing adultery. On the other hand, guardianship is not conditional on justice; if so, most fathers will not be eligible to take guardianship, in other words, more also most allocation is required which is absence.

In any case, reasons outlined can be warded off. Based on guardianship evidence, it seems that guardianship is resulting from title of father and fatherhood description and since all evidence and related attribution include natural fathers, they are also eligible to be guardians of their children. This claim is also confirmed by intellectuals biographies and by rational reasons. Purpose of legitimizing guardianship is to protect interests of a child unable to manage him/ herself (Makarem Shirazi, 1990: 20). In all secular societies, such interests have led to granting lawful power of managing minors' and insanes' property to both parents or to one who is more kind and closer to incompetent child by enacting respective laws and establishing legal specific institutions only based on lawful powers with no courts' interference as much as possible. Holy legislator certainly is not ignorant of such interests. And special order (guardianship of father, of paternal ancestor, of executor appointed but both of them-prevalied guardianship- of orthodox (believer) witnesses) being observed within Religious Jurisprudence for managing incompetents' affairs (Tabataba'ee, 2001: 566-567; Helli, 1995: 26; Khomeini, 1969: 13) indicates importance of managing incompetents' affairs to legislator and legislator's effect to provide this important task.

3-2. Custody and illegitimate children

3-2-1. Posing views

Legislator requires parents to make best efforts to take care of and take after their children physically and mentally (Protection requirement) and to foster talents of and to reinforce skills and to teach individual and social mores to their children (training requirement) (Shahid-e- Sani, 1995: 421; Hammo, 1989, vol.5: 458; Bohrani, 1988: 83) in order for children to become independent persons after they left childhood time behind and to play their roles

properly as members of society. No independent discussion and argument have been given by Islamic Jurists regarding custody of illegitimate children. Those believing in no relation between an adultery-born child and parents generally rejected lineage effects, including custody (Najafi, 1989: 257-258) while those confirming relation between an illegitimate child and parents accepted lineage effects, except for inheritance, regarding such a child (Bojnourdi, 1998, vol.4: 49). Among contemporary Islamic Jurists, Imam Khomeini (Study and research office of National Supreme Court, 1999: 211) and some of others (Madani Tabrizi, 2009, Vol.4: 357) consider illegitimate parents, like legitimate ones, having custody over their children.

This last view is acceptable because requirement of all evidence of custody and lack of conventional lineage and lineage effects result in their relation, except for effects which are religiously lawful and specific to religious lineage. Legislation does not point to necessity of parents lineage legitimacy regarding custody and legal orders consider custody demonstration for absolute parents, as a result, natural parents are custodians of their children, being superior to everybody in taking care of and training them.

3-2-2. Custody of female parent with husband

When marriage indication is invalid such as the case where husband proves that he had no sexual relationship with his wife due to his sexual impotency the case is excluded from marriage bed rule, with adultery- caused lineage demonstration not being problematic. Now, if it is proved that the child belongs to adulterer, is custody of child granted to father or mother considering the problem with shared custody?

Precedence of mother to be granted custody of child during his/ her first years of life is a normal rule based on child's interests, therefore, natural parents' custody is included. The problem, however, is that mother has a husband because according to narratives like that of Abu Harireh, the Prophet of Islam (Peace be upon Him) said, "Mothers have priority to take their children's custody provided that they do not get married" (Bohrani, 1988: 19). It may be claimed that this narrative is effective in rendering custody null for mothers only when they marry for second time after being divorced, therefore, it is not arguable and can't be referred to in relation to mentioned assumption. This claim is not without any problems. Within posed narratives about marriage, "She married him" was not considered as a factor of custody is mother's possession of rights created by being wife of another person (other than the child's father) and based on legislator's assumption, such a condition of mother results in her slackness or inability to exercise

custody properly. It is on this basis that some Islamic Jurists consider relinquish of martial rights as a condition on mother custody (Bohrani, 1988: 92). So, narrative appearance must be neglected and we should act on this assumption based on its necessity.

In fact, religious forged custody is intended to protect incompetents and legislator orders custody to be fallen wherever it views the child's training and care and/ or his/ her life conditions at risk for different reasons such as mother's being insane, having husband, etc. in case she is custodian of child with stronger reason, if at very beginning of child's birth the mother is under marriage of a man rather than child's father, fall of her custody right can be ordered because she is subject to marital rights.

But in legal viewpoint, it can be accepted that ruling of Article 1170 of civil law is not exceptional but in agreement with principle of custody protectiveness and need of removing risk grounds, therefore it can give a criterion based on which an act be taken on custody of feme covert adulteress and on other similar cases like custody of adulteress being suspected to have husband. In addition, exclusiveness is not derived from Article 1174 civil law, and it certainly includes children born through unlawful intercourse in doubt and reluctance; therefore, its inclusion of illegitimate children is not problematic despite not being mentioned (Gorji et al., 2005: 412).

3-3. Expenditure and illegitimate offspring

Offspring expenditure is a sort of relatives expenditure and, unlike wife alimony, is conditional on receiver's poverty and needs as well as on giver's wealth and means (Ibn-e Baraj, 1985: 349).

By taking a close look at evidence, it is found that basis of required child's expenditure is one of two following cases (Fakhr Al-Mohagheghin, 1968, vol.3: 288).

First: relationship and lineage, that is, the closer the relationship and lineage, that is, the closer the relationship with a person is the higher the priority he/ she has to receive expenditure compared to more distant relatives.

Second: birth and authenticity of parent title, that is, everybody to whom this is attributed truly or virtually is required to pay child's expenditure. Since the title is attributed truly to parents and virtually to grandparents, they should provide child's expenditure (Ibn-e Baraj, 1985: 349).

By accepting the first basis according to those who consider no lineage for illegitimate child, parents and other relatives can't be required to pay offspring's expenditure while by accepting the second one even if lack of lineage is considered, parents and grandparents can be required to pay expenditure because title of parent is attributable to them.

Considering expenditure evidence carefully, we recognize that the basis of required offspring expenditure imposed on parent is the very authenticity of parent title; of course, it is clear that a parent is of relativeness. But in case where parent is dead, absent or poor, relationship is the criterion of making expenditure payment required to other relatives. Such arrangement is clearly perceived from Ghiyas Ibn-e Kaloub's narrative. Therefore, since parent title is attributed to natural parents and grandparents, they are required to support offspring's costs and needs as necessitated by evidence.

Within rules on offspring expenditure, legislator has not pointed to expenditure of illegitimate offspring, for this reason, with reference to rule of lack of joining, courts have excluded illegitimate children from rule of required expenditure until judicial procedure considered natural father obliged to pay his child's expenditure relying on explicit (Fatwa) religious decree of Imam Khomeini regarding illegitimate offspring and on the fact that expenditure criterion is the child's natural birth (conventional lineage). It is provided, for example, in advisory opinion no. 1184 dated 28.06.1997 of Judiciary Branch Law office that although there is no established decree on illegitimate children's expenditure in Iranian civil law, criterion of awarding expenditure order is relation between the child and parents (lawful or otherwise) with regard to principle 167 of Constitution, to Article 3 of civil procedure code, to obvious usage, to civil law spirit (Chapter 2 of book 8 of volume 2) and to Imam Khomeini's religious decree of required expenditure set forth in the phrase "By general meaning, criterion of expending is natural lineage of offspring.

By accepting principle of illegitimate offspring's right to expenditure, expending on such children can be studied during 3 periods of time:

Period 1- During pregnancy: based on verse 6 of Sura Talagh (divorce) and several narratives like that of Mohammad Ibn-e Gheis (Horr-e Ameli: 518), husband is obliged to pay pregnant wife's alimony even if absolute divorce has been exercised between them (Article 1109 of civil law). Many consider this decree, in fact, as one requiring father to pay his child's expenditure during pregnancy (Bohrani, 1988: 130). Is adulterer responsible for paying alimony of adulteress and, in other words, of natural offspring's during pregnancy?

Initially, it needs to be seen whether the order to pay alimony to divorced pregnant woman is an exceptional one or is one in conformity to the principle and it is for paying offspring's expenditure that alimony belongs to offspring's mother?

In this regard, there exists no consensus among Islamic Jurists; some of them like Sheikh Tousi (in

Mabsout) and Allameh Helli (in Mokhtalef Al-Shia) believe that such alimony is, indeed, pregnancy one because its existence/ non-existence depends on pregnancy/ non-pregnancy, which indicates pregnancy-based alimony necessity. Author of Hadāeigh has attributed this view to most Islamic Jurists (Bohrani, 1988: 130).

Based on this belief, since food and other needs of foetus is provided naturally by mother, expending on mother's food and needs is in favor of her child, too. In contract, some Islamic Jurists like Ibn-e Zohreh believe that necessity of pregnant woman's alimony is due to explicitly of letter of the Book and Traditions and is against the principle while alimony requirement relates to divorced pregnant woman, not to the foetus (Bohrani, 1988: 130; Madani Tabrizi, 2009, vol.5: 156). Another argument developed to confirm this last view is that if alimony was for offspring, its payment would be an obligation of the ancestor just like the case where child is separated from mother while this is not the case. In addition, if offspring is prosperous (financially rich), mentioned obligation is fallen due to his/her prosperity, which is not the case again (Shahid-e Sani, 1995: 451). While such arguments are discussible, it seems that the first view is acceptable; divorced pregnant woman has no specification and there exists no cause between her and the man which result in entitlement to alimony save the foetus inside woman's womb who belongs to the man, in other words, alimony payment is dependent on and for the sake of pregnancy (Gheble'ie Kho'ie, 2008: 150). Consequently, what is paid to pregnant woman as alimony is intended for foetus's growth and development, in other words, it is the child's expenditure.

With such introduction and basis selected, now we answer the question. Given that alimony is associated with pregnancy (or foetus, in fact) and considered as offspring's expenditure, therefore, offspring's expenditure regulations apply to it; and based on description provided so far, expenditure of adultery-born offspring is the same as legitimate ones, therefore, the rule that father is obliged to pay his child's expenditure during foetus time is not specific to legitimate offspring. On the other hand, it must be noticed that foetus is alive (Bojnourdi, 1998: 25) so during foetus time (other month 4), he/she is subject to whole evidence of offspring's expenditure. In any case, it appears that mother of adultery- born child is allowed to claim her child's expenditure during pregnancy.

Period 2- foster (breast- feeding) time: Mother is not required to breast-feed her child (whether legitimate or illegitimate) although some Islamic Jurists believe that she is obliged to do so until three days after the child's birth. But milk is, indeed, the

child's expenditure which is imposed on father and, for this reason, natural father is responsible for milk of adultery-born child as offspring's expenditure not mother. Legislator explicitly consider mothers free from obligation of breast-feeding offspring (Article 1176 of civil law).

Period 3- Post breast-feeding time: According to well-known Islamic Jurists, adultery-born offspring is not entitled to the right of expenditure on his/ her father, grandfather and even mother. The basis of this belief is the lack of relation between such a child and parents as well as lack of authenticity of child title. However, with the basis we accepted in relation to existence of usage lineage and resulting conventional effects such as expenditure on such a lineage, adulterer is responsible for offspring's expenditure during post breast-feeding period. If adulterer is dead, absent or poor, this obligation will be responsibility of paternal ancestor, mother, maternal grandfathers and maternal grandmothers in order (Article 1199 of civil law).

3-4. Child Rights Convention approach and its interaction with Iranian domestic law

Content of Child Rights Convention, to which the government of Islamic Republic of Iran is a party, turns into domestic law and can be implemented after its annexed Act is approved by Islamic Consultative Assembly. Convention regulations guarantee minimum rights of which children must enjoy like rights to parents identification (lineage), being under parents protection, name, etc. moreover, Convention preface para.3 and clause 1 of its Article 2 guarantee principle of indiscriminate, stating that all children shall enjoy these rights regardless of their lineage (legitimate or otherwise). Although this view is not in agreement with views of most Imamia Islamic Jurists and with lack of relation rule appearance. Guardians Council, which announced Convention items conflicting with Islamic Law standards explicitly to Assembly through its opinion no.5760 dated 25.01.1994, did not consider and announce this provision of Convention against Islamic Law and Constitution, so rights contained in Convention include natural children and domestic regulations must be considered abolished in limits of conflict.

4. Traditional view-based doctrine approach

Following well-known Islamic Jurists, lawyers almost unanimously agree that illegitimate offspring is not related to his/her parents, therefore, it is impossible that effects specific to lineage result for natural parent- child relationship. With mentioned description, doctrine succumbs well-known bases, strengths and weaknesses. Despite this view, by providing different statements and believing in born children's innocence, lawyers have come to support

such children while stating numerous legal views in order to provide some basis for acceptance of effects similar to those of lineage, but they were not successful in achieving their goal because they have relied on the views of well-known Islamic Jurists and on the belief that natural parent-child relationship is lacking,

4-1. Indirect causation theory and sinful parents' civil liability

Some lawyers (Emami, 1999: 193) believe that adulterous parents causing the child to be born can be obliged to expending on child due to indirect causation. Others (Emami, 1970: 258; Safa'ee and Emami, 1995: 113-114) confirming this word argue that courts can force parents to take care of the child as compensation because of civil liability. Also, courts may sentence sinful parents to pay the child expenditure as pension for specified time.

The problem with this view is that it is not in conformity with bases of domestic law. It seems that adulterous person's conviction and sentence to pay compensation on the basis of indirect causation view is specific to particular cases and only with respect to sexual partner (Katouziyan, 2005: 424).

There is some problem legally with rendering a verdict of compensation in relation to the claim brought in favor of a child born from an unlawful relationship because Article 1 of civil liability law emphasizes that injurious act of a person needs to result in damaging a right in order for law to hold him/ her liable. By taking a close look at other Articles like Articles 328 and 331 of civil law, are notice there must be pre-existing property and rights in order to hold author, causer person liable. It is unlikely this evidence includes adultery-born children for whom legal law imagines no rights with respect to their parents at the very beginning of embryo formation and birth according to these very lawyers. In fact, alleged injury relates to losing opportunity to enjoy rights for acceptance of which judicial procedure and domestic law are not so willing. As a result, indirect causation theory will have no efficiency necessary to protect illegitimate children in practice if new laws are not approved.

4-2. Natural commitment of parents theory

Some lawyers (Katouziyan, 2005: 425) consider a natural obligation to pay the child's living costs on an illegitimate child's father. Initially, such an obligation is not guaranteed to be binding legally. But it will be binding legally in cases where the person concerned embarks on supporting and taking care of his illegitimate child explicitly through agreement and contract conclusion or implicitly through practical undertaking. In this way, all effects of expending- related debt include father's natural commitment, that is, it does not depend on

contractual obligation rules and its amount depends on the child's needs and his living costs. In addition, it cannot be transferred to heirs and relinquished through private contracts.

According to its respective theorician, this theory identifies existence of some sort of rights called natural or intrinsic rights accepted by Imamia school under the title of "Intellectual Independents", that is, if intellect understands virtue of and/ or indecency of an award genuinely order (Katouziyan, 2001: 44). Briefly, what is perceived from this theory is that a natural child's rights to receive expenditure, to be taken care of and supported by his/ her parents as well as to respect his/ her human greatness are intrinsic and natural based on intellectual signification because without such rights, it will be difficult or impossible for the child to attain ideal perfection and grown, flourished talents.

4-2-1. Natural commitment theory critique

The problem with this theory is that if we accept legislator refused to accept illegitimate children's lineage, we should know that lineage rejection was, indeed, rejection of lineage effects relying on basis (lineage rejection while, clearly, they cannot be separated. Moreover, in Imamia Religious Jurisprudence, intellectual judgment reasonableness is valid provided that it does not contradict the Book and Traditions rules and consensus of opinions. On the basis of these very lawyers' words, now that legislator has negated lineage and its effects on the strength of some beneficial narratives and legal rules, how can we accept intellectual independent judgment contradicting mentioned rule and recognize existence of those rights, but naturally? In any case, combination of these two views is not possible and one's acceptance requires the other's negation. Consequently, this theory is little helpful in removing problems of illegitimate children in practice.

4-2-2. Additional application of natural rights theory

Right is a sort of interest and relation between rightful person and right-benefited one; and realization of such a relation, like other effects, requires some causes which can be subjective and/ or final, absence of each of which can result in absence of effects (rights). Legal relationship between parents and their child can be connected to either of both causes; on one hand, parents caused the child to be created and, on the other hand, child's natural needs and talents, many of which can be met completely only by parents, are evidence of existence of the same rights as legitimate children's for illegitimate ones. To complement this word, it should be noted that, in Islamic view natural rights accompany human beings' innate responsibilities for going through

human perfections, in other words, existence of natural rights is based on objectivity of creation principle and objective of granting such rights is for human perfection to be realized (Abdali, 2009: 125; Abbassinejad et al., 2006: 66) and in speech view, since Exalted God has created any humans, although bastard, required to go through perfection path, bastards also enjoy rights, like having parents and being trained morally, etc., guaranteeing the said excursion and growth. To support this word, reference is made to some lawyers' words (Langroudi, 2003: 314-315) who consider father's and grandfather's (paternal) guardianship of minor child and minor grandchild, respectively, among innate rights.

As a result, there is no reason that God deprives bastards of such rights while wanting them to go through perfection path without any rights but similar to others.

4-3. Collective duty theory

In order to demonstrate existence of guardianship, custody and required expending for natural parents, some lawyers (Emami, 1999: 192-193) argue, considering a child's needs, his living costs supporting and taking care of him is one of collective duties and social wisdom and justice require everybody sufficiently wealthy to take care of and expend on him, but parents causing such a child to be created are preferred to others to fulfill and exercise such duties. On this basis, it seems that, like legitimate lineage, for adultery- caused lineage, custody can be considered as parents' duty exclusively.

4-3-1. Collective duty theory critique

Imposing is not in agreement with considering the duty collective, in other words, to consider such duties collective ones for society members is usefully meaning, with description of natural parents' preference and exclusiveness, actual necessity of duties for natural parents just like for legitimate parents, which contradicts words of these very lawyers that adultery-born children have no relation to their parents.

4-3-2. Additional read of collective duty theory

Mentioned theory, in other words, on necessity of protecting illegitimate child in the same manner as legitimate ones'. Some other lawyers (Gorji et al., 2005: 412) consider custody, taking care of and training children unable to manage their affairs as necessities and, for this reason, they do not believe in differentiation between legitimate and illegitimate offsprings.

Attention can be paid to necessity existence as one of secondary influential rules although, initially, there exists some doubt about acceptance of these

rules' effectiveness in creating lineage to and/ or duties on the parents of natural children for following reasons:

Firstly: Hardship and losses caused by the rule of no relation for illegitimate children are general and include some type of population (All illegitimate children). Thus, by virtue of reasons of no-hardship, no-loss rule or of necessity, such type of children cannot be excluded from this rule because hardship is typical rather than personal.

Secondly: Rule of no lineage effects resulting for all illegitimate offsprings leads to loss and hardship, seemingly, legislator enacted such a rule with knowledge of hardship, in other words, imposing such hardship is integral to the rule nature and Divine assignment and since such hardship is beyond the rule essence and is not caused by particular conditions, it is excluded from evidence of secondary rules.

Thirdly: To develop a new order (order forging), whether it is situational (like creating lineage) or duty- based (like order of guardianship or custody or expending) is not possible through these rules because they can only negate orders and remove them given particular condition of the bound person until his/ her conditions restore to some condition other bound persons are in. that is, it is not inferred through evidence (reason) of these rules that they can forge new orders and still be lawful (Mousavi Bojnourdi, 2008: 200).

Noted words is facing this problem that lack of resulting effects and of duty on parents with respect to their illegitimate child does not mean that legislator has made conventional and natural lineage void and disappeared. Lineage is a conventional truth with on external origin and its negation by legislator merely means paying no attention to lineage in terms of resulting effects. In addition, Religious Jurists did not reject natural relationship and, in other words, conventional one between illegitimate child and his/ her parents, but they believe that since such a child's lineage is not lawful, no lawful effects result for his/ her natural relationship (conventional lineage) with parents. It appears, therefore, that Islamic Jurists consider lineage legitimacy a condition on resulting effects, especially inheritance. With this reading, effectiveness of secondary rules is acceptable in this regard so that it is said that lack of effects resulting for illegitimate lineage can be based on one of two bases:

First: Adultery impediment, that is, truth of adultery prevents lawful effects from being resulted.

Second: Requirement of lineage legitimacy for effects being resulted, that is, conventional lineage should meet condition of legitimacy of relationship

resulting in lineage in order for effects to be resulted or for which there is no absolute cause.

Since condition and impendency are situational rules and since they cause loss or hardship to the child during his/ her childhood and weakness time, they are cancelled for any illegitimate child- regardless his type- due to his/ her particular circumstances and judges ruling can require parents to fulfill the same duties as other parents' until necessity of protection is removed and the child goes out of weakness and loss state.

4-4. Doctrine view of procedure unity decision no. 617-24.06.1997

Procedure unity decision no.617-24.06.1997 of Supreme Court Full Tribunal requires natural fathers to obtain an identity card for their illegitimate children under their own name. for lawyers, issuance of this decision opens up a new view and is a big step toward protection of rights of innocent children born through unlawful relationships because the decision has removed ambiguity of Article 1167 of civil law completely, indicating that lack of relation rule meaning is not absolute lack of relation between the child and parents (lack of lineage), but is merely negation of inheritance between adulterer and bastard child while he/ she can enjoy other legal rights and duties concerned (Gorji et al., 2005: 414-416).

These very lawyers acknowledge, of course, this decision has constructed solely general limits of rights and duties with respect to illegitimate children and its general rule creates some doubts among judges and lawyers, which, in practice, damages material and spiritual rights of such children (Gorji et al., 2005: 421).

Note that validity range of mentioned decision include the very duty of natural fathers to obtain identity card for their children (similar cases), not going beyond that, but basis of the of the decision is notable, namely, Imam Khomeini's view. Seemingly, Imam Khomeini considered equal duties on natural and lawful parents, except for inheritance and financial rights (Khomeini, 1969: 264-265; Study and research office of Supreme Court, 1999: 211). This view is not in agreement with well-known one. Although this view can be considered a state rule on the strength of its believer (Religion Guardian Jurisprudent), it seems to be expressive of primary actual rule on the subject, that is, it is Honor has discovered and determined the subject in position of society leader in his own perspective of state Religious Jurisprudence; on this basis, he stated legislator rule on the subject. This difference between views of Religion Guardian Jurisprudence and Religious Jurists having tendency toward individual Religious Jurisprudence has caused judicial procedure to select view of Religion Guardian

Jurisprudent rightfully in case of conflict between His view and well-known views on the law ambiguity and conciseness. Based on this, it appears that in cases where courts believe that subjects are legally ambiguous, they can require natural parents to fulfill their duties with respect to their child, according to the view point of Imam Khomeini.

Discussions

In the past, in law of Iran and of many other countries of the world, it has been a normal and just task to consider illegitimate offspring right less. In many countries, today, lawyers' views of such children's rights have changed and moved toward legal equity of them and legitimate ones as much as possible. Iranian law is also taking advantage of such transition. Numerous factors influence this transition such as international expectations caused by approval and membership of such Conventions as Child Rights one, transformation of ethics and views, and second analysis of predecessors' views. Given what provided in this paper, there are protective grounds necessary to support natural children in Iranian law and Imamia views of Islamic Jurists and appearance of lack of relation rule in law, it seems that a natural child is considered by canonic law and legislation an offspring with relation to parents. Parents of natural offspring are also subject to all evidence of and assignment of guardianship, custody, expending, etc., therefore they are required, like other parents, to fulfill some duties although they are distinguished from lawful parents in terms of inheritance. In any case, it is possible to remove current doubts in this regard fully only by enacting explicit and simple acts. Therefore, it is recommended that the text of Article 1167 of civil law be amended as follows: "Adultery-born and other illegitimate children shall be related to parents and be equal to other offsprings except for inheritance".

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