

## Legalizing Marriage with Stepchild in Iran and Human Rights

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### Abstract

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The Iranian parliament revised the law of adoption of children under state. According to article 27 of new law, the head of the family can marry to adopted child, the serious consequence of this law reveal when it is known that according to Iranian law, is Thirteen the age that a girl can marry and for younger children marriage is possible in case of observance the best interest of child. Iran is a member of convention on the right of child, but he made reservations that provide convention on the articles and provisions which may be contrary to the Islamic Sharia provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect. This paper examines in spite of reservation, this law is in contradiction with Convention of Rights of Child and lead to systematic violation of human right, and then it has to be cancelled immediately.

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**Keywords:** Adoption, Best interest of child, Law of Iran, Convention or Rights of Child

### Introduction

Child' adoption has not universal definition, and each country define and regulate it by himself, nonetheless adoption can be defined as below:

"Two-step judicial process in conformance to state statutory provisions in which the legal obligations and rights of a child toward the biological parents are terminated and new rights and obligations are created between the child and the adoptive parents.

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Adoption involves the creation of the parent-child relationship between individuals who are not naturally so related. The adopted child is given the rights, privileges, and duties of a child and heir by the adoptive family."<sup>2</sup>

Regarding that adoption has a direct effect on children' kismet, and children are regarded as a vulnerable group, it is expected that states have nota especial on the adoption' law especially when they are member of Convention on Rights of child [hereinafter] CRC<sup>3</sup>. Iran is member of CRC since 1994and has signed the both optional protocols which relate to the special protection of children against involvement in armed conflict and the sale of children and sexual exploitation.<sup>4</sup>Unfortunately, Iran not only did not cancel those laws that violate children' rights,<sup>5</sup> but also adopted a new law that causes more violation than previous law. The parliament of Iran revised the law of adoption of children after 35 years. According Article27 of revise version, legal guardian can marry with adopted girl. This article cause a wave of anxiety and anger between human rights groups.

Regarding Iran is a member of CRC, this article analyzes the contradiction between articles 27 of law of adoption of children under state with Iran's obligations due to CRC. for this purpose, the part 1 of this paper consider the concept of adoption, best interest of child and responsibility of states about that, then in part B the, those laws of Iran that are related to child adoption is introduced and explained how CRC is breached by them.

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<sup>2</sup>The free dictionary by Farlex.[on line]

Available: <http://legal-dictionary.thefreedictionary.com/Adopted+child>(29 November,2014)

<sup>3</sup>U.N. Convention on the Rights of the Child (1989). UN General Assembly Document A/RES/44/25.

<sup>4</sup>United Nation Treaty Collection.[Online]

Available at <https://treaties.un.org>.( Dec 1,2014)

<sup>5</sup>In 2005, the Committee on the Rights of the Child urged the Government of Iran to immediately halt the imposition and execution of the death penalty and all forms of torture and other cruel, inhuman or degrading

Treatment or punishment, including amputation, flogging or stoning, for offences committed by persons under 18. It recommended that full approval and implementation of the new Bill on the Establishment of Juvenile Courts be prioritized and that the state party undertake a comprehensive review of domestic legislation to ensure full compliance with the Convention's principles. (CRC/C/15/Add.254, Concluding Observations on Iran's second report, paras. 4, 8, 9, 29, 30, 45, 46, 72 and 73 and on the initial report in 2000, CRC/C/15/Add.123, paras. 29, 30,37, 38, 53 and 54).see also CRIN for the Human Rights Committee Country Report,Inhuman sentencing of child offenders in Iran.[Online]

Available at [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CRIN\\_Iran\\_HRC103.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CRIN_Iran_HRC103.pdf) (Dec 1,2014)

## Part 1: Adoption from Human Rights Perspective

Child Adoption is an accepted norm from human rights perspective. Article 21 of CRC does not define adoption, but provide the responsibilities of states that recognized for this legal institution:

"States Parties that recognize and /or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration, and according to article 3 of CRC In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

For any further consideration about adoption, two item should be defined. First who is the child, and second what is the best interest of child.

### 1-1: Age

The first step for adoption is determined who is child. The most important element for child definition is age. Different countries provided different age for age of majority. While in few countries age majority is under 18,<sup>6</sup>in most countries age majority is 18 and in some countries age of majority are higher than 18. Definition of child from human rights perspective can be find in article 1 of CRC that provided: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. On the other hand, the committee on The Rights of child, has encouraged the states to increase the age of majority if it is set under 18."<sup>7</sup>

### 1-2: Best Interest

A according to article 3(1) of CRC;" In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

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<sup>6</sup>Some of them are: Iran, Saudi Arabia, Bolivia, North Korea, and Afghanistan.

<sup>7</sup>Committee on Rights of the Children, General Comment No.4 (2003) General measures of implementation of the Convention, CRC/GC/2003/5, para 23.

CRC does not have any definition of the best interest, but according to general comment no.14 of Committee on the Right of the Children the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child. The Committee has already pointed out<sup>8</sup> that "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention." It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the "child's best interests" and no right could be compromised by a negative interpretation of the child's best interests.

Before issuance general comment N. 14, many effort has been taken to define" best interest"<sup>9</sup>.General Comment N.14 defined best interest as fundamental, interpretative legal principle that means:

"If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen.

The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation and provide 3 level obligation for member states:

- (a) The obligation to ensure that the child's best interests are *appropriately integrated and consistently applied* in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;
- (b) The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.

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<sup>8</sup>Committee on Rights of the Children, General comment No. 13 (2011) on the right to protection from all forms of violence, para61.

<sup>9</sup>The following are institutions that provide criteria about best interest of child:Inter-Agency Guiding Principles on Unaccompanied and Separated Children, (UNHCR, UNICEF, ICRC, IRC, Save the Children (UK), World Vision International, Geneva, January 2004) ,Refugee Children: Guidelines on Protection and Care (UNHCR, Geneva, 1994),Working with Unaccompanied Children: A Community based Approach (UNHCR,Geneva, revised May 1996) ,Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, (UNHCR,Geneva, 1997) The Separated Children in Europe Programmed:Statement of Good Practice, (UNHCR)andInternational Save theChildrenAlliance, Brussels,thirdeditionOctober2004) Working with spearmen Field Guide. Training Manual and Training Exercises, (Save the Children UK, London, 1999).

- (c) The obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child."<sup>10</sup>

The general comment provide some implementation measure to ensure that the best interests of children are a primary consideration in all actions. one of the implementation measure is "reviewing and, where necessary, amending domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, rules governing the operation of private or public institutions providing services or impacting on children, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure."<sup>11</sup>

Regarding that essential element for adopting child, is the best interest, it is obvious that the members' state of CRC, should not adopt provisions that are in conflict of best interest of the child.

## **Part 2. Adoption from Iran' law Perspective**

In 1975 Iran adopted the law of Protection of without Guardian Children Act, this act was revised in 2013. Article 27 of revised act provided; "If the head of family wants to marry the adopted child, he should send her details to a court for approval. If the marriage has already taken place, Welfare State Organisation must report it to the court, upon which the decision on the continuation of the care by the same family or its cancellation will be decided."

The deep of disaster divulges when it is understand that in according to Iran' civil code the age of majority for boys is fifteen lunar years and for girls nine lunar years, and minimum age for girl' marriage is thirteen .although marriage before the majority age is prohibited, it is possible by permission of by the permission of the Guardian and on condition of taking into consideration the ward's interest is proper.

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<sup>10</sup> General Comment No.14, CRC/GC/2003/5, para 14.

<sup>11</sup> Ibid, para 15.

But what are "best interest" and related criteria for applying does not defined by law and in practice the courts' criterion for issuance' permission to marriage is physical growth .then it seems that there are no obstacle for marriage with adopted child. remembering that adopted child usually does not have any relative and financial support except whatever provided by adopting family, no serious objection can be heard from adopted child. The consequence of article 27 is more than that can be imagined. Nonetheless some of them are as follow:

#### a) Promotion of Child Marriage

As official statistic indicate in (2006-2007) the Personal Status Registration Organisation of the Islamic Republic of Iran reported a total of 33,383 marriages of girl children under the age of 15. This figure rose to 43,459 in 1389 (2010 - 2011) and declined to 40,651 in 1391 (2012-2013) from which 187 were under 10 years old. The number of boys who were married under 15 years old in 1391(2012-2013) was 359.<sup>12</sup> According to above- stated data, child marriage is already sever problem in Iran, and then article 27 provides a wider space for child marriage while the adopted child has more fragile situation than other child.

#### b) The Danger of Sexual abuse

Sexual and physical forms of child abuse at home are already rife in Iran, although documentation is rare, but it is believed that this Article would give rise to paedophilia as the father might consider a female daughter as potential wife and sexually abuse her in childhood. Equally, the mother could see a girl as a potential rival in the coming years and decline to give the care and love the child needs to develop her full potential.<sup>13</sup>

#### c) Increasing Discrimination

Family will be reluctant to adopt girl, because the step- mother fill insecure for her marriage, and evenif agirl is adopted, the sphere of insecurity prevail in family.

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<sup>12</sup>UNHCR, Report (Dec 2013), the All Human Rights for All in Iran project.[online] Available on Fwww.ohchr.org%2Fdocuments ( November 31, 2013)

<sup>13</sup>International Coalition against violence in Iran(ICAVI), Islamic Republic of Iran: Promoting violence against Children. [Online] available: [\(November 29, 2013\)](http://www.icavi.org.uk/.../icavi-international-coalition-against-violence-in-iran)

## 2-1 Iran Justification

Article 27 is in contrast with the aim of the law of protection of children without guardian. In healthy and normal conditions nobody accepts marriage with child as a way for protecting her. In larger scale, this article is in contradiction with CRC. Nobody can claim that child marriage is a rational method for child protection. The main question here is that how Iran justifies article 27 while it is a member of CRC and signed both optional protocols which relate to the special protection of children against involvement in armed conflict and the sale of children and sexual exploitation. The answer is that Iran made two general reservations to CRC:

First: "The Islamic Republic of Iran is making reservation to the articles and provisions which may be contrary to the Islamic Sharia, and preserves the right to make such particular declaration, upon its ratification".

And second:

"The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect."

By virtue of the above-stated reserves, Iran argues that according to internal law of Iran and Sharia<sup>14</sup> child marriage is valid and there is no barrier for marriage with guardian, then Iran has not breached CRC's obligations. Regarding Iran's justification, the question then arises how children's rights can be protected under this condition?

## 2-2 Invalid Reserve's Clause

For answer to the above-stated question, it is necessary to examine the concept and conditions of reservation.

Reservation means a unilateral statement, however phrased or named, made by a state when signing, ratifying, accepting, approving or acceding to a treaty by it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state.

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<sup>14</sup>The system of religious laws that Muslims follow.

Reservation that incompatible with the object and purpose of the treaty, is not valid,<sup>15</sup> And any reservation that contravenes the object and purpose of the treaty thus require the unanimous approval of all state parties, because it constitute a fundamental change to the agreement.<sup>16</sup> CRC emphasizes on this "A reservation incompatible with the object and purpose of the Present Convention shall not be permitted". "A reservation incompatible with the object and purpose of the present Convention shall not be permitted."<sup>17</sup> These conditions endorsed by International court of justice:

"It is well established that in its treaty relations state cannot be bound without its consent... [N]one of contracting parties is entitled to frustrate or impair, by means of unilateral decisions or particulars agreements, the" purpose and *raisond' etre* of the convention.[e]vent less could the contracting parties have intended to sacrifice the very object and purpose of the convention thus limit both freedom of making reservations and that objecting to them."<sup>18</sup>

Invalidity of any reservation in contravenes the object and purpose of the treaty reaffirm by The Committee on the Rights of the Child on its General Comment on implementation of the Convention within domestic law: The Committee is deeply concerned that some States have made reservations which plainly breach article 51(2) by suggesting, for example, that respect for the Convention is limited by the State's existing Constitution or legislation, including in some cases religious law.

As it can be seen, the Iran reserve clause are too general that could make the whole convention meaningless because scope of Sharia is too wide and encompass nearly everything. Considering the aim of human rights treaty is" to codify and maintain a minimum level of global standards"<sup>19</sup> thereupon any obstacle to realization of minimum standards for protecting human dignity should be avoided.It is expected that a member of CRC does not pass a law that it is in contradiction with CRC, because as it's known isconsidered as a systematic violation of human rights and causes international responsibility of wrongdoer.

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<sup>15</sup>Vienna Convention on the Law of Treaties, 1969, Article2.

<sup>16</sup>Ibid, Article 19.

<sup>17</sup>Article 51, para 2.

<sup>18</sup>ICJ,Report, Advisory Opinion on Making Reservations to the Genocide Convention ,1951,Advisory Opinion,Report,at26-27,24.

<sup>19</sup>Goodman, Rayan, (2002), Human Rights Treaties, Invalid Reservation, and State Consent, American Journal of International Law, 96:53,534.

## Conclusion

Children are one of the most vulnerable group that need special treatment and are entitled to affirmative action , because not only they don't know their human rights, but also unable to take action against their violated human rights'. It is expected that states provide mechanism to protect and promote children law and terminate law and regulations that are against rights of children.

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