

Feasibility Study of Generalizing Parental Rights to Third-Party Caregivers in the Legal Systems of Iran and the United States

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Introduction

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The family forms the basic pillar and the primary core of every society, and any change and development in it affects the social order. Children are considered to be the fundamental elements of the family and, as future human resources, have an undeniable role in the development of every country, so legislators follow the legal rules in this area with special sensitivity. In this regard, and in order to improve the child education system, the legislator has considered rights and duties such as guardianship, custody, upbringing, discipline, visitation, and alimony for the child's parents. Traditionally, these rights primarily belong to the child's original parents, but the important question that arises here is that if the child's best interests require it, can the above rights be extended to third parties and considered for them as well? If the answer is yes, in how many ways can these rights be extended and what is their scope? The truth is in today's conditions, the concept of family has undergone fundamental changes and developments in all societies, and new claimants have been found regarding the above rights. The traditional concept of the family includes two parents, one of each sex, and biologically related children in their care. However, many children do not grow up in such traditional homes. Growing awareness of this diversity in child-rearing structures has called into question the continuing relevance of traditional principles of parental rights built around the "nuclear family" model. In particular, legislators and researchers have expressed growing concerns that the current body of law does not adequately protect the important relationships that children typically develop with adults other than their biological parents. The author hypothesizes that parental rights in relation to children are not based on the best interests of the parents but rather on the best interests of the child, and that parental rights can be extended to third-party persons and caregivers where their best interests so require.

Theoretical foundations

In terms of research background, as far as the author has searched, there have been no comprehensive and obstacle studies in this regard in legal books, and the few studies that have been conducted have examined in detail the generalization of some of the rights of parents, which are referred to throughout the research. There is also no chapter dedicated to this issue in jurisprudence books, but scattered materials can be found in

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some jurisprudence chapters. It should be noted that the comprehensive design of the above issue for the first time in the Iranian jurisprudential system and the use of the hermeneutic method in solving the problem are innovations of the present research.

Research Methodology

In the present research, hermeneutic methods, comparison, description and analysis of the content have been used to interpret the data. Hermeneutics is a type of interpretive methodology that aims to systematize the interpretation of all meaningful actions of individuals and the outcome of the aforementioned behaviors, especially when they come in the form of text. Here, discovering the ultimate concept of the family is intended, taking into account the changing and evolving conditions of society and understanding the fundamental basis on which the rights of the child are based. Content analysis is a descriptive strategy for finding patterns within a qualitative data set, including legal rules. In content analysis, the researcher presents a community map of the aforementioned themes by extracting components, structural codes, and key points as well as analyzing them. Therefore, by considering the general principles governing the text, while achieving repetitive and meaningful patterns, which in the present study, the structural code of “child’s best interests” has been found in jurisprudential and legal texts.

Research findings

In the Iranian jurisprudential and legal system, the generalization of parental rights has been accepted in three parts: legal, contractual, and judicial. From a legal perspective, the legislator has accepted the generalization of parental rights to third parties and non-traditional caregivers in specific cases, such as instances of the abolition of guardianship or custody rights or instances included in Article 42 of the Law on the Protection of the Rights of Children and Adolescents. These cases have been studied mostly by considering the best interests of the child or the inability of the parents. In terms of contract, despite Article 11 of the Child and Adolescent Protection Act, which prohibits any transaction involving a child or adolescent, Article 41 of the Family Protection Act recognizes agreements and contracts that take into account the best interests of the child. In this case, in order to combine the two articles above, Article 11 should be considered to cover transactions in which there is bad faith, and the best interests of the child are not taken into account. The last part of the above article confirms this view. In addition, Articles 267, 268 and 768 of the Civil Code also confirm the extension of parental rights to third parties through contracts. Article 41 of the Family Protection Act, while confirming the extension of parental rights to third parties through contracts, also includes the extension of afore-said rights through judicial means. In the legal and judicial system of the United States of America, current efforts to protect non-traditional care relationships, while well-executed, are poorly designed. They undermine the protections that the Constitution provides to parents and helps children. The fallacy of these approaches begins with a narrow view of parents that excludes non-traditional caregivers from constitutional protections. They argue that in order to provide any protection for them, the fundamental rights of parents must necessarily be compromised. Instead, the Constitution should be read in a way that provides public

authority to recognize non-traditional caregivers as parents. In this case, once they are recognized as parents, the Constitution will adequately protect them from state interference in raising their children.

Conclusion

There are no explicit provisions in the Iranian legal system that explain the nature, limits, and scope of extending parental rights to third parties or non-traditional caregivers, and judicial practice has rarely shown a willingness to comprehensively accept such a matter. Therefore, the following article is proposed to be added to the Family Protection Law: “The extension of all parental rights regarding children and adolescents to third parties and caregivers is possible only by observing the best interests of the child and does not negate the rights of the competent parents. The relevant agreements are subject to the rules of attorney and the third party is removed if the interests of the child are not observed.”

Keywords: American law, caregiver, child, family law, parent