

# Comparative Examination of Child Right Convention to Civil Right of Islamic Republic of Iran

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## ABSTRACT

According to the 44actof child right convention, member government commit in order to perform registered rights in convention, during two years after joining to convention and after every five years report about legislative, official and performed performance and in their examination, provide and determine problems and influential factors on performing their own commitments.

In order to do government's commitments, the most important one is to determine inner rule and situation and statute of convention against internal rule. Evaluation the effect of these two make possible for every country to recognize legal breach, know deficiency and at last, collect and remedy supportive rules. Whereas, there are super and preferred regulations, perform them. Also in international dimension, government commitments against international associations has been recognized and evaluate human right observance in governments. In this case, this articles to study and analyze convention contents and compare it to internal rules, however, it most emphasis on comparing and complying rules and recognize contradiction.

**KEY WORDS:** convention, child right, statute, civil rule, adolescent age, family, life right ratio, citizenship, custody, alimony.

## INTRODUCTION

Child right is one the most important legal ground in which has been taken attention in internal and international level.

In this case, United Nations Organization child right treaty in 1989 has been passed and now by 192 countries member ship is the base of international thought for improving, supporting and supplying child interests. Child right has been discussed from different views and in different fields and have has legal, political, social, economical, cultural dimensions in internal and international level.

In Iran's constitutional law has been mentioned to child right (21 norm) and in civil and penal law is some points about supportive regulations, however, does have some limitation and deficiency.

Based on the importance of human right topics in nowadays world and according to Iran's joining to child right convention in 1993, it requires to scientifically examining convention and compatible Iran's rule to it.

Article4 of treaty obliged member countries to perform required and legal procedures in order to fulfill recognized rights in convention and it is not possible except improving existing regulations, based on scientific research, increasing people acknowledge about and fostering economical, social and cultural measures in supporting child right.

Whereas based on article 9 of Iran's civil right, its contents are the same as internal rule, we should recognize and evaluate then exactly in order to compare it to internal rules in supplying child rights have taken feasible and influential measures.

In this writing, we tried to mention to the most important factors of non compatibility of internal rules to above convention in civil rights.

## Chapter1-Generalities

### 1. Child Definition

Article 1 child right convention:

"Child means any human under 18years old, unless based on rules, adolescence age be less than it."

Convention has put age as an only measure of distinguishing from adult in child definition end don't pay attention to other measures like mental growth.

Compliers mention to under 18 years old, indicates childhood is a spread age array from birth to reaching adolescence and it is obvious in different ages, these requirements, capabilities and personal abilities are different. For example: the least employing age, the least political participation age, the least age in arm hostility,....

In fact, 18 years old is the border of childhood and adult. This age is the same growth and reaching to a stage of life in which person have the requirement of understanding for getting out of childhood, entering adult eras and finding independence in his legal affairs. In other words, person reach to age of mental and bodily adulthood in which is not interdicted and could decide about related affairs and perform them, and have has the ability to vindication. Convention compiler has paid attention to the important point in which age measure is different according to social position, cultural, religious, geographical....and countries. So the target is accepting convention and government are free to choose child age and they choose based on their internal rules.

In continue to article 1 has been stated:

“...unless based on rules related to child, the age of adult was lesser.”

Therefore, government including Iran could choose different age based on their internal rule and perform it.

It should be mentioned, however, government are free to choose lesser age, but when the supply and support of child right are influenced directly or indirectly, it emphasis implicitly or explicitly on age observance in convention specialty in cases in which require growth and adolescence including the age of penal responsibility and prohibition of heavy punishment, execution and prison for life for under 18 years old (article 37 of convention) and also the least age of marriage in which nonpaying attention to this least would have negative influence on hygiene, mental and bodily health, education and other personal and social rights of child.

In convention collection:

1. Child is a person under 18 years old.
2. Child is girl or boy without gender separation.
3. The base in government authority is to determine maturity age, unless child interest would be in maintaining higher advantages. In this case, we perform convention view.
4. There is exception in convention in which has been provided and are not rule like insane child or those who reach adulthood in ages lesser than 18.

Since, the target is to compare convention contents to inner rules, so we pay them in summary:

In Iran rule based on note 1 in 1210 article, adult age for boy is in 15 years old and for girls is 9 years old in lunar years and based on 17<sup>th</sup> principle of stationary: “The origin of country official history is prophet’s emigration and both lunar and solar dates are valid, but the base of government office is solar date. “Both solar and lunar dates are valid.

Convention knows the adult age similar to girl and boy, but adult year determined in Iran’s rule, according to Islam’s religious law is based on gender and based on article 1 in convention in which states: “Unless, based on rules performing about child, adult age would be lesser. “So, existing contradiction in Iran’s law don’t create problems to convention. But it should determine the effects of adult age has been determined and in practice what number of peoples under 18 in Iran has been supported by convention. In other words, we should divide affairs related to adult to other affairs dependent to mental and growth.

So, by a glance over different branches of Iran’s law (work, civil, penal) shows legislator provides child entering to social activities based on his special capability like on entering work market (the least age is 15) for marriage and penal responsibility (maturity age)....has determined special age and it shows child does have ability to do something in different ages and selection right is depended to having special age. This is reasonable not only about child –those under 18 years old- but also about adults. For example, affairs like citizenship, judge occupation, attorney, selecting as a member of parliament,...requires special age and obviously legislative’s assumption is that these occupations and responsibilities require capacity and special ability. Therefore, being 18 years old in which is the age of adult is not enough for being in charge of these responsibilities and occupations. (so, finishing 18 years old does not mean to entering adult societies) knowing all persons under 18 as an child is not enough and determining similar right and responsibility for them. However, convention compiler has paid attention to this point in some stages, for example, in article 12 has been stated to value child views according to his age, but convention general view is problematic.

Were mind in Iran’s jurisprudence and right, underage is one who does not reach to adult age and in this case is interdicted. Interdiction finish is the end of childhood eras and exiting from it is dependent to growth and adult. In removing interdiction, person could exit from parent’s, master or father’s control and as a whole does have the right to possess his properties, deals independently, has selection right, it seems the only case in which have contradiction to Iran’s rule concept of child is responsibility base in which has been determined the maturity age without considering growth. It includes two cases: marriage and the age of penal responsibility.

## **2. Prohibition principle of discrimination to child's observance**

Child right convention in article 2:

1. Member governments, guarantees rights has been provided in current convention for every child without any discrimination and without considering race, colour, gender, language, religion, political beliefs, and other beliefs, national resource, ethnic or social, property, ability, birth situation, and other child or parents characteristics or his lawful tutor and honour them.
  2. Member governments apply required affairs in order to secure children from any discrimination or punishment based on position, activities, disclosed beliefs or parent's creed, lawful tutor or family member.
- In convention- like other international documents including human right global manifestation, civil and political covenants (civil and political covenants has been passed in 16december 1966 and Iran government has joined it on 1975/5/28 by assembly's approval) and economical, social and cultural covenants (Iran's government has joined to economical, social and cultural right covenants like other above covenants)has emphasis on child right equality and non discrimination among them based on gender, colour, race, religion, birth?,...and government committed to guarantee equal rights.

In comparing this article to internal rules, we should mention to some points:

However, according to 20<sup>th</sup> principle of stationary "All nation member including men and women are supported equally by government and does have all human, political, economical, social, cultural rights by Islam standards observance. "Butin some cases, these rules are according to Islam's standards like:

1. Difference among girl and boy in adult age, the amount of heritage, the amount of fine, the age of enjoying for mother fostering (refer to article 907, 1210,1169 civil rule and article300in Islamic punishment)all are based on gender and are influential on individual's right and responsibilities. The most important graph of influence is on the least age of penal responsibility and marriage.
2. Supporting child without considering their birth means: "Those who was born from marriage and those who are not from it, have right to be socially protected."

However, in Iran's rule for honouring to family private and maintaining Islamic and social values, free and illegal relation of men and women is prohibited. But those who were born from these relations are innocent and have the right to be supported spiritually and pecuniary by parents. So, according to the procedure unity vote no.617 on 1997/6/24according to Imam Khomeini view is the duty of secular father(it's detailed discussion is on recognizing parents)and these child's would be supported too and except heritage case does not have any difference to illegal child's. Because jurisprudents know birth from adultery as an heritage obstacle and believes when there is not religious relation among parents, therefore the heritage laws would not be performed on a case not having relation rule. Civil law has stated:

"Adultery child does not herite from parents and their relatives,"(article 844 civil law)

Under the supervision child's would not herite, too. According to article 2 supporting child's without parents passed in 1972/03/15"supervising is not the cause of heritage. "It means does not child herite from supervisor and not supervisor from child.

3.Parents and legal tutor duties to children

Article 5 of convention:

"Member government honour to parent's responsibilities, rights and duties according to the case, spread family member or association in which has been determined by local custom or legal tutor or others in which are child's responsible. They provide required direction, guidance for supporting child based on his capacities ."

Child does not be borne by his will. Men and women are involved in his birth and because are his parents, does have responsibilities for him in which the most important one are feeding, providing required facilities for life continue including house, cloth, food and supervising properties.

As we see, in all cases, legislator language is general and determining framework and it's border is based on society custom and judge's view and even when there was a dispute.

What is the most important is the circle of family influence and authority about child and how much government could reach to family private and control and audit it. Because against duties in which parents does have for child, they have some rights, too. It gets back to family authority and holiness.

In fact, holiness is one of accepted principle in our culture. Natural parent does have considerable authority to their child. Child punishment in order to treat him by parent and deciding about her marriage (article1041)and financial affairs(article1183)and exemption from retaliation if kill child(article220)are of tutor's authority and privilege.

However, interdiction and prohibiting tutor from possessing property fall authority (article 1882)and cases like no capability in administering his property (article1184) or disloyalty to his property(article1186)leads annexing to tutor , body health or moral treatment being in danger because of non-caring or parent's morale decline changes

fostering child affairs (article1173) and at last decreases tutor authority to child. But it seems there is alternatives in supplying the best advantages:

1. As far as possible, we clear the limit of family authority and duties and adjust those laws in which frees government and family hands in limiting or wasting child right. For example: punishment right
2. In order to control family performance and government, we should establish an audit organization to do required control and audit in this regard. An organization familiar with society culture and family role in supplying and supporting child and also government duties based on stationary and does have required information about influencing direct and indirect on government policy.
3. parent's right and their duties to children and child right on them and as whole child relation to parents would be recognized in family framework based on national-religious culture and recognize it to society.
- 4.

## **Chapter2-Child right**

### **1.Child's life right**

Article 6 of child right convention:

Member government recognize natural right of child for life.

Member government guarantee child growth and survival as far as possible.

The right to life is for everyone. Societies and religions honour human life right and indicated nobody would be deprived from life right and even negate his living.

In international declarations (article 3 of world human right: "Everybody has the right to live freely and have personal security) and international covenants (article 6 international covenants of civil and political right: "Life right is human inherent right. We should support by law. We could not deprive anybody from life willfully.") It has been emphasized on person principle right and article 6 of convention has considered child right inherently.

Article indication is general and it has been determined how to consider life right? From birth or when the sperm is formed?

In Iran legal system, supporting child right and life right begins from mother pregnancy and continue after birth.

Lamb does have civil right even if be born. "(article 957 civil law)

## **Supporting child life right before birth**

Fetus feed from mother existence and is not independent before birth. Therefore, if we know life right on his birth, for his health and natural growth is required to consider mother pregnancy in internal and international level of legislation (human right declaration(article4) and economical, social and cultural promise(act2 article10)has been mentioned mothers would be supported in a reasonable month before and after childbirth till child be treated in health.

In Iran's right, supporting child right and his life right is provided in two civil and penal dimensions.

It reminds some special cases in civil dimensions are influential on child life indirectly.

1. Civil dimension of supporting child life right
  - According to act2 article 21 stationary, government is obliged to support mothers specially in pregnancy and child fostering period....".

It is obvious, because support word is general, it includes different aspects of hygiene , feeding, insurance, social security and other supportive cases.

- In order to prevent malfunction in body and mental influence , venereal disease on fetus and supporting child life before birth in article 104 of civil law has stated:

"Any one of parties in marriage would demand other to provide medical document about being health in contagious disease like syphilis, gonorrhea, and tuberculosis. "When legislator has mentioned to important contagious disease, could include all cases like HIV in which is the basic threatening ground in child health and at last his life right.

- Also for preventing disease side effect like tetanus, legislator obliged women to inject tetanus vaccine before marrying.(women obligation to inject tetanus vaccine passed on 1988/04/12.)
- Of other legislator's arrangement, is father's duty to pay alimony and supply mother's expenses in pregnancy period. (Article1109civil law:" Divorce period and marriage dissolution and giving time and ending about pregnancy women to childbirth. "Article1154 civil law." Death period in constant and temporary is about 4month and 10days. Unless women be pregnancy in which in this case, death period till childbirth would be considered....") Because women in divorce period would not marry and then supply child health in fetus period.

- One of important factors in which danger fetus and child life before birth is pregnancy in unsuitable time, frequency childbirth and mother non capability for pregnancy. Marriage and pregnancy in low ages create some problems for mothers and child's because she has not reached to bodily and mental maturity. Some problems in which would be considered socially and personally includes:
  - ❖ Girl and boy's premature adolescence and in better word, those who does not have bodily and mentally readiness for adolescence and in continue being deprived from education and training right.
  - ❖ Increasing divorce static and family dispute because of non understanding marriage and the target of marrying, increasing the number of young mother in which require family and society support.
  - ❖ Increasing population growth rate, whereas government considered population increasing in his great programming in the first and second social, economical and cultural development. It declared government target: "Canceling all regulation encouraging population growth and adopting fit plan for limiting country birth policy"(First economical, social and cultural development program law of Islamic republic of Iran, passed 1989/01/31)it emphasis on educating and improving general knowledge of individuals specially girls and supporting women and mothers for performing family regulation program by hygiene ministry, medical treatment and education. It should be mentioned, however, legislator has emphasis on maturity and the least age for marriage has been determined based on all dangers of maturity age. Article 1041 civil law: "Marriage is prohibited before adolescence.")But because the age determined in law is very low (note1 article 1210) and does have observed difference to girl's natural maturity age (the mean age for girl maturity is 13years old) and mean age for marriage (22years old for girls), therefore , religious jurisprudents and lawyers suggested for changing and increasing maturity age and conforming to natural age of maturity.  
It seems increasing maturity age by assembly would be possible because it is a creating static and there is no Koran base.

## **2. Supporting child right after birth**

The first right of child after birth is breast feeding. It means child need food after birth and if does not feed, endanger his life. Therefore, in order to maintain breath and supporting his life right, feeding by milk duty is on mother charge .Because mother milk is the best feeding resource.

In Iran's jurisprudent and law has been discussed, do feeding by milk is the mother right or her duty and if is right, when mother don't feed child by her milk and mother's right is interfered with child life right, the priority is to whom?

In Iran civil law followed by jurisprudence, (brightness description, volume 2, page 112) child life right is the first one and has been stated: "Mother is not obliged to feed her child by her milk even when child feeding is not possible without mother's milk. "(1176article civil law) Also, legislator has put facilities for mothers to feed their child by their milk in order to support feeding right by mother's milk and provided feasible ground for mental and bodily security of mother and its advantages to child.

Also in employee law(passed on 1990/09/24 and approved by system policy recognition association)articles 76to 79 has been dedicated to women worker childbirth leave, emphasis on Job security, financial support in childbirth leave, (article76)prohibiting dangerous or hard work in childbirth period(article77)and using lactating leave about 0.5 hour after every 3hours till the end of 2years old and accounting them as an working hours and obliging employer to establish child care centers(like nursery, child care center,...article78)

Child, in addition to feeding requires care and maintaining to continue his life. Therefore, family and government are obliged to guarantee and supply child right. In this case, legislator considered child fostering problem (it has been considered).Of other cases in which maintain child life from dangerous disease and make possible to leave without disabilities like paralysis.

Iran's legislator has obliged government to supply related grounds in hygiene and social security of peoples including Childs. According to article 1"organising and duties laws of hygiene ministry, medical education and treatment" passed on 1988/05/24hygiene ministry is government representative in performing this supportive aspects including general hygiene supply and improving its level through performing hygiene program specially in environment hygiene ground, fighting to disease, family hygiene and schools, general hygiene education, work hygiene and employees by emphasis on hygiene care specially for mother's hygiene and child's. (act2 article1) It reminds government general objects are for supplying individual hygiene including child, supplying people basic requirements through supplying feed in life requirements, supplying health general education, treatment and first aid cares for all by emphasis on deprived region and villages and purring environment. (The first program for economical, social, cultural development in Islamic Republic of Iran passed on 1989/01/31 general target of act6)

Hygiene ministry is administrator of hygiene and perform security plant, general vaccination, supporting pregnancy and milk giver women, feed by mother milk promoter,... and support child and his hygiene for health and better life .

2.Child right in having name, education, citizenship,...

Article7 child right convention:

1.Child birth would be registered after his birth and enjoy the rights of having name, getting citizenship, and recognizing parents and be in their support.

2. Member countries in convention, perform these rights according to their national rules and commitments based on international documents in this regard, especially when child does not have citizenship if they would not be performed.

Registered rights in article includes:

- Having name right
- Citizenship
- Recognizing parents
- Being in supervising

### 1. Having name right

Using name and family name is the child right. Because you could recognize him and know his relation and other rights. In this case, in the world declaration(third principle in the world declaration of child right passed on 20november1959 and article 24 civil and political law covenant passed on 16december 1966)and internal rules(civil and registration administration law)has emphasized registering child birth and name him. According to article 12 Iran registration administration law, any child birth should be informed to registration administration in Iran and to consular official in out of country. It has been defined in rule who would declare child birth. About religious child's, always parents inform his birth and if child be from non-religious relation, natural father would be charged with informing his birth(procedure unification vote617)and if father refuses or could not inform, mother could be informer( article 16 note)and when parents are not clear(anonymous)the informing duty is on in statue representative in which legislator applied to don't have any child birth without registration and support of his having name and registering birth right. In having name and family name, according to registration administration law, selecting name is to informer and in this case should avoid using surname, repelling name or unsuitable to child gender(the same article20)it is obvious, those who select child name are at the first time his parents(religious child) and in other cases(anonymous)selecting name is on institute charge in which care of them. In addition, child would have family name(article 997civil law: "everybody should have family name")article 41note of registration administration knows family name as the same as father name, according to this note, children could select other family name when became elder(exit from interdiction and the end of childhood)in other cases(anonymous child)we should select supposed family name.(Article 17 registration administration law)

In order to guarantee this right of child, legislator fixed executing guarantee for those who are charged to inform birth. In addition to "fixed duties requirements", cash penal has been determined and for registration official obliged to register birth, if there was delay or excuse, prosecution has been assigned by "official court of justice or disciplinary".(The same article48)and about topologist or medicine in which is obliged to issue birth certificate and send to registration, because is responsible, if issue false certificate, would have heavier punishment.(The same note, article49)

In law, birth document is an official document(article999) and the have right to enjoy advantages of having document.

### 2.Citizenship right

Regulation related to citizenship in Iran stationary in principle 41and 42 indicated: stationary's 41 principle: "Iran's citizenship is any Iranian indisputable right and government could not negate no Iranian right even if he/she want to be other country citizen."

Stationary's 42principle:"Foreign citizens could be Iran's citizen according to rule and we could negate their citizenship when other country accept their citizenship or they themselves demand it."

Details about citizenship are according to civil law. According to the above contents, we could say citizenship in Iran's government view is in three cases:

1. Getting Iran's citizenship in Iran
2. Getting foreign citizenship in Iran
3. Getting Iran's citizenship on out of country.

Getting Iran's citizenship in Iran is in these three cases:

1. Birth in Iran

2. Residence in Iran

3. Getting citizenship

- Birth in Iran: Iran rule know these child's Iranian if they have been born in Iran: Child be born from Iranian father(stanza2 article976)child be born from anonymous parent(stanza3 article976)child be born from foreign parents in which one of them has been born in Iran , except those children have been born from political represented and foreign counsel. (stanza4 article976, article976note, article 976note) birth from citizens in which their government knows child be born from Iranian citizen as their own citizen (article978) and be born from foreign father in which child after 18, has lives in Iran only about 1year.(stanza5 article976).
- Residence in Iran: According to stanza1 article 976, all Iranian residence except those who their foreign citizenship is clear, are Iran's citizen. Foreign citizenship is clear for those who their Citizenship document is not is dispute to Iran's government.
- Citizenship: However, one of condition of citizenship is being 18 years old, (stanza1 article979) but minor child of those who are citizen would be Iran's citizen, too. (article984).
- Foreign citizenship in IRAN: those who their foreign citizenship is clear (stanza1article976) and child be born from political represent and foreign consul (article note976) even if they be born in Iran, would be regarded as foreign citizenship.
- Iranian citizenship in foreign: Those who be born from Iranian father out of Iran , does have Iranian citizenship.(stanza2 article976)

Child citizenship in convention definition (those who are not 18years old) would be includes in above case. In other words, according to IRAN rule, child is foreign citizen or Iran and at last does have any country citizenship.

Because girls about 9to 18 years old are child from convention view and does have marriage capability according to Iran's rule. If they marry to foreign citizen, would remain Iranian base on article 987, unless husband government citizenship be imposed on her in marriage. But in this case, they would have Iran's citizenship, too.

We could say in summary, child citizenship registered in article 7 of convention has been anticipated in Iran's rule and there is no contradiction among Iran's rule and convention.

4.Parent's recognition

In Iran's law, child would be born in one of these four cases:

1. Parent recognition ,if child be born in religious marriage
2. Parent recognition if they have doubt in child born
3. Parent recognition if child be born from adultery
4. Parent recognition if child be born from artificial insemination

We pay to each one of them in below:

- Parent recognition if child be born from religious marriage. If child be born from correct marriage, his birth is on the parent's marriage period or after dissolution.
- Birth in marriage period: Child be born from correct marriage in marriage period is belonged to husband, on condition that, from closeness date to child birth had not passed less than six months and more than 10 months.(article1158)
- Birth after marriage dissolution: child be born from correct marriage would be considered after marriage dissolution in one of two supposition: First-mother had not marry again. Second- mother has married again.
- 1. If mother has not married again and has not passed from marriage date to child birth more than two months, child is belonged to husband even if to prove from closeness date to birth has passed less than six months and more than 10 months. (article 1159)
- 2. If mother has married, child is belonging to the one who her joining to husband would be possible (according to civil law). If child has been belonged to the two husbands, child would be for second husband, unless there were testimonies against it. (article1160)

According to civil law, child be born from correct marriage is belonged to the first or second husband, unless prove contrary, of course in any case his relation to mother is definite.

- Parent's recognition when child born is in doubt. When a men and women be close to each other in supposition of marriage relation, but they are married in fact this relation is in doubt and the child from this relation is in doubt, too. In doubt relation, men or women is in doubt or both of them. Child be born from relation in doubt is belonged to a party in which has been in doubt and if both of them are in doubt, child is belonging to both of them.

We should know, however, child recognition is secondary to parent's descent, but non legitimacy would not be obstacle of recognizing him from parents. Procedure Unification vote no: 617 on 1987/06/27 (procedure unification vote no. 617 on 1987/06/27 according to A stanza registration administration article passed on 1976, one of registration administration organization's duty is to register birth and issue identity certificate and there is no difference among legitimate and non legitimate birth. Note 16 and 17 above law, when parent's marriage is not registered and there is no alliance in birth expression and identity certificate issue and parents are not recognized, has determined the duties.

But when child is from adultery and adultery don't get identity certificate, by generalities and above mentioned problems in 3, 47 jurisprudent rules from Imam Khomeini view, adultery is natural father of child and as a result father's duties including getting identity card would be in his charge and based on article 844 civil law, only heritage problem is negated and therefore branch 30 votes of supreme court has compatibility to it and by almost member of supreme court view and based on legitimate law would be accepted. This vote relied on unity article of related law in jurisprudence unity procedure passed on July 1959 is required for supreme court branches and countries branches in which has been issued based on 3 and 47 theories of imam Khomeini in his book "jurisprudence rule from Imam Khomeini's view" and know adultery as a natural father of child and he has his duties, too. It recognizes child parents and it seems legitimate description would be influential only in heritage law among child and parents and other parent's legal duties including taking identity card, paying alimony, accepting fostering, ... are in their charge and child have the same as child's right.

- Parent recognition in child birth by adultery: When men and women be close to each other and know they are married, this action is adultery and child has been born from them is called adultery child. Based on article 1167 civil law would not belong to adultery, but as we mentioned before, relied on unification procedure vote no. 617 on 1987/06/27 adultery is natural father of child and except heritage rule, other lawful relation is existing among them.
- Parent recognition when child is from artificial insemination: Insemination mean being pregnancy and artificial insemination includes entering men's sperm in women's womb without sexual intercourse and for example by medical instrument. It should be done when men is barren does have speedy seminal effusion or nervous disease and women does have problem in her uterus and does not have possibility to reproduce naturally.

Artificial insemination would be done by husband sperm or other men:

Artificial insemination by husband sperm: sometimes, though men is not barren and does have the possibility to reproduce, because of some other problems like speedy seminal effusion, women could not be pregnancy from him naturally, then by artificial insemination and for example by medical instrument, enter men sperm in women's uterus to pregnancy women.

Artificial insemination by other men's sperm: When men is barren and there is no life material in his sperm, it is useless to make artificial insemination by his sperm, then we inject other men's sperm to his wife to be pregnancy in which we call it artificial insemination by other men sperm. Child has been Borne from artificial insemination in each of these two method, does have one of four topics and we could recognize his parents.

#### 4. Being protected

We could consider it from financial and spiritual aspects.

- Child's financial protecting: It is protecting child from financial aspect in order to supply his expenses (in which is called alimony in Iran). At first, father is obliged to pay relatives expenses (child is one of them) even when he is able to pay alimony. So, when child father is not able to pay alimony, this duty would be fallen. But child would not be released without alimony, in the case above and when his father is dead, alimony paying would reach to his grandfather. If child does not have grandfather or they could not pay his alimony, child alimony is on her mother. Of course, as we mentioned about child's father, when mother is dead or could not pay alimony, his grandmother are to pat it. (article 1199: civil law: "Child alimony is on father's charge. after father's dead or When he could not pay alimony, is on his grandfather. When there is no father and grandfather or their non ability, alimony is on mother's charge. When mother is not alive or could not pay alimony, is on his grandmother and ancestor. When ancestor is equal, they would pay equally the alimony, too.) Therefore when child's mother and father ancestor are not able to pay his alimony, they would pay it equally.

When they could pay, but refuse to pay it or be absent, court would take their property in amount in which is the same as child alimony, if child demands. If court does not have access to donor's property, anybody else could pay child alimony and claims from absent donor. (article 1205)

Alimony types are determined in article 1204 by legislator including house, cloth, food and equipment's in about necessity and according to donor's ability.



It should be mentioned in civil law in 1204 article and as an relatives alimony- child is one of them- has been determined in necessity (house, cloth, food, equipment) could be criticized, because those goods are the least necessity of life and for his survival, but child does have other requirements, too. Negating education expenses and also training child's hidden talent as in education and learning profession in which supply child future and don't make him society burden is not reasonable in Islamic society in which its motto is to learn from cradle to tomb. Specially, though 30<sup>th</sup> principle of government stationary has obliged government to supply free education for all nation till the end of high school and develop higher education equipment's till the country be independent, education and training expenses dedicated huge amount of family expenses to itself.

Spiritual protecting from child: In spiritual protecting, we mean training him as by bodily and physically growth, his sensation and feeling be taken in attention and child could satisfy his mental and spiritual requirements by having belongings feel to a family in which are interested to him and his fate. In addition, doing personal affairs of child because he is minor and non-able to do them feasible to his bodily growth and doing his social affairs because does not have vindication and requirement of being somebody to do his affairs are of spiritual protecting affairs. Financial protecting of child is the same as alimony problems.(article1199, 9205).

According to above matters, child could be spiritual protected in Iran's law in three method:

1. Tutorship: Is an authority in which rule give somebody in some reasons to do other affairs and those who does have this title is tutor. Tutorship is special to father and grandfather and their administrator in which father and grandfather does have natural tutorship to child. (article180) Administrator's father and grandfather are called "Special Administrator".(article1194) We could exit from tutorship by growth and elderness. (article1193)
2. Mandate: Mandate is some type of protecting in which has been determined from court to train minor child and administer his financial affairs. One who has been selected as child tutor has been called tutor. Mandate could be child mother or anybody else in which is capable to protect him. It does not matter having relation to child or not. Of course, when minor child have has mother, she is in priority to other in being his tutor.
3. Fostering: it means training and supporting in which in legal term, we call it child maintenance. Child maintenance includes applying required equipment's for survival, bodily and mental health, because in any age, child requires some type of protection in which is feasible to his nature.

-In Iran civil law, child fostering is on his parents charge and child maintenance is the duty and right of parents. (article1168) except female children in which their fostering is on mother charge to 7years old. (1169). Above rule includes one article described as on 2003 by Islamic consultative assembly and remedies by system policy recognizing.

-On fostering a child in which his parents live separated from each other, mother does have priority to 7years old and then father is responsible.

Note: after 7years old, if there was dispute, child fostering is by court recognition. As a whole, fostering by parent does have these two suggestions:

- Common residence of parents in one house
- Non common residence of parents in a house.

Regularly, there is no problem in fostering style in the first case. Because parents are obliged to train child according to their ability based on 1178article, and don't absurd it. If the marriage is continued among them and they have residence in a common house, there is no problem in fostering. But if they don't have common life is because one of them is dead or has divorced and marriage had dissolute or wife has selected separate house in article 1114 and 1115 declaration.(1114article of civil law):"Wife should be residence in a house in which his husband has determined ,unless selecting house be on wife will. "Article1115 civil law : "If being together Contains bodily danger or financial or hounor to women , she could select other house and if she could prove above disadvantages, court does not order to come back to husband's house and she could receive alimony. "When one of parent has died, fostering is to whom is alive(article1171)and the rule of fostering minor or interdicted child by mother (legislative article about the right of minor and interdicted child fostering by mothers has passed on 28/07/1985:"Child fostering in which their father are martyred and has died is on their mother and these child life expense from their property is on legitimate tutor's will." If wife has selected another house, according to child's age, fostering is on his parents.

It should be mentioned, fostering means training, maintenance, educating child, but if these affairs are on parents, charge, it would be fostering and about others (grandfather, administer, or other legal tutor, tutor)we don't use of fostering terms. So, combination of fostering and tutoring is for father and combination of fostering and protecting is correct for mothers.

## Conclusion:

This study object is to recognize child right and comparing to Iran's internal rule. It indicates before Iran's joining to child right convention, it protected from child in different laws(stationary, civil, penal, work)

Koran has mentioned in different verses about child right.

Prophet has reminded parents about their responsibilities to children, frequently. According to Islam theology, child is born innocent, therefore should not be part of elder's dispute, aggression and involvement. Of course, there is some non-agreement in which is conditional right of some Muslim countries about adoption, the situation of child be born out of marriage and,...

It should be mentioned in recent years, there is some remedy in two laws in order to be compatible and close to principles in child right pact: one is article 1041 has been reformed in 2004 in which marriage of girl before 13years old and boy before 15years old is by parent's permission, observing child policy, by court permission. Therefore above marriage would be by court permission.

Other reform in article 1169 civil law is about child fostering age. On 2001/ 11/29 has passed system policy recognition. Equal to reformed article 1169, on maintaining a child in which their parent are separated, mother does have priority to 7years old and then if there was any dispute among them, child fostering would be determined by court.

In direction of Iran government commitments and applying child right convention regulation, Iran has presented his introductory report on december1997 to child right committee. Committee after introductory determination, has presented some points to compile more information in government.

Committee has emphasized on positive and negative development in Iran in order to achieve more targets, has provided some points on 2000:

- Committee has emphasized on child definition based on Iran's rule and no discrimination among girl and boys and wants to change fostering rule for the best advantages of children.

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In hygiene regard, by emphasizing on existing matters and measures for supporting disable children, require more efforts. It pays attention to child work especially in Tehran and Esfahan. It requires providing facilities for recreation and cultural activity for child. Also, convention would be brought in child books. And about special supporting measure, requires registering refugee children in schools and about children work in non-official part and youth equality would be regarded, too. It requires Iran's introductory report based on article 44 paragraph6 in convention.

We should know a system based on reporting in United Nations in which child right is one of them, don't destroy governments and in principle the target is to encourage government to support children through talking and avoid using instrumental suggestion for governments. Child right committee's suggestion is in this regard and some part of them were in governmental responsible attention from committee report period.

At the end, we have suggestions for improving minor child life quality and the method of encountering them and specially improving legislation in this regard:

1. Adjustment and omitting some laws in which directly and indirectly are incompatible to child right and maintain the most advantages including: Parents' punishment right, father exemption from retaliation in killing child, father priority in fostering and the most important of all is maturity age. It deserves to pay attention to natural maturity age and like religious jurisprudence put the end of childhood as an exiting from interdiction in all cases. In other words, along maturity age, growth would be considered in child penal responsibilities.
2. Child right and parents' duties and lawful tutors and as a whole, relation of child and parent in family framework be introduced according to national and religious culture to society.
3. About child view and according to it, it seems legislator would value more on auditor child, especially when it is important on his civil and penal fate.(fostering, legal procedure)

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