The Criminological Investigation of Marriage with an Adoptee

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ABSTRACT

Adoption is a legal entity whose purpose is to simulate a warm family environment for people without children, on one hand, and for orphan children, on the other. The permission or sanctity of marriage with an adoptee, due to its potential role in the increase of crime and deviance, comes into consideration in the criminological studies. While compliance of the permission of this kind of marriage with Sharia and the reality is among its advantages, the potential increase of the crime rate by the adoptee and his/her nominal parents- due to the deviation of adoption from its primary objective of simulating a family environment- as well as reduction in motivations of adopting children are among its disadvantages which can be studied from a criminological perspective. The criminological investigations suggest that the permission of marriage with an adoptee can affect both the crime and victimization of the adopted child and his/her nominal parents. After investigating the concept and history of motivations and bodies responsible for adoption, the present study examines the strengths and weaknesses of permission of marriage with an adopted child and the position of Iranian legislation in this area.

Keywords Adoptee; Adoptive Father; Adoptive Mother; Deviance and Crime; Family.

INTRODUCTION

From a legal perspective, the real child is one who is from the next generation and there is a blood and natural kinship between he/she and his/her parents. In some instances, however, individuals may adopt a child for some reasons. In this respect, in some countries, the legislator regards such a child as the real child of that family and recognizes some effects for this legal relationship. This child is named an adoptee or nominal child and since his/her relations with adoptive parents is artificial (Tavassoli Naini, 2009: 91), some doubts arise concerning all the legal effects of relationship between the child and birth parents. The sanctity of marriage with the adoptee is such an issue. The enactment of the recent adoption law by Islamic Consultative Assembly in October 2, 2013, caught the attention of lawyers and the general public more seriously to the permission and sanctity of marriage with adoptees. Although, the recent law considers the sanctity of such a marriage as a principle and its permission as an exception, analyzing the legislator’s decision and determining therightness or wrongness of it require a closer look at the issue.

Strengths and weaknesses of marriage with adoptees can be studied from various sociological, psychological etc. aspects; however, since the reduction in crime rates is a major concern in all countries and the main purpose of the criminological studies and as marriage with the adoptee could be a source of corruption and deviation, the author attempts to examine the issue from the perspective of criminology.

In fact, the main objective of this paper is to answer this question that how the permission of marriage with the adoptee can increase crime and deviance. As a hypothesis, it seems that the permission of such a marriage makes the environment of the new family undesirable for the adopted child and leads him to commit deviance and crime; as the criminal statistics show that a large number of criminals have come from dysfunctional families (Eshaghi, 2001:32). Using a descriptive analytic method and a library study as well as interviewing with one of the legal experts of the Social Welfare of Markazi Province and ten young couples without children about the impact of marriage with the adoptee on their motivations for adoption, this study attempts to study and explain this issue in details. For this purpose, the concept of adoption and its history and then its motivations have been investigated. Next, the issue of marriage with the adoptee, its strengths and weaknesses- that can be considered in the criminological studies- as well as the current position of Iranian legislation in this area are explained.

A. THE CONCEPT AND HISTORY OF ADOPTION

i. The Concept of Adoption

In English, the term "adopt" means to choose, to take in (Bateni, 2002:5), and to take as one's child (the translation department of Iran Claims Tribunal, 2010:3) and "adoption" usually means the latter, the action or fact of adopting a child.
The term is a Persian gerund composed of two Persian words namely which means a child (whether a son or a girl) (Dehkhoda, vol. 37, 1985, p. 159) and that means to call (Razavi Razavi & Hasan Puralashi, 1994:418). So, this term means to "adopt somebody as one's child" that is to take another's child (Crawley, 2011:5) and bring it up as one's own (Longman Dictionary, 2003:5). In fact, adoption signifies voluntarily acceptance of a child as one's own (Moshiri, 1990:760).

In legal terms, adoption is a legal act which entails a nominal filiation between two people. One is called Adoptant, the other is Adoptee and the mentioned relationship is termed Adoption (Jafari Langroodi, 2004:498). So the above mentioned relationship is a legal relationship arising from the adoption decree (Martin, 2001:15). The adoptant is one who volunteers to adopt a child and the adoptee is a son/girl who is adopted (Moein, 2002:679) and became the non-biological child of one or two other people (Garner, 2009: 25).

B. THE HISTORY OF ADOPTION

I. History of Adoption in the World

Taking care of a child that is not one's own natural child, entitled "Adoption", with the aim of supporting and caring for orphan children and supporting families without children has been common in human societies since ancient times. There were some rules about adoption in the legislations of ancient societies such as India, Egypt, Greece, Rome and etc. in the ancient Rome, adoption with military, economic, emotional and social functions, especially in regard to upper class of society, was an agreement between two parties established by order of the court which brought about family interests. Historical sources widely show adoption in China and Japan; particularly, in Japan where the society put the primary emphasis on family relationship and blood relationship was of secondary importance, adoption was a common practice (United Nations Department of Economic and Social Affairs, 2009:24). However, enforced in the England at the beginning of the 17th century, the "Elizabethan Poor Law" was the first rule in which the emphasis had been put on pauper children. In 1740, the first Child Support Agency for orphans was founded in the USA (Mohseni Tabrizi, 2001:532).

Before the advent of Islam, adoption or "tabani" was a common practice among Arab tribes and ethnicities of the Arabian Peninsula and the adoptee was called "Doee". The adoptee inherited from the adoptant, his wife was considered as the bride and marrying her was prohibited (Mobayen, Ibid:3). In the Islamic law, adoption has not been recognized and does not constitute a legal entity. The fourth and fifth verses of Al-Ahzab imply that: "nor has he made your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But Allah tells (you) the truth, and he shows the (right) way. Call them by (the names of) their fathers: that is juster in the sight of Allah ... ". Therefore, adoption is not the origin of legal effect in the Islamic law. The adoptee does not inherit from adoptive parents and vice versa. There is not a responsibility for the payment of alimony between them. The effects valid in respect to the consanguineous marriages sanctity are not applied here, and so forth. In ancient Persia, particularly during the Sassanid dynasty, adoption had been a common practice and was accompanied by Zoroastrian beliefs (Tavassoli Naini, 2007:91). After the advent of Islam and in compliance with the Islamic law, adoption was not recognized in Iranian Civil Code, however, according to the Protection of Orphans Children Law (March, 1975) a child care institution has been established that can fill the void left by the absence of adoption yet adoptee cannot inherit from nominal parents. (Safai and Emami, Ibid: 277). This act was abolished by the new act of the Protection of Orphans and Children from Dysfunctional Families (2013) and the current law became the basis for adoption.

B. ADOPTION MOTIVATIONS

Adoption of children in a family has deep cultural roots in societies (Sepehr, 2001:61). Adoption is tied to acting on the recommendations of Sharia and innate altruism of human beings, on one hand, and the promotion of family welfare, on the other.

I. Acting on the recommendations of Sharia and acquiring heavenly virtues

The divine religions have always encouraged men to help vulnerable people including orphans. The holy Prophet of Islam (SAW) said, the best household among the Muslims is where an orphan is taken care of and the worst one is where an orphan is mistreated. Of course, Islam recommends the orphans should be sheltered in the affectionate embrace of families and public centers or charities cannot provide such an environment (Fajri, 2009: 77). Sheltering children in loving families is better and more desirable.

In Islam, sheltering orphans have rewards is rewarded with living on Paradise and removing the punishment of the grave (Ibid: 122, 123). So, one of the motivations for adoption for believers is to gain God's satisfaction and heavenly virtues through acting under the orders of religion.

II. Acting on the sense of altruism

Human innate altruism is among his motivations for adopting orphans. Protection of fellows has been the characteristic of all human societies throughout the history (Shakuri, 2007:125). Auguste Comte was the first to use the term altruism and believe that there are...
two forces with distinct drives in every human being: one of them acts in pursuing one’s own interests and the other one acts in pursuing the interests of others which is called altruism (Ahmadi, 2009:88). Altruism and helping others are also recommended by ethics and the religion. Helping children both because of their vulnerability and innocence is preferred both from ethics and religion and conscience perspectives. Therefore, one of the motivations for adopting orphans is to satisfy one’s own sense of altruism and act on moral advices through helping orphans.

III. Experience the sense of being a parent

One of the main motivations for adoption is to fill the voids left by having no children. Loving one’s own children is among the inner and natural desires of any human being and many people wish to embrace a child. Individuals who cannot have children naturally are stigmatized as abnormal, barren, infertile etc. are feel loneliness and isolation. This is frustrating for them. While adopting a child whom is not their own biological child do not relieve them, suffering from infertility lead them to become parents and Experience the sense of being a parent (Razzaghi, 2006:6).

Through creating a family like environment, adoption helps maintaining individual identity of family members and thus achieving a healthy and normal character (Office of family-like affairs, 2009:36). Those without children in addition to feeling deficient and lack of happiness suffer from apathy and lack of interest in life; therefore, loose their exhilaration (Kahani et al. 1997:36).

Indeed, adoption, through creating a family environment, not only helps the characterization of adoptees but is also crucial for the normalization of their adoptive parents’ characters and their interest in life. Adoptive parents, using the adoption entity, will have a coherent family which can fill the mental, emotional and even physical and tangible voids left by having no children and make them happy.

C. MARRIAGE WITH THE ADOPTED CHILD

The permission or sanctity of marriage with the adopted child is an issue raised due to the artificial relationship caused by adoption. Considering law’s silence on this topic and putting the primary emphasis on its sanctity in the new act Protection of Orphans and Children from Dysfunctional Families (2013) as well as the consequences of its permission from the criminological perspective, evaluating the advantages and disadvantages of such a marriage would not be fruitless.

I. Disadvantages of the permission of marriage with the adopted child

The permission of marriage with the adopted child has many disadvantages which are beyond the reach of this paper; therefore, the present study just focuses on these disadvantages from a criminological perspective.

In this respect, some of these disadvantages are discussed.

II. The adoption failure in simulating a warm family environment

As having a safe and suitable environment is the first principle of appropriate and competent upbringing (Zare et al., 2011:33) and no environment can provide such a haven, agencies like adoption are created with the aim of simulating the family environment. In fact, family is the most critical factor in upbringing (Rahimi, Esfahani, 1992:164).

The family environment is a haven for people where they can avoid social conflicts (Davatchi and Tabaei, 2005:143), relieve their suffering, and a place where effective upbringing take place in. As parents play crucial roles in the providing a secure environment for children (Hammett Bnri, 2000:9), their poor performance is among the main cause of psychological disorders in children) Sardar purgudarzy et al; 2003:21). Hence, even when the adoption entity does its best to simulate a secure family environment for the individual, it cannot realizes its ultimate goal of upbringing the adopted child in such an environment, if adoptive parents have a poor performance in providing this security. A man/woman entitled an adoptive father/mother can provide a safe family environment, like one the real parents provide, for an adopted child only if he/she considers that child as his real child not one who can be his/her potential romantic rival in future. In such a circumstance, warm family relationships cannot be created between the adopted child and his/her adoptive parents. These conditions make the communication within the family difficult and ruin the relationship between family members. It is while life is meaningless without relationships (Farhangi, 2010:161) and the individual should learn building relationships from his/her family. If the family is unable to succeed in this function, the individual will fell loneliness and isolation. The isolated person feels that is treated totally unkindly and is not allowed to participate in joint activities with others. He feels that others have no beliefs or desire in common with him. They could hardly rely on others (A number of authors, 2011:286). The continuation of this sense creates a kind of hatred in the individuals towards the society which can be considered among the causes of individual deviations in the near future.

Furthermore, weakness in building relationships with those who are regarded as the parents of an adopted child faces him/her with a lack of love and affection. In fact, one who considers an adopted child as his/her potential spouse and romantic rival can never love him as his/her real children. It is while a child whom has not experience sufficient love and affection from his parents is vulnerable to various behavioral disorders and...
moral deviations. The affection that children experience in the family can produce mental repose and keeps them away from many moral deviations (Shambyaty, 2005:269).

In fact, a little child whom had not experienced love and affection in his/her childhood does not expect others to love him/her in his/her adulthood. Such a child is full of grudge against adults in his/her unconscious but hides his/her deep sense of frustration (Salahi; 2009:167). Therefore, relationships among the family members should be reformed and alienation, separation, division be replaced by solidarity, love, unity, and children encouragement become the base line of family affairs (Ibid: 87); this is what makes the permission of marriage with the adopted child impossible, or at least, hardly possible.

In fact, children are termed "potential victims" because of their physical, mental and social vulnerable position and principally since they are more vulnerable than adults the legislator has set forth special supports to protect them from being victimized both within the family and the society (Zeinali, 2003: 60). The adoption entity was also created to support children and warrant their security; but the permission of marriage with the adopted child, deviates this entity from recognizing its goals and may even cause his victimization in the alternative family in two respects: the child may be victimized by an adoptive parent who might be his/her future spouse, on one hand, and from an adoptive parent who can be his romantic rival. The permission of marriage with the adopted child can be the source of moral temptations and lead to coitus which makes the adoption entity a place of sexual abuse (Emami, 2000:42). Indeed, a person may initially adopt a child with the aim of child molestation and the adoption entity makes the direct and close contact of the child with that potential criminal possible and results in the victimization of that child (Salimi and Davari, 2008: 258). Moreover, in cases that the individual does not adopt a child with the primary motivation of child sexual abuse, Temptations of crime may increase in that person and lead to the victimization of the child. In fact, the sanctity of marriage with the adopted child, recognize him/her as the real child and is an important internal control factor that prevent the child from being victimized, a factor that is eliminated by the permission of this kind of marriage.

One the other hand, the permission of marriage with an adopted child may lead to his/her victimization by an adoptive father/mother who considers him/her as a potential romantic rival. This feeling may be present initially or develop gradually. The continuation of this feeling may result in harming the adopted child by his/her adoptive rival parent. Actually, there is a class of offenders who commit crimes on the basis of love and affection (Najafi Abrand Abadi and H. Beigi, 2011:166). Probably, the adoptive rival parent may commit such crimes against his/her adopted child and spouse. The same probability exists in a case where an adopted child falls in love with his/her adoptive father/mother and considers his/her spouse as a romantic rival, and committing such a crime by the adopted child against his/her adoptive parent due to jealousy etc., is probable.

III. Reducing the motivations for adoption

The permission of marriage with the adopted child and considering him/her as one’s future romantic rival may discourage adoptant from adoption because individuals want to strengthen the foundations of their family not put their own emotional life at risk; thus, they don’t consider adoption as the means to recognize their adjective and have no interest in it. This reduces the rate of adoption and more children have to live in orphanage and loose the opportunity of living in secure environments such as the family. Living in orphanage does not provide sufficient affection for proper upbringing and children grown up in orphanage often lack a sense of security and confidence. They show a weak resistance to temptations, are susceptible in contact with criminals and these lead them to committing crimes (Key Niya, vol. 1, 2007:257); because the insufficient and improper activities in upbringing children may result in features leading them to lower level of self-control (Williams & McShane, 2009:214). Thus, increase in the number of these children would result in the potential increase in the number of deviant people and criminals in future.

IV. Increase in the forced marriages

Probably, the permission of marriage with the adopted life leads to an increase in forced marriages; in that, since the adopted child is under the power of his/her guardian or feels he/she owes his/her guardian may accept a marriage proposal from his/her guardians despite his/her propensity. This unpleasing sensation may result in divorce; as many forced marriages lead to end up in divorce (Salahi, Ibid: 190) or reluctant tolerance of the family environment which, in turn, is the cause of conflicts between the spouses. Anyway, this leads to tolerating the unpleasant family environment for spouses and their children, if there are any, and has its own consequences for increasing crime and deviation rates.

V. Changing the role of marriage entity to a parent-child relationship

Marriage is a legal entity which satisfies a series of material, mental etc. needs of spouses. This entity builds a relationship between spouses whose existence at the beginning of a period of life is necessary for the development and excellence of human beings and satisfies some of his needs. As a matter of fact, the criminological investigation of the marriage entity shows its impacts on crime and deviance from different angles. The existence of this entity with its dominant relationships satisfies some needs of the individual which may oth-
Marriage with the adopted child, due to the age differences between couples, be a cause of creating suspicion in one of the couples towards the other (the adopted child). Suspicion is a state of skepticism about the other person which can create stress and fear in the suspicious person and lead him to committing crime against the second or third parties and an individual whose suspicion cannot lead him to committing crime against the others may decide to commit it against him/herself, i.e. to commit suicide (Basteni, 2012: 101-5); therefore, such a marriage can be taken into consideration in criminology.

VI. Couples suspicion towards each other

Although marriage with the adopted child seems indefensible, there are some arguments such as its compliance with Sharia and reality to justify it, which are discussed below.

I. Compliance with religious traditions

Since adoption is not recognized in the Islamic law, Iranian Civil Code does not recognize it, too. However, under the Protection of Orphans act (March, 1975) a special entity named "guardianship" has been recognized which is somewhat similar to adoption and in other words is a kind of it. It can fill the voids left by adoption (Safai and Emami, 2008: 277). The main issue that distinguishes the adoption entity from guardianship, which replaced it in Iranian legislation, is their different effect in establishing parentage. As mentioned in French legal books, the parentage established by adoption, in opposed to one established by birth, is merely a legal one which is based on a spiritual and psychological relationship not a blood and biological kinship. Therefore, adoption establishes parentage but guardianship, as accepted in Iranian legislation, dose not so and just establishes some limited and legal relationships (Mobbayen, 2005:23); so actual parentage is not established (Qadvi, 2006:153). Hence, in comparison with guardianship adoption is closer to actual parents-child relationship. So, in Iranian legislation, adoption is the narrow sense of that entity which is referred to as "guardianship" as contraindications for marriage have been specified in Sharia and can be expanded with difficulty. This prevents rescinding a marriage license which is valid in the eyes of religion (Katouzian, 2006: 452).

II. Consistency with reality

The reality is that the adopted child is not one's own natural and biological child to be subjected to the sanctity of marriage with the real child. Consanguinity is one of the factors leading to the sanctity of marriage with blood relatives like children which is cancelled in the case of adoption. While the adopted child is in a formal sense like a natural child, the reality is that he/she is not the blood relative of the adoptant and marrying him/her does not cause any genetic problems. This realistic point of view can justify the permission of marriage with the adopted child. This justification is rather rational and opposes to emotional justification for sanctity of marriage with a person whom is like a natural and real child and perhaps condemns it.

III. Weak argument of opponents due to their sentimentalism

The criminological predictions of opponents of the permission of marriage with the adopted child may be criticized in that their reasons are sentimental and that the negative consequences related to this marriage are all based on possibility and emotions and have no rational basis. In response to this objection we can say that firstly, any noticeable probability can alter feelings, emotions and personality of individuals and brings about the psychological causes of crime and deviance which are the subject topics of criminology.

However, how much are predictions rejecting such a marriage probable? Are they so probable to constitute the psychological causes or committing crime and deviations? To answer this question we must say that, firstly, criminology theories have validated the effects of dysfunctional families, which this marriage permission is among its causes. Secondly, criminological statistics show that most criminals have come from dysfunctional families (Eshaghi, Ibid). Furthermore, there are many child abuse cases in which the victimized child was the real child of the offender it is while the offender had been prohibited of doing so. For instance, the case brought to the branch 26 of the Supreme Court for appeals, can be mentioned. In that case, the prime suspect has apparently committed adultery with her daughter (The second defendant) for about five years. According to the complaint brought by the prime suspect's girls, the General Court has sentenced them on the grounds presented in Indictment No. 70/7/17887. So, how are such people expected to do not commit crime and abuse against their non-biological children? While the permission of marriage with the adopted child has made it legitimate form
them and allowed nominal parents to whenever want to abuse their adopted child, legitimize this crime.

To study the subject in a more realistic view, the author – during a short interview with one of the legal experts of the Social Welfare of Markazi Province – asked for the number of children whom has been given to adoptive families and then raped or abused. In response, the experts says that this number hits zero and that this is due to the testing and evaluations of families by the organization at the time of delivery; however, considering the short-term supervision of the organization for a better match between children and families- it is possible that it never be aware of anything about child abuse. How this number can hit zero while the Head of Behavioral Impairment Association, in an interview with Resalat Newspaper, announced that there are 1200 cases of raping daughters by their fathers under investigation.

Moreover, in term of reduction in motivations for adoption, the author’s interview with ten young couples has proven the strength of this probability; as 6 couples prefer to do not have a child and state that they cannot bear a situation in which their adopted child becomes their romantic rival even if it is possible only by one percent. Two couples consider its probability to be low and two couples consider it to be zero. So, there are real reasons for the criminological predictions of opponents and their arguments cannot be rejected by such a criticism.

4. MARRIAGE WITH THE ADOPTED CHILD IN THE IRANIAN LEGISLATION

As it was mentioned, in compliance with the Islamic Law, Iranian Civil Code dose not recognizes the adoption entity and the guardianship accepted in the Iranian legislation is a restricted form of adoption; thus, the adoption child does not place the natural child and the adoption decree does not entail all effects established in the individual relationship with his/her natural child. The sanctity of marriage with the adopted child is one of the issues which, due to the silence of law in the Protection of Orphans act (March, 1975) raised some doubts, however, as public morality cannot accept such a conjugal and logic predicts its negative consequences, reasons for its sanctity were deemed to be stronger. Until, the legislator provided in the article 26 of Protection of Orphans and Children from Dysfunctional Families Act (2013) that “marriage between the adoptee and adoptant both at the time of guardianship and after it is prohibited, unless a competent court, after obtaining an advisory opinion of the organization, recognizes it as the best interests of the adoptee”. So, in Iran’s current legislation, the prohibition and sanctity of this marriage is a principle and its permission is an exception.

CONCLUSION

From a criminological perspective, the permission of marriage with the adopted child has myriad negative consequences and seems indefensible; because, its permission entails both the risk of his/her being a criminal in future, due to upbringing in a new unpleasant family environment, and being victimized in the mentioned family environment which gives him/her both the role of a potential spouse and a romantic rival. None of the parents look at him/her as a real child and it is probable both to be abused by adoptive parents who the right of marring him/her and being victimized by the grudge from an adoptive parent who consider him/her as a romantic rival. As a result, the adoptive parents may dragged into the crime or even be victimized by his/her spouse and adopted child; because such a circumstance creates conflicting feelings in the adopted child and his/her nominal parents. In fact, the permission of this marriage creates such an unpleasing situation that upbringing of an orphan in the orphanage serves him/her better than such families. On the other hand, being without children is better than having an adopted child whom can be the bête noire of the adoptive parent, owing to being considered as a potential romantic rival. Therefore, considering the sanctity of marriage with the adopted child in the new Protection of Orphans and Children from Dysfunctional Families as a principle by the Iranian legislator seems appropriate.

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