

Child Privacy In Islamic Jurisprudence And Law And International Law

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Abstract

Respect to child's privacy and forbidding others from aggression to it, is among the child's natural rights and due to this, it is considered by Islam and humanistic schools including the editors of "international declaration of child's rights". But these to divine and humanist schools have differences in regard to belief and think bases, definition, examples and priorities of this right. The 16 article of deceleration that captured this right, was general and absolute and addressed the parents too. The child's privacy right as a group of society members recognized in all human societies particularly in Islam. As it can enter to individuals' privacy with law axes, in line to protect from their higher interest and educational matter, it can to enter their privacy and this has not any conflict with rights. In Islam it has paid a comprehensive attention to privacy issue so by developing a set of laws we can have a better support for children vulnerable group of society.

Introduction

Throughout life Human rights have been considered. People are always trying to get the most out of these rights. In the meantime, children cannot protect and exercise their rights alone. Creates the physical, emotional, social and psychological conditions of the child who, in addition to basic rights, enjoys special support and care in the form of legal guarantees. Due to this, in religious teachings, educational schools and the legal system, special attention has been paid to the observance of children's rights, so that respect for children's rights is a basic idea in education and comprehensive assistance in intellectual development and mental health. He is considered. From a natural and social point of view, children are more vulnerable than other sections of society and are physically, mentally and educationally threatened. Therefore, the legislature, their parents and international organizations must defend the rights of the child and guarantee its proper implementation (Ramandi, 2017: 88). Respect for the privacy of the child and the prohibition of others from violating it is a natural right of the child and is considered by Islam and the schools of humanism, including the drafters of the International Declaration of the Rights of the Child.

But these two divine and human schools, due to their differences in doctrinal and intellectual foundations, also differ in the definition, examples and priorities of this right. Article 16 of the Convention, which enshrines this right, is general and absolute, and also addresses parents.

The right to privacy of the child as a group of people in society is recognized in all human societies, especially in Islamic societies; But at the same time, just as the privacy of the law can be invaded, so too can the privacy and upbringing of the child be invaded, and this does not conflict with the rights of the child. In the laws, Islam has paid comprehensive and complete attention to the issue of privacy, so by compiling a set of laws, we can better support the vulnerable group of children in society.

The rights of the child in the world have come a long way in recognizing them. In the late nineteenth century, there were historical developments called the period of recognition and respect for the rights of the child. Since the late nineteenth century, in most legal systems, children have been the subject of law as a separate trade union. After the First World War, in which the victims were children, many efforts were made to protect human rights, which led to the preparation and approval of several documents in support of human rights. Following the formation of this type of attitude and activities appropriate to it, the international community's attention was drawn to certain groups of people, including children who require special support (Peyvandi, 2011: 65).

In all legal systems, the child's intellectual rights are a protection mechanism that, while strengthening the child's personality, will also guarantee some of his material rights. In the Islamic system, different rights are considered for children. In jurisprudential teachings, several rights are considered for children and any violation of the rights of this vulnerable sector is prohibited. In all religious statements and teachings, the emphasis is on the importance of the rights of the child.

A comparative study of these rights between jurisprudence and Islamic law with international law is of particular importance. Since the purpose of this study is to recognize the privacy of the child in a comparative

study of Islamic jurisprudence and law with international law, this study analyzes and reviews books and texts related to the subject of research in a descriptive-analytical method. In this research, by using library resources and referring to books, articles, dissertations and Internet sites, the materials are collected and then by reviewing them, the materials are presented in the method of document analysis.

Conceptualization of privacy

From the perspective of international law, privacy is part of the security and freedom of individuals as enshrined in Article 12 of the Universal Declaration of Human Rights (1948) (Goodwin et al., 2006). Article 17 of the International Covenant on Civil and Political Rights also prohibits interference with the privacy, family, correspondence and residence of individuals, and considers the need to protect individuals against such interference and attacks.

The Council of Europe, in its 1970 resolution, defined privacy as follows: "Non-disclosure of irrelevant and disturbing facts and facts, non-disclosure of unlawful legal images, protection of non-disclosure of information obtained or provided to individuals as a result of trust."

The Conference of Lawyers on the Right to Privacy held in Norway, in paragraph 2 of the Declaration on the Right to Privacy, defines privacy as follows: "With minimal intervention from others." (Comprehensive Online Advocacy Information Database).

From the point of view of Islamic teachings, several verses of the Holy Qur'an emphasize the need to respect the privacy of individuals. For example, in verse 12 of Surah Al-Hujurat, God says: »O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allāh; indeed, Allāh is Accepting of Repentance and Merciful.

Also, in a narration of the Prophet (PBUH) in a conversation with Asad Ibn Zararah, the Prophet (PBUH) states the ten goals of his mission, two of which are about children. It is also clear in the tradition of the Holy Prophet (PBUH) and the Imams (AS) that the evidence for the antiquity of the emphasis on the rights and privacy of individuals, in relation to international conventions and documents and human rights (Fazl Ibn Hassan Tabarsi, vol. 3, p. 406).

Experts, of course, argue that mandatory judgments that have been able to translate privacy protections into situational judgments have often been neglected. Importantly, the position of Islamic jurisprudence in the face of privacy is the so-called evolutionary position. That is, privacy is protected in the form of reference to other rights and freedoms such as: the right to property, prohibition of espionage, the principle of innocence, prohibition of suspicion and the spread of prostitution, slander, satire, blasphemy, gossip and betrayal of trust (Ansari, 2014).

The concept of privacy has never been agreed upon by governments and society. Because adhering to a single concept that is agreed upon limits governments in implementing their programs. In order to avoid this restriction and not to be bound by legal frameworks that can be reflected in the constitutions and ordinary constitutions of countries, governments never limit themselves to formal and legal definitions, so that whenever necessary, they can invade privacy. Accordingly, privacy has two specific concepts that are useful to study (Aslani, 2005: 20).

For this reason, some believe that the term privacy does not have a comprehensive definition (Ansari, 2005: 14).

The place of privacy in Iranian laws and legal system

The issue of privacy and its separation from public space is one of the most important issues of national rights in any legal system, and each system, according to the principles that shape its laws and regulations, considers specific frameworks for this issue.

In the Iranian legal system, according to the fourth principle of the constitution, which considers the basis of any law and regulation based on sharia law to be fundamental, it is necessary that the issue of privacy be based on Islamic teachings and jurisprudential principles.

The Constitution of the Islamic Republic, drafted by a group of Islamic elites, is sensitive to this issue and has dedicated one of the 177 principles of this law to this issue. Article 25 of the Constitution states: "Inspection and non-delivery of letters, recording and disclosure of telephone conversations, disclosure of telegraph and telex communications, censorship, non-communication and non-delivery of them, eavesdropping and any kind of interrogation are prohibited, except by law."

The guarantee of the implementation of this principle is explicitly mentioned in Article 582 of the Islamic Penal Code (Book of Punishments) and for spying on the affairs of others in any way, punishment is considered. According to this article, "any employee or government official shall intercept, disclose, seize, destroy, inspect, confiscate, or disclose the correspondence, telecommunications, or telephone conversations of persons in cases other than those permitted by law, or disclose their contents without the permission of their owners." "He will be sentenced to one to three years in prison or a fine of six to eighteen million rials."

In addition to the above, in many other laws, the protection of public privacy has been emphasized by the legislature, which can be divided into two general parts. The first part includes the prohibition of investigations

into the affairs of others by the public and individuals, and the second part includes the prohibition of public and governmental bodies, including officers of the judiciary, the Ministry of Intelligence, the IRGC or the police, and the judiciary. Islamic, and Articles 648, 570 and 571 of the Penal Code and Articles 2, 16 and 17 of the Computer Crimes Law can be cited.

That is why Imam Khomeini (may God have mercy on him) in a decree of eight famous articles, forbade any spying of government officials on personal matters. The decree states: "No one has the right to enter or detain anyone's house, shop or personal workplace without the permission of their owner, or to pursue or care for a crime or to commit a crime, or to Insult a person and commit inhuman-Islamic acts, or listen to another telephone or tape recorder called Crime Discovery or Discover the Center of Sin, or to discover sin and crime, even if it is a great sin, listen or follow the secrets of the people. And to investigate the sins of others or to reveal the secrets that have come to him from others, even for one person. "All of this is a crime [and] a sin, and some of them, because the spread of prostitution and sins is very great from Kabayr, and the perpetrators of each of the above matters are criminals and deserve sharia punishment, and some of them cause the sharia limit."

In all these rules, two main points should be noted:

First, these laws are in the realm of individuals' privacy, and even if there are flaws and sins of the people in them, they cannot be investigated and invoked, and explicitly the command of the Commander of the Faithful (pbuh) is the rule of the most deserving people to cover them. The Commander of the Faithful (pbuh) in his letter 53 of Nahj al-Balaghah to Malik Ashtar, has explicitly stated in this regard that: Therefore, any non-Islamic legal teaching that the prosecutor is obliged to detect a crime and that anything considered a crime in the law should be discovered and pursued is absolutely not Islamic, and officers and judges should pay attention to the fact that in Islam There is a third crime that should be in the criminal record of the country, so that the people do not commit those sins in public, but if they commit those sins in secret and privacy, the ruling person and consequently all relevant officials, is obliged to cover the guilt and They are the faults of the people.

Second, explicitly the eight-article decree of the Imam (may God have mercy on him) and the constitution and ordinary laws, crimes such as: spying for foreigners or conspiracy against the security of the people, which are listed in the first chapter of the book of punishments, do not follow the supreme rule. Given, these crimes can be prosecuted and are not subject to waiver.

Privacy in religious teachings and Islamic jurisprudence

Man is a creature with inherent dignity, and the protection of this dignity is his natural right. The privacy of individuals is an example of human dignity and is considered by all divine religions, schools of thought and human societies. However, these religions and schools differ in defining dignity, determining instances, and prioritizing the most important matters over it, according to the type of view on natural human rights and doctrinal principles.

Of course, it should be noted that in general, from the Islamic point of view, encroachment on the sanctity of every Muslim is forbidden. The Holy Prophet (PBUH) has said: "This is the sanctity of the believer in the sanctity of his tail and property."

The Holy Qur'an absolutely forbids spying on personal matters and the privacy of individuals. As in Surah Al-Hujurat, verse 12, he says: "O you who believe, stay away from most suspicions, because some suspicions are sinful and do not inquire." According to the generality of this verse, even parents should not inquire into their child's personal affairs and privacy; But generality is as long as it has no specialty. If the most important purpose of this verse is the evidence related to the right of guardianship of the father and custody of the mother, which in certain cases, the generality of the verse is assigned and the sanctity is removed.

Therefore, the issue of privacy is emphasized in the Holy Qur'an under such headings as: the sanctity of espionage, and in Surah Al-Hujurat, with the phrase: "Latajaswa", it explicitly forbids spying on the affairs of others. In the early days of Islam, this noble verse was understood to mean not spying on people's privacy. In this regard, in the commentary of Majma 'al-Bayyan below this verse, regarding the dignity of the revelation of the verse, it is written that the second caliph and Abdul Rahman spied one night and saw that there was a fire in the houses of smoke. They went and knocked on that house and entered with permission. They saw a man with a woman who also had bowls in his hand. The caliph asked: Who is this woman? The man said: She is my wife. Then he asked what was in that bowl? Said water. Then he asked, "What kind of poem is the poem that the woman sings?"

The man recited those poems for a lifetime. After these questions, the man turned to the caliph and said: Do you not know that God has said in the Qur'an: "do not spy ." The caliph said: You are right and he came out of that house.

These meanings in Shiite jurisprudential texts have had an impact on various topics, including the obligation to protect the heads of others, the evidences of concealing the sins of others, the evidences of carrying certain actions to correctness and the like, and the general spirit of Imami jurisprudence. It is said that they committed a sin in secret.

The Holy Quran, as the way of life of all human beings, has emphasized the sanctity of individuals and the protection of their citizenship rights in various verses, and the relevant verses show the attention of God Almighty and the religion of Islam to the privacy and rights of citizens.

(12) O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allāh; indeed, Allāh is Accepting of Repentance and Merciful.

"O you who believe, avoid much suspicion about one another, that some suspicions and thoughts are sinful, and also never inquire into the inner state and allow the absence of others. Do you like to eat the flesh of your dead brother?"

In the above verse, even invasion of privacy of others to the extent of suspicion and suspicion is condemned, and this verse is an example of maintaining privacy.

Child privacy in jurisprudential sources and texts

The child, as a human being, is subject to legal protections in the protection of rights, including the right to privacy. On the other hand, the duty of the child's parents or legal guardians to create the conditions for his or her development and upbringing requires having the right to monitor and control the child's behavior, which ostensibly violates the child's privacy.

The whiteboard of children's existence easily accepts and represents any point on which painting. In general, the dough can be shaped in any way you want. By the order of Imam Ali (AS): "Knowledge in childhood is like a stable role on a stone" (Kanz al-Amal, p. 238). The means of communication of the child with the outside of his being is the ear and the eye with which he sees and hears, and it is the heart (intellect) with which he analyzes what he hears and sees and believes or rejects it. In Islam, education is considered as the right of the child, and in Babi jurisprudential books, under the title of the rules of children in the matter of marriage, it is assigned to the rights of the child against the parents, such as the right to education and the right to education.

The privacy of the child is considered as a part of the relationship between family members and society and is mentioned under the title of custody and guardianship and the presentation of examples in the verses in the narrations.

The privacy of the child should always be considered in order to raise the child. In Islamic moral teachings, the privacy of the child is located in three axes of physicality, personality and sexual affairs, the main task of which is to protect the family, especially parents (Naghbi, 1389: 5 and 38).

In the Islamic view, the father and paternal grandfather have the right to custody and the child's property on the condition of justice, and the mother has the right of custody and the right to raise a child.

« (6) O you who have believed, protect yourselves and your families from a Fire whose fuel is people and stones, over which are [appointed] angels, harsh and severe; they do not disobey Allāh in what He commands them but do what they are commanded.»

Verse 6 of Surah Tahrir emphasizes the educational responsibility of the family. This verse is used that parents should not cause harm to the child in any case. Therefore, raising a child is one of the missions of the family and parents (Tayeb, 1378: 17-75 and 76; Dashti, 1389: 518).

« (233) Mothers may nurse [i.e., breastfeed] their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is their [i.e., the mothers'] provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allāh and know that Allāh is Seeing of what you do.»

Verse 233 of Baqarah mentions the right of milk and custody of the mother in these days (Bistoni, 1390: 28/3).

Various Shiites have emphasized the need for the child to be educated and guarded (Hali, 1413 AH: 7/314). In Jawahir, the obligation of custody is mentioned only, meaning the upbringing under the supervision of the child based on his interests (Najafi, 1401 AH: 38/174).

Sheikh Tusi says in this regard: "It is obligatory on the parents to discipline the child until the age of 7-8 years, and the father should teach him prayer and fasting, and from the age of ten he should force the child to pray and fast, and this is obligatory on him." Tusi, 1407 AH: 1/307).

Child privacy in Iranian law

The title of privacy in particular and under an independent title has no precedent in Iranian law. However, considering the importance, necessity and definition of privacy and determining its territory, it should be said that the Iranian legislature has considered respecting the examples of this right from the beginning of the legislation.

The Constitution of the Islamic Republic of Iran also protects examples of privacy in various principles. Such as the privacy of housing (Principle 22), the privacy of beliefs (Principle 23) and the privacy of communications and communications (Principle 25). The guarantee of the implementation of these principles in relation to new communication and information technologies has been considered in the Computer Crimes Law approved on

03/20/2009. Article 3, for example, punishes anyone who intentionally, without legal authorization, eavesdrops on or transmits data transmitted in a private relationship.

It is also Article 17 of the law that criminalizes anyone who, through a computer or telecommunications system, publishes or makes available to a private or family form or image or film or other secrets other than legal matters, without his consent. . Some cases of the Islamic Penal Code, such as Article 570 (deprivation of personal liberty of persons by government officials and officials), Article 580 (entry into a house without permission by government officials), Article 582 (inspection or recording of correspondence or telecommunications or telephone conversations of persons by Government Officials) and Article 699 (Threat of Disclosure of Heads) provide examples of privacy.

The Law on the Protection of Children and Adolescents was approved in a public session on Tuesday, February 23, 2016, and was announced by the President in letter No. 28753, dated March 22, 2016, explicitly but implicitly protecting the privacy of children. . For example, if children want to be provoked or persuaded or deceived and in any way invade their privacy, or the child is hired to commit prostitution or any other mistake, these cases are criminalized and the legislature can enter and provide legal protection to the child. Has predicted. The new law even stipulates that the identity of an injured or endangered child or adolescent should not be published through the mass media, otherwise the publisher has committed a crime. Even in legal proceedings, the question or question posed to the child must be somehow limited to the same subject matter and the necessary measures taken to ensure that the child's private information is not disclosed.

Chapter Three - Crimes and Punishments

Article 18- Disclosure of the identity of a person who reports the occurrence of a crime or the beginning of committing it or a severe and imminent danger against a child or adolescent, is prohibited except with his own consent or by law and in compliance with the rights of the child and Sharia standards. Eight Islamic penal laws are condemned, and in cases where the disclosure of identity causes a crime against the reporter, the whistleblower is sentenced to one or more seventh-degree punishments under the Islamic Penal Code, as the case may be.

Article 19- Anyone who discloses the identity or information and secrets of a child or adolescent victim or in a dangerous situation or the details of a crime committed by or against a child or adolescent through the mass media or by distributing, reproducing, publishing and showing films or photographs and Explain it in such a way as to cause others to commit, spread the crime, teach the method of committing it or cause any harm or injury to a child or adolescent or his family and is sentenced to the sixth degree of imprisonment of the Islamic Penal Code.

Note: If the distribution, publication and screening of a film or photo and the like are limited and for the purpose of scientific use or for the benefit of the child or to help him, and also other cases are excluded from the scope of this article at the discretion of the judge.

These laws explicitly protect the privacy of the child title, so that even the publication of a photo or video is considered a crime and punishable.

Citizenship rights and the issue of children's privacy

In any country, respect for privacy goes back to the extent to which human dignity is respected in the discussion of their citizenship rights. In more developed countries, where this is a matter of course, the privacy of the child is certainly more respected, because traditionally the child has a special right and can have his or her own privacy. Therefore, the less developed the legal system is, the more the privacy of individuals faces obstacles. However, the law, and in particular civil rights laws, can play a decisive role in stopping or perpetuating these problems.

In addition to the laws, we need to create a culture and strict promotion of the rights of the child according to the religious teachings on the rights of the child.

Privacy is an environment in the lives of people in society that human beings do not allow to be violated under any circumstances. In other words, the right of individuals, groups or institutions to the extent and how and when information about them is passed on to others is called the right to privacy. Therefore, privacy can be said that the ownership of individuals in relation to their dignity and honor is the best indicator of privacy.

Privacy and citizenship rights in the system of the Islamic Republic of Iran

Principle 20 of the Constitution, stating that all members of the nation, men and women alike, are protected by law and enjoy all human, political, economic and cultural rights in accordance with Islamic principles. The phrase mentioned in Chapter 3 of the Constitution of the Islamic Republic of Iran on the rights of the nation indicates that the legislator has paid attention to a concept beyond the citizens, for example, the right to freedom of employment (Article 28) Arbitrary Detention (Principle 32) Prohibition of Compulsory Residence (Principle 33) Right to Litigation (Principle 38) Presumption of Innocence (Principle 37) Prohibition of Injury (Principle 40) Prohibition of Insult and Defamation (Principle 39) and Prohibition of Torture (Principle 38) It is one of the

cases that is not specific to the citizens of Iran and is transmitted to all individuals, classes and individuals of the society.

However, the adoption of a special law in support of the principles of the constitution and the privacy of individuals in society requires determination and will beyond the members of parliament and the people, and the support of such a law by all elements of government is necessary.

Hazrat Imam Khomeini (may God have mercy on him) issued a message on 12/15/1982 as the leader of the Islamic Republic of Iran and the authority of imitation of the Shiite world in the eight-article decree addressed to the judiciary in expressing some of the religious rights of individuals. He instructed in his message that "No one has the right to enter or arrest anyone's house, shop or workplace without the permission of their owner, or to pursue or guard anyone in the name of detecting a crime or committing a crime, or To insult a person who commits inhuman Islamic acts, or to listen to someone's phone or tape recorder called the discovery of crime or the discovery of the center of sin, or to listen to the discovery of sin and crime, even if it is a great sin, or to seek the secrets of the people and spy. Of all the sins that have befallen him, even if he reveals them to one person, all these are crimes and sins, and some of them, such as spreading, prostitution, and sins, are very great. They cause the limit of religious qazf (Sahifa, 1995).

This message was not a sharia ruling but an explicit government order for the government, the judiciary and the executives to respect the privacy and civil rights of the individual and to refrain from attacking it. In this order, the judiciary, as an independent and institutional force that upholds the individual and social rights of the nation and is responsible for the realization of the principle of justice based on religious and constitutional provisions and is responsible for monitoring the privacy of the people. In addition, this task has been assigned to the judiciary in the implementation of Article 156 of the Constitution. According to paragraph 2 of this principle, "reviving public rights and promoting justice and legitimate freedoms" is one of the important tasks of the judiciary, but it seems that the actions of the judiciary and the government and officials and even the people and citizens in focusing on this important issue was not enough. The situation of civil rights and respect for the privacy of individuals in Iran is a proof of this claim. One of the reasons for this is the ambiguity in the concept of citizen among the rulers.

Since the knowledge of the citizen is mostly derived from the study of the writings of Western thinkers, such as Aristotle, Plato, Hobbes and others, which are taught in universities, and given that citizenship rights are essentially divine gifts and are part of human nature, It is considered a human trait and does not depend on any contract or union, and no human authority, including governments or religious authorities, grants these rights to individuals (Citizenship Law, 2007).

Thus, the definitions provided by any Western thinker cause one of the problems of interpretation in preparing a detailed and comprehensive bill or law in support of civil rights. Failure to explain this concept and limiting this huge and instructive concept only causes monopoly on the word citizen in certain and limited groups. In a way, Article 1 of the Bill on Civil Rights and the establishment of the National Institution for the Defense of Citizenship, prepared by the Presidential Office of Research and Information, also summarized this concept only among Iranian citizens. Article 1 of the bill states that all Iranian citizens are citizens of Iran and enjoy the rights and guarantees provided for in this law, which are the minimum citizenship rights. "This law has no effect on other Iranian citizens' rights and the rights of citizens of other states, which are provided for in the framework of international laws or conventions."

Child Privacy in the Convention on the Rights of the Child and International Law

The rights of the child were adopted in the form of a convention in the middle of the twentieth century and were included in the plans of different countries of the world. The importance of this issue in the holy religion of Islam is such that in fourteen hundred years ago, with the expression of rulings to explain the rights of children and their educational methods, a fundamental step has been taken and has a comprehensiveness that can be the global legal charter of children.

Whereas, according to Islamic jurists, the International Convention on the Rights of the Child is based on humanist and liberal principles; Therefore, in most materials, it has a different view of Islam, especially Shiite jurisprudence. Awareness of the conflicts of this statement with Islamic jurisprudence, paves the way for a more correct decision, but also the reconsideration of Islamic countries in acceding to this convention or a serious reflection on the right of condition or determination to compile Islamic statements alongside it.

In acceding to the Convention on the Rights of the Child, Iran has used ratification with a general conditional right and has acceded to this convention by adopting a general conditional right. But it is clear that this type of membership is ineffective in our laws and will not help raise our global profile.

If Iran's right to bet is adjusted and clarified, it can show a more justified and logical image of Iran and Islam. Setting clear and transparent conditions for the adoption of the Convention will make Iran's relations with other

members unstable, and the scope of Iran's obligations to other members will be clear. In this way, Iran can clearly state which part of the treaty it considers to be contrary to domestic law and Sharia.

The Convention on the Rights of the Child specifically refers to the privacy of children, as stated in Article 16:

1-No child shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation.

2-The child is protected by law against such interference or insult (Brownlie, op.cit: 434).

Article 13 of the Convention also recognizes the right of the child to freedom of expression, including the right to freedom of expression, religion and the transmission of information and opinions of all kinds, and Article 14 refers to the right of the child to freedom of thought, opinion and religion (Brownlie, op. cit: 433- 434). Accordingly, the realm of children's private rights is in the realm of information and belief, and the lack of attention to physical realms, such as housing and the workplace, is due to the lack of special subjectivity for children (Asadi, 2009: 30).

Paragraph 2 of Article 40 of the Convention also refers to the protection of the privacy and privacy of any child suspected or accused of violating criminal law.

Article 16 This statement is one of the conflicting articles in which everyone is prohibited from invading the privacy of the child. As we can see, this article is general for those who are exposed to this range, and it also includes parents, and it is absolute in terms of conditions, situations, educational needs, and so on. According to Islam, as well as paragraph 1 of Article 18 of the Declaration, children and adolescents, due to the weakness of social intellect and a lot of ignorance, need parental training and supervision, and it is necessary to deliberately become aware of their personal affairs and relationships with other people. Therefore, these interventions are permissible from the point of view of the holy sharia of Islam and include the realm of the intervention of each parent.

The National Authority for the Convention on the Rights of the Child is established in the Ministry of Justice as the custodian and plans, coordinates, monitors and monitors the rights of the child. Protecting the rights of children at the national and international levels is a heavy mission that the Ministry has to ensure, guarantee and promote the rights of the child. According to the duties contained in the important documents and laws of the Islamic Republic of Iran, including the Constitution, upstream documents, especially the general policies of the system, development programs, the Convention on the Rights of the Child and existing laws and regulations, this authority is obliged to structure and create an interactive chain. Continuously with the cooperation of the members of the Coordination Council of the National Authority for the Convention on the Rights of the Child, relevant provincial authorities, the judiciary, non-governmental organizations and other activists in the field of child rights.

In line with its strategic duties, this authority is responsible for leading and implementing various programs to promote the rights of the child in the Islamic Republic of Iran. The series of measures taken in this direction includes a long list of various measures. These include efforts to reform laws and regulations with a child-centered approach, drafting the necessary bills to protect children's rights, teaching children's rights in the form of seasonal schools to key actors in the field of child rights, and coordinating the establishment of child rights clinics. Prevention of violation of children's rights, etc. Undoubtedly, the most important strategy of this authority at the moment is to create a suitable environment and expand the chain of interaction with the devices and to create the infrastructure of the culture of children's rights through the main actors to the community, schools and families.

One of the main functional goals of the national authority of the Convention on the Rights of the Child is to prevent violations of the rights of the child at the national and international levels.

The issue of privacy and its separation from public space is one of the most important issues of nation rights in any legal system. This issue is also of special importance as one of the rights of children.

In the Iranian legal system, according to the fourth principle of the constitution and the need for all laws to be Islamic, the duty of the basis of privacy in Iranian law is clear, that is, these rules and jurisprudential principles that outline the main structure of privacy laws. In this regard, based on the principles and rules of jurisprudence, the privacy of the child can be defined and becomes legally regulated.

Critique of child privacy in the Convention on the Rights of the Child

Child privacy is one of the recognized rights of the child that does not conflict with the parental right to education, but the scope of education and privacy is different in Islam and the West. In Western law, due to the human-centered and materialistic view, only the material dimension of the child's rights is considered in the direction of his worldly interests, and the spiritual and educational dimension and the rights of the parents are not considered.

Article 16 of the International Convention on the Rights of the Child generally and absolutely prohibits others from encroaching on the privacy of the child, including general and educational conditions and parents. But according to Islam, the father has guardianship over the child and is responsible for his upbringing. The mother also interferes in the child's privacy within the limits of the child's custody (two to seven years old) in

consultation with the father, and in the absence of the father, the paternal grandfather and the ruler of the sharia can be in charge of the child's affairs if justice is done. Guardianship requires custody of the child in private.

Respect for the personal privacy of the child and the prohibition of others from violating it is a natural right of the child, and for this reason Islam and the schools of humanism are among the codifiers of the International Declaration of the Rights of the Child. But these two divine and human schools, due to their differences in doctrinal and intellectual foundations, also differ in the definition, examples and priorities of this right. Article 16 of the said declaration, which contains this right, is general and absolute, and also addresses the parents. From the Islamic point of view, the privacy of individuals can be summarized in three general examples: life, honor and property. The father has custody of the child's marriage and property and is responsible for his upbringing. The mother has the right to custody of the child and in some cases has the duty of raising him. Paragraph 1 of Article 18 of the Declaration makes parents responsible for the upbringing of the child but prevents them from interfering in the family affairs of the child. However, the need for education is to intervene in his personal sphere. According to Islam, the life and dignity of the child is respected, and only the father has the right to corporal punishment and awareness of his relationships and mistakes in order to have a reasonable and religious upbringing. The exercise of guardianship over his marriage and property must be in his best interest, but as for the choice of housing, the father is free. Awareness of the conflicts of this convention in particular and other declarations of the UN human rights body in general, paves the way for a more deliberate decision but also for the reconsideration of Islamic countries in acceding to them and the determination to formulate Islamic declarations of human rights.

In Islamic thought, the interests of each person are defined based on the Shari'a and attention is paid to both the material and spiritual aspects. The upbringing of a child is possible only with lawful entry based on law and Sharia into privacy, which must always be done with due regard for the interests of the hereafter and according to the principle of inherent dignity (Asadinejad, 2015: 178; Yousefi, 2016: 79-94)

Iran is one of the countries that has become a party to the Convention by exercising the right of general condition. This general right of condition has been objected to by various countries. Sharia rules and domestic laws are in conflict. Considering that treaties, conventions, etc. must be ratified by the parliament, the parliament in 1993 approved the single article of accession to the convention with the right of general condition that if the provisions of the convention are in conflict with domestic laws And be it Sharia, Iran is not bound by conflicting issues.

Under this condition, by acceding to the Convention, Iran does not seek to amend existing laws in accordance with the provisions of the Convention, but implements existing laws.

It will also enact and enforce laws in the future that it deems appropriate, so that articles of the Convention that are inconsistent with current and future laws do not need to be observed by Iran to which countries object.

Of course, some people have addressed this general condition from other perspectives and state that with such a condition, Iran has actually accepted that there should be no fundamental contradiction between domestic law and the provisions of the Convention, and in some cases, domestic law and Sharia are preferable. It is the purpose. Such an argument seems very unlikely.

After reviewing the convention, the Guardian Council identified the cases that it considered to be in conflict with Islam and Islamic law.

1-Paragraph 1 of Article 12, which deals with freedom of opinion: "According to this article, the child can form his ideas and freely express his ideas and his ideas can be considered."

This article is similar to Article 14 of the Convention, which, as will be stated, the Guardian Council also considers Article 14 to be in conflict with the law. Also, the United Arab Emirates, Indonesia, Jordan, Algeria, Bangladesh, Syria, Oman and Malaysia Have.

2-Paragraph 1 of Article 13 is about freedom.

Due to the rights and freedoms given to the child under these articles, he / she has access to even information that is completely contrary to his / her beliefs, and any supervision and control is prohibited.

3-Paragraph 2 of Article 13 deals with cases of restriction of liberty, which exclusively include respect for the rights and dignity of others, the maintenance of national security and public order, and public health.

4-Paragraph 3 of Article 14 deals with matters restricting freedom of thought, belief and religion, which seem to have been opposed because these restrictions are not comprehensive and complete.

The drawback of these substances is the lack of supervision and control over children's behavior. Therefore, according to this right, the child may have access to information that is completely contrary to beliefs, and any supervision and control is prohibited, which can cause mental and psychological distress to the child. This absolute freedom is not in accordance with the Shari'a. Of course, some have said that the convention on the freedom of thought, belief and religion of children means that they should not be pressured to do certain ideological matters, but should freely choose their beliefs after puberty and think about the religion that is basically the religion of the parents. "Choose realistically."

5-Paragraph 2 of Article 15 on restrictions on the freedom of association and the condition in which the Guardian Council objects to the restrictions being exclusive.

6-Paragraph 1 of Article 16 is about not interfering in the private affairs of the family or the correspondence of the child.

"All societies are trying to find a balance between the rights and responsibilities of parents to raise their children and the rights of the child in the family and society," said Christine Salazar, UNICEF Iran Representative. However, these discussions have not usually led to a general conditional right to the Convention on the Rights of the Child. Therefore, it is surprising why these articles in Iran have led to the stipulation of a general condition on the Convention on the Rights of the Child.

The Guardian Council's objection is that the best interests of the child require that parents and others be able to intervene.

According to the application of the article, even parents can not interfere in the moral affairs, health and general health of the child, which is not only not in the best interest of the child, but also has side effects.

7-Paragraph 1 of Article 29 of the Convention, including the purpose of educating the child to live responsibly in a free society with a spirit of understanding, peace, patience, equality between men and women, and friendship between all peoples, ethnic, religious and sectarian groups. And the nation and others have known that the reason for the Guardian Council's opposition should be related to gender equality between men and women and religious groups that differ in jurisprudential standards in some matters, as well as to cultivate and promote moral values and beliefs. Religion is not mentioned either.

However, the Guardian Council did not consider the prohibition of the death penalty and life imprisonment for criminals under the age of 18 (under Article 37) and Article 2 to be against the Shari'a. The Guardian Council also approved the general conditional right of the parliament.

Islamic law considers the religion of a child to be the religion of her parents before puberty.

Conclusion

Regarding the right to privacy of children, the fact is that the existing human rights instruments, including the Convention on the Rights of the Child, to which Iran has acceded, do not have the necessary efficiency to fully exercise the rights of the child fully and religiously. However, according to some theories, in case of accession to such conventions, these cases will be considered as domestic laws and will be enforceable.

The Convention on the Rights of the Child is one of those conventions in which privacy is explicitly considered, and in fact, arbitrary and illegal prohibition of interfering in the private affairs of the family and the correspondence of the child is considered an insult to the child. The Convention on the Rights of the Child also stipulates freedom of opinion, freedom of information, freedom of opinion, and the child has the right to enjoy all of these freedoms. However, it should be noted that the physical, psychological and personality differences of children require different educational needs and the use of inflexible rules is not responsive. Although Iranian law does not explicitly protect the privacy and immunity of children, bills drawn up by the judiciary regarding children have been somewhat consistent and successful. Therefore, it is necessary to explain the relationship of legal guardians with the privacy of the child and to determine the criteria for entering this privacy, which is still neglected in laws, bills and plans.

Given the wider scope of privacy in Islam and its study in the context of various concepts and examples, it is appropriate for Islamic countries to develop a complete set of laws related to the privacy of the child and examples of his interests under the same heading..

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