A study of Jurisprudential and Juridical principles Of Child Custody

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Abstract: By realization of the marriage contract, a marital relationship will be made between couples and thus the basis of the family will be constructed. But rather, beside the couple, the existence of a child gives a new shape and credit to it. By adding a child to the family, there will be some special rights and duties for the couple. When the couple has a common habitat, both of them are responsible for this task and have this right, but in case they live in separate houses it is impossible for them to have this right and fulfill the related duties simultaneously. Due to this reason, the discussion about the priority in child custody will be raised. There are miscellaneous opinions about the scope of the period of the custody, but finally, what is accepted by the law is awarding custody to the mother till the age of seven and after that, giving it to the father. But this priority is able to be ceded to another and also can be divested from the owner of the right of priority.

Key words: Custody, Nurture, Child, Priority

INTRODUCTION

Sometimes the good life and the spouse does not move and agreed to be the cause of many problems in the children who are at risk of disintegration, are facing more problems, because the fundamental aspects child's personality in social interaction to occur.

Thus, the unintended victims of conflict and misunderstanding regarding the child and the couple is blessed by the care and custody of their parents is time, calls to the custody of the child, whom he deemed appropriate, which will be. On the other hand, foster care, "right" to couples that are denied to any of them should be based on convincing evidence. On the subject of various comments made by the jurists is that the outcome can be seen in terms of civil law. But it appears that the law despite being a viable solution requires a new outlook on life's necessities today. Considering the above points, consider the views of jurisprudence and legal jurists and lawyers, and matching it with the current conditions and how to amend existing regulations, the goal is to keep children's interest and attention in this study are.

The Concept of Custody:

Custody and of the Arabic word "Hzn" to preserve the concept, along with the child, foster, and is sticking to his chest. The term refers to the children and the insane in the province to train and maintain the interest and what is to come. In other words, to the custody of any child to do something that others need. Custody until the fourth century AH is not as independent. Key researcher in the division's first major step taken in jurisprudence, as an independent has to custody and it has made under the provisions of the birth. With the custody of the books of jurisprudence, is a special place, but the jurists on this issue and it does not happen to have different meanings, so that some form of custody and control over the province and some interpreted it to mean We support and respect the child and said they believed that the natural things that God has placed its trust in the mother and the lawyer as a natural right and confirmed that it has signed. Some also believe that the right to custody of a foster child. without providing a definition of custody, its kind in the province and the mother have a right to be considered. The review of these comments is the fact that each of jurists have considered only the particular subject in custody so that the first concept, no matter what kind of person to keep custody of the only known because of the province, but the task is On the second devoted to finding the mother who has a natural origin and the third concept, as interpreted by the lawyer's right to custody of a person and the bestowed Hazn in the quarter, with the distinction between custodial parent and the essential difference between it is a right of custody to the mother and father are considered a duty. Sunni scholars in the custody of the lexical concept of a right or duty to consider and debate it did not. The Iranian Civil Code, although in the second chapter of Book VIII of Volume II, in keeping with the provisions as to child custody and education and its problems, but has not provided a definition of it, but some lawyers I know the concept of keeping custody and education of children said they maintain is the use of equipment necessary for the survival, development and physical and mental health of children such as feeding, dressing, and it is therefore appropriate to what age the child if the child becomes
ill, the doctor and giving medications and the care he needed. Some guardians have the authority to maintain law and children's education is granted to parents. Although the definitions expressed by the lawyers in the custody of the tasks has not been mentioned, but it seems that the recent scrutiny of the authority in the province, the province and duty applicable to custody (Emami, seyyed hasan,1993).

**Right Or Duty Of Custody:**

The first issue brings to mind regarding custody, the nature of the problem is and whether it is right to custody can be dismantled or homework, or even custody of a dual nature and is a mixture of right and duty? In this connection, it does not happen, because some of the promises that’ has the right to custody. They justified their resort to a narrative that is as mother to child is, unless your wishes. That there is no reason in law to the custody of the owner to prove necessity and what is the narrative, evidence indicates Custody is not entitled to rule on the necessity of the right and on this basis can the government refuse to accept custody by her father forced her to custody, but that does not mean that physical custody of the parents is obligatory, coercion but because the father has custody of the state is. Other Fqha’ believe that the sentence in custody and the duty is no different, and some parents also believe that the custodial parent has the right and duty and a sense of nature is dual, namely the one hand For parents this right is so important to the child and do as they want custody of the child and the other hand has decided to uphold the interest of the child and the parent with custody of children, parents, and it's done not shirk from this responsibility. The Iranian Civil Code Article 1168, with effect from this, both the right and duty of parents to maintain children's knowledge and perspective of Iran's legal right to custody of their parents, and in defiance, the other party has the right to govern Violators will have to do it and asked, as if the child's father at the time specified by law, the mother does not give up, he can refer to the ruling and take the child from the father. Custody in this respect than the time specified in the law and demanded the right and the duty is also because the mother was responsible for the custody of the child, keeping him from the dead and is protecting him from every direction. Some way of choosing the right upbringing of the child's parents have decided to train him. But regardless of whether custody is the right or duty, it is noteworthy that stewardship is a condition in custody? In this regard, some believe that stewardship is not sacrificed in custody is likely because the runners are in custody, in this respect no different from the custody of the barrier, getting hard and difficult for refractory disease and prevent these diseases. If both runners get there if possible, whether the parent with custody of diseases that can be prevented, or not. However, it should be noted that has legal custody of any of these are two separate legal issue, although may be gathered in one place, but it is not to say that extend is in custody or Check out the responsibilities of custody is removed (Haeri shahbagh, Ali, Law, 2000). Research in books of jurisprudence and the concept of scrutiny in the 1172 law, the separation between the two is based on the belief that not to limit the scope of the maintenance and custody of the foster child and the child are respected, properly No, because it includes all matters related to child custody as maintenance, cleaning, health and nutrition and breastfeeding and the child is paid in this respect that women can take toward breastfeeding, custody means he is not required because get paid for giving milk to sell its interest in which so many states, there is a dominant rational interest.

**Conditions Of Custody:**

Books of jurisprudence and legal obstacles in some detail the conditions of custody and stated that some of the parents and others devoted to the mother. Hence:

A. Muslims keep a person from the custody, because custody of a Muslim province on the province's child and not infidels, the infidels of custody is among the obstacles.

B. Being free from the other two conditions because I hand to his master and the other hand is not right for his province.

C. The third reason and the rational for such conditions of custody is required, particularly in the event that the supreme leader and mentor children to be wise. However, some believed that if a little madness is not a barrier to custody. But for some crazy right are not in custody, whether madness is or regular basis. In the matter of civil law in 1170 that granted custody to be crazy.

D. empty her husband's rights, if the mother remarried, it is obligatory on the husband's rights, custody, he will be overthrown. It claims to have consensus on Amamh jurists and scholars of other religions also have this happen.

E. The moral authority of another person in custody is five conditions, the condition of Fqha’ as justice and others as being faithful and Sunni scholars titles with modesty, integrity, and are being unfaithful.

F. Being the mother of six living in the residence where the child is in custody is also related to other conditions. In this connection, some believed that if the child's mother to take the place of being broken, his custody is void (the same) and some of the female if the mother wanted to travel go to father a child input. However, some general conditions relating to the maintenance of this condition is not applicable and that it does not include custody.

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G. empty and not with a dangerous communicable disease and other conditions of the maintenance person who is so susceptible to these diseases is not qualified to custody. However, it seems getting the disease, which is denied custody because, as we have pointed out, if not manage the custody and care of persons in each State for children, runners can take custody of him without the right to be void.

**Custody of The Five Territories:**

In the custody of the child to continue when there were few courses that must be made to distinguish between:

A. Start the birth mother's custody until the end of infancy, which some believe is the father of the front, as well as the jurists are promising. However, some custodial parents to custodial parents within the time period considered and the equal right to know.

B. Second infancy of the start of the clean up in this period, some believed the mother, the father has custody of the children qualified for either the daughter or son, and others, qualified to be the mother custody of both children of boys and girls up to age seven are considered. The custody of the father and son after infancy, ie after two years and seven years later granted custody of the girl know.

C. Clean the time until maturity, in particular, some believe that the mother custody of the girls until puberty, there is no doubt, provided that the mother is not married and the father have custody of their sons. Not differ between groups and between male and female children and their mother's custody, however, that this requirement is not married, have a first child. In other words, the number of people, connected to a period of custody during cleaning are clean, without any differences between boys and girls are allowed.

D. time of puberty, the period between the end of the period of custody and Amamyh renowned scholars believe that after reaching maturity, none of the parents of their right to have custody of the child who wants to live with each does.

However, the Iranian Civil Code Article 1169 for custody of their mother's territory when considering a particular child, whether girl or boy and up to seven years, has transferred to the mother. This may cause the impression that after the divorce, custody provisions concerning the way the law has been Iran, not to support the child, whether the law imposing a general rule, the interest of the child has to consider. However, we note that all the materials related to child custody and maintenance in the second chapter of Book VIII of the Civil Code is the second volume, the exact solution can be achieved in matters of child custody. All materials in this respect should be paid attention to the maintenance and upbringing of children and families in addition to the base material and also the divorced wife. Accordingly, although mother's custody in the 1169 is limited to a particular time and may cause the child emotional harm of the status quo may be the emotional loss of 1173, and in 1174 the civil law which meet the parent They recognized, is removable (Dehkhoda, Aliakabar, 1968).

**Associated With Raising A Child Custody:**

A couple of common tasks of cooperation and assistance in raising their children. This task has been emphasized in the civil law. The last part of Article 1104 Civil Code stipulates that: "Couples should be in another contribution to raising their children." And in Article 1178 of the Act states: "Father, which is required in their capacity to educate their children on appropriate terms take action and not put their trash." Verse 233 of Sura Baghara with beautiful words of the Quran in a number of recommendations about the child's upbringing. Which stated: "Your father must be the mother's milk during the two years that he can see to the provision of financing is not his concern." And stated: "If the mother kills the father of my child must feel the responsibility In front of the child and does not provide a livelihood. "and continues to adjust to both parties, stated: While the focus of the operators of this sympathy and understanding to couples counseling and securing their consent and in the work may be stated: If a husband and wife together and to compromise the interests of sight, the separation of the child they are both valid. " Obligations that we have added the rights of parents against their children are being subject to the legitimate lineage and the relationship between the couple has a child's parents. Civil law also required the couple to educate children believe that parental control over children and their rights like any other is the right person, the authority may be explicitly denies the right of parents, however, the duty bound to know. The law also set a policy that has governed relations between parents, the general policy of supporting child and family solidarity, security and civil rights, women or children under the authority of the husband on the family has undergone a parent of the much The child has mastered and should not stand in his upbringing and the child clearly dominate the 1167 law is a mixture of right and duty, the duty of educating children and parents is not based on them under this shirk their disposal and should bear the interest of the child. Child care is also their right and as allowed by law unless that person has no right, to deprive them of this privilege and this is the right choice with couples. In this regard, both family solidarity and the unity of the spouses and dependent children of the blood and moral duty to protect the children of parents with children the basics of important policy is the relationship. outside their homes and spent the other hand, women who stop working because
of compulsory education, he is living by her, usually to serve full time and raising children with the mother's home and the children will be. Although it may be necessary to manage the custody and education of the child's parents or one of them does not exist (Holy Quran).

Guarantees The Child Leave:

Guarantee obligation on the parent education and child care, should be told explicitly what the legislator has the right and duty, and they require any assistance in the maintenance and education of children are, but in the legal articles such as civic 1184, 1172, 1168 and 1188 it is clear that the relationship between parent and child, and if everything is the color assignment of the right to speak, the point is simply that the ability to perform their duties as parents in has granted to others, based on the Article 1172 Civil Code, "a father is not in custody while their children take care of her father's refusal and the refusal of the ruling should apply to one or guardian or a request or demand' prosecutor, kept the child custody to a father who is her responsibility, obligation and the obligation may or may not be effective, parents and guardians to spend when the father died be spent to provide the mother. "So the legislature of each held responsible for the child in all of the growth period is known. But if any of the legal custody of the child, his parents refused to do this, the court's obligation to provide child care and the requirement is not possible, if the parent is responsible for custody of her to refuse, and he cannot be the obligation, the duty of the father has custody of origin and if he should refuse to pay her child is training and if the father is dead, because the custodial parent would be limited to homework, parents are responsible for the cost. Moreover, this single article, adopted in 1365 relating to custody, child support and guarantees for the protection of the rights he is due. According to the article: "If a civil court or the court's deputy, who is responsible for custody of the child and parent or other person or prevent the execution of child refuses extradition, the court issued the warrant, the obligation not to extradite him to stop or prevent the child can and will be sentenced to imprisonment to execution, "It was a violation of the duty to maintain custody and secure custody, and the sentence, in fact anyhow it has the benefit of the child and those who favor the court has assigned custody of them, because the refusal of the court order, requiring him to stop and if not Opposition condemns imprisonment to execution.

Conclusion:

Although the variety of topics related to child custody law and considered the comments in the varied and substantial civil law and regulations is presented in good condition has custody, but it should be noted that the: First of Although there are some viable legal relief, but only if it is necessary and sufficient condition is not considered. Second: In awarding custody to each parent and child custody to parents in order to predict the movement of a particular age range of children in the custody of the child's interest has been given to the legal texts, but he wanted children and a desire not significantly is. In fact, you should consider various factors and using expert opinion and interviews with him about giving priority to child custody and relocation decisions, he said. Even expected to play an important role to educate children by parents, joint custody of their life even under the special agencies and courts are competent to deprive the child of parents of non-competent even in the era of shared custody give the person or Specific reference should be regarded legislator.

REFERENCES

Dehkhoda, Aliakabar, 1968. loghatnameh, university of theran publication.
Holy Quran.