

Children Interests in Figh

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ABSTRACT — The current paper is formulated with the goal of estimating the interest of children in Figh. Determining the higher interest of children is one of the important cases which interest has had an essential role in the implementation process and its identifying and remedying has been forced to religiously accountable one. Although interest of children has a wide range because of inclusive disability and hardness, but the element of “interest” may limit the scope of religiously accountable behavior. However, several questions are raised about such issue which has not been paid attention to and it is feared that this shortcomings and negligence causes the violation of children's rights and neglect or abuse of the guardians of the child. With the purpose of discussing this issue and the posed question, the present paper attempts to investigate the concept, importance and status of children's interests in Figh and express relativeness or variability of this important element. Generally, interest is being investigated as a base of Shari'a provisions forging which is considered by holy lawgiver. The main concern here is that how can this tool be used and how can higher interests about children be implemented.

KEYWORDS: Interest, Absolute Interests, Children, Child Support,

Introduction

Among stages of human life, childhood is an enjoyable stage; stage of playing. A period that some have called as a philosophy of life, and some have called it an introduction and foundation of other life stages. Paying attention to their problems is actually paying attention to the society problems and finally solving the society problems. Generally, if we consider the society, we can clearly find that thousands of children are suffering from the lack of love, health, safety and the rights which guarantee their interests. Ironically, transferring the child to the guardians is the broadest scope of delegating of interest thinking in implementation of sentences to religiously accountable ones and this case raises the most sensitivity. However, the most important questions are the following: What is the real meaning of interest? What kind of impact would interest have on the province and exercise? Should the guardian measures be amended, and include the highest interest or lack of corruption is enough? What are the criteria for the recognition of interest? Is this standard practice inclusive and constant?

The first discussion: interest and children in word

Imam Mohammad Ghazali said in the book *Al-Mustafa*: “interest is gaining benefit or preventing a loss, gain benefits or prevent a loss is not people mundane purpose but purpose is gaining benefits or preventing a loss that is protective of religious purposes and these interests are categorized in five categories which are interest of protecting religion, soul, mind and wealth generation; thus anything which ensures protecting these five categories is called interest and anything which causes their loss is corruption and eliminating those is interest.”¹ Thus, human interest is a thing which includes his aspects of material and spiritual needs and in the meantime, considering the purpose and human perfection is an important issue. From the dictionary point of view, the child is the newborn and any wild animal newborn is also called child². But on the terms of jurists and sharia, someone is called child who has not reached puberty and is synonyms of underage, the owner of *Majmaolbayan* wrote that underage child is from people and underage is someone who is not reached puberty and both are necessary for underage to get out of interdiction³. The word puberty means achieve something.⁴ In expression, puberty is when underage physical force has grown and ready to marriage and fertility and it is a natural thing. Puberty is known from the three things.

1. Growing coarse hair on top male and female genitals.
2. Seminal discharge from the natural duct of man and woman and menstruation in woman is not sign of puberty that shows she had got matured before.
3. Reach the age of 15 for boys and 9 for girls.⁵

The second discussion: the meaning of the term interest

According to what is achieved from the study of dictionaries, interest in its direct meaning is righteousness and righteousness means benefit and in indirect meaning means anti-corruption. Some considered this word equal to benefit in terms of morphological weight

¹ Abu Hamed Muhammad al-Ghazali, *Al-Mustafa* in the science of assets, vol. 1, p. 140, the home of Islamic books, Beirut: 1417

² Abi Nasr Ismail bin Hammad, *Javaheri*, vol. 5, *Asahah* crown of Arabic language, Page 1751, Home Islamic books, Beirut: 1368. “A born child and born of each animal is also a child.”

³ Same.

⁴ Husayn ibn Muhammad Raghhib Isfahani, vol. 1, *In a strange vocabulary of the Qur'an*, p.30, office Publication, 1404.

⁵ Syed Hasan Imami, vol. 5, *Civil Rights*, p. 244, 1368.

and lexical meaning.⁶ In Islamic teachings, interest is used by different meanings, according to a meaning, interest and corruption is considered as philosophy of forging religious order which based on Mu'tazilism opinion, there are interest and corruption behind both obligatory and forbidden thing and because of that necessity and dignity has been forged.⁷ But in fiqh discussions, three meanings for interest can be determined which according to these, one may achieve position of interest on the Islamic law. These meanings are as:

- a. Interest as philosophy of legislation provisions
- b. Interest as indicating provisions
- c. Interest as a reason to devise provisions

Interest (as indicating provisions) in imami fiqh is most applicable to the subject of our research. Thus, interest as indicating provisions will be discussed among three mentioned meanings.

Religious accountable doing that is belonging to the same shari'ah provisions is bound to have interest in many cases. In these cases, holy lawgiver requires religious accountable doing if that is associated with interest and shari'ah provisions is to belonging which interest is a part of it. So much attention is paid to interest in this meaning in both imami fiqh and Sunnite fiqh. In cases of expressing such interest, expressions like goodness, benefit, beatitude, luck, regard and avail have also been used. Now, we refer to some cases of using interest (as indicating provisions) in imami fiqh.

1- Child's guardian is allowed to mortgage child's property provided that he needs borrowing to take care of child and interest of child should be considered in this case⁸.

2- Child or insane guardian can apply preemption in what is sold or what child or insane are partner in it, provided that applying preemption has benefit for child and insane.⁹

3- When guardian or executor leases child to do something for a period that continues after his puberty, such a lease, after puberty, needs a matured one allowance. Yes, if the lease benefits the child, child does not have the right to terminate it.¹⁰

The third discussion: all in the service of higher interests of children

Meaning of benefit, goodness and profit which can be understood from the word interest may include all desires and wishes of human; however, there are conflict and confusion in instances. Divine religions in general and religion of Islam in particular are claiming human goodness through which human happiness and salvation is determined.¹¹

We can say in the upbringing position of children's rights that there are definite expectations and duties which are responsibilities of parents, relatives and at higher levels, rulers and governments and even all human beings and are in line with growth, excellence and the development of children. This right has several aspects. Following items shall be expressed about children educational interests.

1- Experience education and training: emphasis of holy prophet prove this which said: train your children on three characters: like Prophet, loving his family and reading the Quran, because protectors of the Quran will be on protection of God and are near prophets and his elected on doomsday. And also he said: respect your children and train them better. And also said: no father did give his child something better than a good education.¹² Parents should have tried toward children training and provide them correct and informative experiences and try to educate them correctly and properly. Learn religious principles and practical assignments are other children's rights which surely in the shadow of their parents' doings, would remain better in the child's mind and soul and the child would get familiar to it. Also about training behavior at home, it should be said that children's behavior at society and at home is following the type of collision and training of parents at home.

2- Accountability: raising children is gradual which requires patience. During childhood, parents should teach their children how to deal with problems and also teach them the proper behavior in crisis situations or affluence. Such important discussion is ineffective with theoretical discussions and advices without action, thus, children should be involved in everyday life and made familiar to different life situations. Father should be his children's supporter and worker and help them in life's ups and downs, as it is said: "The Messenger of Allah said: God bless those parents who help their children to do well to themselves"¹³. And also said: God bless the father who helps his child to do well to himself.¹⁴ In Islamic law, so much attention has been paid to issue of children training and important duties of parents about children are their moral training and intellectual education and encourage and oblige children and teenagers to study and learn the suitable professional knowledge for their livelihoods and meet the essential needs of life¹⁵. Prophet of Islam said: "behave righteous in granting and forgiveness upon your children, as you like that your children

⁶ Jafar Langroodi, legal schools in Islamic law, p. 158, quoting Ghazali Al-Mustafa. Treasure of Knowledge, 1382

⁷ Seyyed Morteza, Alam al-Hoda, vol. 1, Ammunition in the science of dreams, p. 187; Islam House Institute, Qom, 1413.

⁸ Sayed Ahmad, Khansar, vol. 3, Comprehensive documents, p. 350, Alsaduq office, Tehran, 1355.

⁹ Muhammad Said Hakim, vol. 2, Misbah-Minhaj, p. 250, Ayatollah Sayed al-Hakim office, 1415.

¹⁰ Abolghasem, khoi, Minhaj Note Foundations, p. 138, Daralhady, Qom, 1407.

¹¹ - Mohammad Baqer Taqi, Majlesi, Bihar al-Anwar, vol 18, p 202, home of islamic books, Tehran. «Say no god but God prosper»

¹² Almotqy al-Hindi, Kanz Labour, former, vol 16, p 456, H 45409 to 45411 "Train your children on three characters: Like Prophet, loving his family and reading the Quran, because protectors of the Quran will be on protection of God and are near prophets and his elected on doomsday" "respect your children and train them better" "No father did give his child something better than a good education"

¹³ Mohades Nouri, Mustadrakat Alvasayl, vol 15, p 168, H-2, 5, 7, or 9, Al-Bayt Institute Qom, 1408 AH.

¹⁴ Seghatolislam Koleini, al-Kafi, vol. 6, p. 50, H-6, Tehran home of Islamic books, 1365 SH.

¹⁵ Sayed Hussain Safai, Asadullah Emami, a brief family law, sixteenth edition, 1387, Mizan publication, Tehran, Page 366

behave righteous in respect and kindness upon you.” Or said: “Fear God and behave righteous upon your children, as you also like that they obey and respect you.” Or said: “God Almighty likes you behave equally upon your children, even in their kissing.”¹⁶ Or said: “Privately behave righteous upon your children, as you like that your children behave righteous in respect and kindness upon you”¹⁷. Islam pay attention to the issue perfectly that all human beings do not have same talent. Special attention has been paid to the child's identity issue in collection of recommendations and Shari'a provisions. Abdullah bin Masud asked the holy prophet: What is the biggest sin? His Holiness said: “killing your child because he is your partner in eating.”¹⁸ Thus Islam was to give children the right to life. It ensured their life and recognized their other rights and established in the society. Holy prophet respected children, passed their playing ground quietly to not disturb their happy moments, never considered them humble and little creatures, and behaved all children respectfully. Ans bin Malek said: the God's prophet said hello to children when he passed them.¹⁹ It is said in Beyhaqi Major Traditions that Ibn Abbas said: prophet avoids killing pagan's children and did not kill any of them. Then he said: killing children is not allowable unless you have information as much as holiness Khezh about the person you are killing.²⁰ If marriage is not in the interest of minors or may be detrimental to her, such as the existence of two suitors, but he refrain to marriage his minors girl with a competent person and forced her to marry to another, or married in less than mahrolmesl (It is marriage portion that is considered for girls as the dignity of hers.), or he is considered marriage portion more than mahrolmesl to his minor son's wife. There is a question that whether the marriage is void or based on let a minor boy or minor girl after puberty? In this regard, there is disagreement between jurists: known point of view is that in such cases, the contract occurs as a intrusion and based on the minor after puberty allow or reject if allowed the marriage is correct otherwise it's invalid. Of course, if the guardian marries his minor daughter with marriage portion less than mahrolmesl, some jurists say: marriage is correct and determined marriage portion is invalid, vicious and based on permission of minor girl after puberty, if allowed, it is correct otherwise, her husband must pay mahrolmesl²¹. We can conclude that the benefit in marriage is that man reaches to these goals, so at underage marriage, the guardian can't focus all his attention on worldly matters and just considers high marriage portion or her husband's ability. But according to what was told it could be concluded that the guardianship sentence of minor's marriage refers to earlier times and early period of Islam. So it must be adhered the benefit in minor's marriage, because of the benefit is relative and common, observing it rarely happens in marriages of minors at this time and guardianship sentence of minor's marriage will apply, in urgent cases.²²

Result of discussions and research

1. In Islamic law like any other legal system there is the silence. Judicial events are infinite but texts are finite and silence law arises from the interaction of these two factors. According to the above provisions the religious law on children's benefits have been stated, but faced with routine new problems, new issues in life of children is created that requires to look after the interest in term of legal.
2. Sometimes, stopping at some verses and traditions and neglect of Islamic generalized human propositions creates misunderstanding that children's rights have been neglected. Among the traditions which the punishment right of children is permitted and considering the simplification and focusing on the theme of religion in criminal law has led to a "Courage" about the violations of human rights against children in the community are being institutionalized.
3. As the children must be protected, their property should also be encouraged and respected because they can use them effectively after growth. It is certain that the authority of a father is not absolute and does not follow of her will and in fact, what has been the philosophy and wisdom of these facilities and authority, (benefit of) own self prescribes also its limits and bounded. The task of guardian is providing the benefits of maintenance of the ward's property and sometimes this benefit is the property of fecal loss and sometimes it is maintaining of gradual loss, which is generally caused by the use of the main property in the ward's expenses. The factor that allows to guardian seizes the property of the ward, is "lack of corruption" or in other words the benefit is general (benefit of maintaining and increasing the property) and the factor that refuses the seizure of guardian is "corruption or financial loss". Refusing the seizure of the property of the ward by guardian is dependent on two conditions: the presence of real corruption and guardian knows that there is this corruption. If the guardian is aware that his seizure causes a loss and seizure that was not really a disadvantage or vice versa, if by awareness of lack of corruption, seizing harmful, and his seizures will not be refused. Seizures of guardian is limited to two allowed and forbidden sentence but are sentenced to one of five sentences.

¹⁶ Al-Muttaqi al-Hindi, Kanz Labour, former, vol 16, p 444, h45346 & 45347 and p 445, h 45 348 to 45358.

¹⁷ Razialdin Hassan Bin Fazl Tabarsi, Makarem ethics, former, Page 220

¹⁸ Al-Shaykh al-Tusi, Almahsout, vol. 7, p. 4, Classed and commented upon by Mohammed Baqir Albehbudi, meant to publish, Almrtazevi library to revive Jaafari effects, Heidari publication 1351 SH.

¹⁹ Razialdin Hassan Bin Fazl Tabarsi, Makarem ethics, P. 16, published in 1412 AH, published by Sharif Razi, Qom

²⁰ Abu Bakr Ahmad ibn Al-Hussein Bin Ali Albeyhaqi, died in 458 AH, Great Traditions, vol. 9, p. 53, thinking office printing press for publication: thinking office, Beirut Lebanon, Bita.

²¹ Prophet avoids Pagans children and did not kill any of them. killing children is not allowable unless you have information about the person your killing as much as holiness Khezh"

²² Jabal Ameli, Zinedine Ben Ali, p.139

²² Ansari, Godratallah . "children's sentences and rights in Islam", p. 79, the jurisprudence center of Imams , Qom in 1391.

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