



Forcible tutor's possessions extends at financial and non financial of interdicted ones in Iran and France laws

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ABSTRACT

Original Article:

Authority to others it is an affair against principles and it needs laws permission. It sometimes legal authority prescribed via judicial verdict tutorship and some other times by the original's authority such contracting a delegation contract. Authority to other it implies generally containing delegation on details and it has the possibility of delegation at all exception which needs specific cause. The tutorship contains tutor's authorities at all financial and nonfinancial and this is by ruler's authority. Tutorship just according to regulated points contains father and grandfathers and it does not contain mother. But by some modifications at regulations this problem was evaded on some extends and mother authority at some situations such fathers' death or no merit regarding to father the lack was reformed. In France laws tutorship for child is for father and mother and none of them has priority on condition laws offers.

Forcible tutorship is just about ones who need supporting and these are just permanent mad and children. Although on some situations like a grand girl, the father power is superior on his authority aspect but the main essence of this institution is supporting one who needs supporting. The tutor's action on Possession of one who needs supporting should be on fair although it was not mentioned by regulator but it can be understood by principles concerning tutorship that France civil laws declare it precisely. As lack of child's fair acted unintentionally it leads to not operating his activates and on situation it acts intentionally it has responsibility about ones' possession.

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1. Introduction

The aim of «Forcible tutorship» they are such authorizes that tutor has at one needs supporting with this difference the concept of authority has no effect though it is accompanying with «forcible» expression. The authority of no one has no affect at continuing and this is laws force which both of them must compile principles of laws in this concern. «Tutor» after reaching «tutorship» concept and it has not the ability of its rejection and one who needs support has no right rejecting it hence it is implied as «Forcible tutorship». Imamiye Foqaha are relying on reason, forcible tutor is specific containing father and also grandfathers. [1] 6 Although this idea is not under generalization, regarding to it our laws are gaining from Imamiye Feqeh and they are standing on this main source it can not be apparent from its principles event the civil laws expression all depend on father authority and grandfather but as taking place such situations it can not deny father authority or grandfather although nowadays custom rules caused neglecting father authority at such high extends.[2]

In this survey we are following applying this question that forcible tutor has which responsibilities and duties at Iran and France laws?

2.Principles and conditions of holding forcible tutorship

2.1.Principles of holding tutorship

It could be founded two points from the analysis of Foqaha and lawyers' ideas regarding to the authorship about tutor and the affairs concerning to one needs support. Generally it can be told that the authority can be supporting from one needs supporting.

2.2.Conditions of forcible tutor

At civil laws there is not anything expressed about forcible tutor hence referring to Feqh about forcible tutorship seems inventible. Though in this concern it can be pointed about forcible tutorship as the following conditions:

A. Being nominative relation

Forcible authority is gaining from relative relation with child and without it can not claim authority. Nevertheless one of the conditions of forcible authority it is legal and legitimate relative relation between interdicted one and parent. It is from requisites legitimate relation between father and mother as couple and the relation of illegitimate intercourse it is not related to rapist. (1167.civil laws)

B. Legal capacity

In site of it civil laws did not express anything about legal capacity for forcible authority but it should be known as fundamentals for accepting any legal affair. Civil laws declared the failure of author's legal capacity as his deposal. (Acts 1185& 1182 civil laws)

C. Justice

Justice it is an ethic concept that in a general meaning it contains all interests which are obstacle in front of sin and as integrity.[3] About the requisite of this condition there is severe conflict between Imamiye Foqaha. Some of them believe that forcible authority should be efficient when his justice could be proved.[4] But there is not clear pointing in this concern at civil laws even it was obliged being Moslem of inheritor and one who had inherit.(Act 1192)

2.3.One who had inherit conditions

As it needs come conditions about admission of forcible author, needing some conditions for one who had inherit is needed in this system.

A. Ancestry

One of the most important principles ruling on authority it is legitimate ancestry because it has not legal affect on illegitimate ancestry and it can not have authorship. (Act. 1167 Civil laws) At this condition as soon as child's birth would not be concerning to legitimate relation, he is not regarding to parents and following it can not shape authorship between him and forcible author. This affair dose not means declining authorship of natural parents. In other words although there is not any authorship relation between him but they can run their natural son as author. Although the modifications of ideas about natural son caused that maximum right donated to son and from other hand some it made duties for his parents. (Cooperation judgment No.17 date 18/6/1997)

B. Lack of legal capacity

One of the other conditions about one who accept authority it is lack of legal capacity because one who has capacity he does not need to third one deputy. In other words one who has sane wise he can run his affairs and in this concern he dose not need any attempt. Nevertheless one of the conditions at one who needs authority it is lack of legal capacity.

In this concern it should be told that forcible authority is regarding to mad and immature ones. And this judicial institution dose not concern to other ones such patients and prisoners and absent.

2.4.Duties and responsibilities of forcible authors

Forcible author is responsible obeying some legal duties as individual and it has not transformation aspect. These duties can be financial and nonfinancial from the other hand action some of these tasks are concerning to specific periods and some of them not.

2.5.Forcible author duties

The relation of ancestor it causes some duties for sides of this relation such it is not possible neglecting. Some of these duties are financial and some others are nonfinancial, in present study it is analyzed parent's duty about financial and nonfinancial duties.

A. Running Nonfinancial affairs

Interdicted ones like ordinaries can have rights and financial prosperities in better words interdicted ones have civil rights too as the act 956 of civil laws declare about it precisely. From the other hand the interdicted ones because of failure at their recognition they do not have the ability of running their prosperities and hence their deputy or parents do their task in place of them. Acts 1214, 1183, 1212, 1213 civil laws predicted this affair clearly.

B. Payment of alimony

Generally the responsibility of paying alimony is by head of family and it is usually by father. This institution is not a new point even it is one of old tasks from old times.[5] The symptom of paying children and wife alimony it is point to the alimony not only made for family stability but also it is for supporting others. Though it should express paying alimony has two aspects of coordination and supporting.

C. Tutorship

Tutorship is a concept mixture of duties and rights and there is not any possibility of failure it. From the other hand not only, has not right individual right aspect but also it has public aspects that the legislator let public authority to act about on its failure. (Acts 1172, 1168 civil laws)

The other point which it should be attention on some conditions the parents' tutorship right dismissed. As instance on condition of death and become mad each of parents the tutorship transfers to the other one. (Acts 1171 & 1172) from the other hand being cruel and ethical disordering may lead to something to such conclusion. According to part two of book eight of civil laws concerning to tutorship of children concerning to raising and training the child.

D. Marriage and divorce

As the nonfinancial affairs concerning to parents it is their interference at their children's marriage. Generally parents' authorizes are very limited in this concern and just it is about their girls. (1043 civil laws) but anyway forcible author regarding to interdicted ones are more that it is analyzable.

3.Forcible tutor's civil responsibility

3.1.Studying on France laws

3.1.1.Tutor's appropriations

Generally forcible tutor has the right of supervision at one who needs support France laws as he is known as a manager in this concern.

The forcible tutor is as one who needs support deputy and he has capacity to run some of him financial and nonfinancial tasks. So it is analyzed the forcible tutor's authorities.

3.1.2.Forcible tutor's appropriation (Independent from France laws)

Forcible tutor has authority some of financial tasks independently and at some other cases it does such supervisor of some actions.

3.1.3.Nonfinancial affairs

Action some of nonfinancial affairs for interdicted ones prescribed how he can do it independently and for some other actions he needs forcible tutor by direct and independent interruption.

3.1.4.Marriage

Marriage is such kinds of contracts which have dual entity from one hand it has financial effects and from other hand nonfinancial. Though about prescribing this kind of contract by interdicted ones both it should pay attention to its financial and also capacity of such these ones about nonfinancial affairs.

3.1.5.Divorce

One of the methods of divorcing it is separation on this situation divorce is the end of intercourse by its specific conditions. After the marriage of interdicted ones the possibility of divorce is probable for them.

3.2.Indexes of appropriation of forcible tutor at Iran Laws

Iran regulator knows tutor' appropriations at damage and consideration by implying to acts 1184, 667, 1241. According to it forcible tutor as legal deputy of one who needs support the index declared regarding to his delegation. In better words what seems important in regulator by considering his interest even by laws or contract or judicial verdict. In this concern it should insist on considering one who needs support damaging as main criterion.

3.3.Indexes of forcible tutor's appropriation at France laws

Depending on act 371/1 of France laws interdicted parents at doing his duties they should have any aim just "preparing welfare" for one who needs support. The mentioned expression applied as welfare and tranquillizer that it means considering damage. Though during France laws it should consider tutor about one who needs support it is considering his damage with this difference that it was applied with more emphasis because due to it the parents should provide welfare for the one who needs support. In other words French regulator considered social welfare about consideration about interdicted ones.

4.Conclusion

One has rights by his birth and even before that at embryonic era that it is called having rights. These potentialities can not be dismissed from one utile end. But this point does not mean that one who had rights apply them independently at all his life aspects. There are some periods on anyone's life that he can not have his rights personally and in this way he needs guiding and supporting. For reaching such aims regulator predicted different institutions that some of them apply before one's birth and some other of these

systems were made due to interdicted ones' needs. As instance the system of forcible torture is applied for everybody in Iran and no one is not without need to it but the eternity system is just applied for one who has physical disabilities.

Authority is an Arabic word which is applied mostly after great prophet's death by Foghaha and they applied in theoretical points of Islamic government. Foqaha applied the element of sovereignty and they called it a kind of authority at ones' wealth or life which it is made for ones' parents and it dose not needs anyone's' will. (Acts 1180, 1183 civil laws)

About master of authority between Foqaha made some conflicts but all of them are confessing this right to father and grandfather and about mother there is conflict. Civil laws following Foqaha's idea it knows authority for father and it dis not mention about mother. (Act 1181 civil laws) In spite of it civil laws specifically talked about father and grandfather but it did not talk about ancestors and it does not mean that they do not have authority even by laws silence it should refer to Feqhi sources and it express that authority is for ancestors too. Though both father and father ancestor they have authority to the child. From the other hand ancestors authority is not by father's death even they all can have authority independently.

Forcible tutorship is a supporting institution and it gains from legitimate relation and it dose not have anything for illegitimate and illegitimate child is not legal to follow the rules. (Act 1167 Civil laws) but the Supreme Court declined some part of it and it knows all rights for illegitimate child and father. (Cooperation judgment No.617 date 14/7/1997) but this fault is about that the same they are governing to father ancestors and these ones known illegitimate child forcible tutor. In this concern it dose not differ as illegitimate child is by illegitimate relation or by traversing his sperm by experimental, because about transferring sperm there is the same principle legally.

In addition to authority institution, there are some other such appropriation, will, step child and etc. These ones are absolutely different from authorities and principles. Just about step child complete it is the same in some countries laws and close to authority system and it is complying with and step child has the same rights such as real child at all rights.

In spite of it was defined all parts of forcible tutor at Imamiye Feqh, civil laws do not express precisely in this concern but by some definitions it can be gained some points such being Moslem on condition being Moslem one who needs supporting (Act 1193) wise and growth (Act 882), being faithful (Act 1186)

Authority is about ones who has mental or physical faults and they need supporting. These ones are divided to three groups such little children and mad ones. Although there is conflict at Imamiye about definition of maturity age but regulator defined having 15 years for girl children. (Act 1210 civil laws) It is on condition that in most of European countries it was defined eighteen year and more as instance for girls and boys puberty is a8 years old without attention physical conditions. (Act 488 civil laws of France)

Little children are divided to distinguished and undistinguished and they know distinguished ones efficient at their financial operation correct and there is no need to tutor. Such the operations distinguished little child can accept it is donation to him without tutor supervision. (Acts 1212, 12 14 civil laws) All of these operations are that one who needs supporting never damage from his tutor's action. But about undistinguished child legal action regarding to his disability they do not have the ability legal rights and all his actions needs to interruption. Regarding to mad girl would be treated such distinguished children and their action do not need supervision just at nonfinancial dealings and totally mad needs permanent supervision.

Interdiction of interacted ones can be evaded by some conditions. As instance the interdiction of child would be evaded by his growth and mad one with recovery. At civil laws there is not any definition about the age of puberty by it knows 18 as evidence. But

in France laws in addition to reaching 18 even person's marriage is evidence out of interdiction. (Act 338 French civil laws)

About the bases of forcible tutorship there are two principles, some lawyers know authority as father and they know all fathers' words efficient about interdicted. Some others know the base of this principle that father is master for child and in all subject he should obey him. This thesis now emerged Islamic countries and the requisite of father permission for girl it is coming from this although lack of permission about son's marriage can break it.

From the other hand forcible authority could gain from supervision view of ruler about the interdicted ones and at situation it may hurt them by dealing the forcible torture would enter at their tasks.

According to the points of legislator about forcible tutor it can depend on rational points. In this concern about lack of conforming with there are different questions. Imammie Feqh knew mother tutorship absolutely right and necessary in which the ruler because of some abuses and social problems he was forced to decline. Admission of family support act on 1974 and the possibility of mother tutor ship were such samples although this right was demolished on 1979 but know on condition reassignment forcible torture it reach to mother and decrease these worries. (Act 1184 civil laws)

Deputy of forcible tutor contains both financial and nonfinancial affairs. (1212, 1213, 1214 civil laws) about the authorities of forcible tutor we point to some points that tutor interruption it does not need to any organization permission. (Act 73 of non litigious jurisdiction affairs) and he can act independently. From the other hand authority is by laws not by ones' will.

In France laws going out of interdiction are possible by some conditions. The interdiction of child would be evaded by his growth and mad one with recovery generally at France laws it takes place by two methods. At first one the subject of maturity and parents ' will. At situations the parents conclude they refer to the court and by the court permission it has authority. But on conditions of marriage it is called not clarified. (Act 476 French civil laws)

The tutor's appropriation should be such extensive which lead to abuse, so in this concern his authorities should have some extends to protect interdicted rights. In the country which its laws gained of Imamaiye principles considering welfare is known as criterion. This act has brought at criminal and civil acts and non litigious jurisdiction acts. (Acts 1184 667, 1241)

In French laws during act 371/1 non litigious jurisdiction the child's interest is main criterion for one who needs supporting.

The authority of one who needs supporting after evading interdiction concerning to his appropriation is not unlimited and on condition of damaging he can reject otherwise he can not own his tutors' appropriations and in simpler words his appropriation are efficient about tutor and the original can not reject him just as damaging at dealings.

References

- [1]. Jebyi Ameli, Zeine din, Alroze Bahiye Fi Sharhe almah Dameshghiye, second version, Islamic publication office, 1986.
- [2]. Katouxiyan, Naser, Family laws, Second version, sherekate sahmi, first publish, 2010
- [3]. Shams, Dr. Abdolah, Civil judicial trial, Third version, Derak Publication, 21st version, 2012
- [4]. Ardebili, Ahmad ibne Mohammad, Majmaol Fayedeh and Borhan Fi Sharhe Ersahd, Ninth version, Islamic publication office (Jame Modaressin) Qom 1970.
- [5]. Jafari Tabar, Dr. Hassan, A discussion about religious right at Sasani era, The magazine of politica and las faulty of Tehran University. No. 70 2005
- [6]. Bohrani, Ale osfour, Yousef ibne Ahmade Ibrahim, Al hadaeghe Nazere Fi Ahkamal Etrate tahere, Version 23, Islamic publication (Jame modaresin) first version 1975