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A Child's Right to a Name: An Emphasis on the Iranian Legal System

Abbas Mirshekari¹ & Alireza Fattahi Ketilate²

ABSTRACT

This article provides an interpretation of the Iranian legal system in which individuals are free to choose their own name, unless the choice of a particular name is prohibited by law, depending on a concrete and reasonable justification. Accordingly, both the right of children to have a name and the right of parents to freely choose a name for their children will be explored. A parent's right to name can also be framed as an example of parental rights to their children; albeit a parent's right to name is constitutionally restricted by a principle prohibiting abuse of the right. In other words, the issue must be recharacterized as an act of parents on behalf of, and as the agents of, their children. If the name is not compatible with the child's interests, the child should be allowed to rename themselves. For this reason, the right of children to change their name at the age of legal maturity is justified. This article will examine the role of government, parents, and children in the naming process, with an emphasis on the Iranian legal system.

KEYWORDS: human rights, children's rights, family law, naming rights, right to name.

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I. INTRODUCTION

Different legal systems have taken various approaches to governing the process of naming children. Parents, children, and the government are all involved in shaping the legal system of naming; in other words, paying attention to the parent, child, or government's role in the naming process has different legal consequences.

In analyzing the naming process, one first needs to think about why naming has become a legal issue. First, what about naming should be regarded as a legal act and worthy of being legislated and regulated by a legal system? Where does the legal requirement for having a name come from? And what legitimate interests are there to justify legislative intervention? Second, who has the right or duty to name? To what extent are they free and responsible? Legally, what restrictions and adjustments might be imposed on their actions? Why and how can these terms and conditions, which are assumed to limit the scope of one's freedom of action, be justified? Third, how does the exercise of this right by its holders affect third parties? The term "third party" is used here with tolerance because, for example, the child is considered to be a third party for the act of naming by his parents, but the effects of the name chosen by the parent can be seen throughout the child's life, without the child having a role to play in the process.³

In thinking about the above three issues, one can draw on three legal perspectives on the naming process: (1) government; (2) parental rights and obligations on naming; and (3) children's rights in regard to their names. Traditional legal approaches have largely viewed the issue from the first two perspectives; that is to say, the issue is primarily seen as a challenge between parents as rights holders and the government as the party that restricts parental rights.

The ideas above can be simplified in another way: there is a clear rule that individuals must have a name in a legal system. There are also specific legal rules for naming, including that the right to name a child is delegated to the parent at the time of the child's birth. In addition to this right, powers to register, control, and verify a name have been recognized by various governments. Traditional approaches have also focused mainly on establishing rules for resolving conflicts between the government and parents who choose a name banned by the government.

However, new legal approaches have focused on the children. From this point of view, acts are done by individuals (here, the parents) and are eventually identified and recorded by the government with modification or approval. These effects have the greatest impact on children and may be positive or negative. Consequently, rather than focusing on legal order or parental rights, the status of children as at-risk or in need of legal protection should be considered. In particular, children should be protected from abuse by others because of their lack of autonomy. Advocating for the best interests of children has been prioritized in new approaches. Further, instead of universal human rights guarantees of freedom of expression and privacy, specific safeguards of children's rights are prioritized. In this way, the requirement to name is essentially redefined as part of every person's right to identity and legal personality, under equal protection of the law.

This article analyzes these issues in the light of the legal tradition and experiences of the Iranian legal system, as well as the experiences and arrangements of other advanced legal systems.

³ Some sociological studies have shown that there is a relationship between the name of the child and the occurrence of some social anomaly, and even the tendency of the child to commit a crime. The name of the child can also impose social judgments and environmental pressures, and even affects their academic success and chances of being accepted into job interviews. For further reading, see: David E. Kalist & Daniel Y. Lee, *First Names and Crime: Does Unpopularity Spell Trouble?* 90 SOC. SCI. Q. 39 (2009).

The topic is summarized and analyzed through three basic perspectives in the following sections: the roles of government, parents, and the child in the naming process.

II. THE GOVERNMENT'S ROLE

The process of state-building can begin when the government has accurate information about the status of its citizens that it can use in large-scale planning. A modern government's first step in establishing its relationship with its citizens is often to ensure that it can formally identify them based on personal documents. From this point of view, the importance of a name is evident. In fact, having and registering an official name are prerequisites for granting Iranian citizenship and identifying one's rights and obligations.

Given this logical necessity, the first steps in the formation of a modern government in Iran included a registry system. From the beginning, registration was compulsory for births, marriages, divorces, and deaths, known in Iran as the "four events." Legislation designated the National Organization for Civil Registration as the forum for such registration, including birth registration and name registration. Specific procedures were also established to record this information.

In the early stages, all efforts by the government were to ensure that all citizens' personal data was recorded in the system of registration. The Registration Code was approved in 1925 and stipulated that the birth of any Iranian person should be reported to the competent authority. At the time of this announcement, the name for the baby had to be chosen. Additionally, in order to enable the government to communicate with citizens, it was necessary for all citizens to have a full name, including a first and last name. To make the name mandatory, the legislature required individuals to report births, marriages, divorces, and deaths, or the "four events," to the local registry. The importance of registering these events was so fundamental that the legislature threatened offenders with criminal penalties.

Once the government possessed this information for all its citizens, it moved toward establishing order and consolidating its power, rather than seeking to create rights for its citizens. This is likely why the legislature has set many rules for the proper naming process. For example, it introduced the "rule of compatibility," which mandates that a name be consistent with one's gender, community customs, local culture, and even social status. Otherwise, the name cannot be registered. The rule of compatibility was an opportunity for the government to intervene in the naming of individuals and limit the powers of citizens.

The government took other steps to gradually restrict citizens' freedom to name. One of the main restrictions was on citizens' right to choose their children's names. Specifically, the government decided not to allow citizens to choose names that opposed the norms of society. Regarding these names, Article 20 of the Registration Code states that "[i]t is forbidden to choose names that offend the sacredness of Islam, as well as the selection of titles, nicknames, and pornographic or inappropriate names." According to the same article, "[t]he identification of prohibited names is with the high council of the registry organization and the council shall determine its examples and report to the organization."

According to the principle of liberty, however, individuals are permitted to take any action not prohibited by law. As such, it follows that in name-choosing, individuals may choose any name unless the name is prohibited by law. Therefore, the registry organization is required to register the announced name, unless the selected name is prohibited. But in practice, the registry organization behaves differently. According to a 2011 directive called "Name," a name will be recorded if it is listed in the names book, which contains a set of pre-approved names that parents

are permitted to choose. This is indefensible because it limits the freedom of individuals to choose their preferred name.

In assessing the role of the State in naming, it should be noted that other legal systems' approaches are different. Some legislative bodies grant full freedom to individuals in the naming process, and in doing so, cite the principles of individual autonomy, privacy, and freedom of expression. The disadvantages of these systems are the lack of deference to the developments of modern society and the need for some government intervention, especially in child protection. Contrary to this approach, some systems prefer public order over personal freedoms. These systems also prefer to establish national cultural values and to respect religious history and traditions. This approach restricts individuals to arbitrary names, unless the chosen names are pre-authorized. In this regard, they have provided a list of legal names that limit the freedom of individual choice. In another group, in contrast, the government provides a list of banned names that limit the freedom of naming. The disadvantage of these approaches is that no legislature has the capability to predict all problematic names that may be selected or created by individuals.

The middle approach attempts to provide legal criteria by which specific categories of names can be banned on the basis of legal assessments. In this approach, the properties of a banned name can be pre-announced. Then, based on those features, the registrar's staff will check whether or not registration is possible. But this approach highlights the role of staff who are likely to act on their own discretion. This violates individual rights and freedoms. Under this premise, however, individuals may be allowed to sue staff for their actions.

In this article, the Iranian government's role in the naming process is the focus. The Iranian government preempts certain names and permits individuals to choose only those names that appear on the list of permitted names. These actions violate not only the Registration Code, which requires the government to designate banned names rather than authorized names, but also implicates legitimate freedoms and privacy concerns.

III. PARENTAL RIGHTS ON NAMING

Although the government's role in the naming process cannot be ignored, parental rights are also undeniable: parents are the ones who conceive the child, pay the costs of raising the child, and most importantly, ensure the child's comfort and well-being. It is logical to look at the parents as holders of the right to name their child. Therefore, it is unfair for parents to be barred from choosing their favorite name for their child. In addition to the more emotional aspects mentioned above, one can justify this approach from the perspective of two fundamental rights: freedom of expression and privacy.

Naming a child is without a doubt a form of expression. Therefore, a parent's right to freedom over that form of expression must be respected. Citizens sometimes choose to name their children based on their religious interests (e.g., names of religious saints), political beliefs (e.g., names of trusted and beloved political leaders), intellectual ideologies (e.g., pan-Iranianists' choice of the original Persian name), or even their intellectual interests (e.g., names of heroines from novels or television series). In such cases, naming becomes an expression of some belief. As such, this right must be protected by law in the broadest sense. The restriction of this freedom must be exceptional and only allowed where there is truly a legitimate interest.

In addition, it must be acknowledged that the issue of naming is a private family matter. Therefore, the process of naming should be left to parents, and the government should respect their decision in this regard. If the government has no legitimate interest or justification for interfering

with a couple's privacy, there is little to do with public interest and public order. In this approach, the name that parents give to their child is considered to be a family affair and is subject to privacy safeguards. Because the Iranian Constitution recognizes privacy, the freedom of parents to choose a preferred name is therefore justified.

When we consider parents as holders of certain rights, the legal analysis of naming becomes clearer. Parents have the right to give their child their favorite name. When they do so, neither the government nor the child will have the right to protest. This approach is widely seen in Iranian judicial practice. Iranian judges generally believe that when a father chooses his child's name, no objection to his action will be heard. In particular, the name chosen by the parents is written in an official document, and sealed and signed by a government representative. Due to the importance of the official document and the need to maintain its validity, protesting the parents' choice of an inappropriate name means protesting the official document. This protest is hardly accepted in principle. Changes to the contents of an official document may not be made, except if by law and by legal authority through due process. As a result, after a name is chosen by the parents, neither the government nor the child has the right to change the name.

However, granting absolute authority to parents may violate the public interest if the name chosen by the parents may be contrary to the child's interests. For example, parents may choose a name that embarrasses the child. For this reason, parental rights should be restricted. In the Iranian legal system, this restriction would be based on the theory of prohibition of abuse of a right. It is true that parents have the right to name their child first and foremost. However, as is the case with any other right, they are not allowed to abuse it. Therefore, if this right is exercised contrary to public order or morality, or causes harm to others, the State is permitted to intervene and enforce certain prohibitions. According to Principle 40 of the Iranian Constitution, "[n]o one can harm society or another by using his or her right." Although parents are officially recognized as holders of the right to name, they face bans if they do not follow the legal rules of public order. Accordingly, they should choose a name that is consistent with the child's gender, social status, and local culture. They also should not choose obscene names that violate the inherent dignity of the child.

Given the child's inability to defend his or her interests, he or she needs legal protection. Accordingly, in some cases, government intervention on behalf of the child is necessary. In this approach, choosing an inappropriate name is akin to other forms of parental abuse. Thus, the government must infringe on the parents' freedom and privacy and intervene on behalf of the interests of the child because there is an objective, legitimate, and reasonable social benefit. If it can be proven that parents have chosen a name that causes harm to their child, they should be prevented from doing so.

IV. THE RIGHT OF THE CHILD

Iran's legal system has ignored the child's right in the naming process, instead placing full emphasis on the role of the government and parents. However, the right of the child to have a proper name should not be overlooked because the name accompanies the child for the rest of his life. Inappropriate naming may lead to humiliation and ridicule of children in social environments for many years, and it may have adverse effects on the child's development and socialization process. Therefore, the government's intervention in regulating and ensuring the child's well-being and socialization is justified as a matter of public concern.

In addition, the basis of the child's right to a proper name is his right to identity, which is recognized and protected by law. This right belongs to the child but is delegated to the parents due to the child's young age. The fact that parents choose their child's name does not mean that they exercise their child's personal rights. Rather, they act on behalf of the child. As a result, they must respect the rights of the child. Accordingly, if parents choose an inappropriate name for their child, the child will have the right to object to the name and to choose an appropriate name for himself once he reaches legal adulthood.

This principle is consistent with beliefs in the Islamic legal system. In the religion of Islam, choosing a good name is regarded as the right of the child and the duty of the parents. The significance of this issue is shown by a separate chapter in the Islamic texts called the "Chapter of the Name." This chapter contains a quote from religious leaders that advises parents to choose an appropriate name for their child.

Despite this, Iran's Constitution and its laws, such as the Civil Code and the Registration Code, do not recognize the right of a child to have a name. In fact, the Iranian legal system is weak on addressing children's rights. However, Iran has joined and therefore is bound by international human rights documents in which these rights are explicitly protected. According to these documents, every child has the right to a first and last name; it is also the right of the child to have his or her name and surname officially registered, in order to maintain his or her identity as a citizen and enjoy other civil rights. In this regard, the child is entitled to a proper name consistent with the values and culture of his or her community, so that the best interests of the child are clearly observed by the parents.

Specifically, international documents emphasize the right of a child to have a name. For example, according to Article 24(2) of the International Covenant on Civil and Political Rights, ratified by the United Nations General Assembly in 1966 and by the Iranian Senate in 1976, "[e]very child should be registered immediately after birth and have a name." Additionally, according to Article 7(1) of the Convention on the Rights of the Child, ratified by the Iranian Parliament in 1993, "[t]he child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality. As far as possible, the right to know and be cared for by his or her parents." Article 7(2) of the Convention further provides that "states parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless." Finally, Article 8(1) of the Convention also emphasizes that "state parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."

Although Iranian law does not treat the child as a rights holder, courts tend to support the child's rights and interests. Accordingly, wherever a person can prove his legitimate interest in changing his current name, the courts allow him to do so. This approach is mainly based on the Convention mentioned above.⁴

Iranian courts also refer to two religious principles. The first is the "prohibition of detriment" rule, which provides that whenever a religious or legal ruling causes unnatural harm, its execution is canceled. According to the second rule, named the "negation of distress and

⁴ See, e.g., vote no.: 4/2/91-0082 issued by Branch 123 of Tehran Public Court, date: 23/4/2012, retrieved from Iranian Nat'l Jud. Sys.: <http://raay.ijri.ir/Judge/Text/407>; vote no.: 73/278/18 issued by Branch 18 of the Supreme Court; vote no.: 236/1370 issued by Branch 25 of the Supreme Court. To study other votes, see: YADOLLAH BAZGHIR, JURISDICTION AND ITS JUDGMENTS IN CIVIL AND CRIMINAL MATTERS (2001).

constriction” (La. Haraj), whenever a religious or legal ruling causes a person to have a difficult task, he or she will be exempt from that obligation.

According to Iranian jurisprudence, a child may rename himself if the original name causes him harm, or if his name causes him to be in a situation that it is generally difficult to endure. Courts allow this renaming to provide relief from existing laws that advocate for the stability of a person’s name. In one case, the court stated that “addressing a person with a name that is not desirable has created psychotic effects in the individual that would not be favorable under the rule of Islam.”⁵ In another case, the court concluded that “when a person is having difficulty using the name on the birth certificate, the Islamic religion has not created a bar to changing the name according to the rule of La. Haraj . . .”⁶

This approach seems to be valid. A child has the right to a proper name, which may affect his whole life and influence his personality development. Parents choose the name on behalf of the child. Therefore, if the name is not compatible with the child’s interests, the child should be allowed to be renamed. In this respect, the reasoning of the Iranian courts in citing both international documents and jurisprudential principles seems correct.

V. CONCLUSION

There are three approaches to considering a child’s right to their name in relation to the system of fundamental rights and human rights. One approach highlights the role of government in the naming of individuals. It cites the public interest of society and believes that the government, as the guardian of public interest, should be involved in the naming process. The second approach emphasizes the role of parents. It introduces choice of name as part of parents’ rights, citing family privacy and the right to freedom of expression by parents.

This article addressed the issue of naming as a child’s right, a third, newer approach. Specifically, the article introduced the right to have a name as part of one’s identity and civil rights, arguing that no child can be deprived of that right. The basis of this argument is that every individual has the right to a legal identity and a recognized legal personality before the law. Beyond these rights of identity, this article also addressed the need for children to have legal protection and to secure their best interests. Accordingly, the right to choose a name belongs primarily to the child. Naturally, given the child’s legal incapacity, this right is initially vested in the parents.

In exercising this authority, parents must account for the public interest as well as the interests of their child. To ensure parents’ respect for the public interest, the government has banned the selection of some anomalous names. Additionally, if the name chosen for the child is not in the best interests of the child, the child may change his or her name once he or she has acquired legal adulthood. Iranian codes do not allow such action by a child, but this practice is well accepted in the judicial process for protecting the child’s interests and on the basis of certain religious rules.

⁵ Vote no.: 28/5/92-367, Branch 41 of Tehran Public Court, date: 19/8/2013 in class case: 92/41/600147, retrieved from Iranian Nat’l Jud. Sys.: <http://raay.ijri.ir/Judge/Text/4912>.

⁶ Vote no: 9109972164500861, Branch 220 of Tehran Public Court, date: 7/1/2013, retrieved from Iranian Nat’l Jud. Sys.: <http://raay.ijri.ir/Judge/Text/4313>.

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