

The analysis of province, custody, and trusteeship legal institutions from psychological view

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Abstract :The civil and particularly civil law is one of the most applied fields of human sciences in humans' lives, and it can be stated that the human communities will desperate without it. Nonetheless, law science needs alignment with the present changes according to the social changes and the sciences growth to have proper responses to its era's needs. One science in more relationship with the civil law is a psychology to approve more efficient laws using the related psychological findings to human. The objective of this research is analyzing the province, custody, and trusteeship legal institutions from a psychological view to find more precise cognition in the psychological field about the present laws in this research. The most important obtained result from this research is that the province, custody, and trusteeship legal institutions don't adapt with the psychological findings completely, and it can be claimed that the proposed laws of the legal institutions need to be revised by legislators according to the psychological findings.

Keywords: province, custody, trusteeship, legal institutions, psychological analysis

INTRODUCTION

Family as the apparently small social unit is the principal pillar and the main institutions of each community. Actually, each family must be known as the brick of the society building and the base of training though, morality, and excellence of the human soul. Law has considered supporting families and consequently orphans because of the physical and mental strength in various cases. Supporting an orphan is sometimes presented in invalidity or lack of their legal acts penetration. The predictions of province, custody, executorship, and trusteeship institutions to grow and protect orphans by parents or other legal individuals are also the samples of legal supporting for orphans (Safaei and Ghasemzadeh, 2003, p: 6). Province in the family relationships means the given authority by the legislator to provide his/her financial affairs and sometimes behave the orphan, and it is forcible which means is compulsory and. The civil law has attributed the compulsory province just to the father and paternal ancestors following Imamie Jurisprudence (Katuzian, 2004, vol.2, p:202). It is stated in province subject that orphans need protection and care as they are disabled of providing their needs. The civil law has assigned this duty under the title of "province" to the parents. Province observes the physical and body protection of underage and insane not the financial and non-financial affairs management and does the legal acts by the incapable person (Jafari Langerudi, 1998, p: 216).

The guardian in trusteeship subject is the legal representative of the incapable who is determined by the qualified judicial authority in absence of the compulsory guardian or testamentary guardian. The clear provisions of article 1218 states who need to have guardian are the incapables not having a specific guardian. Therefore, if there is no assigned compulsory guardian or testamentary guardian for them, the court will determine guardian for the orphan (Jafari Langerudi, 1999, vol. 4, p: 2973). It is pleasing that Iran legislator has always emphasized on the human rights particularly for orphans by leaning on the rich Islamic resources and has established the flow of human rights as the most suggestable social issue in legal issues by joining to the International Convention on the rights of the orphan in 1994. Modifications of legal clauses of 1173, 1169, and 1041 of civil law as well as approving orphan abuse act in 2002 are some attempts in this field; in addition, in spite of the problems in the family support bill, it has focused on the legal and judicial dilemma. It has predicted right to litigate for mother in recent assumption. It is written in the deducted bill, clause 7 from the government to the Islamic Consultative Assembly that "mother or any other person as responsible of protecting an orphan or the incapable person essentially has right to ask for the right to litigate for the incapable person in spite of not having trusteeship". The related laws to

the province, trusteeship, etc. to supervise orphans and people in various ages are executed correctly when they are tied to the correct cognition of patents and society about human behavior and personal growth condition. In addition, the resent laws must be modified according to the losing the foundation of the patriarchal family, the increasing prevalence of the nuclear family, and the raising knowledge levels and intellectual development of women in society.

It is essentially based on the mentioned matters that laws have comparative and interdisciplinary studies to make Iran civil laws more efficient, scientific, and updated to respond to the social needs properly in today world. In other words, this research needs psychological studies in a part of Iran civil law to obtain more precise cognitions in psychology about the laws and this research subject. In addition, this research makes the related laws to the legal institutions more efficient and province some suggestions to improve the laws in the present society. It is investigated in this research whether civil laws and other legislation of the province, trusteeship, and custody institutions adapt to the psychological findings based on psychological aspects or not.

Definitions of concepts

This part defines the lexical and expressions the terms province, custody, and trusteeship.

Province

Lexical meaning: province lexically means to govern, dominant, companion, help, find, and conquer. Compulsory lexically means forcible and emergency. Province lexically means supervisor, government, and rule, dominate, and find a friend, involved with the action. The owner of Bolq Al-Faqih differed the lexical definition of the province by the different pronunciation of Va or Ve and wrote: "province lexically with Va pronunciation is infinitive and means victory and monotheism and when it is pronounced by Ve, it means ruling and commanding." However, its roots from "Vali Yali Valian Felanan" means gets close to that person and "Valif Yali Valiyan" means his/her guardian and ruler. The term in Arabic "Vali" and "Velayat" and other derivatives such as "Oula", and "Moula" are stated in the Arabic language as two things beside each other without any gap between them. The dead Bahr Al-Olum stated about province that province means the rational and legal governance in the existence, properties, or both than another person on own or by others, and the author of Ketab Al-Mofassal stated province as "province is law in terms of personal power by manipulating or rubbing your valid or binding on either the person or property of another". In province law, the compulsory or legal representative is a group of people must get the control than the others for the weakness or insolvency of their civil affairs such as father, ancestor, or the assigned testamentary guardian by them. The compulsory guardian is the selected one by the holy canon law and law for supervision and administration of incapables' properties including father and paternal ancestor for the orphan to reach the maturity age and for insane and madman whose madness and foolishness is connected to orphan even after his/her maturity (Katuzian, 2003, vol. 2, p: 241-202).

The idiomatic meaning: the province is interpreted in the civil law book of Dr. Hassan Emami: province in the legal expression means the given dominance and powers to a person by law from some reasons to do another affair and who has this rank is called guardian. Guardian is divided into 2 parts: the common guardian and specific guardian (Emami, 1997: vol.5, p: 202).

A: common guardian: he does the related affairs to the public in law limits. The governor is the common guardian and he was assigned to this rank by the qualified legal authority. now, the governor status is for magistrate and prosecuting attorney and the definite legal affairs are assigned for them such as presumptive death sentence, divorce decree of the absent missed person, stone sentence, determination of guardian to protect the insane properties, determination of the secure person to do the affairs of the absent person, embryo, and so on in the command of article 16 of law of principles of the judiciary. In addition, the administrative duties of the magistrate are protecting the orphans, insane, and the absent missed the person and protecting the heritage if absent or the heirs are not clear and so on.

B- Specific guardian: the specific guardian does the related affairs of a specific person in the legal limit. The specific guardian is stated in article 1194 of civil law: "father and paternal ancestor, and the attributed guardian by them are called the orphan specific guardian." A person who the specific guardian protects him/her is called pupil. Therefore, the specific guardian is divided into 2 groups. The first group is the compulsory guardian including father and paternal ancestor. Law knows the compulsory province for father and paternal ancestor following Imamie jurisprudence and mother is deprived of this right. This social fact is among the Imamie jurisprudents. The second group is the selected testamentary guardian for testator after his/her death in doing actions which he/she could do such as debts payment, one-third dismissal, its usage and keeping for the pupil, managing his/her assets, and so on (Emami, 1997, vol. 5, p: 203) In this regard, father and paternal ancestor have right of a province on the child. If

there don't exist, the assigned guardian (testamentary guardian) by one of them will become the guardian, and if the three are not, guardianship is by the governor, if not the faithful Muslims can be a guardian. Father or a paternal ancestor (to up) independently (without the permission of another person) manage the pupil affairs and do as the child representative, no one is prior to another one, and their possessions are valid if there are no corruptions for the orphan. Therefore, the compulsory guardian is determined by the act of law and gets their rank directly from the law and his/her guardianship is a social and family duty. In other words, it is compulsory not to volunteer. It may be called compulsory maybe for this reason. Even some lawyers defined the compulsory province instead of the mandatory province (Emami and Safaei, 1995, vol.2, p: 169).

Custody

Lexical definition: custody has Arabic infinitive of Hazan, Yahzon. Yahzon in the Arabic language means the distance between underarm and thin part. In other words, it was breasts and two arms, and what we have between the chest and armpit. In other words, it can be summarized as the hug. Therefore, custody is infinitive and means covering the chickens under the wings. If we use this meaning for human, custody is defined as hugging and behaving a child. Custody is by mother and father who take care of the child (Nazari Tavakoli, 2012, p: 131).

Therefore

The main pillar lexically is protection and guardianship. Therefore, custody can't be known as protecting a person who is independent on his/her tasks because the custody result is taken from its meaning.

Custody lexically is a general meaning including child and non-child. Although, the most significant example is protecting child so its meaning about the child guardianship and custody doesn't seem correct because it is not comprehensive.

Behaving is not involved in the custody concept; although, the necessity or result of custody means his/her behavior. Therefore, knowing custody as behaving is not correct even if this claim is for the lexical meaning.

Custody lexically is not just attributed to the child and contains anyone needs supervision and nursery such as insane and fool. Custody lexically means protecting a child but what tasks are considered as a child protection is based on common sense. Therefore, attributing the title of behaving in the custody concept doesn't have jurisprudence validity unless we claim that a person take the responsibility of another person's custody is also responsible for his/her behavior, but this claim is not valid in custody of an insane in its moral concept. It can be stated that custody lexically includes protecting a child and in expression has a different meaning. Some Imamie jurisprudents defined it as "custody is dominance and province on a child behaving and its belongings such as protecting, putting in bed, making near, washing his/her cloth, applying kohl, and so on (Katuzian, 2009, p: 139). Mohammad Jafar Jafari Langerudi in a detailed book about law terminology said about custody:

Custody lexically means growing and in the civil expression means growing children. Custody by parents and relatives is both right and duty and grow is both according to material and ethical and spiritual aspects. Custody in expression means material and spiritual maintenance of the child and raising and supervising the child by parents or who law assigned. More simply, custody means protecting and behaving child, referring to the doctor for his/her treatment, paying the education costs, etc. are the common actions to protect the child. The common expression of custody in society is protecting and supervising by parents but the concept of this issue must be legally determined more precisely. According to my idea, custody is considered as a right traditionally based on parents commitment to protect children. However, custody has the legal nature more than being right from a legal perspective because supervising a child is executed correctly. In addition, cases such as treatment, financial and nonfinancial affairs are parents' duty, and parents are responsible to execute them based on the determined duty in law (Jafari Langerudi, 1999, vol. 4, p: 2973).

Trusteeship

Lexically meaning: it trusteeship means supervision and being a guardian. Trusteeship and trusteeship both are false infinitives and have been used in this meaning. Trusteeship is the false Arabic infinitive that is repeatedly published in Persian texts. Trusteeship lexically is called to who exists or related affairs to the existed person (Jafari Langerudi, 1999, vol 4., p: 2973)

Idiomatically definition: guardian in the legal expression means who is selected by the court at the request of the prosecutor and to protect the incapable ones. It means protecting in lack of father presence (father and paternal ancestor, and the selected guardian) and the response of the incapable one's assets. In Islamic law, trusteeship is a type of general province of the jurisprudence governor in Imamie jurisprudence. Whenever the incapable ones don't have a specific guardian and no full-competent Mujtahid for his/her affairs, most believers can supervise the

incapable ones, and each of them alone or by other participation can act in this regard by considering the incapable ones. "Guardian in legal expression means the specific compulsory province which is a father, parental ancestor, or the assigned person by them for a child or immature and insane person whose growth or insanity is zero. The province on whose characteristics are as mentioned is called guardian." Guardian lexically means "direct, correct, and balanced" and in legal expression is who is selected by the court or ruler to supervise and preserve the incapable person assets who don't have a specific guardian. When an incapable doesn't have a specific legal guardian and guardianship is assigned to another person by the court, his province is called trusteeship which has specific regulations (Jafari Langerudi, 1999, vol. 4, p: 2973).

Hassan Emami wrote about the civil laws that guardian is who is selected by court to supervise the incapable and protect his assets in cases that don't have father, paternal ancestor, or another assigned person by the legal governor or a specific person who is selected legally by deputy chancellor of justice (Emami, 1975, vol. 5, p: 292).

Investigating the legal institutions of province, custody, and trusteeship from the psychological view
The legal institutions of province, custody, and trusteeship were comparatively studied from the psychological view.

Province

The province issue is studied from a psychological view from 4 aspects of the father province on the child, related laws to the the guardian responsibilities and duties, the related laws to the age and gender of the child about the province and exclusivity of the right of the province for the father and parental ancestor on the child.

The compulsory guardianship of the province of father and paternal ancestor

The legislator has assigned the province right to the father and paternal ancestors which is considered as the most important and principal right on the child. Articles 1180 and 1181 of the civil law have assigned the province right of the immature child to the father and paternal ancestors. Although the mother is a parent and must be known as the "guardian", the father is known as the "specific guardian" or "compulsory guardian" and the child as "pupil" because the law has given the specific province law to the father (Katuzian, 2004, vol 2, p: 202).

The compulsory province of the father on the child is an issue that must be investigated from the psychological view to indicate the adaptation of this issue with the psychological issues. The compulsory province of the father on the child can be stated as whether the compulsory province of the father is confirmable from the psychological view or not?

According to what is about the parenting types in the psychological theories particularly the ideas of Diana Baumrind, father must be powerful but not self-willed (Bark, 2008, vol1, p: 482) and assigning the compulsory province to father can make him abuse his status, and having the compulsory province for father is not essential for child behavior because father must be moderate in giving coercion and authority to the child as the child can grow well. From another view and based on various psychological ideas, the compulsory province on the child can bring the following problems: a- father may abuse his status; b- father may not have the proper cognitive and psychological competence to province or supervise the child and yet is selected as the responsible of child supervision; c- father is opinionated and authoritarian and not consult with the mother of the child to supervise her/him and make the improper decisions for the child and his/her future.

Therefore, it is concluded that the related laws to the compulsory province is not without mistake and need revision. In this case, the compulsory province is taken from the father or generated to the child mother.

The responsibilities and duties of the guardian

The father province on children mostly supervises on the life economic aspect of the child. The responsibilities like supplying the necessary costs to keep like food and clothing and expenses related to education, recreation, progress, etc., referred to as alimony that is stated in Article 1199 of the Civil Code, are all the effect of the father province on the child which dominates on its assignment aspects. Based on the province right, the right of the child assets and properties are by father and paternal ancestors. This case is documented to article 1183 of the civil law since the child is immature and is not called adolescent. Father manages the child assets (Emami, 1997, vol5, p:202).

It can be stated about the subject of "father economic management and supervision on h child and the father economic province" that this subject isn't so much related to the psychology and this subject can't be discussed psychologically. However, it is to be noticed why the legislator has emphasized on the economic issue of the child above all?

Although this issue is important, the other issues such as mental security and mental health are also important that must be considered by the guardian. There are some criterions for the father psychologically for

treatment such as being powerful based on treatment (that was proposed in Diana Baumrind view) (Bark, 2008, vol.1, p: 482). Moreover, it can be confirmed by physiological tests based on physiological health. Psychologically, when the father has a proper physiological condition, he can have a proper province, too. Therefore, this point can be mentioned here that the legislator can mention the physiological condition of the father in decision making about the province and not just rely on the father supervision.

Age and gender of the child in the province discussion

According to article 1210 of the modified civil law in 1991, growth age for son is 15 and for daughter is 9 luminary years and father can do what he thinks advisable about the child, the child, make a transaction for him or from his own funds, economic exploitation, or financially for the child to sell his property and sell the property to his or her own sake and for the interest of the child to invest or do other things (Emami, 1997, vol.5, p: 202).

About the issue of "father province on the boy to 15 years old and daughter with 15 years old" that was mentioned previously, mean the discussion about the mature age of boy and daughter and based on what has mentioned in the psychological literature, several points must be mentioned and studied here¹.

A- The maturity of a child is different in law with physical maturity, as well as rational or cognitive-psychological, and, as the legislator finds out, intellectual maturity is considered the same as physical maturity. In other words, the law didn't pay attention to the other aspects of maturity like intellectual, social, and cognitive maturity.

In other words, according to the life view, and other psychological views like Piaget's cognitive development, or psycho-social development of Erik Eriksson, the child doesn't have the adolescence characteristics even in tee age and is not able to make explicit and accurate decision like them, because the teen's age is one of the turbulent, emotional, and exciting age with intellectual mistakes and weak foresight.

For example, it is defined in the sexual view of Erik Eriksson about teen's age as identity against confusion: teen asks who am I and what is my status in the society? He answered 11-18. In addition, Piaget knew that teen's age is since 11 years so on that teen can imagine fantasy and get better reasoning power (Shamlu, 2003, p: 75). According to the two mentioned views above, it can be claimed that the maturity age must increase both in boy and girl up to 18 years as they can find better cognitive and mental power.

The exclusivity of the right of the province to father and paternal ancestor

It is seen in laws that mother can't be a specific guardian of the child at any case and the right to province and right to the province is just at freedom ad authority level, not compulsory guardianship. If a child doesn't have a father or paternal ancestor, the mother can be determined only as the guardianship under the legal rights. Consequently, the economic and financial aspect responsibilities that are only under the decision of father will find another condition (Emami and Safaei, vol. 2, p: 170).

This question is occurred by these assumptions that according to the emphasis on the economy in the province that is limited to the father and paternal ancestor, can anyone from the child family be the guardian of the child who has the power of supervising the child?

Law says that the province is right to falter and paternal ancestor at first. Here, the mother of the child is not the priority. Since the mother has an important and significant role in behaving the child and her effectiveness is relatively more than father psychologically, can't she have the right of the province of a child beside father? If the issue is economy, income, and financial power, many mothers and women in today condition of the society have financial and economic power and are more proper than any other one for the province of the child, so can't she have the priority of the right the province of the child. The psychological issues conserve this right for mother. Since the child attachment to mother is very intensive based on the psychological view like Bolby, this view says that the child attachment to mother and its quality are so effective in the future of the child (Bark, 2008, vol.1, p: 345). This view even prioritizes the mother right to father's. Therefore, it is essential for a legislator to mention the priority of mother based on a psychological view of the province and trusteeship and revise the laws.

It can be claimed based on the studied legal points from the psychological view that the civil laws regulations and other regulations about the father province on the child are not fully but relatively adapted with the psychological findings so regulators must try to change the related laws based on the findings of this research.

Custody

The custody can be discussed psychologically based on three aspects of father or mother prioritization about the child custody, the competencies, and characteristics of the custodian, and the related laws to the child age.

¹ For more information, refer to Bark, 2008, vol. 1, p. 70 so on

Prioritization of father or mother for child custody

Custody of child means protecting a child and based on article 1168 of civil law, "protecting children is both duty and right". Custody usually observes on the maintenance of the child body; nonetheless, custody includes upbringing a child and based on article 1168 of the civil law, "protecting children is both duty and right of parents." The custody is mostly an observer on the child body although custody generally includes treatment, too. Therefore, parents are mutually responsible for treating their child in a lifetime. The custody age for daughter is 9 and for son is 15 years old. This matter starts when parents get divorced that have 2 models:

A- When mother or father died, based on article 1171 of civil law, "If one parent died, the child custody will be assigned to the alive one." Even if the died-one was the father and determined the guardian for the child." Therefore, if the father died, the child custody is by mother, and no one is legal to abolish this right of the mother even the grandfather.

B- The second model is when parents got divorced. In this case, based on article 1169 of civil law, the mother is prioritized up to age 7 years old then the custody is by father. Based on the note of his law, if a dispute occurs, the court recognizes to give the right of child custody to whom (Katuzian, 2009, p: 139). This question can be asked according to the mentioned matters which parents can be more competent for the custody of the child?

According to the mental-psychological view of Erik Eriksson and psychoanalysis- sexuality view of Freud and other views, such as John Babylon's attachment view, etc. which are about the human attachment and his social and mental growth that searched more and offered theories, it can be claimed that the impressionability and attachment of child to mother is more than father and this is more in lower ages. The younger the child is, the more attaches to the mother, and this attachment will be high to the end of elementary school age (Bark, 2008, vol.1, p: 345). Therefore, it can be claimed that the mother is more competent than a father for child custody. Of course, father as the mother and child supporter and also his gender and security roles and models can lead to the better growth of the child.

Although Iran law has mentioned about the child custody by mother, it seems necessary to have more attention and give this right to mother at least to the end of elementary school age because the mother is more needed for a child according to the psychological issues.

Competence and characteristics of the custodian

What is important about the child custody after divorce is the child expedient. The court is an observer on child custody if a dispute happens among parents. In this regard, article 1173 of civil law says that "whenever the physical health or moral treatment of child is endangered for lack of parents' maintenance or moral degradation of a father or mother whose child is under their custody, court can make any proper decision for the custody of the child based on the demand of the child relatives, his/her guardian, or demand of courts of justice head" (Katuzian, 2009, p: 139).

The following vases are the exemplifications of lack of parents' maintenance or moral degradation:

1- Addiction to alcohol, drugs, and gambling; 2-having moral corruption and prostitution; 3- catching to mental illness with forensic diagnosis; 4-abusing the child or obliging him/her to enter to the anti-ethical jobs such as corruption, prostitution, smuggling, and begging; 5- repeated assaults out of the ordinary level.

Therefore, when a father become the custodian of his child after his/her 7 years age, the court will abolish this right of father and give this right to the mother if the father acts against the child expedient and court proves the disruptive behavior of the child's moral education or physical integrity (unless the mother is not competent to be custodian of child e.g. Forces the child to the anti-ethical jobs like smuggling, begging, corruption, or prostitution) (Katuzian, 2009, p: 139).

The legislator has very good restrictions on the first step of child custody on the guardian which is about the child maintenance and even can act independently along with the child expedient. It is also referred to as laws that the custodian mustn't be mentally ill. Nonetheless, it hasn't referred that who want to get the child custody must have the psychological competencies and characteristics. In other words, there are different types of guardians in parenting styles based on Diana Baumrind idea and psychology view, and the best parent is who has powerful characteristics (Bark, 2008, vol.1, p: 481). Thus, isn't it possible to select the better person for child custody by this criterion? So it can be stated based on the mentioned psychological view that the psychological issues were entered in the related laws to the child custody and they must be used more (it was more explained in the issues of province and about the psychological competences of the guardian that the same characteristics can be named for the competence of the custodian of child).

Related laws to the child age in custody subject

Article 1169 of civil law approved in 1925 prioritized mother for child custody up to 2 and 7 years after birth for son and daughter, respectively. The modification of this law on article 1169 of civil law in 2003 and it's not increased mother custody time up to 7 years for a son and for an increase this time can fight with the father and obligate the court to determine the duty of custody with the best interest of the child. The civil laws don't explicit the custody time end but indicated all rules of custody to the immature for all cases by indicating "child" must be immature (Nazari and Tavakoli, 2012, p: 134).

Therefore, if there is a conflict between parents for child custody after the divorce, how can act based on the psychological views and which age is proper for mother and father to take the responsibility of child custody?

As it was previously mentioned, the mother is prioritized than father for child custody based on the psychological views because the child attachment to mother is higher. It is better child stay beside mother to the elementary school age based on growth psychological views (particularly Bolby attachment view) to get the needed love and benevolence from mother (Bark 2008, vol.1, p: 345). Of course, more custody time by mother depends on the financial condition of mother that if not supplied, father is prioritized. Anyway, the mother for child custody for up to 7 years is not enough psychologically.

It can be claimed based on what has mentioned that the regulation of the civil law and other references about other custody to 7 years old of child and then father custody are not fully adapted with the psychological findings based on psychological aspects.

Trusteeship

Trusteeship can be discussed and studied based on the psychological view from three aspects of the related laws to the conditions and characteristics of the executor, related laws to the executor duties, and related laws to the child age and gender.

Related laws to the characteristics and conditions of the executor

Executor in the judicial courts is called to whom is selected by the judge to maintain the insane or small or immature child and is so-called dominant representatives. Based on Islam laws, if an executor is selected for a small Muslim child, his/her executor must be also Muslim. In addition, the executor must be wise, mature, insightful, and aware of the intended subject. The executor must have full familiarity, ethical competence, and reliable. In addition, it can be claimed regarding the criterion of article 1192 of civil law about guardianship that if the incapable is Muslim, the non-Muslim executor can't be selected. In addition, based on article 1231 of civil law, the following people can't be determined for trusteeship:

- 1- People who are under the trusteeship of another person.
- 2- People who are sentenced to the verdict for committing a crime or one of the following cases: robbery - betrayal in trust - fraud - embezzlement - the abduction of honor or affection - child abuse - bankruptcy to a fault.
- 3- People whose bankruptcy verdict is published, and their bankruptcy haven't been yet settled.
- 4- People who are famous for moral corruption.
- 5- People who or their close relatives have a conflict with the small child (Jafari Langerudi, 1999, vol.4, p: 2973).

If the relatives are competent to be the executor are prioritized than others and the court will determine one or several of them for trusteeship. Father of child or mother, or don't have a husband, are prioritized than others if have competence. If the wife is incapable, the husband of the wife is prioritized than others of has competence. According to article 1233 of civil law: "wife can't accept the responsibility of child trusteeship without her husband' satisfaction" (Jafari Langerudi, vol.4, p: 2973).

The legislator can select a person except for the child parents for the guardianship under specific conditions. This issue shows that legislators are in thought of the child welfare under any circumstances. The considered importance by the legislator about the child is very important as the child guardianship is very important in psychology because childhood is the most sensitive lifetime of a human². In addition, the court will strictly enforce the duties by the guardian and may determine the supervisor which is very important psychologically that the executor is a competent person or not and the competence of the executor is important for the court.

However, it is to be noticed here that the issue is about the psychological competence of the executor. As it was proposed in province issue, it is needed to pay attention to the psychological characteristics of the guardian. The legislator attends to the supporting and guardianship laws of a child about the guardianship issue. However,

² Karami Nuri R., 2000, educational psychology, first publication, Tehran, p: 43

the psychological competence is not seen at all in the executor characteristics. The legislator states based on article 1231 of civil law that the executor mustn't have one of these characteristics to be competent:

1- People who are under the trusteeship of another person. 2- People who are sentenced to the verdict for committing a crime or one of the following cases: robbery - betrayal in trust - fraud - embezzlement - the abduction of honor or affection - child abuse - bankruptcy to a fault. 3- People whose bankruptcy verdict is published, and their bankruptcy hasn't been yet settled. 4- People who are famous for moral corruption. 5- People who or their close relatives have a conflict with the small child.

It can be claimed based on article 1231 which talks about the characteristics of the executor that the legislator doesn't intend for the psychological discussion of the executor. The mentioned characteristics may influence on the mental health and psychological competence of the executor but it can't definitely guarantee the executor mental health. Therefore, the researcher believes that the related law to the guardianship must be revised like the related laws to the province and more efficient laws must be included in law texts based on the psychological issues for more improvement of the immature child. In other words, the related laws to the psychological and mental competence must be considered beside the other mentioned characteristics in the related laws to the executor competence.

As it was mentioned about the issue of father province and guardian, the psychological competence of the executor can be determined by various methods to guarantee the proper treatment and supervision for the small child. The determination methods of psychological competence include various psychological tests proposed in the province such as psychological tests of personality, parenting, intelligence, etc.

Related laws to the executor's duties

The executor's duties are determined by civil law and non-litigious law that depends on the selected affairs for that executor. For example, if they are to manage the properties, it has a specific law and if for treatment, it follows its specific law. Laws are complete with some exceptional cases that the other always must be used. According to law, the executor can take possession of the movable property but for the non-movable ones, the permission of the prosecuting attorney is needed. If the small child grows to the mature age, all the movable, and non-movable belong to him, and if he/she complains about the performance of his/her executor who didn't consider the expedient, he/she can complain to the legal centers. In this case, the executor can claim that has considered the expedient in protecting the properties. By referring to article 1235 of civil law:

"The protection of the pupil and his/her legal representatives in all properties and financial rights are by the executor." Another point that must be certainly considered by the executor in properties management is compliance with envy and expedient of the incapable person. The executor must prevent the harmful actions for the incapable (Katuzian, 2008, p: 744).

Undoubtedly, the executor performance health is not possible without the supervision of his/her performance. In order to ensure the protection of the pupil, the law predicted that the prosecuting attorney can determine sooner as the supervisor on the executor performance. Article 1247 of the civil law must be considered about this case that says: "the public prosecutor may assign the supervision of the affairs of the pupil, in whole or in part, to reliable persons or to the board or the institution. The supervisor person, institute, or board that was determined to supervise on the determined actions will be the responsible. In case of fault or betrayal, the student will be liable for the damage to the pupil in case of fault or betrayal" (Katuzian, 2009, p: 745).

The executor duties in the related laws to the trusteeship are indicated that the most important ones show the protection which can be determined in various forms by the court. This protection can be in the educational background and financial supervision. However, if more focus on this case, nothing is mentioned about the correct parenting and mental health of the executor for the proper supervision and accurate treatment and this is revisable and examinable here, too. Legislators can insert the psychological issues in the issue of the executor. In other words, if the related laws to the executor duties include precision in parenting based on the psychological view and findings like Freud psycho-social or Jean Piaget's cognitive view as well as the related views to parenting like Diana Baumrind parenting view (C. Carbon, 1996, p:68). This issue and psychological discussion are not observed in the civil laws about the trusteeship.

Related laws to the age and gender of the small child about the trusteeship

The concept of "immature" is used opposite to "mature" and who hasn't reached to the adolescence is called immature. The concept of immature is similar in jurisprudence and civil law. However, based on the removed article of 1209 of civil law, the small is called to who doesn't reach to 18 years old yet. The immaturity is existed by reaching 15 years old for boys and 9 years old for girls (article 1210 of civil law). Immaturity is based on two parts of

audit and non-audit. The non-audit immature doesn't have perceptual power but the audit one has the concept of good and evil and can have the legal will in some cases (Safaei, 2004, vol.1, p: 92).

There are some mentionable psychological points about the age of immature that are so long in agreement with what was said about the father province on the child, and psychology knows the intellectual maturity age different from the physical maturity age and the same for boys and girls. In addition, it is better to determine and increase the immaturity age based on the mental abilities and child decision making power. In other view and what was mentioned about province, it can be stated that age and gender of the immature child like the province discussion needs revision because the psychological view like Piaget cognitive development perspective and the psycho-social view of Eric Erickson show that (Shamlu, 2003, p:75) child smoothly enters to the higher social-mental cognitive growth and several years are need as to be able to make the certain and logical decision. According to the mentioned view about human intellectual and rational growth of human seen in 11-16 years old, he/she can show stronger logic and reasoning. In addition, these changes in two genders are not so much different and can't be confronted like the physical or sexual maturity. Consequently, it seems necessary to change the existed laws about the trusteeship or approving new laws based on the psychological findings and legislators must attend to the psychological findings.

CONCLUSION

The most important result of this research is about the adaption of the related laws to the province, custody, and trusteeship with the psychological findings including;

It can be concluded based on the difference in legal views from psychological view about age in the related laws to the legal institutions that the immature child age in trusteeship, child age in province, and child age in custody must be revised in Iran laws and pay more attention to the psychological issues and increase the age in the mentioned legal institutions.

It can be concluded based on the difference in legal views from psychological view about gender in the related laws to the legal institutions that there is some difference in most discussions in province and custody of boy and girl based on the rational and maturity age and mostly age of 15 and 9 are considered for boys and girls, respectively that need revision as it was discussed previously and is not correct psychologically. Consequently, age can increase and the gap between these two age decreases.

Lack of efficient attention to the discussion of executor, guardian, and custodian in civil law showed that the legislator can use the psychology science in determination of the executor, guardian, or custodian for better growth of child and the legislator knows one of the competence criteria as the psychological competence of parent or the supervisor. It seems that this use hasn't completely entered the civil laws institutions. A researcher here doesn't mean not having mental diseases but means having the psychological competence based on protecting the child and parenting and having the proper personality.

The significant points can be mentioned about the lack of the full adaptation of laws with mother custody on child up to 7 years old and the father by psychological view: as it was stated in chapter 4, the child attachment based on studies are more on mother psychologically and so child needs more years to spend beside mother a gender doesn't play role here, consequently, it can be stated about the age in custody of mother on child that laws need revision and years must increase.

Totally, it can be concluded that the related laws of the legal institution to province, custody, and trusteeship consider many problems psychologically like the competence of the mentioned institutions for protecting the child and more detailed laws like the age of children have mentioned. However, the psychological issues are not completely observed in the laws of the legal institutions and it can be claimed that the legal institutions are completely adapted with on psychological findings.

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