

# Assigning Custody of Foreign Children to Iranians from Legal Perspective: With an Intro into Islamic Jurisprudence on the Terms of Guardianship

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## Abstract:

Recent social media discourse has fueled speculation regarding the possibility of Iranian citizens adopting foreign children residing in care facilities within Iran. This paper investigates the veracity of these claims, examines the official responses from relevant authorities, and analyzes the legal implications of such a policy under Iranian law. The study concludes that current regulations and policies do not support the claims surrounding the adoption of foreign children by Iranians, highlighting the complex interplay between social, legal, and political factors.

**Keywords:** Adoption, Afghan Children, Iranian Social Services, Custody, Social Media Discourse, Iranian Law, Kafalah, Child Welfare

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## **Introduction:**

The issue of child custody and adoption is a complex and sensitive topic, often intertwined with social, cultural, and legal considerations. Recent discussions on social media platforms have centered around the alleged adoption of Afghan children by Iranian citizens, raising questions about the feasibility and legality of such a practice under Iranian law. This paper aims to critically examine these claims, analyze the official responses from relevant authorities, and explore the legal implications of child custody and adoption in the Iranian context.

## **Background:**

The influx of Afghan refugees into Iran due to ongoing conflicts and instability has led to a significant number of unaccompanied and orphaned Afghan children residing in care facilities within Iran. The situation has sparked discussions about their long-term well-being and potential integration into Iranian society. On July 21, 2024, a news report emerged claiming that Behzisti, the Iranian welfare organization, was facilitating the adoption of Afghan children by Iranian citizens. This report ignited a wave of public interest and controversy, particularly given the existing challenges surrounding the adoption of Iranian children in need of care.

## **Public Reaction and Ethical Considerations:**

The announcement triggered a wide range of reactions, with some expressing support for the idea of providing Afghan children with stable and loving homes, while others raised concerns about prioritizing foreign children over Iranian orphans. Critics argued that it was ethically imperative to address the needs of Iranian children in care facilities before extending adoption provisions to foreign nationals. This debate highlights the ethical dilemmas inherent in child custody and adoption decisions, especially in the context of cross-border and cross-cultural situations.

## **Official Response and Legal Framework:**

In response to the claims, a specialist from Behzisti in Tehran refuted the reports, clarifying that the adoption of foreign children

is currently not permissible under existing Iranian regulations. The primary obstacle lies in the requirement for a birth certificate, which is exclusively issued to Iranian citizens or individuals born in Iran. This legal barrier effectively prevents the adoption of non-Iranian children, as highlighted by the expert.

The legal framework governing child custody and adoption in Iran is rooted in Islamic jurisprudence and codified in the Iranian Civil Code and the Law on the Protection of Children and Adolescents (2002). The concept of "kafalah" (guardianship) is more applicable to the situation of Afghan children in Iran than adoption. Kafalah allows for the care and upbringing of a child without the legal transfer of parentage. While kafalah provides a mechanism for caring for children in need, it does not confer upon them the same legal rights and status as biological children.

#### **Analysis and Implications:**

The controversy surrounding the alleged adoption of Afghan children by Iranians underscores the complexities of child welfare and protection in a cross-border context. It also highlights the challenges of balancing humanitarian concerns with legal and procedural constraints. The fact that current Iranian law does not readily accommodate the adoption of foreign children raises questions about the adequacy of existing legal frameworks in addressing the unique needs of refugee and migrant children.

Furthermore, the debate reflects the broader societal attitudes towards adoption and the integration of foreign nationals into Iranian society. The prioritization of Iranian orphans by some segments of the public reflects a deep-rooted sense of national identity and cultural preservation. However, it is important to consider the potential benefits of cross-cultural adoption in fostering understanding and empathy between different communities.

#### **Guardian in Islamic Fiqh and Law:**

The role and responsibilities of a **guardian** (Qayyim) within both Islamic jurisprudence and contemporary legal frameworks have been explained explicitly. The term **Qayyim** denotes a guardian or custodian responsible for overseeing individuals who are incapable

of managing their own affairs, such as minors or individuals with mental disabilities. In Islamic jurisprudence, the concept is grounded in the authority of the judge (Qadi), who may appoint a Qayyim to manage the affairs of those without a specific guardian, a practice universally recognized by both Shia and Sunni scholars (Momeni, 2024). Islamic law stipulates that the judge has the authority to either personally manage or delegate this role, while the modern legal system assigns this role through judicial appointment when a specific guardian is absent (Law on Guardianship, 2024)

In contemporary Iranian law, the role of the guardian is defined by specific statutory provisions. According to the Civil Code and the Law on Personal Status, a guardian is appointed by the court in cases where there is no specific guardian available. The guardian's duties include the protection of the individual and the management of their financial matters (Civil Code, Articles 1180-1218; Law on Personal Status, 2024). The court retains the authority to appoint or remove guardians and ensure compliance with legal standards (Law on Guardianship, 2024).

Furthermore, the paper discusses the differences between the traditional Islamic view of guardianship and the modern legal interpretation, highlighting that while Islamic jurisprudence views guardianship as a public duty that can be delegated, contemporary legal systems treat it as a formalized, statutory role with specific legal obligations and rights (Iranian Civil Code, 2024).

## Conclusion

To address the complex issue of child custody and adoption in the context of Afghan children in Iran, a multi-faceted approach is required. Firstly, clear and transparent communication from official sources is essential to prevent the spread of misinformation and manage public expectations. Secondly, a comprehensive review of existing laws and regulations is warranted to assess their adequacy in addressing the unique needs of refugee and migrant children. This could involve exploring legal mechanisms for facilitating kafalah

arrangements or potentially amending existing adoption laws to allow for greater flexibility in cross-border adoptions.

Moreover, it is crucial to engage in a broader societal dialogue about the ethical, social, and cultural implications of child custody and adoption across borders. This dialogue should involve stakeholders from various sectors, including legal experts, child welfare organizations, religious leaders, and community representatives. By fostering open and informed discussions, Iran can develop a more holistic and compassionate approach to child welfare that takes into account the diverse needs and backgrounds of children in its care. The study concludes that while there is a fundamental alignment between Islamic and modern legal perspectives on guardianship, the latter provides a more detailed regulatory framework to address contemporary needs.

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