

Lineage Influence on Nationality from Islamic Republic of Iran law View Point

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Received: November 15, 2011

Accepted: December 12, 2011

Online Published: June 1, 2012

doi:10.5539/jpl.v5n2p188

URL: <http://dx.doi.org/10.5539/jpl.v5n2p188>

Abstract

Nationality is an important issue in governments' and their national's international relationships. In this article, we're trying to have an examination on the kind of lineage which is considered as a criterion in giving nationality according to the blood principle. What's that kind of lineage? What's the criterion; is it only the legitimated lineage related to the children who were born lawfully? Or natural children who are born unlawfully and illegally can also get the nationality based on the blood principle from their parents, just like legitimated children? The legal lineage has been supported in the Iranian civil law's note 2 of the article 976. In the Iranian nationality code, the supported lineage based on the blood principle is the legal lineage; so the natural child is recognized as Iranian relying on the note 3 of the article 976(based on *jus soli*) in the Iranian civil law.

Another issue to be considered is that, when's the best time to

- A. Coagulate the sperm for the child?
- B. Give birth to the child?
- C. Marriage for the parents?
- D. Considering government's interests
- E. Authorizing the child

Ultimately, different comments and suggestions are considered to observe the rights of both the child and the government.

Keywords: *jus sanguinis*, lineage, lawful, nationality, unlawful

1. Introduction

"Nationality is a political and intellectual relationship which defines the relationship between one person and a specific state." (Nasiri, 2001) they continue to reflect social norms and ethno-cultural customs that have developed over generations (Mateos, 2011)

There are two criteria in granting nationality: *Jus sanguinis* (based on blood or descent) and *Jus soli* (based on birth place). Each of the nationality requisites is not complete in its own, there upon; governments take them together to endow nationality.

One of the important elements in nationality transferring thorough *Jus sanguinis* is the lineage effect on it. The main subject of this research was that if the marriage conditions affect the lineage transferring. And if the children born in or out of wedlock shall enjoy the same nationality transferring based on the legal or illegal marriage, the lineage divided to groups of legal and natural lineage. Iran law in nationality transferring identifies both legitimate and natural children in same situation and with no legitimate limitation grants nationality to both groups. In Iran civil law, article 976, note 2; in nationality transferring by *Jus sanguinis*, only legitimate lineage is considered; but by some explanation, according to note 3 of Iran civil law, we can considered an illegitimate

child as an Iranian national. Another important issue is the time of nationality transferring to child thorough Jus sanguinis system. In this regard some criteria are proposed and some explanations are presented.

2. Definition of Lineage and its Types

The word "lineage" can be surveyed from different points of view; including the general definition which comes as: "the sheer family relationship" and the specific definition which comes as: "family relationship based on blood (hematology)".

There's also a more particular definition which says: "the relationship between the child and parents". From another point of view, there are two kinds of lineage: lawful and unlawful. The lawful lineage has also two types: A) Real lawful lineage due to a legal and lawful marriage B) Appointed lawful lineage in which there's a concept of presence of copulation (Daneshpajouh, 2003).

There's no legal relationship of copulation or any concept of marriage in the unlawful lineage as well. Different of lineage can be summarized in figure 1.

3. Lawful Lineage

According to 2 clause of 976 article of Iran civil law:

"Those born Iran or outside whose fathers are Iranian." considered to be Iranian subjects.

Therefore, a child who's born from an Iranian father is considered Iranian, although his mother is a citizen of another country or even was born in another country. Considering that the legislator always regards a lawful and legal marriage as a valid one, a lawful and legal child is considered as a valid one and thus will be legislated by the legislator unless a new law is legislated.

The lineage is lawful only in case of the parents being legally married when copulated; whether a permanent or temporary marriage. One another of lawful lineage is the lineage relative to sexual inter course through mistake. According to Article 1165 of the civil code of Iran - A child born after such mistaken sexual intercourse will belong to the Party who made a mistake and if both parties were in error child belongs to both of them

Article 1166 - If marriage between the parents of a child is illegitimate owing to the Existence of any legal impediment, the relation of the child to that one of the parents who Was ignorant of the existence of the impediment is legitimate, and its relation to the other Party is illegitimate. If both parents were ignorant of the impediment, the relationship of Both of them to the child are legitimate.

4. Natural Child Nationality

Article 976 in the civil law of Iran is not empty of ambiguities; for example, the one which refers to natural child (illegal child) nationality. Some include this in the note II of the article and as a result, consider the child an Iranian citizen. But most of commentators don't include the child in this note since he/she is an illegal child (Daneshpajouh, 2003).

Therefore, the main reasons behind the dispute refer to different points of view around the consequent influences on the lineage and joining/ not joining of the natural child to his/her father.

5. Lineage in the Iranian Nationality Law

The child will get his/her father's nationality only if he's born legally or is legally considered joined to his father according to the civil law.

According article 1167 of civil law of Iran:

"A child born of adultery shall not belong to the adulterer"

Since the legislature doesn't recognize a parental relationship to such a child, then nationality can't be given to the child through this (Madani, 1993).

So, we can say that such a child can't have an Iranian nationality through jus sanguine.

Thus, nationality through jus sanguine means father's nationality while the child is born. The child's descent to his father must be legal as well (Saljouqi, 1998)

Inspired by Islamic rules, the Iranian civil law doesn't recognize some rights for the illegal children. According to the article 1167 in the civil law, a child born from an adultery has no join with his father; so summing up the notes 1 and 3 in the article 976 of the Iranian civil law which say that all the residential people in Iran are

considered as Iranian except those people whose non-Iranian nationality is certain, and on the other hand, all the people born in Iran are considered Iranian even if their parents are not certain, so as a result we can say that the illegal children whose parents deny them, in case of being born in Iran, fall also into that category of Iranian residents which their non-Iranian nationality is not certain, so they are considered as Iranians, since their parents are not certain and definite (Arfa'enia, 1991).

Notes 1 and 3 of article 976 of the Iranian civil law:

Article 976: The following persons are considered to be Iranian subjects:

Note 1: "All persons residing in Iran except those whose foreign nationality are established if their documents of nationality have not been objected to by the Iranian Government."

Note3: "Those born Iran or outside whose fathers are Iranian."

Therefore, we could say that whenever the law's talking about parents or children, it means legal parents or children, not illegal ones.

From another point of view; everyone has to have a home country and in case of the legislature won't let the illegal child to be joined with his father, inevitably has to determine a nationality for him, and there's no reason to determine a nationality for an illegal child except his father's, because if the right of having father's nationality is taken away, this child has no home country and confirming the existence of people with no home country by the legislature is contrary to his duties (Ameri, 1988).

There has to be a difference between an illegal child who's born from an Iranian father in Iran, and an illegal child who's born from an Iranian father in a foreign country.

Case 1; the child born from an Iranian father in Iran: in this case, Iranian nationality is given to the child; but since the child who's born from adultery is not joined with his father, the child's nationality will be due to the note 1 or note 3 in the article 976, not note 2 which is allocated to being born from a legal father (Azizi, 2009).

Article 976: The following persons are considered to be Iranian subjects:

Note 2: "Those born Iran or outside whose fathers are Iranian."

Case 2; the child born from an Iranian father in a foreign country: it's due to the rules of the place of birth.

There are some criticisms upon this category. For example in case 1, it's based on the soil system, not jus sanguine. On the other hand, the parents of the illegal child may be quite certain and definite; in this case, the child is not considered as an Iranian citizen anymore, due to the note 3 in article 976 and based on jus sanguine as well, since it's only included in civil law's note 3 of article 976 if the parents are uncertain, but in case of revealing that the child is illegal, his Iranian nationality is under doubt.

Due to the article 1167 on the civil law, critics exclude an Iranian father's illegal child from the note 2 in article 976 and only recognize him as an Iranian citizen if he's born in Iran based on soil system, not jus-sanguine. It must be indicated that the subject of article 1167 is exclusively about inheritance in the legal and civil area and is not related to nationality. Since nationality rules are compiled under the influence of the society common rights, it's good to say that nationality follows the international changes rather than Islamic rules. Also, from the Islamic point of view the results would be the same in which there's no difference between a legal and an illegal child in case of transferring the nationality through jus sanguine. Therefore, these children are included in the civil law's note 2 of the article 976. So, these children are a part of Iranian nation and it's not in the government's interests to leave them with no home country or nationality (Daneshpajouh, 2003).

Principals and basis o nationality law is listed as bellow:

- 1) Each person must have nationality
- 2) No person can have more than one nationality
- 3) Nationality is not a permanent and interminable (continual) issue.

Necessity of this principal is rational and logical because people lives in the community and the international order (discipline) required that each person belongs to a community to this rights and obligations identified.

Governments attempt is that identify their nationals by regulative appropriate nationality rules.

This principle 1 is mentioned in the introduction of Hague Convention of Nationality Laws 1930 and the universal declaration of Human Rights.

Although some times may be persons who have not any nationality and referred as statelessness persons one reason of statelessness is the illegal issue.

Therefore resolve the statelessness condition relative to person as well as for conservation of international peace and security is essential. For this reasons, to how very international agreements are set up for prevention of statelessness some of these agreements are:

- 1) Hague Convention on Conflict of Nationality Laws 1930
- 2) Convention Relating to the Status of Stateless Persons 1954

6. Time to Give Nationality to the Child Based on Jus Sanguine

Another issue to be considered is that, when's the best time to Impose the nationality based on the blood principle?

- i. Coagulate the sperm for the child?
- ii. Give birth to the child?
- iii. Marriage for the parents?
- iv. Considering government's interests
- v. Authorizing the child

6.1 The Parents' Marriage Time Nationality

Sometimes it may be considered that the valid time for giving the father's nationality to the child is the date of that marriage occurred. So there's unlikely to consider the date of marriage; since the time of giving nationality to the child and date of marriage are two different subjects. The essential of every marriage is not to have children, and also the time between getting married and having a child is not consistently the same; therefore, marriage could not be a criterion for the nationality status (Madani1993). Moreover, this theory's not comprehensive, since the sperm may be coagulated before marriage and the parents marry after the child is born and so legalize the child- according to the most countries rules-; during this time, the child has no nationality.

6.2 Nationality status during sperm coagulation

The followers of this theory believe that to determine the child's nationality, the time when the sperm was coagulated has to be considered and then father's nationality must impose to the child.

Despite it's almost near to reality, most of legal authors refuse it and the main reason behind is the uncertainty of the exact date of sperm coagulation. It's not reasonable to give nationality to something doubtful (Nasiri, 2001).

6.3 Considering Government's Interests

Nationality belongs to a government's general rights and jurisdiction and it's a political relationship in essence. Since every government considers the society's interests in case of authorizing nationality, they determined that an Iranian nationality is good for the child (Nasiri, 2001). So it seems that both groups are going to go extremes. Since nationality is essentially political, applying to this theory lead to disorder in relationships between the governments; because not only isn't certain the exact date of the sperm coagulation, but also the child may have two or none nationality, that is the both countries may give nationality to the child and on the other hand, the both refuse to give nationality. Moreover, the government's interests are not some clear defined rules.

6.4 Authorizing the Child

The followers of this theory say that admitting the father's nationality while sperm coagulating is a right for the child, not an imposition; therefore the child has the sperm-coagulating time nationality only in case of having it chosen when grown up/adult (Nasehi, 1996).

Although this theory's ideal and mostly secure the individual's interests, but represents no clear rules. An individual's interests are different from time to time and place to place; while it's crucial to have a clear rule to authorize the nationality. Moreover, authorizing nationality -which is essentially political- to individuals is illegal and unreasonable. Also, in some cases in which the government considers a legal character for the child before birth, it's merely on the issued like inheritance, will and possession, not on the general rights area.

6.5 The Child's Date of Birth

According to this theory, the criterion to determine the child's nationality is his father's nationality while being born. One problem here is that what if the father dies before the child birth? Although some legal authorities such as Weis believe that the father's nationality is gone when he dies and it's impossible to authorize the child,

so the child has to be authorized as his mother's nationality (Ameri, 1988), but since nationality is a political relationship that the legislature get it assumed and doesn't go off in case of death, and on the other hand the mother's lineage hasn't been identified by the legislature, therefore the child possesses a nationality as his father's while dying.

Ultimately, it's clear that distinguishing the exact and scientific date of sperm coagulation is not possible now on; so it doesn't seem sensible to determine the nationality- which is the origin of some important consequence in one's life- based on a doubtful hypothesis. On the date of sperm coagulation we have to indicate that birth is something evident, perceptible and easy to record its date; while, on the other hand, the date of sperm coagulation- in all cases- cannot be evident. So nationality mustn't be depended on a doubtful date.

7. Results

Nationality is one of the important subjects in international relationship between governments and their nationals.

Nationality is the status of belonging to a particular nation by origin, birth or naturalization.

Nationality is a political and spiritual relationship in attaching a person to a government.

There are two criteria in granting nationality: Jus sanguinis (based on blood or descent) and Jus soli (based on birth place). Jus sanguinis (based on blood or descent)

One of the important issues in the blood principle is about the type of lineage that is supported on nationality transferring based on blood principle. That is, the lineage that is depended on the marriage-which is occurred legally or illegally- is divided to natural and legal lineage. The legal lineage has been supported in the Iranian civil law's note 2 of the article 976.

In the Iranian nationality code, the supported lineage based on the blood principle is the legal lineage; so the natural child is recognized as Iranian only relying on the note 3 of the article 976(based on jus soli) in the Iranian civil law.

One of the important issues in Jus sanguinis system is the time of nationality transferring through this system from parents to their child. In this regard some criteria are defined such as time of birth, semen formation and the time which the person has more gain or may this be proper to define for son child the choice right.

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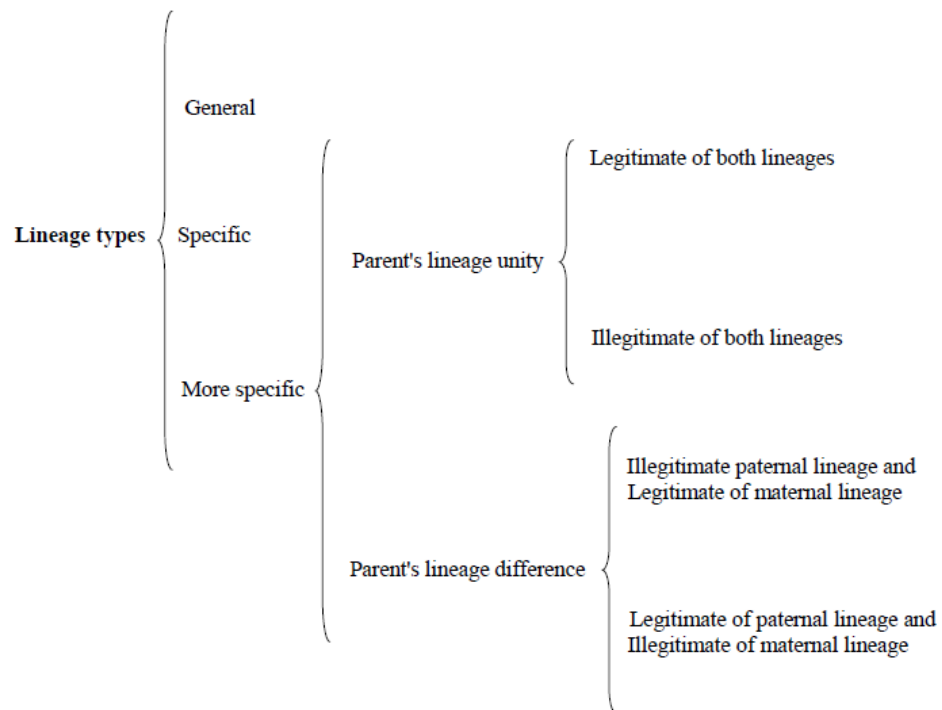


Figure1. Different of Lineage