

An Important Matter Regarding Giving Children for Adoption

Darulifta Ahlesunnat (Dawateislami)

Question

What do the scholars of Islam say regarding the following matter: Zayd gave his two sons to his sister-in-law for adoption with the consent of his wife. The children were only one day old at that time. Now their ages are 8 and 10 years. Zayd now wants to take his children back from them. Does he have the right to take them back or not? No relationship of suckling (raḍā‘ah) was established with the children.

Answer

In our society, when a person gives his son to a relative for adoption, it is understood that he will not take him back. It is expected that the child will stay with the person who adopted him, and that person will arrange for his complete education and upbringing. So, in the context of giving a child for adoption, there is a customary promise of not taking him back. According to the rule, "What is known by custom is equivalent to what is stated explicitly." Therefore, in the mentioned situation, Zayd should keep his promise and should not take the children back, provided there is no harm to the children's education and upbringing. However, if the education and upbringing are not being carried out correctly, the children should be taken back, and this will not be called a breach of promise, even though his intention at the time of giving was not to take them back.

In any case, it should be kept in mind that giving one's child for adoption to someone is permissible, but adoption is not a contract that cuts the child's connection with his real father. The person adopting does not become the owner, nor does the child become his real son. It cannot be said that the real father cannot take him back. Rather, it only means that the father has given his right of upbringing to someone else, and this right can be taken back after giving it.

The scholars of Islamic law state a similar rule: If a woman who has the right of upbringing gives up her right and gives it to another woman, and then later wants the children back (and is capable of raising them), she can take them back.

Furthermore, if there is a fear of breaking laws of Shariah by leaving the child with the person raising them, the child must be taken back.

When a similar question was asked to Imam Ahl al-Sunnah, Imam Aḥmad Razā Khān رَحْمَةُ اللَّهِ عَلَيْهِ regarding an adopted girl who had nearly reached maturity (or had become an adult) and the person raising her was a stranger (not a maḥram), there was a concern regarding the lack of veiling and the risk of fitnah. Since the father wanted her back, Imam Ahl al-Sunnah رَحْمَةُ اللَّهِ عَلَيْهِ stated with emphasis:

Now that she has become an adult or has nearly reached maturity, she must stay with her father until she gets married. In fact, after the age of nine, a girl is taken

even from her real mother to stay with her father. It is certainly not allowed for her to stay with a stranger. Calling someone a daughter and raising them does not make them a real daughter. Whatever the person spent on the child, he spent it considering the child his own and not as a loan; therefore, he is not entitled to get that money back either. (Al-Fatāwā al-Riḍawiyah, vol. 13, p. 413)

وَاللَّهُ أَعْلَمُ عَزَّ وَجَلَّ وَرَسُولُهُ أَعْلَمُ صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ

(Allah Almighty knows best and His Messenger صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ knows best.)

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