

Author: Assistant Professor Abdul Qahar Azizi

Naming Child: A fundamental right of Juvenile

Abstract

Children are entitled to a set of fundamental rights. No one can deprive children. Naming a child is one of the child's rights. A child is entitled to having a name upon birth; even a fetus is entitled to the right either. In both cases, whether a fetus is born alive, or immediately dies within the postnatal period has the right to have a name. Yet naming a child is a controversial issue, whether a father or mother has the right to name their child, or other relatives have the right to name the child. In Afghanistan, the law has not stated whether a father or mother has the right. In Islam, it is the exclusive right of the father, but he can seek the advice of the mother of the child. The Convention on the Rights of the Child (CRC), Universal Declaration of Human Rights (UDHR), Cairo Declaration on Human Right in Islam (CDHRI), and other international treaties and conventions provides for the right to name a child; however, none of them specified whether a father or a mother has the right to name their children. Despite this ambiguity, Islam specifies not only who has the right to name a child, but also provides for the day of naming a child, and recommends

special ceremonies such as slaughtering upon the birth of a child and giving her/him a name at the time.

This paper employs an analytical-comparative approach to explore the provisions of Islam, the regulations of the Law on the Protection of Child Rights in Afghanistan, the CRC, UDHR, and CDHRI concerning the right to name a child.

Keywords: Child, Naming, Islam, Father, Mother.

Introduction

Naming children is common among human beings. Every person has a specific name that he/she is called at the time of addressing. When a person wants to call another person, or wants to narrate a story of a person, they, nevertheless, use their names to introduce the person to the audience. There is no person without a name on the globe. In some communities, it refers to religion, while in others it refers to a tradition to name a child. However, in some communities, people are given more than one name. For instance, in Afghanistan, a person might have more than one name: one is official, and another is used for the community. Islam not only insists on naming a person, but also insists that choosing a good name is the responsibility of parents. Parents must give their children better names. Afghan laws and international documents also provided for the right of a name to a child.

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End of the research

The end of the paper is to explore the stand of Islam, Law, and international conventions regarding naming a child.

Importance

As discussed above, having a name is common among human beings. Despite its commonality, it is not discussed in academic papers in Afghanistan. Since, as it is not discussed, it is important to explore whether the law and other documents have given the right to children or they are not entitled.

Research Methodology

This paper has been written in the analytical-comparative method. Provisions of Islam, Regulations of Law on Protection of Child Rights of Afghanistan, CRC, UDHR, and CDHRI have been discussed widely and explained. Additionally, the stands of international conventions are discussed and compared with Islamic provisions. Finally, the names of some conventions and laws are contracted.

Question

How did naming a child include within the national and international legal context as a right?

Hypothesis: It is supposed that giving a name to a child is set not only within the national regulations but also included within the international legal context.

Naming Child in Islam

Islam is one of the best religions among divine religions. Islam has set regulations for all aspects of human life. Besides, Islam has considered children as weak human beings. Thus, they have been entitled to a set of rights.

Naming a child has a profound effect because it exerts a defining impact on that child's development, as well as its connection to and interaction with the people and things around the child.

The first thing Muslim parents blessed by God with the coming of a newborn should know is, that Islam considers the moment of choosing a name and 'naming' (tasmiyah in Arabic) one of the pivotal events in all of life. Naming a child is very important in Islam, as Allah "ﷻ" has named some of the messengers such as Yahya "ﻯ" [John]. Allah "ﷻ" says in the holy Quran about naming John: "يَا زَكَرِيَّا إِنَّا نُبَشِّرُكَ بِغُلَامٍ اسْمُهُ يَحْيَىٰ لَمْ نَجْعَلْ لَهُ مِنْ قَبْلُ سَمِيًّا" (Maryam: 7) Translation: "O Zechariah, We give you good news of a son, whose name is John, a name We have never given before." (Talal Itani: no date) Naming person as much important as, Allah "ﷻ" names some of messengers and other virtuous persons like Maryam (Mary), as Allah "ﷻ" says: "وَإِنِّي وَسَمَّيْتُهَا مَرْيَمَ وَإِنِّي أُعِيذُهَا بِكَ وَذُرِّيَّتَهَا مِنَ الشَّيْطَانِ الرَّجِيمِ" (al-Imran: 36) Translation: "...and I have named her Mary, and have commended her and her descendants for your protection, from Satan, the outcast." (Talal Itani: no date) It shows that naming a child is very important in Islam and has been considered and

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taken into account from the very beginning; as Allah “ﷻ” chooses names for some of the persons, even in the ante partum period. Thus, it increases the importance of giving a name to a child according to Islam.

Not only is the name of a person important, but the name of all things is important. Allah “ﷻ” learned Adam “ﷺ” names of all things as He says in the Holy Quran: “وَعَلَّمَ آدَمَ الْأَسْمَاءَ كُلَّهَا ثُمَّ عَرَضَهُمْ عَلَى الْمَلَائِكَةِ فَقَالَ أَنْبِئُونِي بِأَسْمَاءِ هَؤُلَاءِ إِنْ كُنْتُمْ صَادِقِينَ” (Al-Baqarah :31) Translation: “And He taught Adam the names, all of them; then He presented them to the angels, and said, “Tell Me the names of these, if you are sincere. (Talal Itani: no date)

Our Prophet Hazrat Mohammad “ﷺ” also insisted on naming, especially good names. As He said: “You shall be called by your names and the names of your fathers. So, give good names to your children.” (Zakat Foundation: no date) In addition, Hazrat Mohammad “ﷺ” has said: “The Prophet “ﷺ” said: Call yourselves by the names of the Prophets. The names dearest to Allah are Abdullah and AbdurRahman, the truest are Harith and Hammam, and the worst are Harb and Murrah.” (Sunan Abi Dawud 4950).

Moreover, Hazrat Mohammad “ﷺ” commended Muslims to give their children good names, because they will be called on the day of resurrection by those names. Abi Darda “ؓ” narrated that Hazrat Mohammad “ﷺ” said: On the Day of Resurrection

you will be called by your names and by your father's names, so give yourselves good names.” (Sunan Abu Daud: 4948)

It means that: first, a Muslim must have a name; second, Muslims are ascribed to their fathers; and third, a father is responsible for choosing a good name for his child.

The right is not the new one, but it is documented in lots of documents. Islam insisted and compelled parents to choose a proper name for their child. Based on narration, Hazrat Mohammad “ﷺ” changed the name of His followers whose names were incorrect, and belong to the era before Islam, as well as choose better names for them. In addition, Hazrat Mohammad “ﷺ” said: “Abu Sa'id “τ” and Ibn ‘Abbas “τ” reported God’s Messenger as saying, he who has a son born to him should give him a good name and a good education, and marry him when he reaches puberty. If he does not marry him when he reaches puberty and he commits sin, his guilt rests only upon his father. Baihaqi transmitted in Shu'ab al-iman” (Mishkat al-Masabih 3138).

Apart from naming a child; In Islam, some names are forbidden for Muslims. For instance, names of Allah “Ψ” (e.g. Al Khaliq, Al Rahman...), names that attribute servitude or worship to anything or anyone but Allah “SWT” (e.g. Abd Al-Kabah, Abd Al-Nabi...), names of people whose faith other than Islam (such as Paul, Tony...), and names of idols (such Lat, Manat...)

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It provides for parents that are not only responsible for the survival and protection of their children. But they are also responsible for protecting their children from threats and diseases that cause children to die. Parents are responsible for supervising children and taking care of them in case of other life-threatening issues.

Naming Child in Afghanistan

Children in Afghanistan possess basic and fundamental rights, although at times, they are deprived of some of these rights. In Afghanistan, children's rights are articulated in the Law on Protection of Child Rights (LPCR), which was enacted on March 11, 2019. This comprehensive law consists of 108 articles that define and safeguard the rights of juveniles. In this context, we will focus on the right to a name for a child as enshrined in the LPCR.

Article 12 of the LPCR enumerates 34 fundamental rights of children under the heading "The fundamental rights of a Child." Notably, it declares that a child, in accordance with this law and other legal documents, possesses certain fundamental rights. Among these rights, the law explicitly states:

- The right to live.
- The right to have a name.
- The right to have a nationality.
- This emphasis on the right to have a name underscores two vital points:

- Having a name is a fundamental right of the child.
- This right commences immediately after birth, and no one can deprive a child of it.

The LPCR addresses not only the right to a name but also the broader concept of a child's identity. According to paragraph 21 of article 3 of the LPCR, identity is defined as follows: "the complete set of personal information, encompassing the name, surname, father's name, grandfather's name, date of birth (specified by day, month, and year), place of birth, and permanent and current residence of an individual."

Furthermore, article 14 of the LPCR underscores a child's right to an appropriate name upon birth. It states: "A. A child has the right to an appropriate name upon his/her birth..." Additionally, parents, guardians, and caretakers bear the responsibility of selecting a suitable name for their children. The LPCR recommends: "...B. Parents, guardians, and caretakers are obligated to choose a fitting name for their children upon their birth and to register the child's identity with the appropriate authorities in accordance with the law." Furthermore, the chosen name should respect the child's dignity and religious beliefs, as articulated in section C: "C. The name of the child should not be demeaning or contrary to his/her dignity or religious beliefs."

In the event that a child wishes to change the name given at birth, the LPCR permits it as noted in section D: "...D. In case

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a child does not wish to retain the name chosen by their parents or caretakers, they have the option to change it."

Article 17 of the LPCR outlines the responsibilities of health workers upon a child's birth. Health workers are mandated to register the date of birth, sex, first name, surname, parents' names, nationality, place of residence, and occupation of the child's parents in a birth certificate, which is then submitted to the child's parents. Moreover, the LPCR requires specific individuals, such as healthcare personnel, family members, and village headmen, to notify the National Statistics and Information Authority (NSIA) about the birth of a child and obtain the child's birth certificate.

Crucially, the issuance of birth certificates is provided free of charge, ensuring accessibility to all as paragraph 3 of article 17 states: "...The birth certificates are prepared by the NSIA and are issued at no cost."

The LPCR also specifies that even in the event of a child's death shortly after birth, the birth and death must be registered. Additionally, if a fetus passes away during the prenatal period, its death should be recorded. Furthermore, the LPCR delegates the responsibility of registering a child born in areas lacking health facilities to the village headman, who must complete the registration within seven days and submit the documentation to the nearest health facility or NSIA department.

The provisions of the LPCR extend to Afghan children born outside of Afghanistan. Parents of Afghan nationals born abroad are required to notify the Afghan Embassy or Consulate regarding the birth or death of the child within three months or inform the NSIA upon their return to Afghanistan within one month. The NSIA is then tasked with issuing an Afghan National ID card (Tazkira) for the child, taking into account the child's birth certificate. These comprehensive measures, if diligently implemented, ensure that every Afghan has an official ID card.

In summary, the LPCR not only recognizes a child's right to a name but also mandates parents, caretakers, and authorities to register a child's birth as an inherent and natural right. Additionally, it lays out the comprehensive process for birth registration and the issuance of birth certificates, thereby ensuring that no Afghan child goes without a registered identity.

Naming Child within the CDOICHR, UDHR, CRC, and other international conventions

One of the primary rights of a child is the right to have a name, and this right is considered essential for every child. A child's name is not just a formality; it often influences and signifies the character of the child. Fortunately, the right to name a child is enshrined in various international conventions and treaties, and children are entitled to this fundamental right. Let's explore

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how some of these international conventions, treaties, and declarations have incorporated the right to name a child.

Cairo Declaration of the Organization of Islamic Cooperation on Human Rights (CDOICHR): The CDOICHR emphasizes the right to name a child upon their birth. Although it does not explicitly state the right to have a name, the context implies that a child possesses this right. However, it does not provide clarity regarding whether the father or mother holds the right or responsibility for naming the child.

Convention on the Rights of the Child (CRC): The CRC explicitly addresses the right to name a child in sections 7 and 8. Section 7 states that "a child shall be registered immediately after birth and shall have the right from birth to a name," among other rights. The CRC not only recognizes the right to have a name but also emphasizes respect for this right. Article 8 of the CRC states that "States 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."

International Covenant on Civil and Political Rights (CCPR): Paragraph 2 of section 24 in the CCPR also establishes the right to name a child, stating that "Every child shall be registered immediately after birth and shall have a name." Additionally, article 29 of the CCPR acknowledges the

right to name a working child, further emphasizing the importance of this right.

UN Convention on the Rights of Persons with Disabilities (CRPD): The CRPD includes the right to name a child in paragraph 2 of article 18, which stipulates that "Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name." The CRPD also extends the right of children to be cared for by their parents.

African Charter on the Rights and Welfare of the Child (ACRWC): The ACRWC explicitly recognizes the right of every child to have a name from the day of their birth, as stated in Article 6: "1. Every child shall have the right from his birth to a name."

However, it is important to note that while these international conventions emphasize the right to name a child, the Universal Declaration of Human Rights (UDHR) does not explicitly address this right.

In conclusion, the right to name a child is a fundamental and universal right granted to every child from the moment of birth. This right is not only protected within national laws but is also firmly established in various international conventions and treaties, emphasizing the importance of this essential aspect of a child's identity.

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Reservations of Islamic Countries on the CRC

Every country that becomes a state party to a treaty has the right to put reservations on specific provisions of that treaty. The Convention on the Rights of the Child (CRC) is no exception, and both Muslim and non-Muslim countries have exercised this right by placing reservations on the CRC when joining it.

Some Islamic countries have made explicit reservations, while Afghanistan's reservations, in particular, have been ambiguous and vague. For example, Bangladesh has removed the entire paragraph 1 of section 14 of the CRC, which deals with state parties' obligation to respect the rights of children to freedom of thought, conscience, and religion. Bangladesh's declaration states, "The Government of the People's Republic of Bangladesh hereby enters our reservations on article 14, paragraph 1."

This reservation is not unique to Bangladesh; it is a shared concern among various Islamic countries. While Bangladesh's initial concern was related to religious conversion, the reservation removed not only the mention of "religion" but also "thought" and "conscience."

Algeria, another Islamic country, has made two reservations, one regarding articles 14.1 and 14.2 and the other regarding articles 13, 16, and 17. Several other Islamic countries, including Iraq, Jordan, Mali, Maldives, and Malaysia, have also made reservations related to different articles of the CRC.

Afghanistan, a signatory to the CRC on September 27, 1990, and a ratifying party on March 28, 1994, has asserted its right to express concerns regarding provisions of the convention that are deemed incompatible with Islamic law or local legislation that was in effect before the CRC. The Afghan government's declaration states: "The Government of the Islamic Republic of Afghanistan reserves the right to express, upon ratifying the Convention, reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shari'a and the local legislation in effect."

Restrictions on Naming a Child

In some countries, parents are restricted from giving their children specific names, often for various cultural, religious, or social reasons. These restrictions are in place to maintain local traditions, religious norms, or to prevent the use of offensive or embarrassing names.

For example, Tajikistan has prohibited the use of Arabic terms in names. Other countries have banned names associated with individuals who have committed acts of aggression against their people; for instance, Azerbaijan has prohibited names belonging to Armenians. Some nations have restricted the use of Western names; Saudi Arabia is an example of a country with such restrictions. Additionally, certain countries have banned names deemed anti-Islamic or names that are considered to be of the opposite sex, as seen in Iran.

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These restrictions on naming a child serve to preserve cultural and religious norms, as well as to reflect the values and traditions of the respective societies.

Naming a Child: A Responsibility of Father or Mother

The responsibility for naming a child varies across different countries and cultures. In some regions, naming a child is the exclusive right or responsibility of the father, while in others, both parents share this responsibility. Here, we explore the practices in different countries and traditions regarding who has the authority to name a child.

Afghanistan: In Afghanistan, the Law on Protection of Child Rights (LPCR) does not specify whether the right to name a child belongs to the father or the mother. This means that both parents have the right to choose a name for their child. It's important to note that in Afghan culture, it is common for a child to receive multiple names, with one from the father's side and another from the mother's side. Additionally, grandparents, uncles, and aunts may also have a say in naming a child, which can result in the child having more than one name.

Islamic Perspective: From an Islamic perspective, naming a child is primarily the right of the father. However, it is recommended for the father to consult with the mother, and both parents should agree on a name that is acceptable to both. In cases of disagreement, the father has the final authority to choose the name. This perspective is based on the teachings of

Islamic scholars and the example of the Prophet Muhammad (ﷺ), who named children himself.

France: In France, naming a child is a shared right of both parents. However, a registrar can intervene if the chosen name is deemed to be against the child's best interests. Registrars in France have the authority to reject a name if they believe it may be detrimental to the child's well-being.

Hebraism: In Hebraism, both the father and the mother have the right to name their child. This naming right is exclusive to the parents, and no one else has the authority to name the child. There are ongoing discussions and debates within the Hebraic tradition about who should have the right to name the first or second child, as well as whether there are any distinctions for naming sons and daughters.

In conclusion, the responsibility for naming a child can vary significantly based on cultural, religious, and legal norms. While some cultures grant this responsibility to the father, others consider it a shared responsibility between both parents. Additionally, legal regulations in different countries may also play a role in determining who can name a child.

Naming day

In Islam, naming a child is not only about choosing a suitable name but also involves the regulation of the day on which a child receives their name immediately after birth. There is some difference of opinion among Islamic scholars regarding the

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specific day for naming a child. Some suggest naming the child on the very first day of their birth, while others recommend waiting until the seventh day.

The Prophet “ﷺ” according to a good (ḥasan) ḥadīth in the collection of Al-Tirmidhī, instructed Muslims to name newborns on the seventh day, purify them then, and make the ‘aqīqah sacrifice all on the seventh day. The scholars report both, naming the child on the first day and the seventh day. Some say the seventh is preferred; others say the first is preferable, while others say both are equally preferred. Bukhari, the great ḥadīth collector, reconciles these two report streams by saying that if the ‘aqīqah sacrifice is to be offered, then delaying naming the child till its seventh-day supersedes in preference. (Zakat Foundation: no date) Hazrat Mohammad “ﷺ” said: “A boy is in pledge for his ‘*aqīqa*. Sacrifice is made for him on the seventh day, he is given a name and his head is shaved” (Sunnah.com. Mishkat al-Masabih: 4153)

Conclusion

In conclusion, the right of a child to receive a name immediately upon birth and up to the seventh day is fundamental and well-established. The act of naming children is not merely a customary practice but an essential aspect of their identity. A name is the means by which individuals are recognized, both within their immediate community and on a broader scale, akin to how prominent leaders and figures are known and distinguished.

Moreover, beyond mere recognition, a name contributes significantly to a person's identity, particularly in the case of children. It serves as a cornerstone for their identity, initiating a process that encompasses a range of attributes, including the first name, surname, paternal lineage, maternal lineage, and more. Thus, having a name is a vital first step in establishing one's identity and commencing the broader process of identification.

The significance of naming a child extends beyond national boundaries; it is a matter regulated by international conventions. Additionally, Islam places a particular emphasis on the act of naming children, offering guidance and recommendations. These include provisions related to the timing of naming, the determination of whether it is the mother or father who holds the right to name the child, and suggestions for choosing meaningful names for children.

In essence, providing a name to a child is undeniably one of the fundamental rights of children, a right enshrined not only in Afghan laws but also in international agreements and declarations. While the Convention on the Rights of the Child (CRC) explicitly recognizes the right to name a child, the Cairo Declaration of the Organization of Islamic Cooperation on Human Rights (CDOICHR) implies this right. Additionally, the International Covenant on Civil and Political Rights (CCPR), the UN Convention on the Rights of Persons with Disabilities (CRPD), and the African Charter on the Rights and

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Welfare of the Child (ACRWC) all affirm the right to name a child, whereas the Universal Declaration of Human Rights (UDHR) does not specifically address the naming rights of children.

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