

RE: Adoption

1. Is adoption legal in Afghanistan?

Adoption is not recognized by the Afghanistan Laws, and neither it is explicitly prohibited. Instead it reorganized and provided provisions for guardianship of children.

The article 228 of Afghanistan Civil Code states: “an adopted person whose identity (parentage/origin) is known, the parentage obligations and rights such as life-support, guardianship fees, inheritance, illegality and illegibility of marriage [with adopted parents] will not be applied on such relationship”.

The above article differentiate the original paternal relationship with the adopted paternal relationship and states that the legal obligations and rights which exist between a child and parents, such as: (1) The parent (mainly father) is responsible for life-support expenses of the child, (2) both parents and child are entitled to inheritance from each other, in case of death, (3) parents (mainly father) is responsible to pay for guardianship of the child, and (4) due to the relationship of child and parent they can't marry each other and some certain relative of each other, such as sister, uncle, aunt etc..., while in case of adoption, there is no legal obligation to adhere above rights and obligations.

As per article 3.20 of Law on Protection of Child's Rights, dated March 11, 2019, published on official gazette number 1334, the lineage is a relationship of a child with those parents who give birth to her/him. So, as per above definition, the Adoption, is not considered as a lineage relationship of child and adopted parents.

Likewise, the Civil Code, as per article 16.1 of Law on Protection of Child's Rights, “whenever an adopted person whose identity (parentage/origin) is known, the parentage obligations and rights such as life-support, guardianship fees, inheritance; illegality and illegibility of its marriage [with adopted parents] will not be sorted on such relationship”. While in the article 16.2, it states that people can take guardianship of an unidentified child (a child whose parents are unknow), and an orphan who don't have a legal guardian.

The adoption is even not defined by the Afghanistan laws, but as per the context of above laws it is different from guardianship, which is legalized by Afghanistan laws. As article 4.1 of Children Guardianship Law, April 12, 2014, published on official gazette number 1130 states: “the guardianship will not have the legal effects of inheritance, lineage, and family relationship (intimate)”

If the adopted child is breastfed by the adopting mother, such adoption is accepted by the Afghanistan Laws, and has a limited legal affects.

As article 4.2 of Children Guardianship Law states: “if infant is taken for guardianship, and one of the family members give her/him breastmilk, the provision of article 235 of Civil Code will apply” and article 235 of Civil Code states: “if a woman give her breastmilk to a child before she/he is 2 years old, the woman will be consider the child’s adopted mother and her husband will become its adopted father.”.

As per Afghanistan laws, the above circumstance is the only situation which adopts a child to a parents other than her/his own, but such adopted child will have very limited rights and obligations in compare to what the original children have. And it is different from what the adopted children may have in the western world. Such adoption is considered as a middle ground between original children and the children under custody of a guardian.

2. Are there laws concerning adoption?

There is no law concerning adoption, but there are following laws, to regulate the guardianship matters of the child and similar subjects.

- Children Guardianship Law, April 12, 2014, published on official gazette number 1130
- Law on Protection of Child’s Rights, Dated March 11, 2019, published on official gazette number 1334

3. Who would be legally allowed to adopt a child?

There is no legal requirement on who would be allowed to adopt a child, while there are provisions on who can take guardianship of a child and what requirements shall such guardians must have.

4. Is adoption accepted in the Afghan society?

Despite of no legal basis for regulation of adoption in Afghanistan, adoption is accepted in the Afghan society at some levels, because there are practical cases happened and happening regularly, but it is not accepted without difficulties and such children are not treated like the real children, both by the family and others. In most cases they are addressed as bastard, in some cases they are rejected and in some cases they have a good life. As the status of such adopted children are not well defined by law and Sharia, majority of people do not consider them as real family member (intimate).

5. What role does the Afghan government, as well as religious clerks (and Mullahs) play?

Both Government and religious clerks, support the guardianship instead of adoption. The adoption of child without giving adopting mother's breastmilk to child, as indicated above, is not accepted by the religious clerks. While, the laws are only regulating guardianship, but the government allows people, and made some procedures for taking children in hospitals and guardianship centers, while some considers such child transfer as adoption and some as guardianship.

6. Please explain as detailed as possible: If I am interested in adopting a child what would I need to do?

Most people want to adopt new born children. If this is what you are interested in, you need to visit a hospital where it has child birth facility, and file an application for it, the application would be processed and put in the queue, and when the turn is yours, you can collect the child. But the process is not a transparent and with dignity.

In the following circumstances, the mother/parent give up or abandon their child, which paves the way to adoption or guardianship.

- a. Bastard children: If the birth is not result of a honored and lawful relationship, the child would be a shame for parents and mainly for the mother, so she abandons the child immediately after the birth, which most of such incidents happening in the hospitals.
- b. Donation by relatives: Some relatives, who has sympathy with those close relatives who don't have children, give them their new babies. Such adoption is done completely unofficial.
- c. Some parents who can't support their children, give them to adoption, this can be done in hospital during the birth, or later at any time, but these kind of incidents are very rare.
- d. Orphans: The children who lost their parents, are also adopted by close relatives, but legally they are not considered as adopted children, while ethically they are. Some of such orphan who don't have relatives, are taken to orphanage, the orphanage also give custody of such children to guardians.

7. Is it possible to register for a child, and its adoption, at a hospital in Afghanistan? And in Kabul?

Yes, it is possible.

8. Do you know of any illegal activities concerning adoptions in Afghanistan? And Kabul?

Most of adoptions, either registered or not registered are not recognized by law as adoption. In addition, some corruption also exists in hospitals during process of giving custody of children to the adopting parents.

9. (However, socially accepted: e.g., a girl was raped, became pregnant, so what to do with the child?)

In practice, such incidents would be managed through following mechanisms:

- a. There would be a reconciliation between the perpetrator and the victim and they will get married, in such settlement, the child will be treated as lawful child of both.
- b. If a marriage is not possible, the child would be aborted as soon as the pregnancy is recognized.
- c. If neither a marriage and nor abortion happened, the child would be abundant as soon as birth is given. Under no circumstance, the bastard child would have a peaceful life in the family of both perpetrator or the victim.

10. Would there be a relationship between the birthparents and the adoptive parents?

In cases, which the child is adopted in a hospital or from stranger or unknown parents, there won't be any relationship.

But if the adoption is taken place within a family, such as brother to brother, or cousin to cousin, in such cases, there would be relationship between the birthparents and the adoptive parents.

11. What would happen if a girl was raped and became pregnant and gave the child up for adoption? How would society react?

It would be a shameful situation and for both the girl and the family. They will try to hide the result of such action (rape) as soon as possible, and in any possible way. So, giving the child for adoption is a possible way out. Although, it will be a bitter one, but still acceptable than keeping the child.

12. What would happen if a person adopted the child whose parents died in war?

It is possible, and treated as a honorable act, but in most cases the adopting parents are interested to adopt new born, instead of grown up children.

In most of such cases, such orphan children are adopted by close relatives. And in case of lack of such close relatives, they are taken into custody by the orphanage.

13. Where is it possible to register for adoption (both birth parents and future adoptive parents)?

It is possible to register in the hospitals, where are known for mother-care facilities, and in most cases the birth parents are anonymous.

14. Which government institutions are responsible for adoption?

Mostly, it is handled by the hospitals.

15. What is the hospital's role in adoption?

They register the requesting parents, do all process and deliver the child to the requesting parents.

16. How would a Tazkira be issued for the child?

Legally the adoptive parents are not considered the real parent, so, they are not entitled to write their names in the Tazkira. But in practice it happens and the Tazkira would be issued without any clue to identify the child that whether it is adopted or not. and there is no special procedure for it, it will be processed as of a birth child of the adoptive parent. But if the child already has a Tazkira, it is not possible to change the father's name in Tazkira to new adopted father's and through legal procedures.

17. Whose names would be used (parents)?

In practice, the name of adoptive father would be used. Means, at the time of taking the first Tazkira, if the child is in custody of real father' his name will be used, but if it is in custody of the adopted father, his name will be used. But in no circumstance, it will be wrote as adopted father.