

A Study on the evidences of proving maternal filiation in Iranian law

Mohammad Abouata¹, soheil kabiri², soheil zolfaghari³

1. Assistant professor, Semnan university, semnan, Iran

2. Instructor, department of law, semnan Branch, Islamic Azad University, semnan, Iran

3. Phd student of private law, Arak Branch, Islamic Azad University, Arak, Iran

Abstract: In Iranian civil code, there are not special regulations on proving maternal filiation and this matter, principally has been put subject to general provisions of proving claims. So a person who wants to establish her/his legitimate filiation to a woman having husband, ought to produce relevant evidences. Such evidences regard two different but related points: Woman's accouchement and the conformity of the child who was born from her with the claimant of filiation. As the pregnancy and accouchement fall in legal events classification, they can be proved by any legal evidences. The most common evidences in this respect consist in: identification document, confession, testimony, hearsay and many presumption of fact. Of course the effectiveness of some of these evidences especially confession to filiation, is subject to particular conditions stipulated in civil code.

Key words: Filiation, Mother, Evidence, Confession, Identification document, Testimony, Hearsay, Presumption,

Introduction

Filiation or blood relationship and proving it, is a part of family law and in upper level, civil law. This subject may be divided into two aspects of paternal and maternal filiation thought there is an exact relation between them. Maternal filiation can be studied in two methods: either a woman claims that a determined person is her child or as it is more common, a person claims that a determined woman is her/his mother. Although in sections relating to filiation in Iranian civil code, the provisions pertaining to paternal filiation have been focused on two evidences, that is Farash (sexual intercourse) presumption of law and confession have been detailed, but the establishment of filiation both paternal and maternal, is principally subject to general regulations of proving claims as section 1273 of civil code which next to other regulations about confession stipulates the regulations concerning to confession to filiation, includes also maternal filiation. To produce identification document is just like that. Most of evidences that are invoked in proving filiation (confession, testimony, hearsay...) have their roots in Shiite jurisprudence and have entered into Iranian civil code therefrom. However the role of modern evidences which result from some social developments (like many of presumptions of law) or are conclusions of medical achievements (especially DNA test) are also to be considered. In this research, the evidences that normally are used and invoked in Iranian court to prove maternal filiation have been studied. Of course due to considerable role

of confession in proving filiation, this evidence has been studied with more precision and detail.

Identification document

Identification document, is the most usual evidence that can be produced by everyone to show filiation. This document is really a transcription of birth document that is given to persons by relevant organization and hence, its validity is subject to principal document. The child birth is usually informed by parents on the basis of attestation of a hospital in which the child is born. (section 14 and 15 of personal status Act). Identification document is an official document. (sections 999 and 1287 of civil code) and all of public and private authorities and organizations give effect to it and do not require any other proof establishing its contents. So if it is claimed the child's birth, as it is indicated in identification document, has not been informed to registrar or he has altered the information produced by parents, this claim is not heard unless by showing that the registrar has committed forgery. But if someone, including the child herself, claims that incorrect information has been intentionally or imprudently produced to the registrar and he has registered what he saw or heard, there is no need to bring forgery action. (Katouzian, Establishment and evidences, vol 1, p 137).

An important issue to be noted is that if the father's name is not registered in the identification document, the legality of filiation is not rejected. Since as soon as her/his filiation to mother is proved, her/his filiation to father is also established on the basis of

sexual intercourse presumption of law.(Op.cit, p 343). For example, suppose that in the identification document of Hassan, only the name of his mother, Maryam, is written. If we know that Maryam is Ali's wife and the child, has been born during their marriage period, Maryam's husband, is deemed as father of Hassan unless it is shown, under section 1158 of civil code that it has passed less than six months or more than ten months from their last sexual intercourse. Meanwhile under section 1161 of civil code, declaring child's birth by her/his father, is confession to the filiation and if father claims to reject of filiation, it is not heard.

Confession

The most important Shiite jurisdictional evidence in this matter is confession, as some of the greatest Shiite jurists, have informed it as undisputed and subject of consensus.(HossiniAmeli, MeftahAlkeramat,vol19, p689). From legal point, as we will see, the confession to filiation must satisfy not only the common conditions stipulated in section 1262 of Iranian civil code but the particular conditions provided in section 1273 of the same code.

Section 1259 of civil code says: " confession consists in declaring a right for another one and against himself ". It is clear from the definition that the confession, is the way to reach to reality and does not make a right. The law presumes that the declaration is in conformity with truth because any persons, does not normally act and speak against himself. So the guidance of confession to its subject is based on the legal presumption of truth.(Katouzian, Family Law, p353).It can be inferred from the legal definition of confession that it has some elements: declaring a right, the existence of profit for another one and at the same time being harmful to the person who makes a confession. The value of confession as an evidence is so that if any time a competent party, informs of a right, decisively and unconditionally for another person and against himself, that right is established; as section 202 of Iranian civil procedure express this point.

The conditions for validity of confession to lineage General view

In addition to the common conditions provided for confession in section 1262 of civil code, the confession to lineage must satisfy the allocated conditions stipulated in section 1273 of the same code.(Lotfi, Family Law,vol 2, p209). Section 1262 reads as follow: "theperson who confesses ought to be sane, major, decisive and willing. So the confession of the minor, insane during insanity, unwilling and person under duress is not effective". As mentioned, these general conditions are essential in all confessions as an

legal evidence. But section 1273 of civil code, deals with particular conditions of confession in proving filiation. The section says:" the confession to filiation is valid when, firstly, the existence of filiation is possible under the law and custom secondlythe person whose filiation is the subject of confession confirms it unless in respect of an infant that has been confessed to his childhood provided there is no opponent". Of course, in Islamic jurisprudence, being unknown of lineage has also been added to above conditions(Helli, TalkhisAlmaram, p165).Thus if someone claims he is father a person who has known filiation, his confession is null however the latter is mature and confirm his confession. It seems that the legislator has combined this condition in the necessity of absence of opponent. Another view is that these conditions relates to cases which the effect of lineage, particularly inheritance, are for the two parties because in respect of the effects which are solely detriment to confessor, like duty to pay alimony, the confession is anyway valid. But this viewpoint,does not conform to appearance of some of sections of civil code and some of Shiite jurist's opinions. Moreover, it is difficult logically to divide lineage and its effects and it seems impossible to know filiation with regard to some person as proved and not to other one. Civil code has no express provision about the necessary age for validity of confession but considering its section 1210, we can say it is 15 and 13 years full age respectively for male and females. Of course due to the relevant custom and the permission of section 1041 of civil code, males and females can marry each other before reaching mentioned ages and such a marriage may lead to conception. So the courts have to pay attention to other legal evidences to infer the possibility of paternity or maternity between who confesses and whom has been confessed to.(Ameli, Allomaa, p219- Emami, Comparative Study of Filiation In Iranian and French Law, p117).

Possibility of filiation according to the law and custom

If filiation is not possible according to custom for instance a 18 year- old- young, makes confession to filiation of a 8 year- old- child, or that under the law and religion, filiation is not possible, for example, one confesses to an illegal filiation of an infant, those confessions are not valid and do not produce legal effects. With regard to the recent case, section 1167 of civil code reads imperatively as follow: " any child resulting from adultery, is not relatedto adulterer". The existence of filiation may also be impossible by reason,as a 26 year- old- person cannot be the son of a 25 year old one. So,such confession is void and null although this case has not been mentioned in section 1273 of civil code.

Confirmation of the person whose filiation has been confessed to

If someone makes confession to maternity of another one, since such a confession is detriment to the latter too, under the rule provided for in section 1273 of civil code, the confession is in effect when the latter, male or female, confirms it. Otherwise filiation and relation is not established. Of course according to the said section, such a confirmation is necessary only when whom has been confessed to his or her filiation is major and sane and has valid legal intention. So the confirmation to filiation is not essential by the infant or insane and as soon as someone confesses to their maternity, filiation is established. Also if filiation of a deceased child is unknown and after his or her death, someone confesses to her maternity and such a confession is, according to the law, custom and reason, possible and there is no opponent, filiation of the child is proved. Now we have to see if someone whose filiation has been confessed to, denies it, does the confession becomes totally null or is in effect to the detriment of who has confessed? Some jurists believe when the person confessed for do not attest it, confession is in effect only in respect of who has confessed, for example in this case, only the former inherits the latter. (Jaafari Langroudi, Family Law, p 152). But another view is that in this case (absence of confirmation), filiation resulting to inheritance, is not established between them unless there are witnesses to testify the accuracy of claim and confession. (Helli, aljamee alsharayet, p343). As filiation relation is a bilateral one and it is not reasonable that this relation its effect exist on one side and not on the other and particularly with due attention to section 1273 of civil code, the first view is not acceptable. In reality, this section is an exception to section 1272 which as a rule, does not consider the confirmation of confession as its condition of effectiveness and it is inferred that in lack of confirmation, confession is void. From opinions in some Islamic jurisprudence sources such Masalek Alafham and Meftah Alkaramee, it is clear this view has been accepted by many Shiite jurists. (Safaie and Emami, Family law, p316). As was said, Under section 1273, if person whose lineage has been confessed to is infant, his or her confirmation, provided to lack of opponent, is not necessary. By infant, according to section 1210 of civil code, it is meant 15 full year-old for male and 9 full year old for female. As we see, the section points to infant without any condition and this means there is no difference between paternal or maternal claim and filiation. This is the opinion of majority. But some jurists believe that the purport of the section is regarded to father. In the

other words, in respect of mother's confession to filiation, it is necessary for infant to confirm it or else, maternal filiation is not proved because the provision has promulgated about male's confession not the female's. From this viewpoint, female can produce an evidence specially testimony that shows the infant was born from and belongs to her but male cannot produce such an evidence. In reality, to prove unknown filiation is a subject in contrary to the ruling principle. Hence we ought not to interpret the law widely. (Lotfi, Op.cit, p570). Another issue is whether after infant grows up and reaches maturity, will he be able to deny filiation or not? It seems as the infant's confirmation is not the validity condition of confession neither at the time of infancy nor after that and by making confession and absence of opponent, filiation relation is established, the denial of infant after reaching maturity has no effect. (Mohaghegh Helli, Sharayee Aleslam, vol 4, 242). But it seems the person confessed for can prove the nullity of confession and any time it is shown that confession has been based on false or mistake, the competent court will decide the privation of lineage. (Safaie and Emami, Op.cit, p316). Due to was said, in confessing to maternal lineage, contrary to general rule, confirmation by infant is not a condition and the reason for this exception consist in protecting the infant of family. There is on opponent in Shiite Jurisprudence that if some person confesses to maternity of an insane mature and there is no opponent, such a confession is considered as confession to filiation of an infant. Hence there is no need of confirmation. Civil code is silent in this matter but according to reasoning behind recent part of section 1273 about the infant, it seems the same provision is applicable to the insane. Meanwhile this solution and inference is to the benefit of that incompetent person. On the other hand, as some of Shiite jurists have said, if after confession to lineage, insane is cured and leaves insanity and subsequently deny lineage, such a denial is not heard and established filiation relation is not ceased to be valid by next denial. But it appears that if insanity is temporary, insane cannot be subject to the provision for infant since temporary insane may, during lucid interval, confirm maternal filiation. So his or her confirmation during lucid interval, is according to the last part of section 1273 of civil code, the legal condition for establishment of maternal relation.

Absence of opponent to filiation

In Shiite jurisprudence, one of essential conditions for effectiveness of confession to filiation, consists in absence of opponent to it. So, if there is difference and confliction between two confession in this respect, the two evidences cease to be valid and

fall. Thus we ought to utilize other evidences particularly testimony. In reality the relativity of filiation and maternity is unreasonable and logically it cannot be accepted that someone is deemed as the child of two mothers or that, a child, in some respect, is considered as the child of a female and in another respect is not considered so, is unreasonable and unacceptable. (Sabzwari, Kefayatalahkam, p508). According to section 1273 of civil code: "the confession to filiation is valid when, firstly, the existence of filiation is possible under the law and custom secondly the person whose filiation is the subject of confession confirms it unless in respect of an infant that has been confessed to his childhood, provided there is no opponent". The appearance and wording of this provision is so enacted as if the condition of absence of opponent, is related to the last part of the provision that is confession to lineage of an infant child and it cannot be considered as a general condition of validity of confession to filiation. But with due attention to Islamic jurisprudence sources and historical precedents of civil code, the condition of want of opponent, relates to whole provision. In the other words, in all cases about the establishment of paternal and maternal filiation, this condition is to be satisfied. (Katouzian, Family Law, p359) Of course if two females confess to the lineage of a mature or adult person, the confession of each of them that is confirmed by the person confessed for is effective and the other falls as, according to the law, the confirmation of the latter is the validity condition of such a confession.

Results of confession to filiation

Civil code has no express regulation about the results of confession to maternal filiation. However according to Shiite jurisprudence which is the principal source of civil code provisions and with attention to other relevant sections of the code, the most important effects of such a confession are as follow:

The result of confession to maternity, is to establish the filiation with its whole relevant effects including reciprocal rights and duties. Such a confession has effectiveness only between who confesses (mother) and whom his or her childhood has been confessed to (especially in respect of inheritance and paying alimony), but with regard to other persons, it is not, as a general rule, effective. (section 1278 of civil code). Of course third parties have a duty to respect the lineage and maternity that has been proved under the law.

In addition to both side, society has also some benefits in establishment of filiation. So some time on the basis of public interests and social convenience, it precludes, by promulgating relevant provisions, who

confesses from any action contrary to her past confession. According to section 1161 of civil code: "...anytime husband has expressly or impliedly confessed to paternity, his legal action of filiation denial is not heard". But it must be noted this section's purport is not to deprive the husband of the right to claims that his confession was based on error, duress, insanity or being drunk and binds him on the basis of his defective intention. Since the effectiveness of confession is focused on this presumption that a sane person does not act to the detriment of himself and what he says is true and correct. In reality section 1161 which is extended to female (mother) is one of cases conforming to general rule stipulated in section 1277 of civil code. Under this section: "To deny after confession is not heard but if confessor claims that his/her confession has been null or based on error or wrong, it is heard as well if he presents some acceptable excuse for the confession.....". In Swiss law, according to section 257 of civil code, a husband who has expressly or impliedly confessed to his paternity, can claim that he has been persuaded in recognition of child and in his action of filiation denial is heard. But in French law, under section 314 of civil code, in case husband confesses to paternity, his action to deny filiation is not heard. (Emami, Op.cit, p124). It is to be noted that implied confession in section 1161 consist in doing such conducts (such as specific donation of family's souvenir to a child) which denote to acceptance of the person confessed for as his/her child. (Katouzian, Op.cit, p 355).

Testimony

Testimony has an important role in proving maternal filiation. In the action for establishing maternity, witnesses have to testify the female's conception and especially accouchement and that claimant of lineage, is the same person who was born from her. According to section 230(3) of civil procedure code: "claims that ordinarily women are informed of such as birth, foster, women's internal illnesses can be proved through testimony of four women, two men or a man with two women". However the acceptance and effectiveness of testimony is leaved to the judicial discretion and is not imposed to court. Particularly in cases that several years have passed from the date of accouchement and birth, the courts usually do not accept testimony to those legal events unless strong presumptions and indications protect the claim. Anyway section 241 of the same code says, as a general rule including child birth that: "it is for the court to determine the value and effect of testimony". In reality, the purport of section 230 of civil procedure code is inspired from Islamic jurisprudence and there from has entered to the code.

Hearsay

In Islamic jurisprudence, hearsay is one of the legal evidence that falls and studied under testimony. By hearsay it is meant the testimony on the basis of common sense and current belief among people about the subject of claim. In the other words, in hearsay, contrary to testimony in the exact concept of the term, the person who testifies, has not been informed of the issue by his senses directly.(Bahr Aloloom, vol3,p359).for example, someone may witnesses in respect of property claim on the basis of common sense and current talks and has not seen or heard himself anything about it.(Amidi, KanzAlfavaed, vol 3, p553). With regard to claims that can be established by hearsay, there are two different views. Some jurists believe that by hearsay, some certain claims may be legally proved. Of course the number they indicate differ from seven to seventeen claims.(Helli, ErshadAlazhan, vol 2, p160 and GhavaedAlahkam, vol 3, p501- Tabatabaie, Riyaz, vol 11, p 366- Esfahani, KashfAllesam, vol 10, p 346- Katouzyian,EsatvaDalilEsbat, vol 2, p22) but in all of their view, filiation including paternal or maternal is undisputed. Others believe that by hearsay similar to testimony, any claim may be proved and the power of hearsay to establish legal claims, is not confined to specified disputes. (Najafi, JavaherAlkalam, vol 40, p135- MousaviAlkhomeini, TahrirAlvasile, vol 2, p407- Lankarani, TafsilAlsharieh, p 532). So, under the two views and no doubt, birth and lineage can be shown by hearsay. It is to be noted that civil procedure code has no explicit regulation on hearsay but has provided for detailed provisions about local investigation (sections 248 to 256) in which, claimant invokes to information of some region residents to prove his claim; the information that often results from common sense and in other words, what has been heard from others. Thus the application limit of these two evidences actually overlaps. Considering what discussed above, hearsay and local information may be applied,according to the circumstances of each case, as a dependent evidence to prove maternal filiation or protect and complete other evidences in this respect.

Presumption of fact

Under section 1321 of civil code: “ Presumption of fact, consists of circumstances which is considered by the law or judge as proof of something”. Such an evidence is divided by sections 1322 and 1324 of the code to presumption of law and presumption of fact. To prove paternal filiation, there is a specific presumption of law in section 1158 of the same code which reads: “infant born during marriage, belongs to husband provided it has not passed from the date of sexual intercourse until berth, less than six months and

more than ten months”. But there is no such an evidence about maternity. However different presumptions of fact may help judges in finding reality, that is, completes other evidences or independently invoked in proving or even rejecting filiation. In filiation disputes, following circumstantial evidences is focused on more than others:

Despite different opinions in Shiite jurisprudence, most of Iranian lawyers believe that confession and sexual intercourse (Farash) presumption of law, are not exclusive evidences of filiation but other independents evidences including testimony or judicial presumptions such as hearsay is also effective in the matter. DNA test is included in these presumptions. Of course, from this view, filiation may be rejected by conclusions resulting from this medical test but not necessarily be proved by such presumption unless it is produced with other presumptions. (Emami and Safaie, Op.cit,p57). However as the result of DNA test is based on scientific researches, it is stronger than other judicial presumptions and can satisfy the judge more. (Katouzian,Op.cit, p341).

That filiation claimant lives in a family which considers herself as a member of it and to identify, however impliedly, her as a family child.For example, if a child grows up in a family whose wife takes care of her as mother and is introduced to society by the name of wife’s husband, such circumstances may indicates the truth of claim and lineage. (Ibid).

Conclusion

Maternal filiation may be proved by different evidences. Among them, confession, provided some specific conditions are satisfied, is the most important. Those are: possibility of filiation according to the law and custom, confirmation of the person whose filiation is confessed to(excepting for the infant and insane) and absence of opponent to maternity.Identification document as an official document denotes to filiation too although the name of father is not registered in it.Another evidence is testimony. Under section 230 of civil procedure code, filiation, can be proved if four women or two men or one man with two women testify to it. Of course determining the value and effectiveness of testimony is anyway discretion of the court. In addition to mentioned evidences, maternal filiation may be established by various presumptions of fact which the most significant of them are: information based on hearsay and common sense, the continual life of lineal claimant in the family whom she claim to be a member of it and the conclusions resulting from DNA medical tests. Of course, such presumptions alone are not normally accepted as

filiation evidence but they complete other each other or other evidences.

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