

ADOPTION IN HALACHA

by Rabbi Doniel Neustadt

QUESTION: What are the possible halachic problems and solutions regarding adoption?

A. Is it proper?

When the adoption process conforms to halachic guidelines, it is considered to be an extremely noble and rewarding deed. In numerous places in the Talmud, our Sages praise one who raises another person's child as his own(1).

B. Child's origin - Jew or non-Jew?

Both of these choices have their advantages and disadvantages. Theoretically, a Jewish child would be preferable, since it is a great mitzvah to raise a Jewish child who may otherwise not have a Jewish home. In practice, however, it may prove difficult to verify the lineage (yichus) of the child, in which case unforeseen problems may arise regarding the child's future entry into a Jewish marriage. Thus, before adopting a Jewish child, one should thoroughly investigate the child's background to clarify his yichus. A non-Jewish child, however, has no yichus problem. At the time of adoption the child undergoes conversion, which allows the child to marry any person permitted to wed a convert. The drawback, however, is that the child must(2) be told of his conversion when he or she reaches the age of maturity, thirteen for a boy and twelve for a girl. At that time, the child is given the option to reject the earlier conversion which took place without his consent. Should the child choose to reject his conversion, he would be considered a non-Jew. Obviously, a non-Jew would not be adopted or raised as one's own child.

C. How close a relationship?

Adopted children should be told of their origin at the earliest possible time(3). People who choose to hide the origin of their adopted children from them may unwittingly cause grave halachic hardships or complications in the future and it is forbidden to do so(4).

Although in a spiritual sense an adopted child may be considered as one's own child, the poskim stress that this does not apply to physical contact. Yichud (being alone), hugging, kissing, etc., are not permitted as they are with one's natural child. Most poskim strictly forbid this type of physical contact(5). Yichud with an adopted child may even be more stringent than with a stranger, since it would fall under the category of "libo gas bah"(6). [Note that these halachos apply to foster children and stepchildren as well.]

There is, however, a view(7) that tends to be lenient on this issue. This view holds that when a child is adopted at a young age, we assume that a basic father/daughter or mother/son relationship has developed between them. We do not fear that any illicit relations will take place and hence do not restrict the parents from treating their adopted children as their own. This leniency applies only to children who were adopted before the age when yichud is prohibited, three for a girl and nine for a boy. A couple may not adopt a child of an older age unless they observe all restrictions of yichud and physical contact(8).

Harav M. Feinstein(9) also holds that yichud is permitted with adopted children, but for a different reason. No adoptive father, he suggests, would dare commit an illicit act with his adoptive daughter for fear of being found out by his wife upon her return home. That intimidation factor alone is enough to permit yichud. Consequently, as long as both adoptive parents are alive, married and living together in one home, yichud with a stepchild [in their home] is permitted(10). According to Harav Feinstein, it is also permitted to kiss and hug an adopted child, since the kissing and hugging is done as any parent does to his or her child, which is permitted(11). Others allow this only till the age of five or six(12). As we mentioned earlier, most poskim do not agree with this approach altogether. In their opinion, an adopted or a stepchild is just like any other stranger with whom yichud, hugging and kissing etc., are prohibited.

D. How is he called to the Torah? The poskim disagree as to whether an adopted child should be called to the Torah as the son of the adoptive father(13). Harav S.Z. Auerbach(14) rules that if the biological father's name is known, then the child should be called to the Torah by that name. If the biological father's name is not known, then he may be called to the Torah as the son of the adoptive father.

FOOTNOTES:

1.Harav Y.Y. Kanievsky, among other eminent Torah giants, endorsed the practice for those unable to have children of their own - See Devar Halachah (addendum to fourth edition). See also Chazon Yechezkel (preface to Tosefta Yevamos). R' Shlomo Kluger (Chochmas Shelomo E.H. 1:1) holds that the mitzvah of procreation can be accomplished through adoption. Most other authorities do not agree with this.

2.Igros Moshe Y.D. 1:161-162; Kisvei Harav Henkin 2:86.

3.Harav Y. Kamenetsky (oral ruling) advised that adopted children be told of their origin before their teenage years.

4.Igros Moshe E.H. 4:64-2; Kisvei Harav Henkin 2:99; Minchas Yitzchak 4:49; 5:44; 9:140; Otzar ha-Poskim vol. 9, pg. 130; Harav S.Z. Auerbach (quoted in Nishmas Avraham vol. 5, pg. 132).

5.Chazon Ish (quoted in Devar Halachah 7:20); Otzar ha-Poskim, vol. 9, pg. 132 - written responsum from Tchebiner Rav and Harav Y.Y. Kanievsky; Minchas Yitzchak 4:49; 9:140; Shevet ha-Levi 5:205;

6:196; Devar Yehoshua E.H. 3:16; Harav S.Z. Auerbach and Harav S.Y. Elyashiv (quoted in Nishmas Avraham vol. 5, pg. 134. See also Yashiv Moshe pg. 191).

6.Devar Halachah 7:20.

7.Tzitz Eliezer 6:40-21; 7:44, 45. Note that his view is stated as a limud zechus and in order to make it easier for abandoned children to find good, Jewish homes that would adopt them.

8.Tzitz Eliezer, ibid.

9.Igros Moshe E.H. 4:64-2. See also E.H. 4:71 [concerning marrying a woman who has a daughter].

10.Harav Feinstein also does not limit this leniency, as the Tzitz Eliezer does, to a child who was adopted before the age of three for a girl or nine for a boy. See also Avnei Yashfei 2:89-12.

11.Based on the Shach Y.D. 157:10.

12.Harav S.Z. Auerbach and Harav Y.Y. Neuwirth (quoted in Nishmas Avraham vol. 5, pg. 135).

13.Minchas Yitzchak 4:49; 5:46; 6:151 strictly prohibits this practice, while other contemporary poskim find room for this leniency - see Lev Aryeh 1:55 and Nachalas Tzvi pg. 31.

14.Quoted in Nishmas Avraham vol. 5, pg. 136. The same ruling applies to writing the adopted child's name in a kesubah or a get. See, however, Igros Moshe E.H. 1:99.

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