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Original Research Paper

Analysis of the Scope of Mother's Guardianship over the Child in Islamic Jurisprudence and Statutory Law

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Abstract

The concept of the mother's guardianship over her child is one of the significant topics in Islamic jurisprudence and statutory law. This article aims to examine the extent and scope of the mother's guardianship over her child in Islamic jurisprudence and statutory law, clarifying the mother's role in the legal and educational decision-making process for the child. This research adopts an analytical and comparative method to explore the jurisprudential and legal foundations of the mother's guardianship over the child. The study investigates Quranic verses and narrations from the infallible Imams regarding the rights of mothers and their guardianship over children. Subsequently, the various aspects of this topic are analyzed using contemporary jurisprudential and legal sources. The findings reveal that in Islamic jurisprudence, particularly in the infallible Imams school of thought, the mother's guardianship over her child—especially during the early stages of life (from birth to puberty)—is extensively emphasized. the results indicate that in many legal systems, the mother is recognized as a key figure in decisions related to the child's growth and upbringing. The results of this article demonstrate that the mother's guardianship aligns with children's rights and their best interests. Serious attention to this guardianship is essential to ensure the child's proper and balanced development. Emphasizing the practical application of these concepts in social and educational contexts is necessary to promote children's rights and highlight the mother's role in this regard.

Keywords: Mother's guardianship, expediency, child, forced guardianship.

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مقاله پژوهشی

«تحلیل دامنه ولایت مادر بر کودک در فقه اسلامی و در حقوق موضوعه»

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چکیده:

مفهوم ولایت مادر بر فرزند، از جمله موضوعات مهم در فقه اسلامی و حقوق موضوعه به شمار می‌رود. این مقاله با هدف بررسی حدود و دامنه ی ولایت مادر بر فرزند در فقه اسلامی و حقوق موضوعه نگاشته شده است و در صدد تبیین نقش مادر در فرایند تصمیم‌گیری‌های حقوقی و تربیتی مربوط به فرزند می‌باشد. این پژوهش با اتخاذ روش تحلیلی-مقایسه‌ای، به بررسی مبانی فقهی و حقوقی ولایت مادر بر کودک می‌پردازد. در این راستا، آیات قرآن و روایات معصومان در خصوص حقوق مادران و ولایت آنان بر فرزندان مورد واکاوی قرار گرفته است. سپس ابعاد مختلف این موضوع با بهره‌گیری از منابع فقهی و حقوقی معاصر تحلیل می‌گردد. یافته‌ها نشان می‌دهد که در فقه اسلامی، به‌ویژه در مکتب اهل بیت (ع)، بر ولایت مادر بر فرزند، به‌ویژه در مراحل آغازین زندگی (از تولد تا بلوغ)، تأکید گسترده‌ای شده است. نتایج حاکی از آن است که در بسیاری از نظام‌های حقوقی، مادر به عنوان یکی از ارکان تصمیم‌گیری در زمینه‌ی رشد و تربیت کودک شناخته می‌شود. دستاوردهای این مقاله نشان می‌دهد که ولایت مادر با حقوق کودک و مصالح عالیه‌ی او هم‌راستا بوده و توجه جدی به این ولایت ، برای تأمین رشد صحیح و متوازن کودک ضروری است. تأکید بر کاربرد عملی این مفاهیم در بسترهای اجتماعی و آموزشی، برای ارتقای حقوق کودک و برجسته‌سازی نقش مادر در این زمینه، امری ضروری به نظر می‌رسد.

واژگان کلیدی: ولایت مادر، مصلحت، کودک، ولایت قهری.

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Rezensionsartikel

Analyse des Umfangs der Vormundschaft der Mutter über das Kind in der islamischen Rechtsprechung und im Gesetzesrecht

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Zusammenfassung:

Das Konzept der mütterlichen Vormundschaft über ihr Kind ist ein zentrales Thema der islamischen Rechtsprechung und des islamischen Gesetzesrechts. Dieser Artikel untersucht Umfang und Reichweite der mütterlichen Vormundschaft über ihr Kind in der islamischen Rechtsprechung und im islamischen Gesetzesrecht und verdeutlicht die Rolle der Mutter im rechtlichen und erzieherischen Entscheidungsprozess für das Kind. Die Studie untersucht die juristischen und rechtlichen Grundlagen der mütterlichen Vormundschaft mithilfe einer analytischen und vergleichenden Methode. Die Studie untersucht Koranverse und Erzählungen der unfehlbaren Imame zu den Rechten von Müttern und ihrer Vormundschaft über Kinder. Anschließend werden die verschiedenen Aspekte dieses Themas anhand zeitgenössischer juristischer Quellen analysiert. Die Ergebnisse zeigen, dass in der islamischen Rechtsprechung, insbesondere in der Denkschule der unfehlbaren Imame, die Vormundschaft der Mutter über ihr Kind – insbesondere in den frühen Lebensphasen (von der Geburt bis zur Pubertät) – stark betont wird. Die Ergebnisse deuten darauf hin, dass die Mutter in vielen Rechtssystemen als Schlüsselfigur bei Entscheidungen über das Wachstum und die Erziehung des Kindes anerkannt wird. Die Ergebnisse dieses Artikels zeigen, dass die Vormundschaft der Mutter mit den Rechten und dem Wohl des Kindes im Einklang steht. Eine ernsthafte Berücksichtigung dieser Vormundschaft ist unerlässlich, um eine ausgewogene und ausgewogene Entwicklung des Kindes zu gewährleisten. Die Betonung der praktischen Anwendung dieser Konzepte in sozialen und pädagogischen Kontexten ist notwendig, um die Kinderrechte zu fördern und die Rolle der Mutter in diesem Zusammenhang hervorzuheben.

Schlüsselwörter: Vormundschaft der Mutter, Zweckmäßigkeit, Kind, Zwangsvormundschaft.

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Introduction

Guardianship as one of the key concepts in Islamic jurisprudence and civil law, refers to the responsibility of overseeing and managing the affairs of those unable to care for themselves, such as children. Traditionally associated with the father and paternal grandfather, this concept has, in certain cases, been extended to include the mother. Throughout history, the mother's role in raising and caring for children has always been emphasized. However, a crucial question arises: What are the boundaries and extent of the mother's guardianship over her child? Can the mother possess the same authority as a legal guardian[1] in all matters related to the child, or is her guardianship limited to specific conditions? This issue can be analyzed not only from legal and jurisprudential perspectives but also from social, emotional, and ethical dimensions.

The mother's guardianship over the child is an important subject in family law and child upbringing, with varying positions across different societies based on culture, religion, and local laws. In Islam and many legal systems influenced by it, guardianship implies the authority and responsibility to manage the child's affairs. Although the father is often recognized as the primary guardian, the mother plays a crucial role in the child's upbringing, care, and support.

One of the primary foundations for the mother's guardianship is the child's emotional and physical dependence on her, particularly during the early years of life. During these years, the child relies on the mother for nourishment, care, and physical and psychological development. This dependence places a significant responsibility on the mother and strengthens her position in the guardianship of the child.

From a jurisprudential perspective, numerous hadiths and narrations highlight the mother's role in raising and supporting the child. One famous narration states, "Paradise lies under the feet of mothers," emphasizing the mother's elevated position in nurturing children. Additionally, in the Qur'an, verses related to breastfeeding and the care of children clearly outline the mother's role.

1. وَلیّ قَهری.

In the legal systems of Islamic countries, the mother's role in child custody[2] up to a certain age—typically until the age of religious maturity or a specified legal age—is emphasized due to the child's need for maternal love, support, and education. Although legal guardianship[3] is usually granted to the father, in cases where the father is unable or unfit to fulfill his duties, the mother can assume full guardianship.

From a psychological perspective, the mother plays a vital role in shaping the child's identity, sense of security, and self-confidence. Research has shown that children who grow up under a mother's attention and affection experience better development and greater resilience in facing life's challenges.

Therefore, the mother's guardianship over her child is not only rooted in emotional and educational dimensions but also supported by religious, legal, and scientific evidence that cannot be overlooked. In situations where the father is absent or unable to fulfill his duties, the mother can be recognized as the primary guardian, assuming full responsibility for the child's upbringing and life management. This guardianship is not only a duty but also a right for the mother, which must be protected and reinforced in legal and social systems. Its full recognition requires a thorough analysis of jurisprudential, legal, and religious sources.

Explanation of the subject

In many societies, the issue of parental rights and responsibilities in the upbringing and guardianship of children has always been a focal point of attention. Among these, the concept of parental guardianship, particularly the guardianship of the mother over her child, is examined from various perspectives. Although in most legal and religious systems, the father is recognized as the primary guardian of the child, the role of the mother is also significant in many legal and religious frameworks when it comes to supporting and nurturing the child. However, questions remain regarding the extent to which a mother's guardianship over her child can be exercised, and in what areas there are limitations.

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2. حَضانَة.
3. وِلايَةِ قَهری.

In this context, exploring and analyzing the scope of the mother's guardianship over the child, from legal, social, and cultural aspects, especially within the legal systems of Iran and other Islamic countries, holds particular importance. This paper aims to examine this issue by exploring the rights, responsibilities, and limitations of mothers in relation to their children, as well as the challenges and differences between the rights of mothers and fathers in making critical decisions regarding the child's future.

This study seeks to analyze the various aspects of the mother's guardianship within the framework of existing laws, Islamic juristic opinions, and its cultural and social impacts, particularly concerning the rights and well-being of the child.

1. The concept of a child from different perspectives

A child is a human offspring from birth to puberty.[4] (Smith & Johnson, 2023; Brown & Taylor, 2023)

In Misbah al-Munir, it is stated: "A small human offspring is called a child,[5] a term that applies to both boys and girls as well as groups of children. Before reaching the age of discernment, they are referred to as ṭifl ṣaghir (young child)."(Fayumi, 2007, 1/374)

In jurisprudential terminology, a child is referred to as a human offspring from birth until the beginning of puberty. This term appears in many discussions. For example, regarding a child's adherence to the rulings of parents in Islamic law, some scholars have stated: "The ruling on a child who has not reached puberty—whether a boy or a girl, and regarding their being Muslim or non-Muslim—depends entirely on the status of their parents. In matters like purity and impurity, the child follows the ruling of their parents. This matter is agreed upon by the scholars, and there are numerous authentic narrations to support it." (Tabatabai, 1997, 8/109)

Scholars have defined puberty as the end of childhood and the entry into the stage of religious duty. Therefore, from a jurisprudential perspective, a child is someone who has not reached the age of puberty.(Qal'aji, 1988, 1/51)

4. طِفل.
5. طِفل.

In legal terminology, a child[6] is someone who, due to their age, has not reached the necessary physical and mental maturity for social life. Since true life begins at birth, the childhood period starts with birth. Article 956 of the Civil Code states: "The capacity to possess rights begins with the live birth of a human being and ends with their death."

However, it should be noted that a child, even before birth (while still a fetus), is considered alive and thus deserves protection. It can be said that the true beginning of childhood is from the moment of conception because it is at this point that the child is considered a living, independent being, and the law grants rights to the fetus.

According to the Civil Code, a fetus (a child who has not yet been born) enjoys all civil rights from the moment of conception, provided it is born alive, even if it dies shortly afterward. Therefore, in civil law, a child,[7] is someone who has not yet reached puberty and is not legally an adult. (Safaei, 2025, 174)

It is important to clarify that in the Civil Code, the terms "child", "minor"[8] and "infant"[9] are used interchangeably. A ṣaghīr is someone who has not reached puberty and has not become mature. (Emami, 2024, 5/187)

Children, due to their physical and mental conditions, are highly vulnerable and in need of protection. Legally, they lack sufficient intellectual and mental development to conduct transactions or manage their own property, so they require guardianship. Consequently, every country considers the age and maturity of individuals when determining their legal capacity.

To better determine legal capacity, age is used as an indicator. Prior to the 1982 amendment, the legal age of maturity in Iran was 18 years. However, after the issuance of the Unification Ruling No. 30 dated 3/10/1364, proof of maturity became a requirement for financial matters, while for non-financial matters, puberty alone was deemed sufficient. Thus, both girls and boys, upon reaching the age of puberty—9 for girls and 15 for boys—can make

6. صَغیر .
7. صَغیر .
8. صَغیر .
9. طِفل .

independent decisions in non-financial matters such as changing their family name or pursuing education.

In Iranian Civil Law, Article 1210 defines puberty as the end of childhood. According to the Islamic Penal Code (which removes criminal liability for minors), a minor[10] is someone who has not reached the age of legal puberty. The determination and recognition of the age of puberty are crucial for a child's civil and criminal rights.

A review of civil laws reveals that the end of childhood is not explicitly defined, as a person may be considered a child in one context and an adult in another. For example, a 9-year-old girl can marry, have children, but she cannot participate in elections or be employed, even though a court may declare her an adult.

The Charter of the United Nations recognizes the equal rights and dignity of all members of the human family as the foundation for freedom, justice, and peace in the world. The United Nations, through the Universal Declaration of Human Rights and international human rights conventions, affirms that every individual, without any discrimination based on race, color, sex, language, religion, political beliefs, social or national status, or other characteristics, is entitled to all the rights and freedoms set forth in these documents. Given that the United Nations has stated in the Universal Declaration of Human Rights that childhood requires special care and assistance, it believes that the family, as the basic unit of society and the natural environment for the growth and well-being of all its members, particularly children, must receive the necessary support and assistance to fulfill its responsibilities in society.

Considering that a child must grow up in a family environment filled with happiness, love, and understanding to achieve balanced and full personality development, the necessity of special care for children was expressed in the 1924 Geneva Declaration of the Rights of the Child and was approved by the General Assembly in the Declaration of the Rights of the Child on November 20, 1959. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (especially in Articles 23 and 24), the International Covenant on Economic, Social, and Cultural Rights

10. صَغیر .

(particularly in Article 10), and the documents and provisions of specialized agencies and international organizations related to child welfare all recognize these rights.

Given the importance of the United Nations in promoting international cooperation to improve the living conditions of children in all countries, particularly developing nations, all member countries of the 1989 Convention on the Rights of the Child reached agreements and are obligated to implement the laws stipulated in the Child Rights Treaty.

This treaty explicitly states that "a child, due to their incomplete physical and mental development, requires care and support, including legal protection before and after birth." Furthermore, the Universal Declaration and related legal documents outline the legal and social principles concerning the support and welfare of children, with special reference to issues like foster children, adoption, and international adoption. The United Nations Minimum Standard Rules for Juvenile Justice (Beijing Rules), and the Declaration on the Protection of Women and Children in Emergency and War Situations, highlight that there are always children in every part of the world living under difficult conditions. These children require special attention and care.

In recognition of each country's traditional and cultural values, as well as the importance of international cooperation to improve children's living conditions globally, agreements have been reached to support uniform care and education for children. The Convention defines a child in Article 1 as "any human being under the age of 18, unless under the law applicable to the child, a younger age of majority is recognized." (The Convention on the Rights of the Child,2009)

2. Guardianship over Children in Islamic Jurisprudence and Civil Law

Islamic jurists[11] generally reserve guardianship over children exclusively to the father and paternal grandfather. (Hilli, 1999, 2/541; Ameli, 1998, 255)

Articles 1180 and 1181 of the Civil Code, following Islamic jurisprudence, place children under the guardianship of the father or paternal grandfather. Article 1180 of the Iranian Civil Code states: "A minor is under the

11. فُقَها.

compulsory guardianship of his father and paternal grandfather, and also a minor or insane child if his lack of maturity or insanity is due to his minor."

Also, Article 1181 of the Iranian Civil Code stipulates: "Each father and grandfather has parental authority over his children."

The majority of jurists hold that the mother has no guardianship over her minor children after the death of her husband. (Mousavi Khomeini, 2022, 1/290; Golpayegani, 1984, 2/152; Behjat, 2005, 3/442)

The renowned jurist, Al-Jawahir, quotes from Allama Hilli in Tadhkirah and Majma' al-Fa'idah wa al-Burhan by Muhaqqiq Ardebili, affirming that this opinion is based on the consensus among scholars and supported by numerous hadiths regarding the guardianship of the father and paternal grandfather. (Najafi, 1983, 29/234)

Ardebili in Majma' al-Fa'idah wa al-Burhan states that no clear evidence exists other than this consensus. (Ardebili, 1984, 9/231)

The guardianship of the father and paternal grandfather is further validated by the practices of the Muqallid (common people) and the actions of the ‘Ulama (jurists). (Makarem Shirazi, 2003, 1/364)

Guardianship over a child means the right and responsibility for guiding, nurturing, and caring for them. This guardianship is usually granted to the father, although in some Islamic jurisprudential schools, the mother's position is also acknowledged.

According to Islamic jurisprudence, the mother is obligated to support the child during the breastfeeding period, and she has the right to claim the necessary expenses for raising and maintaining the child (alimony) from the father. In most Islamic schools, after divorce, the custody of the child is awarded to the mother. This right typically continues until a specific age (e.g., seven years for a boy and nine years for a girl).

In Iranian law, specific provisions address the mother's guardianship over the child. According to Article 1169 of the Civil Code, the mother has the right to custody until a certain age, after which this right may transfer to the father. Article 1169 of the Iranian Civil Code states: "For the custody and care of a child whose parents live apart from each other, the mother has priority until the age of seven, and after that, it is with the father."

The Family Support Law: This law specifically addresses women's and mothers' rights, including policies to support family welfare.

International Documents: At the international level, several documents address the rights of mothers and children: The Convention on the Rights of the Child (1989): This convention emphasizes the right of parents (both mother and father) to care for, raise, and maintain their children, calling for the best interests of the child to be considered in all decision-making. (The Convention on the Rights of the Child,2009)

The Declaration of the Rights of the Child: This declaration emphasizes that mothers and children should receive special protection, with their specific needs considered.

In general, the scope of the mother's guardianship over her child in Islamic jurisprudence and Iranian law is relatively significant, although the father's rights are also considered in many cases. Additionally, both national laws and international documents emphasize the protection of the rights of both mothers and children. This issue is continually debated and may change with time and social developments, highlighting the need for a review of laws and greater attention to the rights of mothers and children in contemporary society.

3. Examining the reasons for the necessity of mother's custody of the child

The Existence of the Maternal Bond: Regarding the issue of consensus[12] and the transmitted narrations,[13] objections have been raised, stating that this consensus is merely a secondary argument and that the narrations are advisory and can be disregarded.

Moreover, in refutation of the practices of the community and the general populace,[14] it has been argued that among the people, there have been various practices, and in modern times, new practices and traditions have emerged. The changes in laws have rendered many of the old customs and traditions obsolete. Additionally, in relation to the Islamic way of life,[15] it can be argued that some of these practices existed even before Islam, and the

12. اِجماع.
13. حَديث.
14. سيرة متشرعة و عُقَلاء.
15. سيرة متشرعة.

approval of Islam does not imply permanent and unquestionable acceptance of a practice. (Mehrizi, 2012: p. 364)

Islam: In Islamic jurisprudence, if the guardian[16] is Muslim, The successor[17] must also be a Muslim. This is a point on which there is no disagreement among Shia jurists. (Shubairy Zanjani, 1998, 12/4350)

In the Civil Code of Iran, Article 1192 states: "A Muslim guardian cannot appoint a non-Muslim as a guardian for the one under his care." Therefore, by analogy, this condition can also apply to the guardian. Thus, if a mother becomes Muslim and the father remains a non-believer, the children will follow the mother's faith, and as a result, the father will not have guardianship over them.(Ibn Rushd, 1996, 2/470)

The Principle of Welfare:[18] Shaykh Tusi discusses the importance of considering the welfare of the child in the guardian's actions, stating that if a guardian's action over the property of a minor results in no benefit for the child, such an action is invalid. This is because such an action contradicts the purpose for which the guardian was appointed.(Tusi, 2020, 2/200)

Furthermore, according to verse 152 of Surah Al-An'am, which states: "Do not approach the property of orphans except in a way that is best," the verse forbids approaching the property of orphans unless the action is in their best interest. Since actions without welfare are not in the best interest, they do not qualify as an exception in the verse and are thus considered forbidden.(Khoi, 1996, 5/23)

Therefore, the guardian must consider the welfare of the child in all their actions. When the evidence for guardianship does not have a general application, one should limit it to what is certain and act based on the principle of non-existence of guardianship in actions that do not benefit the child.(Hosseini Shirazi, 1996, 144)

Al-Muhaqqiq al-Karki in Jama'a al-Maqasid also emphasizes the necessity of considering the welfare and benefit of the ward when performing actions on their behalf. He states that a guardian should act with the welfare of the ward in mind; purchasing property without considering the ward's welfare is improper, and the property remains the seller's.(Ameli Karaki, 1993: p. 187)

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16. وَلیّ.
17. مُوالی عَلَیه.
18. قاعِده مَصلَحَت.

Thus, it can be argued that the guardianship of the parents is a rational matter, with rational people considering welfare as a fundamental element. According to another view, the authority of the guardian is not merely a matter of religious duty, but rather a rational principle that is supported and confirmed by legal evidence. (Makarem Shirazi, 2003, 1/433)

In law, the basis of guardianship over a child is also welfare, as the representative role of the guardian is for the purpose of safeguarding the welfare of the ward. Therefore, the guardian's authority is limited to actions that are in the best interest of the minor. (Katoozian, 2021, 2/223)

The guardian can only perform actions that are in the best interest of the ward, meaning that it must be beneficial and in their welfare. (Emami, 2024, 5/224)

The Civil Code also explicitly states in Article 1184 that the guardian must consider the welfare of the child, and Articles 1185 and 1186 implicitly take this into account. Article 1184 of the Iranian Civil Code states: "If the child's guardian does not respect the minor's wishes and commits actions that cause harm to the minor, upon the request of one of his relatives or upon the request of the head of the judicial district, after proof, the court shall dismiss the said guardian and prohibit him from disposing of the minor's property and appoint a competent person as a guardian to manage the child's financial affairs. Also, if the compulsory guardian is unable to manage the property of the trustee due to old age, illness, etc., and does not appoint someone for this purpose, an individual will be assigned to the compulsory guardian as a trustee in accordance with the provisions of this article"

Article 1185 of the Iranian Civil Code states: "Whenever a child's guardian is incapacitated, the public prosecutor is required to appoint a guardian for the child in accordance with the regulations regarding the appointment of guardians"

Also Article 1186 of the Iranian Civil Code states: " In cases where there is strong evidence that the compulsory guardian is not trustworthy with respect to the child's property, the public prosecutor is obliged to ask the primary court to investigate his actions. The court will investigate this case and, if it is found that he is not trustworthy, will act in accordance with Article 1184."

Based on jurisprudential and legal perspectives and child-related laws, it can be concluded that guardianship over a child by the father or paternal grandfather is considered a duty rather than a right for them.

The Will: The father and paternal grandfather of a child, who are the legal guardians, have the right to appoint another guardian through a will, referred to as a Qayyim (guardian). (Sabzavari, no date, 420)

Therefore, the mother can also be one of the people appointed by the guardian as a wasiyy (executor), and thus the mother may assume guardianship over the child through this process. On the other hand, upon the father's death and the lack of legal authority for the mother, new challenges arise in decision-making for the child. This creates a constant concern for the mother that legal tools could be used to prevent her from making decisions in the best interest of her child. This issue becomes even more pronounced when the father has passed away and the mother holds guardianship over minor children.

The conflict between the mother's guardianship and the paternal grandfather's guardianship creates significant problems in the child's upbringing and other related matters. For example, in medical treatment, surgery, or taking the child abroad, coordinating between the mother and the paternal grandfather to make appropriate decisions for the child becomes extremely difficult. Disagreements increase, especially if the paternal grandfather uses the child as a way to settle past disputes. Furthermore, in matters of the child's upbringing and education, which requires financial resources, the dispute arises over who is responsible for the child's needs. Some have argued that during the period of guardianship, the responsibility for upbringing lies with the custodian, as without this, the mother would simply be a servant taking care of the child's cleanliness (Iranmanesh, 1995, 30).

Under such conditions, the mother cannot make decisions about the child's development and this creates hardships. In today's era, where nuclear families are more common, children do not live under the same roof as their paternal grandfather, and the grandfather may not be as invested in the child's future as a father or mother would be, which makes it difficult for the paternal grandfather to assume sole guardianship after the father's death.

Thus, granting more authority to the mother in managing the child's property, upbringing, and well-being is a social necessity that the changes in society and family structure in Iran demand. Especially since mothers are generally more devoted and self-sacrificing than anyone else when it comes to their children. (Safaei, Emami, 2024, 167)

If someone other than the mother is appointed as the guardian through the will, numerous challenges arise within the family. Unfortunately, a mother who is responsible for her child's custody will be forced to seek the guardian's permission for all matters concerning the child, which is an insult to the mother's authority.

Guardianship of the Righteous Muslims:[19] The term Guardianship of the Righteous Muslims refers to individuals who are virtuous, just, and committed in the Islamic community, acting according to religious and ethical principles. In the absence of a specific guardian or if the current guardian is insufficient, these individuals take on the responsibility of guardianship.

Islamic scholars base the guardianship of righteous Muslims on Quranic verses, Hadiths, and jurisprudential principles. One of the most important verses in this regard is verse 6 of Surah Nisa:[20]"And test the orphans until they reach marriageable age..." This verse highlights the community's responsibility towards orphans. Scholars emphasize that, in the absence of a specific guardian, the Islamic community has the duty to manage the affairs of orphans through just individuals.

Additionally, the well-known prophetic Hadith "The Imam is a shepherd, and he is responsible for his flock" illustrates the general responsibility of guardianship in the Islamic society. In the Islamic family system, the mother holds a unique and irreplaceable position. Numerous Quranic verses and Hadiths from the Ahl al-Bayt (peace be upon them) refer to the mother's role in raising, nurturing, and supporting her children. For instance, verse 15 of Surah Al-Ahqaf states: "And We have enjoined upon man [care] for his parents. His mother carried him with hardship upon hardship..." This verse acknowledges the mother's struggles during pregnancy and after, emphasizing her essential role in the child's life.

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19. وِلایة عُدول مُسلِمین.
20. نِساء.

The mother, as a just, worthy, and committed individual, is a prime example of a righteous Muslim. Given that the mother shares the deepest emotional and natural bond with the child, her guardianship, based on the general principles of guardianship by righteous Muslims, can easily be established.

The guardianship of the mother over the child, based on the general principles of guardianship by righteous Muslims, is not only legally justifiable but also appears to be logical and necessary from a moral and customary perspective. As a worthy and committed individual, the mother can take on the child's guardianship in the absence of a competent or lawful guardian. This not only ensures the child's welfare but also helps maintain the stability of the family and society.

Custodianship:[21] Custodianship refers to a legal status in which an individual is appointed as a legal guardian to oversee the rights, property, and upbringing of a child or a ward. This concept is recognized in the civil law of Iran and other Islamic legal systems. Article 1184 of the Iranian Civil Code refers to the appointment of a custodian when the natural guardian[22] is unqualified or absent. Article 1184 of the Iranian Civil Code states: "If the child's guardian does not respect the minor's wishes and commits actions that cause harm to the minor, upon the request of one of his relatives or upon the request of the head of the judicial district, after proof, the court shall dismiss the said guardian and prohibit him from disposing of the minor's property and appoint a competent person as a guardian to manage the child's financial affairs. Also, if the compulsory guardian is unable to manage the property of the trustee due to old age, illness, etc., and does not appoint someone for this purpose, an individual will be assigned to the compulsory guardian as a trustee in accordance with the provisions of this article"

Custodianship is a key concept in Islamic law and jurisprudence, where it refers to the guardianship of vulnerable individuals, such as children or wards, by a custodian (legal guardian). In Islamic jurisprudence and enacted laws, custodianship is delegated to another person when the natural guardian (father or paternal grandfather) is absent or has lost their competency. In this context, the mother, due to her emotional connection and

21. قِیمومیّت.
22. وَلیّ قَهری.

nurturing role, can be appointed as the child's custodian. This role, in addition to its legal aspect, is grounded in Islamic principles and the child's best interest.(Safaei, 2025, 1/92)

The documentation of maternal custody in Islamic jurisprudence includes the following:

A. The Principle of Prioritizing the Best Interest of the Child: One of the fundamental principles in Islamic jurisprudence is the prioritization of the child's best interest over other considerations. Whenever a child is in a situation where the natural guardian is unable to protect their rights, a custodian is appointed in a manner that ensures the child's welfare is best safeguarded. Given the emotional bond and nurturing role of the mother, she is often the most suitable choice for the child's guardianship in such cases.(Tusi, 2020, 1/235)

B. Hadiths and Narrations: There are numerous narrations in Islamic sources that emphasize the responsibility and role of the mother in supporting and caring for her child. For example, the Prophet Muhammad (PBUH) said in a well-known hadith:

"Whoever leaves wealth, it belongs to his heirs, and whoever leaves behind children or an orphan, it is my responsibility and that of the righteous after me."(Majlesi, 2020, 103/148)

This hadith refers to the duty of the community and righteous individuals to care for orphaned or vulnerable children. The mother, being the closest and most righteous individual to the child, is a clear example of this narration.

The Wisdom of Rational Individuals: The concept of the wisdom of rational individuals[23] is one of the important sources for deducing legal rulings.(Mozaffar, 2020, 2/153) This principle refers to the behavior and practices that wise individuals in society adopt based on wisdom and public interest. In the case of maternal guardianship over a child, this concept can serve as a strong supporting argument. Wise individuals naturally entrust the responsibility of raising and caring for the child to the mother, as she has the closest emotional and nurturing bond with the child. Below, the role of

23. سیره عُقَلاء.

the wisdom of rational individuals in proving maternal guardianship over the child is discussed.

In Islamic jurisprudence, the wisdom of rational individuals is considered one of the sources for deriving legal rulings. Jurists use this principle to explain issues where there is no explicit Quranic or Hadith-based text. In other words, whenever the behavior of rational individuals in a particular matter aligns with reason and logic, it can be accepted as a valid legal basis. (Mozaffar, 2020, 2/153)

Maternal Guardianship from the Perspective of Common Custom: According to general societal norms in various communities, the mother, being the closest individual to the child, is primarily responsible for the child's upbringing and care. This responsibility stems from the natural emotional bond between mother and child. Rational individuals also believe that, due to the mother's deep understanding of the child's needs and her ability to care for him or her, she is the best candidate for guardianship.

Prioritization of the Child's Well-being: One of the principles accepted among rational individuals is that the well-being of the child takes precedence over all other matters. From the perspective of rational individuals, the mother's presence as the guardian is more logical, not only because of the emotional and psychological bond but also because she ensures the child's well-being in the best way.

Acceptance of the Mother: as Guardian in the Absence of the Father In various societies, even before the establishment of legal and juristic systems, rational individuals typically accepted the mother as the guardian when the father was absent or deemed unsuitable. This behavior demonstrates the rational approach that affirms the mother's guardianship over the child.

Recent legal and psychological research emphasizes that the maternal bond, being as fundamental as the paternal bond, provides a strong justification for recognizing mothers as natural guardians of their children, particularly when the father is absent or deemed unfit." (Evans, 2024, 89)

The Rule of No Harm:[24]The rule of No Harm means "no one should harm another.This principle is one of the fundamental rules in Islamic

24. قاعِده لاضَرَر.

jurisprudence, particularly in the Shia legal tradition. It teaches that any action leading to harm or damage to others is illegitimate and should be avoided. This rule applies not only in individual relationships but also in social and family contexts. (Mohaqiq Damad,2023, 1/131) In the context of family law, the No Harm rule can serve as a general principle to protect the rights of children and define the responsibilities of parents, particularly mothers.

According to the Rule of No Harm, any decision leading to harm to the child must be reconsidered. This means that if the father is unable or unwilling to fulfill his responsibilities, the mother should be able to make necessary decisions based on the child's welfare. This not only protects the child's rights but also helps preserve their physical and emotional well-being.

Preventing Potential Harm: In situations where the father is absent or unable to meet the child's needs, the lack of maternal guardianship could lead to serious harm to the child. Following the rule of No Harm, measures should be taken to prevent such harm. Therefore, granting guardianship to the mother in such circumstances is not only logical but essential.(Widjaja et al, 2020)

The Impact of Time and Place on Guardianship Over the Child: Time and place are two fundamental elements in human life that have profound effects on individual growth and development, especially during childhood. Time, as a determining factor in daily life, greatly influences the development and upbringing of the child. It can be considered in two forms: social time and biological time.

1. Social Time: Social time includes the culture, customs, and traditions that exist in a particular society. These factors can influence how a child is raised. For example, in some cultures, mothers dedicate more time to raising and caring for their children, which can lead to the creation of a stronger emotional bond between mother and child. Additionally, specific times, such as holidays, celebrations, and religious events, can provide opportunities to strengthen family and social ties.

2. Biological Time: Biological time refers to the various stages of a child’s growth. Each stage has its own specific needs, and a mother must choose the appropriate time to educate and raise her child according to these needs. For

instance, during the early years of life, there is a greater need for attention and care, which can significantly affect the child's emotional and social development. (Rao, 2019)

The Impact of Place on the Child: Place is also a crucial factor in shaping a child's personality and behavior. It includes family environment, community, and educational settings.

1. Family Environment: The family environment is the first place where a child grows. Parental behavior, emotional atmosphere at home, and the quality of family interactions greatly influence the child's mental and social well-being. For example, children raised in supportive and positive environments are more likely to be emotionally healthier and develop stronger social skills.

2. Community: The community where a child lives plays an essential role in their development. Social values, beliefs, and norms shape the child's behavior and attitudes. Additionally, access to educational, recreational, and healthcare facilities in the community significantly affects the child's quality of life.

3. Educational Environment: Educational spaces, such as schools and learning environments, contribute to the child's learning and social growth. The quality of education, social interactions, and the physical environment at school can impact the child's development.Schools with positive and supportive environments help build self-confidence and foster motivation for learning.Time and place are key elements in shaping a child's personality and behavior. Mothers who consider these factors can provide the best upbringing for their children. Understanding the child's time and place needs and creating a supportive and positive environment can promote healthy emotional, social, and cognitive growth. Therefore, paying attention to time and place in child-rearing is essential for both parents and educators.(Rao, 2019)

The Principle of No Hardship:[25]The principle of No Hardship means that no one should face unbearable hardship in their life. This principle is rooted in Quranic verses and the sayings of the infallible Imams (peace be upon them). Specifically, the verse "Allah does not burden a soul beyond its

25. قاعِده لاحَرَج.

capacity" (Al-Baqarah: 286) clearly emphasizes that God never imposes a task on anyone beyond their ability.(Bojnordi, 2022, 1/365)

The Connection Between the Principle of No Hardship and the Mother's Guardianship:

1. Protecting the Child's Rights: One of the main objectives of the Principle of No Hardship is to protect individual rights. For children, this is particularly significant because they cannot defend their own rights. The mother's guardianship ensures that the child's rights are preserved and keeps them away from unnecessary hardship.

2. Providing Emotional Needs: Children have unique emotional and psychological needs that only a mother can fulfill in the best possible way. If the mother is not allowed to have guardianship over her child, the child may be deprived of the necessary love and attention, which could harm their mental well-being.

3. Preventing Conflicts of Interest: In cases where the father and mother may have differing opinions on the child's upbringing, granting guardianship to the mother can help prevent conflicts of interest. This ensures that the child grows up in a peaceful environment without emotional stress.

4. Facilitating the Upbringing Process: According to the Principle of No Hardship, if the mother cannot have guardianship, the child's upbringing process may be disrupted. This disruption can lead to psychological problems not only for the child but also for the mother.In conclusion, the application of the Principle of No Hardship highlights the necessity of the mother's guardianship in certain situations to protect the child from harm and ensure a healthy and stable upbringing.(Hazrati, 2024)

The Principle of Protection:[26] The verse specifically highlights the importance of protecting and safeguarding children. In the Holy Qur'an, God emphasizes proper upbringing and protection of children. This verse reminds parents of their responsibility to shield their children from harm and danger. Its meaning is to protection and care—both physical and spiritual.

Several Qur'anic verses, such as "And be kind to parents" (Surah Al-Isra:

26. وقایة.

23) and "His carrying and weaning is thirty months" (Surah Al-Ahqaf: 15), point to the special role of mothers in raising children. These verses suggest that mothers are deserving of guardianship due to their unique connection with their children.

The Relationship Between the Verse and the guardianship of its mother is that:

1. Preserving the Child's Rights: According to the verse, parents must ensure the rights of their children, including meeting their basic needs, providing education, and proper upbringing. In these matters, the mother plays a central role.

2. Impact on the Child's Future: Proper upbringing and emotional support from the mother have a direct impact on the child's future. This aligns with the concept of the verse, which emphasizes the protection and safeguarding of children.

3. Strengthening the Family Foundation: Since the mother plays a crucial role in raising children, empowering her role helps strengthen the family structure. The verse also underscores the importance of a healthy family and harmonious relationships within it. (Tabarsi, 2022, 10/477; Makarem shirazi, 2024, 24/286)

In conclusion, the connection between the verse and the mother's guardianship highlights the significance of her role in nurturing and protecting her children. By following Islamic teachings, mothers can shape their children's character and future, benefiting both the family and society in raising healthy and capable generations.

4. Ibn Junayd's View on the Mother's Guardianship Over the Child

Ibn Junayd al-Iskafi, one of the prominent early Imami jurists, held unique and sometimes uncommon views on certain jurisprudential matters. Regarding the mother's guardianship over her child, he opposed the mainstream opinion of Imami jurists, who traditionally limited compulsory guardianship[27] to the father and paternal grandfather. Instead, Ibn Junayd believed that in the absence of the father, the mother could assume guardianship of her children. Ibn Junayd maintained that if the father was absent (due to death or lack of qualification), the mother could act as the

27. ولايَة قَهرى.

child's guardian and take responsibility for managing their affairs. This perspective reflects his recognition of the mother's vital role in raising and supervising her children..

Although Ibn Junayd's view on the mother's guardianship did not gain widespread acceptance among Imami jurists of his time or afterward, it has drawn the attention of some contemporary scholars and social reformers.

Ibn Junayd's stance on this issue is recognized as a rare and unconventional opinion in Imami jurisprudence. Nevertheless, it highlights the flexibility of some early jurists in addressing social and family matters, offering potential inspiration for modern legal and jurisprudential reforms.(Helli, 2020, 7/124)

5. Challenges of the Lack of Maternal Guardianship

The absence of maternal guardianship in traditional jurisprudence and laws poses several challenges, affecting the rights of the child, the mother, and even society. These challenges are explored in various dimensions below:

5-1. Challenges Related to the Child's Rights

a. Violation of Child's Rights: In cases where the father has passed away or lacks competence, denying guardianship to the mother may harm the child's rights. The person with the closest emotional and nurturing relationship is unable to make crucial decisions for the child.

b. Disruption in Custody: When no legal guardian (father or paternal grandfather) is available, the child may be placed under the care of other individuals or judicial institutions that may lack sufficient understanding of the child's needs.

c. Legal Conflicts: The lack of clear laws regarding maternal guardianship can lead to confusion in the judicial system, resulting in the violation of the child's rights.(Aziz et al, 2023)

5-2. Challenges Related to the Mother

a. Decision-Making Limitations: Despite her close emotional and educational relationship with the child, the mother is deprived of the right to make significant decisions about the child's education, healthcare, or property management.

b. Dependency on the Legal Guardian: The mother often has to seek the consent of the legal guardian, even if he is unqualified or lacks sufficient motivation to act in the child's best interest.

c. Family Tensions: Disputes between the mother and the legal guardian can cause family conflicts and negatively affect the child's well-being.(Brophy, 2022)

5-3. Social Challenges

a. Increased Pressure on the Judiciary: When no competent legal guardian is available, courts are forced to intervene and appoint a custodian for the child, increasing the burden on the judicial system.

b. Cultural Consequences: Denying the mother guardianship presents an unfair image of women's role in society, reinforcing gender discrimination.

c. Economic Consequences: In cases where the mother is financially capable but not allowed to manage the child's property, financial resources may be poorly managed or misused.(Miller&Manzer, 2018)

5-4. Psychological Challenges

a. Impact on the Child's Mental Health: The child may feel that his or her mother lacks the legal authority to protect them, which can negatively affect their confidence and sense of security.

b. Psychological Pressure on the Mother: Being deprived of guardianship can lead to feelings of helplessness and frustration for the mother.(Pedro et al, 2024)

5-5. Legal Challenges

a. Conflict with Social Realities: In modern societies, where women play more active roles, denying maternal guardianship is inconsistent with contemporary life realities.

b. International Legal Standards: In many legal systems worldwide, mothers and fathers share equal rights to guardianship. The lack of alignment between local laws and international standards can create legal challenges at the global level.

In conclusion, addressing these challenges is essential to protect the rights of children and mothers, while also ensuring that the legal system adapts to modern social realities and global standards.(Golestani. 2024)

Conclusion

The conclusion of this article highlights that granting the right of guardianship to mothers over their children is crucial not only from a legal perspective but also from social and psychological aspects. The exploration of this right reveals that the mother, as the primary caregiver during many early stages of a child's life, should have a more significant role in key decisions such as education, healthcare, and the child's well-being. In various societies, cultural attitudes and existing laws may limit or deny maternal guardianship, despite evidence showing that granting this right to mothers can strengthen family bonds, improve child welfare, and promote gender justice within the family.

Furthermore, the article concludes that legal and cultural reforms aimed at recognizing mothers' guardianship rights can positively impact the upbringing and development of children while facilitating the protection of children's rights at the societal level. Ultimately, this research suggests that to achieve greater justice and balance in family responsibilities, legal systems must seriously consider granting mothers the right of guardianship and provide the necessary supportive mechanisms. Strengthening the role of mothers in family and community decision-making processes can also contribute significantly to this goal.

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