

Chapter 5: Child-Custody

Fatma: What is Islam's view on child custody?

Sayyid: The Qur'an advises couples accordingly,

"Take mutual counsel together, according to what is just and reasonable." (65:6)

Granting that couples cooperate and come to a mutual agreement on what is best for their children then Islam would support it.

The issue of child custody is not fostered on gender; it is based on the capability and suitability of the parent; that is, which parent is better prepared to raise the children. When parents cannot agree on settling the issue of custody, then in most cases, the father would obtain custody of the children.

Again, this is conditional based on the premise that the father was religious and morally qualified. Otherwise, the children may remain with the mother, and the father must continue to financially support his children.

If the father were granted custody of the children, it would not mean that the mother would be denied seeing the children. The mother would continue to have access to her children. A father could never deny a mother the opportunity to be with her children.

Fatma: What is the consensus among scholars on the age criteria of children when parents cannot agree on custodial rights?

Sayyid: There is no consensus among the scholars, but the general rule among the scholars is that when parents separate and they cannot agree on the issue of custody, then the mother would attain custody of the boy until the age of two and the daughter until the age of seven. However, this rule is conditional and dealt with accordingly, case by case.

If both parents were faithful and honorable, then the Islamic judge would order the first few years of the child's life to be with the mother. This is an essential developmental time for a child, and the parent that

best fits in catering to the needs of a child during those years is the mother. In most cases girls, because of their natures, are entitled to be in the care of their mothers for a longer period than boys.

Fatma: Would Islam consider the child's preference of which parent they would wish to live with?

Sayyid: If the child had reached the age of maturity, and was responsible in determining what was best for their well being, then the Islamic judge would consider the child's preference.

Fatma: Considering both parents were qualified religiously, morally, and financially, and each parent wanted custody of the children, how would Islam normally deal with such cases?

Sayyid: Presuming that both parents wanted custody of the children, and both were qualified in the areas you mentioned, the father would attain financial and custodial rights of the children.

There are many reasons as to why Islam has held the father to be the legal guardian of the children —the most critical of which is remarrying. In most cases, after couples divorce they remarry. The chances of a man remarrying with children are much better than a woman with children.

As unwarranted as it may be, the children may become an impediment to the woman trying to remarry. Scholars also take into consideration that if the children are brought into the home of another man they may not be fully accepted. Reasons such as the ones mentioned, are an attempt to preserve and safeguard the children as well as the parents.

Fatma:

“Mothers shall give suck to their offspring for two whole years if the father desires to complete the term.” (2:233)

Is the Qur'an implying that the father has the decisive right of whether or not the mother will nurse the child?

Sayyid: In the original text of the Qur'an, which was written in Arabic, the Qur'an states that both parents must mutually agree to complete the feeding term, not only the father.

Fatma: What would be the grounds for the mother to be granted full custodial rights?

Sayyid: There are many reasons. For example, any form of cruelty, violence, neglect, or mistreatment of the children on the father's part would affect this decision. Furthermore, if the father were morally corrupt, irreligious, or indecent — these would also be decisive factors.

Fatma: In some instances where a father has died, the paternal grandfather attempts to claim custodial rights of the children. Does Islam permit the grandfather the right to take possession of the children while the mother is present and capable of raising them?

Sayyid: In the absence of the father, Islam permits only the paternal grandfather, if he chooses, custodial rights of the children. However, if the mother is financially and ethically capable of raising her children, without any form of negligence, then she may petition the Islamic courts or take her case to a religious scholar to secure the custody of her children.

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