

What Is The Viewpoint Of Islam Regarding Guardianship?

Definition Of Guardianship

The verbal meaning of "guardianship" in Arabic is to embrace, to provide assistance to somebody or to train. But the purpose of this word in legal and religious term is to keep or train a child physically and spiritually by someone who is determined by law as the person or persons suitable to provide the health and happiness for the ward in future and now.

Is Guardianship A Right Or Duty?

There are three possible answers to this question:

- Guardianship is a right
- Guardianship is a duty
- Guardianship is both a right and a duty.

If the guardianship is simply a right, it is transferable to others and the owner of this right can deprive himself by transferring his/her right.

But if it was just a legal or religious duty, the owner should accept it and he/she cannot shirk from this responsibility.

From the collections of civil law (such as Article 1168 and 1172 of Civil Law) it is stated that guardianship is not only a right but also a duty for parents. So the holder of this, in training and growing of his/her child is responsible and obliged and he/she cannot refrain from keeping the child.

Yet depending on the interests of the child, and in the situations which are explained in law, the court

can deprive one or both of the parents of this right.

The other theory that exists is that the guardianship for the father is a duty, but for the mother it is a right.

The Criterion Of Religious Edict About Guardianship

In male-dominated countries, the right of guardianship is for men, but in those countries that pay more attention to women's rights this right is transferred to women.

But in the view point of Islam, to be a man or a woman is not a preferential criterion to acquire this right but fundamental criterion is interests of the child.

According to this, if the wife and husband got divorced, the right of guardianship until the child becomes 7 years old because of the need of keeping and training in home is given to mother. But after that because of interest of the child and the needs of him in his relationship with outside world in adolescence age, the right is given to the father.

This order is for normal situations. But in exceptional cases depending on expediency of child or adult, the court transfers the right of guardianship to those who have a merit and ability; and it does not matter whether it is the father or the mother.

Of course, if the child stays with one of the parents, the other one is not deprived of visiting his/her child in normal cases, and according to Article 1174 of civil laws, if the parents have problem, the court determines the quality, time and place of meeting.

Now, in order to give more explanation, we shall narrate some legal and religious edicts:

Article 1168: keeping the child is both a right and a duty for the parents.

Article 1169: for protecting and keeping the child, where his parents got divorced, the mother is responsible for her child till the age of 7, and thereafter that responsibility is given to the father.

Note: if the child is 7 years old and parents have problems about guardianship, bearing in the mind the interests of the child, the issue is dependent on the decision of the court.

Article 1171: if one of the parents dies, the tutelage of the child is given to the other parent even though the deceased was the father and had arranged for him/her a guardian.

Article 1172: Neither of the parents have any right to shun the responsibility of the child in the period of his or her guardianship. If one of them refuses from keeping the child, the court must enforce the guardian according to the request of another or other guardian or one of the family members. Where there is complaint that the enforcement was not effective, the father should accept the expenses of

guardianship and where father was deceased, the mother is responsible.

Article 1173: When the father or mother, who is the guardian of the child, does not pay enough attention and is careless towards the child, and the physical or morality of the child is at risk, the court can decide about the guardianship at the request of the family or guardian or decision of jurisdiction

The following are examples of uncared child and immoral parents:

1. Harmful addiction to alcoholic, narcotic stuff and gambling.
2. Renown of moral decay.
3. Stricken to psychological ills as recognized by a medical doctor.
4. Slave labour from the child or making him/her to work in immoral jobs, such as child sex, corruption, begging and handling contraband items.
5. Beating and maiming repeatedly beyond the usual limitations.

Article 1174: If because of divorce or any other reason, the parents do not live at the same location, the parent who is not the guardian of the child has the right to visit his/her child. The time and place of visiting and other details related to it is determined by the court if there is any dispute.

Article 1175: One cannot hold the child from the father or mother who is guardian, if there is a proof at law.

Article 1176: The mother cannot be forced to breast feed her baby unless the baby's nutrition is not possible with others.

Article 1177: The child must be submissive to the parents and in each age must regard them.

Article 1178: The parent must be aware of his/her child's need for treatments and must not be unresponsive to them.

Source URL:

<https://www.al-islam.org/some-questions-related-womens-rights-islam-sayyid-rida-husayni-nasab/wh-at-viewpoint-islam-regarding#comment-0>