



## Motherhood Duties and Child Custody Right in Islamic Jurisprudence

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### Abstract

According to the teachings of the Qur'ān, the mother is obliged to breastfeed her baby up to twenty-one months after the baby's birth. It is clear, however, that besides feeding on milk, the baby needs certain care to keep on nourishing; and this care is to be performed, in normal circumstances, by someone who has the strongest emotional and physical relationship with that baby. The issue of custody, which regards the question on who is responsible for this, is brought up when parents are divorced; but in case of continued matrimony, this issue is out of the discussion because the parents cooperate in taking care of their child. The custody of the child, although after being weaned, is the main responsibility of the father; however, the mother is also given the right to undertake this responsibility up to when the child is seven if so she wishes, irrespective of the child's gender.

**Keywords:** Mother, Child, Custody, Islamic jurisprudence.

### Introduction

Taking care of the child, which is called *ḥiḍānat* (Custody) in jurisprudence and legal texts, has been of interest to the Muslim scholars since long ago. In addition, because of its significance and the great role it plays in forming and adjusting socio-familial relationships, it has been examined in various chapters of legal books and the traditions of the infallible Household of the Prophet (a).

Although the root word *ḥaḍāna* and its derivatives are not used in the Holy Qur'ān, but the root "kafala" concerning the issue of child custody and providing for its needs have been brought up in two instances; one about the Prophet Moses (Qur'ān 20:40 & 28:12) and the other for the Holy Mary (Qur'ān 3:37 & 3:44). *Kifāla* (guardianship), at least in its qur'anic application, is used in a more inclusive meaning than child custody. *Kifāla* in this usage includes all aspects of a human being ranging from breastfeeding to provision for his/her living expenses and caretaking without any time limitation; but custody does not enjoy such comprehensiveness, as will be explained in the following sections.

The term *ḥiḍāna* in Arabic is derived from the root *ḥaḍāna*. In Arabic, *ḥaḍāna* means "the distance between the armpits to the loins," "the chest and the two arms and what included in-between," which can be summed up as "embrace." Accordingly, *ḥiḍāna*, which can grammatically be either infinitive or noun (Fayyūmī, 1927, vol. 1: 193), means "to clasp the baby to one's breast," "to nurture the baby," and "to embrace the baby," which can be viewed as a synonym to "nursing" and "wet nursing" (Ibn Manẓūr, 1985, vol. 13: 122-124). In Islamic jurisprudence, *ḥiḍāna* is used in its lexical meaning (Karakī, 1987, vol. 7: 129 & 246) and it

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does not have a new meaning (legal reality). Thus, using the word *wilāya* in the meaning of "guardianship" for the definition of *ḥiḍāna* (‘Āmilī al-Faq‘ānī, 1997: 204; Ḥillī, 1993, vol. 3: 101) would not be correct.

### **Custody, right or a decree**

Among the issues open to discussion about custody is whether it is a right or a decree. Some Muslim jurists believe that religious laws (legal fabrications) are divisible into right and decree, the most important difference of which is in transferability of their use to others, as well as the possibility of refusing to use it (*isqāt* = relinquishment) in case it is a right and the impossibility to do so in case it is a decree (Tawḥīdī, 1992, vol. 2: 47).

If we accept that transferability and relinquishment are two basic features of right, then it is argued whether child custody is a right or a decree. To those who believe custody is a kind of guardianship (*wilāya*), it is a decree, for *wilāya* is among the granted legal decrees which are removed or devised by the grantor or legislator, and the one who is religiously accountable (*mukallaf*) has no option in fabricating or not fabricating them; consequently, neither of the parents can refuse to accept it. However, those who do not regard *wilāya* as valid in the concept of custody, naturally view it as among the rights; as a result, either of the parents would be permissible to refuse to take care of the child (i.e., accept its custody) (Khānsārī, 1977, vol. 4: 472-473).

Even if we regard custody to be among the rights, no conclusion can be made from it for the permissibility to refuse to put it into action in all cases; for right is divisible in one aspect into two types of natural innate and entrusted. The entrusted right is an authority given to a person by law and perhaps it can be viewed as a synonym to "sovereignty"; natural right, however, is one genetically enjoyed by everybody without requiring any legal authority, like the right to freedom.

Accordingly, undertaking a person's custody takes place in either Genetic (natural) or Legislative (granted) ways, for, in some cases, one's genetic relationship with another person in itself is sufficient to undertake their custody, but in some other cases, one has to be permitted to take over a task or someone's affairs.

In cases where the custody of parents is concerned, mention is made of a natural-genetic right that is created as soon as a filial relationship is realized. Naturally, such a right cannot be relinquished so much as the genetic relationship between the child and its parents cannot be relinquished, especially if we remember that custody is a reciprocal right. On the one side is the child and on the other either the father or mother. On the one hand, if the child is not protected, it will fall prey to annihilation – so the parents are obliged to protect and support their child, and on the other hand, the realization of the father-child or mother-child relationship itself necessitates the parents and no other people to undertake their child's care. Therefore, it is incumbent on the parents to fulfil their duties in this respect, and they are not allowed to shun this responsibility, for failure in this case would inflict serious harms onto the child (Sayyid Sābiq, n.d., vol. 2: 338-339; also, for more information about the reasons of those who regard custody as an unrelinquishable right and criticism of them, q.v. Fāḍil Hindī, 1984, vol. 2: 107).

However, besides the parents and the child's blood relatives who naturally undertake the child's custody, other people can undertake this task, such as a person who can undertake the custody of abandoned babies due to specific conditions. Although picking up abandoned babies from public passageways (*iltiqāt*) is a collective obligation, by leaving the baby to the finder of the baby or any other person through the organizations which are authorized to make decisions about such a baby, that person is privileged (permitted) to undertake the baby's custody. This privilege or right is a legal right according to which God has given the person

the responsibility of taking care of a baby and that person has the right to relinquish or transfer it to others. As he can discontinue his cooperation in this respect or due to losing the competence for taking care of the baby, the right to custody is taken back from them.

### **Stages of child custody**

The issue of child custody is examinable in two stages: the infancy and afterwards; or, in other words, before and after two years of age.

#### **Child custody before the age of two**

Some Muslim jurists believe that the custody of a child before the age of two is to be undertaken by the mother (Suyūrī, 1982: 433), while others believe that the custody of the child is upon both parents, even though they are divorced (Ibn Fahd Ḥillī, 1987, 3: 426; also, to learn about its criticism, q.v. ‘Āmilī, 1993, vol. 1: 466). The most significant reason that the proponents of both views present are the traditions (ḥadīth) related from the Infallible Imāms in Islamic sources (Regarding their content, these traditions are divisible into three categories: 1) The partnership of both parents in child custody; 2) Child custody as exclusive to the mother; and 3) Child custody as exclusive to the mother (q.v. Ibn Bābwayh, 1984, vol. 3: 509, no.4788 & vol. 3: 275, no. 1304; Kulaynī, 1968, vol. 6: 45, no. 4). The content of these traditions would sum up to the fact that during the first two years of the child's life (i.e., infancy), the mother is superior over the father in taking care of the child (Shahīd Thānī, 1993, vol. 8: 421). A child can be turned over to its mother to be taken care of (custody) during its first two years of life (infancy) as long as the mother consents to breastfeed her child. However, if she rejects to do so, the father is permitted to hire a foster suckling-mother for the child and take him/her away from his/her mother (Ibn Idrīs Ḥillī, 1990, vol. 2: 651; Muḥaqqiq Ḥillī, 1988, vol. 2: 566 & 568).

#### **Child custody after the age of two**

When the parents have divorced, who should undertake the custody of the child once the infancy period is over? The answer to this question can be examined in the form of three hypotheses.

**The parents are alive:** In case the parents are divorced and are both alive, there are various views stated by the jurists on the custody of the child in terms of its gender. The most important is the priority of the mother in the custody of a son up to the age of two and a daughter up to the age of seven (Q.v. Shahīd Awwal, 1990: 176; Yūsufī, 1989, vol. 2: 200). However, the differentiation between a son and a daughter concerning custody does not seem right (Q.v. Baḥrānī, 1984, vol. 25: 88), because the custody of the child, although after being weaned, is the main responsibility of the father; however, the mother is also given the right to undertake this responsibility up to the age of seven if she wishes so irrespective of the child's gender (Rawḥānī, 1991, vol. 22: 304). The best evidence for proving this view is a tradition related by Ayyūb b. Nūḥ, which explicitly states, “The woman is more deserved to [take care of] her child until it reaches seven unless she wishes otherwise” (Ibn Bābwayh, 1984, vol. 3: 435, no. 4504).

**Either of the parents is alive:** In case the mother dies while undertaking the custody of her child (to the age of seven), the responsibility of the child custody will be transferred to the father (Najafī, 1988, vol. 31: 293). Since the child custody is the responsibility of the father and it is transferred to the mother for seven years in case she desires so, the father has priority over others in his child's custody. However, if the father dies, there is no doubt that the mother would undertake the custody of the child up to the age of seven. However, who should take

care of the child after this age? Some Muslim jurists have mentioned the restoration of custody to the mother (For more information of how this evidence has been alluded to as well as their criticism, q.v. Ḥillī, n.d., vol. 2: 40). In contrast, there are some other possibilities brought up such as the transfer of the child custody to the father's waṣī (executor of the father's will) (Shahīd Thānī, 1978: vol. 5: 66), to the paternal grandmother (Mufīd, 1990: 531), and to the paternal grandfather, of which the latter possibility is more likely to be correct by all the reasons presented.<sup>1</sup>

No parents are alive: If a child loses one of its parents before it reaches maturity, who must undertake its custody? To answer this question, first we have to look for a specific reason for which one or more persons are determined to undertake this responsibility and if there is not such a reason, seek to decide on someone based on the existing generalities.

As it was stated before, this responsibility is transferred to the child's paternal grandfather, since seeing into and appropriating the child's properties and making decision about its marriage, at least before reaching maturity, is only upon the grandfather to a similar level as its father in his absence. All the more so, then, the child's affairs and custody rest with him – To prove this view, some arguments have been presented which are not free from dispute (q.v. 'Āmilī, 1993, vol. 1: 472; Ḥillī, 1967, vol. 3: 256). In case the child's grandfather is not alive, this responsibility will be transferred to the father's and grandfather's executor. That is because the latter is the exclusive successor of the father and grandfather, who is authorized to intervene in the underage child, and it is clear that the custody and rearing of the child are among the duties of the father and the grandfather (Najafī, 1988, vol. 31: 296).

### **Essential conditions for the custody of children**

Although the mother can take care of her child up to seven years after divorce from her husband, she has to meet certain conditions for undertaking such a task, the lack of each of which would lead to losing her competence to this end (Of course, it is to be noted that if undertaking the child's custody is subject to the realization of these conditions, there is no difference in this task between the mother and other people of equal rank or her successors). Eight conditions have been stated in old legal texts for the confirmation of the mother's competence in the custody of her child.

#### *Islam*

Since before reaching maturity the child is legally attached to the religion of its father or mother, some Muslim jurists believe that the mother can take the custody of her child after divorce from her Muslim husband if she is a Muslim herself. The most important reason for this, notwithstanding the possibility of a non-Muslim mother's influencing her child's beliefs, is the impermissibility of the guardianship of a non-Muslim (unbeliever) over a Muslim child (Sabziwārī, n.d.: 194). What is meant by child custody is only taking care of the child and has nothing to do with guardianship over the child, so that a non-Muslim mother's taking care of a Muslim child may require the guardianship of non-Muslims over the Muslims (Khū'ī, 1986, vol. 2: 311).

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1. Although in regard to custody, none of the jurists have brought up the above possibility, it is asked in the book of inheritance whether one – after his death – can hand over his child to a stranger to take care of while the child's grandfather is still alive. Giving a negative answer to this question, the Shī'a jurists – contrary to the Sunnīs – have brought up some matters from which it can be concluded that the custody of the child after its father's death rests with its paternal grandfather in case the parents have already divorced and the child is over seven years of age. For more information, q.v. Anṣārī, 1995: 61; Baḥr al-'Ulūm, 1984, vol. 4: 72-73; Ḥakīm, 1971, vol. 14: 593; Shahīd Thānī, 1991, vol. 2: 323.

*Intellect*

Among the basic requirements of the mother's custody of her child is her being sane. If the mother does not enjoy the soundness of intellect, she cannot undertake her child's custody, because she is not only unable to take care and safeguard her child, but she needs someone to take care and custody of herself (Sayyid Sābiq, n.d., vol. 2: 342; Shahīd Thānī, 1993, vol. 8: 423). Therefore, if the mother is suffering from chronic insanity, she is certainly not qualified to take the custody of her child; but if the mother's insanity is periodical such that she is able to do her duties, its occurrence will not endanger the child's physical and psychological health and the mother can in due time undertake her child's custody. Of course, this is the case when its occurrence is not so frequent as to have an impact on the child's life and practically depreciate the mother's ability in taking care of her child and satisfying its needs (Sabziwārī, n.d: 194).

*Freedom*

Among the qualifications mentioned in some of the early legal books, concerning the mother's custody of her child is that she is not a slave, which to our opinion is not a valid qualification at least for the mother.<sup>1</sup> Although talking about the rules of slavery in our time is useless due to the abolishment of slavery, this issue – by the refinement of reason – can be useful in two cases. When the mother is imprisoned for committing a crime or is living in a forced labor camp; for, as the slaves have been deprived of wielding power in most of their daily affairs and unable to make independent decisions about their lives, it is true for the person who lives in a prison or a forced labor camp. Now the question is raised that whether the child is sent to prison along with her mother to be taken care of by her, although she is not able to make independent decisions concerning her own daily life affairs. Alternatively, it is separated from the mother to be left with the father or any other person who can legally take its custody because of the inappropriate atmosphere of such places and the destructive effects that such places may have on the personality growth of the child.

*Not having a husband*

According to this qualification, the mother may not remarry while holding her child's custody (Ḥillī, 1992, vol. 7: 306; Ibn Bābwayh, 1995: 360). In five traditions, reference has been made to the mother's remarriage and child custody and it is emphasized that the mother enjoys the right to have the custody of her child so long as she has not remarried. Thus, if the mother gets remarried during her child's first seven years of age while the child's father is alive and there is also no obstacle for her to take care of her child, this remarriage will cause the loss of her right to her child's custody, which will then be transferred to the father (Ḥillī, 1989: 187; Ibn Ḥamza, 1988: 288).

*Trustworthiness*

Among the qualifications mentioned in legal texts for permitting the mother to take the custody of her child is her trustworthiness (Shahīd Thānī, 1993, vol. 8: 424). Mother's being trustworthy is interpreted from two aspects. The first is the lack of sinful signs (depravity) in her, which is sometimes mentioned as justice (for a definition of justice in Islamic

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1. For more information about the reasons proposed for the validity of this condition, i.e., the contradiction of guardianship with slavery, contradiction of custody with ownership and traditions, as well as their criticism, q.v. Baḥrānī, 1984, vol. 25: 91; Ṭūsī, 1967a, vol. 8: 107, no. 361.

jurisprudence terminology and various viewpoints about it, q.v. Anṣārī, 1994: 402; Ardabīlī, 1983, vol. 12: 311; Ṭabāṭabā'ī, 1988, vol. 1: 10). The second is the lack of perfidy and negligence in the issues related to the child's life (Baḥrānī, 1984, vol. 25: 93), which seems to be more pertinent, since a mother may not be abiding by the moral instruction of the religion but does not show the slightest negligence in taking care of her child. However, the validity of the parents' having moral competence for undertaking the custody of their child does not require a specific reason since the very legislation for custody is for protecting the life and psychophysical well-being of the children whose parents have divorced by the ominous phenomenon of divorce (Najafī, 1988, vol. 31: 289). Now, how is it possible to leave the child with a parent who may inflict serious physical or moral damages upon that child?

#### *Unchanging status of the mother's residence*

Some of the Sunnī jurists believe that to be able to take care of her child, a mother should not change her residence, whether temporarily or permanently (through travelling) (Nawawī, n.d., vol. 18: 341; Sharbīnī, 1958, vol. 3: 452). It should be noted that the child is not merchandise in the hands of the father or mother who have the right to possess it; rather, it is entrusted to them to be taken care of during the time it is not able to manage its own life and to be provided with means for its growth. Therefore, during the time the child is living under the supervision of its mother or father, its interests must be taken into account. Therefore, if the change of residence does not have a negative impact on the child's life trend, psychophysical health, education, and moral conduct, it will undoubtedly live with its mother given the (other) proofs hold true. However, if the change of residence is detrimental to it in any of the physical, psychological, emotional, religious, or educational aspects, this change will not be permissible.

#### *Unchanging state of the father's residence*

The Sunnī jurists have made the child's custody by the mother conditional on the unchanging status of the father's permanent or temporary (by travel) residence, in a way that if the father decides to change his place of residence, he can take the child away from the mother (Ibn Qudāma, n.d., vol. 9: 307; Kāshānī, 1989, vol. 4: 45; also, q.v. 'Āmilī, 1993, vol. 1: 469; for more information about other possibilities on this problem, q.v. Ṭūsī, 1967b, vol. 6: 40).

Since there is no legal evidence for these issues in the traditions and qur'anic verses (Baḥrānī, 1984, vol. 19: 94), what is in the child's best interests has to be taken into account. If being with the father or mother is to the child's interest, it will move along with them, and if staying in its present residence is in his best interests, it will stay on (Sayyid Sābiq, n.d., vol. 2: 352).

#### *Unafflicted with chronic and contagious diseases*

We explained previously that the mother's insanity is a factor in disclaiming her competency in the custody of her child. Furthermore, some Muslim jurists have raised the question whether the mother's affliction with chronic and contagious diseases, as was the case for insanity, causes the loss of her competency or not.<sup>1</sup>

By raising the issue that a child's living with its sick mother will cause harm to it, some jurists claim that a child must be separated from its sick mother (Bukhārī, 1981, vol. 7: 31; Dāmād, 1985: 165; Ibn Bābwayh, 1984, vol. 3: 557, no. 4914 and vol. 4: 357). In contrast,

1. In early legal texts, given the knowledge of the time, mention has been made of such diseases as leprosy, scabies, anthrax, and plague (cholera); for more information, q.v. Shahīd Thānī, 1993, vol. 8: 423 & 425.

some Muslim jurists also believe that the mother's affliction with chronic and contagious diseases would not cause the loss of her right to the custody of her child (Māzandarānī, n.d., vol. 12: 259; Rawhānī, 1991, vol. 22: 307).

The contagious diseases have to be distinguished from the chronic ones. In the contagious diseases, so long as the mother has not recovered from her illness, the child may not be left in her care; in the chronic diseases, however, its effect on the mother's ability to take care of the child is to be taken into account. If the mother is afflicted with certain chronic diseases such as different kinds of cancers, which do not hinder the mother from taking care of her child, her right to her child's custody is retained even though she receives help from others to this end. Nevertheless, if this disease is so serious that it does not allow the mother to fulfil her duty and someone else is to help out, there is no doubt that the child cannot be left with her.

Accordingly, if the mother is addicted to narcotic drugs or alcoholic drinks, she is not qualified for her child's custody, although she can fulfil her duties, as its ethico-moral soundness and – in some cases – its physical health will be endangered. Thus, leaving the child with such a mother will cause the relinquishment of a purpose for which the law of custody has been devised.

In the end, it is necessary to consider some points. All the qualifications mentioned for custody, if we have reason for their validity, are not exclusive to the mother but common between her and the father, unless in regard to marriage, which, in case of validity, is only exclusive to the mother and is not applied to the father (Ṭabāṭabā'ī, 1983, vol. 2: 162). As, to our opinion, the mother's custody period includes the first seven years of the child's life, be it a boy or a girl, and after that the custody is transferred to the father up to the age of maturity; therefore, each of the parents is to observe these terms during their custody period (Jazā'irī, n.d: 296). The qualifications explained above are related to custody, and the custody of a child and the related discourses are in effect only when the parents have been divorced. Therefore, when they are living together, they both undertake their child's care, and in case of the incompetence of either one, the other takes the custody of the child (Fāḍil Hindī, 1984, vol. 2: 106). Given the fact that the child's infancy is part of the seven-year period that it spends with its mother, the qualifications for custody are true and necessary during the infancy, too; therefore, not asserting them for the infancy period is not because of their invalidity; rather, it is because of the clarity of their validity (Najafī, 1988, vol. 31: 289).

### **Loss of the required conditions for child custody**

If either of the parents, while holding the custody of his or her child, loses any of the qualifications for this task, who will take over their duty?

### **Loss of mother's conditions**

Some Muslim jurists believe that if the mother lacks or loses one of the qualifications required for the custody of her child, then the father will substitute her and undertake the duty of the child's custody (Ibn Barrāj, 1986, vol. 2: 262 & 352-353; Qumī Sabziwārī, 2001: 510; Ṭūsī, 1987, vol. 5: 131). Therefore, if the mother is qualified for taking care of her child but refuses to fulfil her duties for it, the father has to undertake care of his child even when the mother has the primary duty for that, and if the father also refuses to do so, he can be forced to in order to protect the child (Shahīd Awwal, n.d., vol. 1: 396). The child's custody is the father's main intrinsic duty that for special reasons is transferred to the mother for the first seven years of its life; then, if the mother cannot or does not want to fulfil this duty, the father will substitute her.

### **Loss of father's conditions**

If the father lacks or loses one of the required qualifications, the possibility has been outlined in some legal texts that the task of taking care of the child up to maturity is transferred to the mother (Najafī, 1988, vol. 31: 295; Shahīd Thānī, 1993, vol. 8: 429). However, during the time that the father is undertaking his child's custody, i.e., from seven years old until maturity, in case the father does not have the requirements for the child's custody or if he loses them, this duty will be transferred to the paternal grandfather. That is because with the termination of the mother's custody period, the duty of taking care of the child is transferred to the father or his successor (Q.v. Hīlī, 1999, vol. 4: 14).

### **Return of the requirements**

So far, we have stressed that the custody of a child is subject to certain qualifications and if any of the parents loses one of them, they will no longer be qualified to hold the custody of their child. However, it is natural to raise the question that if either of the parents regains the required qualifications for the child's custody, can the child be put under their care? If the father regains the required qualifications, his child's custody will undoubtedly be given back to him. The reason is that the loss of qualifications is an obstruction to the father's status, and it is obvious that if the obstructions are removed, his fatherliness will restore its efficacy. Similarly, if the mother is also able to regain the required qualifications while holding the custody of her child – for example when signs of insanity are removed from her, her contagious disease is treated, etc. – she will regain her right to the custody of her child, for the expediency for custody is retained in her.

### **Parents' relationship during the child custody**

Among the most important issues brought up in child custody is the way the parents treat each other and the kind of relationship existing between them during this period, for as we explained before, child custody comes up when the parents have separated through a divorce. The parents' separation in itself creates tension between them, which may lead to hostile and vengeful behavior.

This unfriendly relationship between the parents would most often reach its peak by using the child as bait, that is, the child being with one parent is a means or pretext to exert indirect pressure on the other parent. For this reason, the great Shī'a jurists have since long ago attempted by stating a definition of these relations to minimize the probable damage being inflicted upon any of the parents as well as the child.

During the period in which the child is living with its father, whether due to the mother's lack of qualification for the child's custody or because her legal time for this purpose has run out, the father must make arrangements for the child's relationship with its mother in a way that neither the child nor the mother may be kept at bay. To this end, the father has to prepare the grounds for certain affairs to fulfil.

### **Meeting with the child**

He should prepare the ground for the meeting between the child and its mother. Moreover, he might not prevent this meeting, since preventing the child from meeting its mother would lead to breaking off the ties of relationship, which is strongly repulsive to Islam (q.v. Shahīd Thānī, 1993, vol. 8: 426).



### **Caring for the child**

If the child gets sick, the father must not prevent the mother from nursing and treating the child and hold her back from staying with her child, since the mother is more caring than others towards her child, and the sick child needs someone to take care of it, and it is obvious that the mother is the most deserving person for this task (q.v. Hillī, 1999, vol. 4: 13).

### **Caring for the mother**

When the mother gets sick, the father must not prevent the child – whether her son or daughter – to visit their mother frequently (q.v. Hillī, 1999, vol. 4: 13).

### **Child's mourning ceremony**

In case the child passes away while the father is holding its custody, the mother can be present at her child's deathbed and attend to the related tasks (q.v. Sayyid Sābiq, n.d., vol. 2: 351).<sup>1</sup>

### **Mother's mourning ceremony**

If the mother dies, her child can be present at her deathbed, and if old enough, the child can undertake to administer the burial services such as funeral ablution, enshrouding, funeral procession, and burial. As the studies indicate, nothing is mentioned in any of the Shī'a legal texts about the child's relationship with its father while living with its mother.<sup>2</sup> Taking care of the child by any of the parents cannot lead to the relinquishment of the mutual rights of the child and parents; thus, all the things that are conventionally regarded as the requirements and functions of the father-child or the mother-child relationships are permissible and the child or any of the parents cannot be deprived of it.

### **Conclusion**

1. Child custody is a father's intrinsic duty, which is transferred to the mother for a limited period. After divorce from her husband, the woman has the right to take care of her child, whether it is a boy or a girl, up to the age of seven.
2. The parents share the conditions for custody, except in case of the mother's remarriage.
3. A non-Muslim mother has the right to take care of her child.
4. Mother's chronic insanity inhibits her from the custody of her child. However, mother's periodic insanity does not inhibit her custody over the child in case she can fulfil her duties of taking care of the child and the number of its recurrence is very few and not too lengthy.
5. Mother's remarriage during her child's first seven years of life nullifies her custody over her child, whether her remarriage takes place during her ex-husband's lifetime or after his death and whether her second husband agrees with taking care of the child or not.

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1. It is to be noted that some jurists – while emphasizing the mother's presence at her child's preparation for burial, enshrouding, and burial service – have stressed according to some traditions that the mother is not to attend her child's funeral procession, which from the viewpoint of the Shī'a jurists is not true; q.v. Abū Dāwūd Sajistānī, 1990, vol. 2: 72, no. 3167; Ḥurr 'Āmilī, n.d., vol. 2: 817-819; Qazwīnī, n.d., vol. 1: 501, no. 1574-1578.

2. It is worth mentioning that in some Sunnī legal texts, there are phrases that include both the father and mother, "If either of the parents gets sick or dies and the child is with the other one, it would not prevent the child from visiting him or her or attending his or her funeral" Sayyid Sābiq, n.d., vol. 2: 351.

6. Mother has to be trustworthy for the custody of her child; namely, she must not misappropriate or fall short of the issues related to her child's life.
7. Mother is required to be morally qualified to be allowed the custody of her child.
8. When the mother is suffering a contagious disease, she cannot undertake her child's custody so long as she is not cured. Nevertheless, when she is suffering from a chronic disease such that she is not able to take care of her child even with the help of others, her right to custody remains valid; however, when it is by no means possible for the mother to take care of the child, this right is voided.
9. When the terms and qualifications for custody are lost during infancy, the mother's right to custody is transferred to the father. However, if the father loses the qualifications for his child's custody, it is transferred to the paternal grandfather and then to the executor of their will.
10. While the child is living with its father, the latter must not inhibit the mother from meeting her child, and if the child gets sick, he must not prevent the mother from nursing it. In addition, when either the mother or the child dies, the father must not prevent the other from taking part in the mourning ceremony.

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