

# Governing Regulations of Spousal Rights Dowry (*Mahr*)-Financial Support (*Nafaqah*)-Custody (*Al-Hadanah*) in Islamic Jurisprudence and UAE Law-Comparative Study

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## Abstract

The family is foundational to society, acting as the primary environment for nurturing children and significantly influencing communal health. Islam has long prioritised family stability, establishing frameworks to protect against social decay and preserve integrity. This study examines the legal principles governing marital rights, focusing on *Mahr*, *Nafaqah*, and *Al-Hadanah* within Islamic jurisprudence and UAE law. Marital rights are a sensitive yet essential aspect of Islamic jurisprudence, as these laws preserve family cohesion and ensure that individuals receive the divinely ordained rights necessary for harmonious coexistence. The structured approach in Islamic jurisprudence supports marital stability and respectful treatment, even in cases of marital dissolution, fostering dignified relations and reducing adversarial outcomes. Additionally, these regulations provide children with an environment free from parental conflicts, supporting their psychological and emotional development in a stable family setting. The findings of this study reveal that Islamic jurisprudence comprehensively addresses issues surrounding *Mahr*, *Nafaqah*, and *Al-Hadanah*, ensuring that no legal aspect is neglected. The diversity of interpretations within Islamic law further allows individuals to adopt rulings that best suit their unique circumstances, offering a degree of flexibility viewed as a form of mercy. UAE legislators have incorporated Islamic jurisprudential principles into family law to address potential deficiencies and clarify ambiguities, underscoring the value of Islamic jurisprudence in fortifying family stability. This integration highlights the role of Islamic principles in enhancing family resilience, which in turn contributes to broader societal welfare and cohesion.

**Keywords:** Dowry (*Mahr*), Financial Support (*Nafaqah*), Custody (*Al-Hadanah*), Islamic Jurisprudence.

## Introduction

The importance of family occupies a significant position among humans. Family is the basis for building society because it is the incubator that takes care of the children, in which they receive feelings of love, compassion, and solidarity. It is the first cell that society reforms with its goodness and corrupts society with its corruption. To carry out its civilized duty, it should be built on proper foundations and stilts that guarantee its stability and preserve its existence and sustainability. Hence, *Islam* takes the lead in caring for and surrounding it with great care. It takes great effort to organize, protect, and purify it from the chaos of pre-Islamic times. *Islam* also establishes it on firm foundations and strong pillars that protect it from corruption and destruction and help it perform its function perfectly. One of these pillars is the system of rights, which is considered the safety valve for the family and its stability. Hence, *Islam* accords special significance to it, clarifying the rights of each party therein, prescribing the manner of its utilization, and safeguarding it with the principles of faith and morality. This ensures its rightful application while preventing any potential misuse.

*Islam* gives women many rights through legislative sources, which are represented in the Qur'an and Sunnah, guaranteeing them the right to dowry (*Mahr*), financial support (*Nafaqah*), and custody (*Al-Hadanah*). Likewise, the Emirati legislator adheres to what is enacted by the Islamic Sharia to regulate women's rights, regulating the right to dowry under Article (50), which considers that the dowry is an inherent right of women. In addition, Article (53) of the Personal Status Law, which indicates the extent to which a woman has the right to abstain if she desires to enter into it until she receives her dowry. The legislator also regulates financial support under Article (63), which includes all expenses and the basic needs of human beings. Article (67) confirms that a husband's refusal to spend on his wife is equivalent to a debt not subject to the statute of limitations. Article (71) also identifies situations in which financial support is dropped from the wife if the marriage continues. Moreover, the Emirati legislator guarantees entitlement to custody to the mother under Article (146), which affirms that the principle of custody devolves upon the mother unless an impediment prevents this.

## Literature Review

The study of marital rights in Islamic jurisprudence, particularly *Mahr*, *Nafaqah*, and *Al-Hadanah*, highlights the principles that uphold family stability and individual rights. Islamic scholars have examined these rights extensively, noting their impact on maintaining social harmony and supporting respectful relationships within families. In the context of UAE law, integrating these principles with modern legal frameworks reflects a commitment to balancing religious values with contemporary needs. This literature review examines existing research on these marital rights, focusing on both classical interpretations and their practical applications within UAE legislation.

### *Nature of Spousal Rights in Islamic Jurisprudence and UAE Law*

The spousal bond is one of the relationships that Islamic Sharia has diligently protected and organized through a set of provisions and rulings that provide a comprehensive framework for the relationship, including various elements that are considered financial and moral rights arising from the establishment of the marriage in its Islamic legal sense, as codified by *Sharia*.

While the essence of the spousal relationship is based on affection and compassion, and its foundation is the voluntary fulfilment of mutual rights, Islamic Sharia and Islamic jurisprudence have not neglected to establish provisions that regulate these rights. This ensures the preservation and clarification of these rights for everyone, providing a *Sharia*-based reference for organizing these rights in the event of disputes between the parties in the spousal relationship and any related conflicts.

On the other hand, the positive legislator provides his perspective on organizing these rights, derived from Sharia and Islamic jurisprudence rulings. The legislator steps in to enact effective regulations within the state, drawing from jurisprudential principles that may have varied interpretations among scholars. This intervention prompted the legislator to impose binding constraints on individuals, ensuring a standardized framework for these rights applicable to all citizens. In this context, the legislator issues a series of laws, including "Federal Law No. (28) of 2005 regarding Personal Status, amended by Federal Decree-Law No. (52) of 2023," and "Federal Law No. (21) of 1997 regarding the Determination of Dowry (*Mahr*) in Marriage Contracts and its Expenses," which regulate certain aspects of spousal rights.

### **Concept of Dowry (Mahr) in Islamic Jurisprudence and UAE Law**

The dowry is one of the paramount rights mandated by the spousal relationship. Indeed, the completion of this relationship is inconceivable without fulfilling the dowry, which is considered a fundamental pillar in the marriage contract.

#### *First: Concept of Dowry (Mahr) in Islamic Jurisprudence*

The definition of dowry is the money owed by the husband to the wife upon marriage contract or consummation, representing one of the woman's rights over her husband, a gift from Allah or the gift that Allah has mandated the husband to give his wife. Accordingly, the dowry is considered one of the consequences arising from the marriage contract, and it is referred to as "*Sadāq*," whether pronounced with a "fatha" or "kasra." It is also known as "*An-Nihlah*," "*Al-Hiba*," "*Al-Qa'ar*," and "*Al-Farīdah*" (Younis, 2010). Islamic jurisprudence differs in the literal definition of the dowry, but it agrees on its concept and meaning. The Hanafis define it as "*the money due from the husband upon marriage contract as consideration for the consummation*" (Amin, 2011). The Malikis define it as "*the money owed to the fiancée as consideration for intercourse with her*" (Ahmed, 2014). The Shafi'is define it as "*the obligatory amount per the marriage contract or consummation*" (Muhammad, 2006). Meanwhile, the Hanbalis define it as "*the compensation specified in the marriage contract*" (Muhammad, 1996).

The dowry is proved with evidence from the Qur'an and Sunnah, where Allah Almighty said: "*Give women 'you wed' their due dowries graciously*" (Surah **An-Nisa**, Verse 4). Most interpreters believe that the speech in this verse is directed to spouses (Abbas, et al., 1990); in contrast, some say that this speech is directed to the guardians '*awliyā*', who used to take the dowry for themselves without giving the women anything (Muhammad, 1994). The first statement of the interpreters is the most correct statement on this issue, as the speech in the previous verses is directed to husbands. "*If you fear you might fail to give orphan women their 'due' rights if you were to marry them, then marry other women of your choice—two, three, or four.*" As a result, the consistency of pronouns in the verses requires that the addressee at

the beginning be the addressee at the end, thus making the verses' direction in addressing spouses more probable (Abdullah, 2003).

As for the Pure Sunnah, there is a lot of evidence that proves the obligation of the dowry, including the saying of the Prophet (PBUH), "*Go, I have agreed to marry her to you with what you know of the Qur'an (as her Mahr)*" (Sahl b. Sa'd Al-Saadi, and Reported by Al-Bukhari 5871 and Muslim 1425). The research proves that a man must pay the dowry during marriage, even though memorized Qur'an verses. The Messenger directed that anything be sought as a dowry for the woman at marriage, and the Messenger (PBUH) did not relinquish the dowry in any of his marriages.

#### *Second: Concept of the Dowry (Mahr) in UAE Law*

The Emirati legislator acknowledges the necessity of referring to the principles of Islamic jurisprudence and regulations to interpret and comprehend the Personal Status Law's provisions. This is clear from extrapolating the provisions of Article (2) of "Federal Law No. (28) of 2005 regarding Personal Status, as amended by Federal Decree Law No. (52) of 2023." In addition to arranging this Article for the schools of jurisprudence according to the priority of reference when interpreting, it began with the *Maliki* school, then the *Hanbali*, then the *Shafi'i*, then the *Hanafi* (Article, 2). The UAE Personal Status Law defines the dowry through Article (49) as "*the valuable money that the husband provides for marriage*" (Article. 49). Provided that its maximum limit is referred to in Federal Law No. (21) of 1997 regarding specifying the dowry in the marriage contract and its expenses. However, this law does not define the dowry; instead, it is limited to discussing it from an organizational perspective and relying on the Personal Status Law, jurisprudence, and custom to determine its meaning (Saud, 2022).

Accordingly, it is clear from the law's provisions that the dowry, in addition to being money given for marriage, must be as *evaluated property*, implying that its possessor is legally entitled to benefit from it. As per Sharia, the dowry cannot be illegitimate, which is an understood requirement given that non-evaluated property is not permissible according to Sharia in the first place. Consequently, the dowry must not be alcohol; money earned through trading in alcohol or other forbidden items whose circulation and dealing are prohibited under Sharia. The researcher believes that the Emirati legislator adheres to the jurisprudential limits of defining the concept of dowry. The concepts of jurisprudence and law are identical in this regard, which is understandable, considering that the Personal Status Law believes the provisions of Islamic jurisprudence to be its reference and to which it is referred in cases of legislative silence or ambiguity. Therefore, adhering to these provisions when stipulating the legal rules is preferable, which is the path the legislator follows.

#### **Concept of Financial Support (*Nafaqah*) in Islamic Jurisprudence & UAE Law**

Islamic law recognizes the dowry as a wife's financial right and obligates the husband to provide financial support throughout the marriage. Furthermore, it mandates this obligation in certain situations even after the dissolution of the marriage. The Emirati legislator adheres to these principles when regulating personal status matters.

*First: Concept of Financial Support (Nafaqah) in Islamic Jurisprudence*

Islamic jurisprudence addresses the definition of financial support through a group of similar definitions. The Hanafis define it as "that *which guarantees the survival of something due to its continuity*" (Muhammad, 1970). The Malikis define it as "*what a person normally consumes without extravagance*" (Al-Ansari, 1993). Another definition states it as "*expenditure used for good purposes*" (Muhammad, 1994). The Hanbalis define it as "*the provision of sufficient supplies of bread, food, clothing, housing, and associated necessities*" (Yunus, 2015).

The definitions of financial support provided by Islamic jurisprudence show that it includes all expenses a man owes to his wife, children, and relatives. It is the money that Sharia requires to be spent on these people, whether food, clothing, housing, or service, and everything is recognised by custom within the limits permitted by Sharia.

*Second: Concept of Financial Support (Nafaqah) in UAE law*

The Emirati legislator discusses financial support in Chapter I of Section V of Federal Law No. (28) of 2005 regarding personal status, as amended under Federal Decree-Law No. (52) of 2023. The Emirati legislator explains the concept of financial support by describing its elements without providing an abstract definition, as Islamic jurisprudence offers definitions. Article (63), paragraph (1), refers to financial support elements as "food, housing, clothing, and medical care" and adds the service element if this element is available to the wife in her family's residence, unlike the rest of the financial support elements that the husband is obligated in all situations (Article, 63).

In his approach, it is noteworthy that the Emirati legislator includes medical care as an element of financial support, which is not mentioned in the definitions of Islamic jurisprudence. However, this comes within the scope of the principle of "*as may be required by the customary good treatment in spousal relations,*" which the legislator also mandates as a general provision for all types of financial support, as the husband is required to provide all his wife's needs, including medical care, within his financial ability, and without extravagance.

The researcher considers that the elements of financial support are too diverse to be strictly defined. Customary good treatment mandates that a husband, according to his financial ability, must provide all the essentials that facilitate a comfortable life for his wife. It is inconceivable to exempt the husband from this duty as long as he can fulfil it, mainly if the wife has been accustomed to a similar standard of living in her family home.

**Concept of Custody (Al-Hadanah) in Islamic Jurisprudence and UAE Law**

In linguistic terms, custody refers to "*the preservation and maintenance of something*" (Ahmed, 1989). It denotes the guardianship and care of children. Islamic jurisprudence and UAE law define custody through their definitions.

*First: Concept of Custody (Al-Hadanah) in Islamic Jurisprudence*

Despite variations in the jurisprudential definitions of custody, the extrapolations of these definitions reveal the consensus among the jurisprudential schools regarding its essence. This consensus is evident through the definitions diligently provided by the scholars of the different schools of thought. The Hanafis define custody as "*bringing up children by those entitled to their custody*" (Amin, 1999). The Malikis define it as "*protecting children in terms*



of their accommodation, food, provision, clothing, bedding, and cleaning their bodies and clothes" (Ahmed, 1999). The Shafi'is define it as the "bringing up of those who cannot manage their affairs in a manner that benefits and protects them from harm" (Muhammad, 2020). Lastly, the Hanbalis define it as "protecting the young from harm, including their upbringing and working for their best interests (Younis, 2022).

The researcher notes that the various approaches in Islamic jurisprudence to defining custody primarily focus on the proper care of children, including providing all their necessities across different aspects of life. This approach guarantees their adequate upbringing, shielding them from poverty, need, and harm. Custody extends beyond the material aspect of spending; otherwise, it would merely be part of financial support (*Nafaqah*). Instead, it encompasses a range of non-material elements that ensure the child's proper upbringing, care, and physical and psychological well-being. It involves raising the child and attending to all their needs to ensure their well-being until they reach a certain age, under the care of those entitled to custody.

#### *Second: Concept of Custody (Al-Hadanah) in UAE law*

The Emirati legislator regulates custody through Chapter II of Section IV of "Federal Law No. 28 of 2005 regarding Personal Status, as amended by Federal Decree-Law No. 52 of 2023". This is the Section with the title "Effects of Separation." Article (142) defines custody as "preserving, caring for, and raising the child in a manner that does not conflict with the guardian's right to guardianship" (Article, 142). It is clear that the Emirati legislator, through its regulation of custody, targets the same objectives as those intended by Islamic jurisprudence, which is to achieve the interests of the child by providing care and education for him in a sound manner consistent with the principles of Sharia. In addition, ensuring health, safety, and good upbringing without prejudice to his legal guardian's right (*Wali*) in the matter of guardianship.

It is clear from the concept adopted by the Emirati legislator about custody that it is consistent with the path of Islamic jurisprudence. This leads to agreement on the reasons for and circumstances surrounding custody loss, particularly about the general rule contained in Article (2) of the "Personal Status Law," which requires referring to jurisprudence rules and principles in the event of a need to explain any concept or clarify any similar ambiguity.

The researcher believes that while the concept of custody refers to one of the parent's rights to guardianship, it is essentially connected with the minors' best interests. Thus, the right to custody of minors is only considered in the child's best interests, regardless of whether this interest leads to the right to custody of the child.

#### **Principles and Regulations Governing Spousal Rights in Islamic Jurisprudence and UAE Law**

Defining concepts is the first step to developing regulatory frameworks and regulations. Both Islamic jurisprudence and UAE Law use this approach to regulate spousal rights. Each began by establishing specific concepts for various aspects of these rights. This is followed by formulating the regulations that govern these concepts, which are generally binding in most cases and cannot be violated by mutual agreement. This approach ensures alignment with Islamic legislation and jurisprudential regulations, integrating them into the broader legal system.

Considering spousal rights as a specific category of rights, they are subject to both the general regulations of rights and the particular regulations outlined in jurisprudence and law. These rights encompass both financial and non-financial aspects. As a result, they involve various forms of jurisdiction afforded to their holders and a set of consequences that both jurisprudence and law aim to regulate clearly and comprehensively.

### **Principles and Regulations Governing Dowry (*Mahr*) in Islamic Jurisprudence and UAE Law**

A set of jurisprudential and legislative regulations governs dowry, confirming that it is a woman's exclusive right following a set of controls. The establishment of this right has a set of effects.

#### *First: Regulations of Dowry (Mahr) in Islamic Jurisprudence*

Islamic jurisprudence considers the dowry as an irreplaceable gift. The woman does not provide anything in return, and it is solely the husband's responsibility to give the dowry. Any suggestion that the dowry is in exchange for the husband's interest in the wife can be countered by acknowledging that the wife also receives this interest in return (Tawfiq, 1032). It is a gift imposed by Allah for women in Islamic law. In addition, the laws that preceded it in confirmation of according to Allah's Almighty saying; "*I wish to marry one of these two daughters of mine to you, provided that you stay in my service for eight years*" (Surah Al-Qasas, Verse: 27). The obligation of the dowry is unanimous without dispute with the evidence of the Qur'an. For the Sunnah, Aisha narrated on the authority of the Prophet (PBUH), who said: "*The marriage of a woman who marries without the consent of her guardians is void. If there is cohabitation, she gets her dower for the intercourse her husband has had*" (Sunan al-Tirmidhi, Chapters on marriage).

For most scholars, the dowry is not considered one of the pillars of the marriage contract or a condition for it, but rather, it is one of the effects resulting from it. The contract is valid if it is concluded without mentioning the dowry, according to Allah's Almighty saying: "*There is no blame if you divorce women before the marriage is consummated or the dowry is settled*" (Surah Al-Baqarah, Verse: 236). It is preferable to include the *Sadāq* in the contract following the Sunnah of the Prophet, who did not marry his daughters or anyone else, without specifying the dowry in the contract. However, even if the dowry is not explicitly mentioned, the wife is still entitled to receive it. The absence of inclusion in the contract does not negate her right to claim the dowry (Al-Sharif, 2015).

Jurisprudence determines what can be considered a dowry. The Hanafis believe that only "evaluated" money can be called a dowry, so it is not permissible to call it without or with "non-evaluated money" (Bakr, 2019). The Malikis allow the dowry to be in a form other than money, subject to dislike. It is permissible for them to have the dowry as a service, memorizing the Quran, etc (Ahmed, 1086). The Shafi'is permit the dowry to be in kind or debt, whether paid in advance or deferred. They consider the marriage contract to be a contract for benefit, like a lease; as such, what is permitted in benefit contracts is permissible (al-Mutai'l, 2007). The Hanbalis allow the dowry to be everything that may be a price in sales contracts or rent in lease contracts, whether in kind, debt, advance, deferred, little, much, or a benefit (Al-Bahuti, *ibid*, p. 134).

The researcher prefers the opinion of the Hanafis, who argue that the dowry should be limited to the evaluated money, referring to the saying of the Prophet (PBUH), "*O young men, whoever among you can afford it, let him get married, for it is more effective in lowering the gaze and guarding chastity, and whoever cannot then he should fast.*" If it is permissible to mention the dowry as something other than money, the youth should be ordered to memorize the Quran, and the guardians (*'awliyā'*) should marry their daughters with a non-financial dowry.

#### *Second: Regulations of Dowry (Mahr) in UAE Law*

The Emirati legislator establishes the regulations regarding dowry through several Articles of the Personal Status Law, specifically Articles (49) to (53). The Emirati legislator, in Article (49), adopted Hanafi jurisprudence, requiring that the dowry be an evaluated property. In addition, the Emirati legislator in Article (50) prohibits any agreement restricting a woman's freedom to dispose of the dowry, considering it her exclusive right to manage as she wishes. The Emirati legislator in Article (51) states that the dowry may not be specified in the marriage contract, in which case the woman is entitled to a dowry equivalent to that of her peers (*Mahr Al-Mithl*). According to Article (52), the dowry may be either fully or partially paid or deferred. Lastly, the Emirati legislator in Article (53) permits the woman to refuse consummation of the marriage if she has not received the Paid dowry. If the wife consummates the marriage without receiving the dowry, it remains a debt owed by her husband (Mohsen, 2015).

Notably, the Emirati legislator does not adhere strictly to the rulings of a single school of jurisprudence. Instead, the legislator adopts Maliki jurisprudence without specific legal provisions or when interpreting ambiguous regulations. Additionally, the legislator adopts Hanafi jurisprudence regarding the rules for specifying the dowry. Moreover, what constitutes a dowry? This approach highlights the adaptability of the Emirati Personal Status Law and the legislator's dedication to adopting rulings that are suitable for contemporary times and Emirati society. The researcher considers that the judicious adaptation of legal provisions, ensuring adherence to the compulsory regulations of Islamic law, represents a commendable facet of legislative conduct. The diversity of opinions among the various schools of jurisprudence has allowed the choice of the most lenient and fitting rulings for societal application, which enables the legislator to choose appropriate regulations according to the wisdom perceived from the legislative provision.

#### **Principles and Regulations Governing Financial Support (*Nafaqah*) in Islamic Jurisprudence and UAE Law**

Islamic jurisprudence and law agree on the husband's obligation to support his wife financially. Furthermore, they agree that this right is not absolute, as its entitlement depends on certain conditions specified by Islamic jurisprudence and the law.

#### *First: Regulations of Financial Support (Nafaqah) in Islamic Jurisprudence*

If Islamic jurisprudence agrees on the obligation of financial support for the wife by the husband, however, there is a difference in the rationale behind this obligation. The Malikis, (Yusuf, 1980) the Shafi'is, (Al-Mutai, *ibid*, p. 148) and the Hanbalis (Aladdin Abu al-Hassan, 1995) consider that financial support becomes obligatory upon the husband for the wife due to the consummation of the marriage, as is required.



They cite that the Prophet (PBUH) consummated his marriage with *Aisha* two years after the marriage contract without evidence of him providing financial support during these two years (*Al-Muhtaj, ibid*, p. 435). Their statement confirms that the disobedient wife (*Nashiz*) forfeits her financial support. Hence, financial support is conditioned upon consummation. Therefore, financial support is not obligatory until the consummation of marriage. The Hanafis hold a distinct view on the obligation of financial support. According to Hanafi jurisprudence, the requirement for *Nafaqah* is contingent upon the wife's stay-at-home under a valid marriage contract. This stay implies that the wife cannot go out to earn money, thus putting her at risk if her husband does not provide support. Whether or not the marriage is consummated, the Hanafis asserts that the primary basis for financial support is the wife's stay-at-home, not the consummation of the marriage. Given the husband's right to keep his wife at home under the marriage contract, the mere fact that the wife resides with him obligates the husband to provide for her (Abu Bakr).

Despite the majority of scholars establishing the basis for financial support on the consummation of marriage, the researcher believes that the Hanafi approach is more reasonable. According to this perspective, keeping the wife stay-at-home compliant with the husband's rights effectively deprives her of all opportunities to earn money and access financial resources. Consequently, relieving the husband of his responsibility to provide financial support in this scenario would be unjust. Since the husband has the right to keep the wife at home and can dissolve the marriage if she refuses to consummate it, not providing for her while enforcing her stay-at-home would be equivalent to intentional harm. Thus, the Hanafi approach, which bases financial support on the wife's stay-at-home rather than the consummation of the marriage, appears to be more equitable.

#### *Second: Regulations of Financial Support (Nafaqah) in UAE Law*

The Emirati legislator adheres to the approach of most scholars, considering the *consummation of marriage* as the basis for financial support. This is the ruling stipulated in Article (66) of the Personal Status Law, which believes that a valid contract obliges financial support as long as the wife abandons herself to her husband, even inevitably. Article (67) also considers financial support debt from refraining from spending. This ensures this debt is not forfeited except when paying or discharging it. Additionally, the legislator grants the judiciary the authority to determine temporary financial support for the wife until a court decision on estimating and obligating financial support while giving the financial support debt absolute priority over all other debts (Al-Asi, 2007).

The Emirati legislator also specifies cases in which financial support is forfeited, limiting them to five cases. These include the wife preventing herself from the husband, abandoning the marital home, preventing the husband from entering the marital home, or if a judgment restricting her freedom is issued and is being executed. Lastly, financial support is forfeited when the wife breaches one of the legal obligations specified by law within marital status, provided these conditions occur without a legal excuse. These are the conditions under which the legislator stipulates that the wife's entitlement to financial support can be revoked (Khater, *ibid*, p. 133).

The researcher believes that, under Article (72), the Emirati legislator permits the wife to go out without her husband's consent. If her departure aligns with the law, custom, or

Sharia, such as going out to work, it does not constitute a breach of spousal obligations. Therefore, financial support should not be forfeited in these instances, even though it technically breaches the husband's right to keep the wife stay-at-home.

### **Principles and Regulations Governing Custody (*Al-Hadanah*) in Islamic Jurisprudence and UAE Law**

If the concept of custody is determined to achieve the child's best interests and ensure their proper upbringing, jurisprudence and law regulate custody under a set of regulations. Through these regulations, this concept and its essence, which is to achieve the best child's interests, is taken into account, bearing in mind that custody is initially assigned to the mother, and from this beginning comes the organization of custody.

#### *First: Regulations of Custody (Al-Hidanah) in Islamic Jurisprudence*

The most important regulations governing custody are regulations regulating the terms of its entitlement and the reasons for its forfeiting. Hence, custody revolves around these two types of rules. Jurisprudence agrees upon the term of reason as a basis for custody, while they differ on other terms.

To be eligible for custody, the Hanafis stipulate several conditions for the custodian. The custodian must not apostatize and must be trustworthy, ensuring that she is not known to be immoral or engaged in a lowly profession such as a mourner or a dancer. The custodian must not marry anyone other than the child's father except a child's relative, such as an uncle. If she marries a non-relative, her custody shall be forfeited and shall not be restored except by divorce from the non-relative. The custodian must adequately care for the child and not request a custody fee if the father is insolvent and must be accessible. Custody is granted to both Muslim and non-Muslim women, provided that the custody of the non-Muslim woman does not threaten the child's religion. If she is known to take the child to churches or to feed him forbidden things, her custody shall be forfeited and transferred to the next eligible person in the custody arrangement. (Amin, *ibid*, p. 555).

The Shafi'is add to the Hanafis the requirement that the custodian must be *Muslim*, so there is no custody for a non-Muslim over a Muslim child. They also add the requirement for the custodian to reside in the country of the child if the child is at the age of discernment, "*Sin al-tamyiz*" (Muhammad al-Shafi'i, *ibid*, p. 195). The Hanbalis have specific criteria regarding the custodian's capability. They do not permit custody if the custodian needs someone to care for her due to blindness, paralysis, or other conditions that hinder her. This is applied in cases of infectious diseases that are feared to be transmitted to children, such as leprosy (Al-Qinaa', *ibid*, p. 498). Finally, the Malikis stipulate that for the validity of custody, the custodian must not be reckless or incapacitated, so the custody is forfeited due to old age. They also do not allow custody of the foolish and the extravagant and stipulate that if the custodian is male, he shall have a woman to assist with caregiving (Al-Jaziri, 2003).

The researcher believes that custody is forfeited in the absence of the above regulations and is accordingly transferred to the next eligible person and the mother in the custody arrangement. Custody is also transferred at the end of its term, which varies according to different schools of thought. For the Hanafis, it is seven years for a boy and nine years for a girl. According to the Malikis, custody lasts until puberty for the boy and until

marriage for the girl. The Shafi'is allow the child to choose at the age of discernment "*Sin al-tamyiz*", while the Hanbalis set the term at seven years for both sexes.

#### *Second: Regulations of Custody (Al-Hadanah) in UAE Law*

Article (143) of the UAE Personal Status Law stipulates several conditions for eligibility for custody, including sound judgment, legal competence, trustworthiness, capability, freedom from contagious diseases, and no prior convictions for crimes of honour. Accordingly, individuals who are legally incapacitated due to mental illness or young age, those whose custody poses a risk to the child due to a lack of trustworthiness, those with contagious diseases that could be transmitted to the child, or those who have been convicted of the crimes as mentioned earlier are not eligible for custody. These general regulations apply to any custodian, whether male or female (Alrajoub, 2019).

In addition, if the custodian is male, he must share the same religion as the child, have a suitable woman in his household to care for the child, and be a close blood relative of a female child. Conversely, a female custodian shall not remarry a man who is unrelated to the child and shall generally share the child's religion unless the judge decides otherwise (Article, 145).

The researcher considers that the UAE legislator stipulating that the custodian shall not have been previously convicted of a crime of honour (*Sharaf*), should have instead stipulated that the custodian shall not have been previously convicted of any crime against honour. The interests of the child in custody naturally require that the custodian not be one of those who have committed crimes of theft, fraud, breach of trust, or any crime that indicates a weak affiliation with the state, such as terrorism, espionage, and other crimes affecting state security. Instead, the researcher points out that the custodian's obtaining acquittal in one of these crimes for a procedural reason other than proving his innocence is considered eligible for the legislator to reconsider this rule. This ensures that the child is raised in custody in a sound environment suitable for proper upbringing.

#### **Conclusion**

The issue of spousal rights remains a sensitive and essential aspect addressed by Islamic jurisprudence and UAE law. These regulations aim to preserve family and societal harmony, ensuring that each individual enjoys the rights prescribed by Allah and established within the legal framework. Such provisions work to uphold stability in marital relations and encourage respectful treatment even if a marriage ends, allowing spouses to part amicably and with mutual respect. This framework supports a healthy upbringing for children, protecting them from parental disputes and conflicts.

Islamic jurisprudence thoroughly regulates matters of dowry (*Mahr*), financial support (*Nafaqah*), and custody (Al-Hidanah), leaving no aspect of spousal rights unaddressed. The diversity within Islamic jurisprudential interpretations provides flexibility, allowing individuals to adopt the rulings best suited to their circumstances, a variety that is considered a mercy. The UAE legislator recognises the importance of Islamic jurisprudence in guiding the regulation of these rights, referring to it to clarify ambiguities and address any legal gaps.

However, certain amendments could further enhance the application of these rights under Federal Law No. (28) of 2005 on Personal Status. Proposed changes include linking

*Nafaqah* to a wife's presence in the marital home (Article 71), refining language concerning criminal convictions to specify chastity (Article 143), and adjusting custody terms to end when a child reaches five years, irrespective of gender (Article 145). Such revisions respect Islamic principles while advancing the interests of the Emirati family, adapting traditional rights to contemporary contexts.

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