

CHILDREN'S RIGHTS IN ISLAM



Children's rights in Islam

- Protection of children's rights are entrenched in legal rules and not merely social or religious commitments.
- Legal rules derived from four sources:
 - The *Quran*
 - The *Sunnah*: normative behavior of the Prophet Muhammad (pbuh)
 - *Ijmaa*: the consensus of scholars
 - *Qiyaas*: Analogical reasoning based on above three sources.

Marriage in Islam

- Marriage is a civil contract.
- Couples may include anything in their contract provided it is not repugnant to Islamic norms.
- Requirements are: the couple; the guardian; the proposal and acceptance; two witnesses.
- Dower is a proprietary consequence of the marriage and not an essential element of the contract itself.

Maintenance in the marriage

- Husband's maintenance liability created by marriage.
- The other ground for maintenance liability is consanguinity which makes it obligatory for parents to maintain their children and places upon children the liability of maintaining their aged and/or destitute parents.
- Wife's maintenance is the duty of the husband due to surrendering herself to him.
- Wife cannot be compelled to cook food for herself, much less for her husband etc.
- He must provide her a dwelling which has an independent entrance and exit.

Divorce in Islam

- Marriage may be dissolved by:
 - Talaq by the husband.
 - Mutual agreement – Khul'a
 - Judicial order – Faskh
 - A pronouncement of divorce by the wife as per the marriage contract.

Parentage

- Parentage is the legal relationship that exists between parents and children as a result of a valid marriage between their parents.
- Islam leans favorably towards holding children to be of legitimate parentage.
- Rule: a child born 180 days or more after the parents concluded a valid marriage contract is deemed legitimate.
- Children born from adulterous relationships shall only have a maternal lineage for all legal purposes.

Adoption

- Adoption of a child under Islamic Law shall be ineffective.
- Adopted children shall not have the same rights as real children i.r.o. maintenance, inheritance etc.
- Generally speaking, according to the clear injunctions contained in the Qur'anic verse (33:5) (*..NOR HAS HE MADE YOUR ADOPTED SONS, YOUR REAL SONS*) we cannot ascribe the parentage of persons to others than their real fathers. Likewise, (in the Prophet's *Sunnah* too) there is a clear reference to the prohibition for acknowledging children of others as our own children. For example, there are the following two traditions, prohibiting such acknowledgement.

- It has been reported in an authentic tradition reported by Sa'd b. Abi Waqqas and Abu Bakr that both of them have heard and remembered by heart the Prophet saying: 'Whosoever claims himself to be ascribed to someone other than his own father, despite the knowledge that the latter is not his father, Paradise shall be prohibited to him.' [1]
- Likewise, there is another tradition reported by Abu Dharr that he heard the Prophet saying: 'There is no one who has claimed as his father someone other than his own father but that he has committed infidelity.' [2]

[1] Al-Qurtubi, *al-Jami*, op.cit., xiv, p.121.

[2] *Ibid*

Stages of Childhood

- Muslim jurists refer to children in terms of their various stages of development and grants them rights and obligations in keeping with these stages.
- They do not treat children of differing age groups equally.
- Based on Hadith: 'Ensure your children pray when they are seven,' jurists define this age as the age of discretion.

The Age of Discretion

- The indispensable condition which determines the age of discretion (*tamyiz*) is that the child should be rational (*aaqil*).
- the juristic test of rationality is that such a child comprehends what is said and gives a sound response to it.
- There are some jurists, like Ibn al- Qayim, who saw it as a possibility that the state of discretion and rationality could be attained below the age of seven.

Rights at Age of Discretion

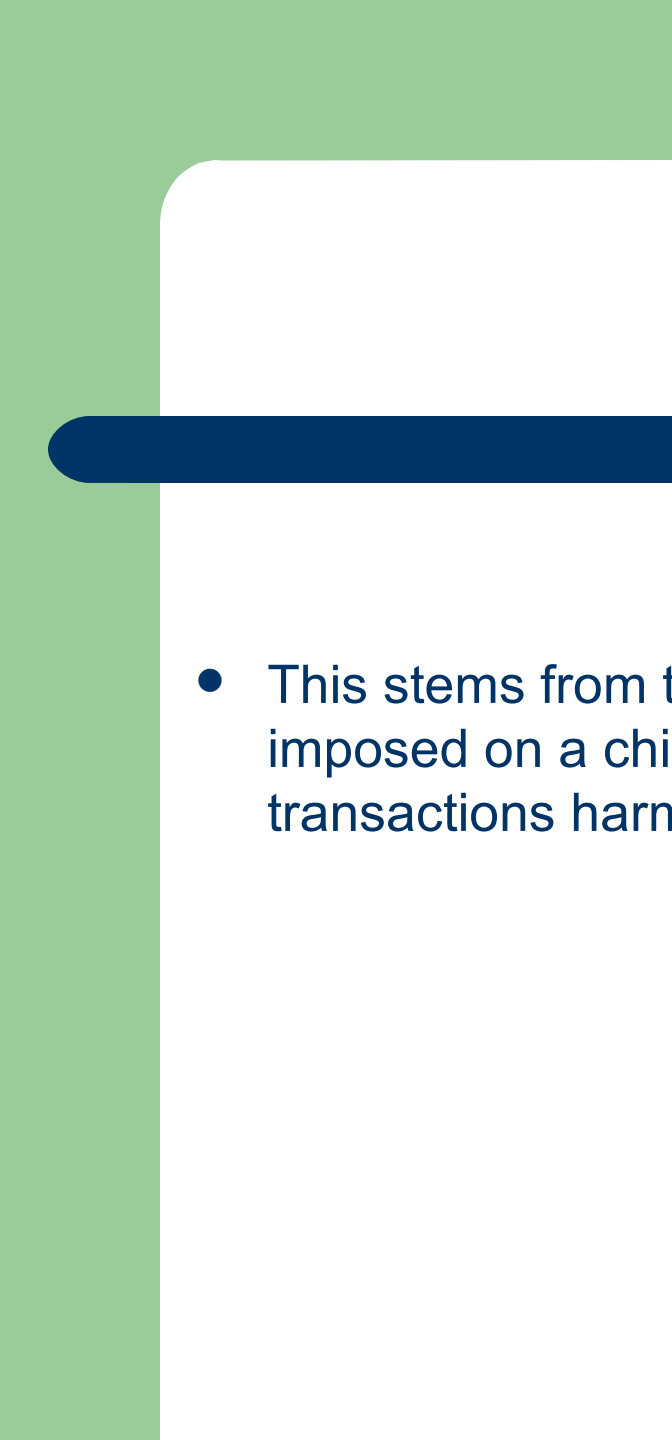
- Selling, buying and dealing with minor articles and objects, suing someone or raising a claim and the presentation of his evidence to the court with or without the guardian's approval, are examples of the minor's capacity at this stage.
- CASE-STUDY

Case-study

- Illustrated by a Saudi case of *A v. Aq*. The boy *A*, claimed that the maintenance allowance which had earlier been adjudicated in a grand court to be sufficient, had now, due to changing economic times become insufficient. He, therefore, asked the court to order his guardian to increase the amount. Consequently the judge asked the boy to estimate the amount of maintenance he thought adequate for his needs and subsequently ordered it to be paid to him.

Rights at Age of Discretion

- The testament made by such a child, who has been proved sane, will not be invalidated *ipso facto* because he was under age.
- It will not even be subject to the approval of his guardian as long as was aware of the nature of the bequest and did not contravene the laws of bequest.

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- A decorative graphic on the left side of the slide, consisting of a light green vertical bar and a dark blue horizontal bar with rounded ends.
- This stems from the concept that the principle of interdiction imposed on a child is to protect him from concluding transactions harmful to him.

Physical maturity/*Al-Bulugh*

- *Al-Bulugh* or puberty is the age at which a child becomes an adult.
- The minimum age for girls is nine or the onset of menstruation and for boys fifteen or the onset of nocturnal emissions.
- At this age the person is legally entitled to manage his own affairs and even marry.
- CASE-STUDY

Case-study

- This is illustrated by the case of *Kh v. S. D* , *Kh*'s agent, who was also her uncle applied to the court for his niece to be declared *Baligh* in order to terminate the power of her guardian (her uncle *S*) and oblige him to surrender her property to her. The guardian disputed her maturity but the court confirmed that she was fifteen years old and competent to manage her own property.

Quranic injunction

- The original idea of proving mental maturity of the young and prodigal before validating their actions was initiated by the text of the Quran in the following two verses:
- *And do not give up to the fools (and prodigals) their property which Allah has made as a means of support, but feed and clothe them therewith, and speak to them words of kindness. (4.5)*
- *And test the orphans (with regard to their intelligence) until they reach the age of marriage; if then you find sound judgement in them, release their property to them, and do not devour it extravagantly in anticipation of their growing up..... (4.6)*

Explanation

- The meaning of the quoted verses is so clear that it need not be mentioned that the ruling does not just apply to orphans but includes every immature person.

Custody

- The jurists differ on the age at which the mother must relinquish custody to the father.
- The general rule is that the mother shall have custody of her son and daughter till they are seven years of age. Thereafter the child shall be given the right to choose between his mother and father based on the following illustration:

Illustration

- A mother and father disputed each others' right to custody of their son. They referred the matter to the Prophet (pbuh) who said: 'O Boy this is your father and your mother take the hand of the one you choose,' and the boy chose his mother.
- This proves that if a child is found to have reached the age of discretion and the mother's right to custody expires, the child can be given the right to choose.

The custodial responsibilities of mother and father

- As a result of the 'choice' principle if the male child opts to stay with his father, he would continue to live with him day and night.
- If, however, the child chooses his mother, he would be allowed to stay with her only at night.
- For the rest of the day he would stay with his father whose duty it shall be to teach him manners and to educate him in the right and proper way.

Child's right to maintenance

- The responsibility of the father for the maintenance of his legitimate children is unconditional and absolute. The father cannot escape from this duty merely on the grounds that his children are disobedient or in the custody of the mother.
- It is settled Islamic Law that it is the legal duty of the father to maintain his sons till they attain the age of majority and the daughters until they marry.
- With the proviso that if the children possess wealth of their own and they can be maintained from it, then the father's responsibility ends.
- If the father is indigent the maintenance responsibility lies with the mother if she is by the means. If not it passes to the paternal grandfather.