

FATĀWĀ RELATED TO WOMAN RIGHT OF CHILD CUSTODY IN PAKISTAN, INDIA AND EGYPT: AN ANALYSIS

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ABSTRACT: *Islam has provided all the rights to Children. They need support and care from both parents because with parents they grow positively in the society. Parents have full right over their children due to which they are given duty and responsibility to look after their affairs. They should avoid neglecting them and their focus should only be the best upbringing of children. Parents are role models for them. Custody of children is an important right of them and parents should in case of separation consider its importance. Islam has also given preference to the child in case of separation among spouses. Children are sons and daughters born out of parents with the effect of wedlock relationship. ¹On failing of marriage, next important duty of both husband and wife is to decide the custody of the children or child. Scholars have differentiated between child custody and child maintenance. Child custody basically means to have guardianship over children till they reach to the age of puberty. Custody is always recommended in Islam for child's welfare. Where he or she can be lived in better environment from father or mother. His interest is given priority to choose with whom he wants to live. The present paper is the Analytical study of Child custody as a right of mother according to the Mufti's of Pakistan, India and Egypt.*

KEYWORDS: *Fatāwā, women rights of child custody, Fatawa related to child custody in Pakistan, India, Egypt.*

Meaning of Hadānah

Literally it means “to maintain, supervise, custody and care of someone”² Hadānah means hug or embrace which is taken from the word hadāna.³ It is derived from Arabic word which means “the distance between the armpits to the loins”, “the chest and the two arms and what includes in between”. It has also meaning “to clasp the baby to one's breast”, “to nurture the baby”, “to embrace the baby”, which can be viewed as a synonym to “nursing” and “wet nursing”⁴

Both parents have this duty to give them righteousness educational upbringing and affection which is mostly given by mother. In case of separation it becomes more necessary to give them love to face society with dignity. Fact is that both parents can give best rearing to their children but in unfortunate circumstances, mutual decision by both spouses has great influence on upbringing of the child. Both need to observe that still child requires attention both so each spouse should allow each other to visit child.⁵

Technical Meaning of Hadānah

Custody is the right of a boy who is in the age of seven and the girl who is below the age of puberty should be provided with care and love.⁶

Islamic law defines custody as *Hadānah* which means that a woman is given the upbringing duty of a child and that woman is known as *Hadānah*.⁷ All jurists have unanimous agreement that mother has right to be *Hadānah* of child.⁸

Scholars say that difference should be found between *Hadānah* and *wilāya*. *Hadānah* is *tarbiyya* of the child emotionally whereas *wilāya* is the support provider which effects child's future life. *Hadānah* demands the presence of mother whereas *wilāya* can be anywhere but to support him. As generally *wilāya* in Islamic law are men and *Hadānah* are mothers.⁹

Legality of *Hadānah* in Qur'ān

Allah has given commandments in Qur'ān related every matter of family life. Jurists have deduced laws either through specific *Hukm* or through general *Hukm*. *Hadānah* does have direct verse but through *qiyas* they have related verse with *Hadānah*. Allah says in Qur'ān: ” وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنْعِمَ الرِّضَاعَةَ ۖ ۱٠ “

[...The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term....].

This verse is for the fosterage so as mother can feed child so right of *Hadānah* also goes to the mother. They also deduce other verses from Qur'ān and the Moses's sending to the wife of Pharaoh, Asia then his real mother was chosen as fosterage mother. Allah says:

” إِذْ تَمْشِي أُخْتُكَ فَتَقُولُ هَلْ أَدُلُّكُمْ عَلَىٰ مَنْ يَكْفُلُهُ ۖ فَرَجَعْنَاكَ إِلَىٰ أُمِّكَ كَيْ تَقَرَّ عَيْنُهَا وَلَا تَحْزَنَ ۚ وَقَتَلْتَ نَفْسًا فَجَعَيْنَاكَ مِنَ الْغَمِّ وَفَتَنَّاكَ فُتُونًا ۚ فَلَبِثْتَ سِتِينَ فِي أَهْلِ مَدْيَنَ ثُمَّ جِئْتَ عَلَىٰ قَدَرٍ يَا مُوسَىٰ ۝ ۱۱ “

[When your sister walked up [to Pharaoh's palace] saying, "Shall I show you someone who will take care of him (yakfuluhu)?" Then We restored you to your mother, that she might be comforted and not grieve].

” وَحَرَّمْنَا عَلَيْهِ الْمَرَاضِعَ مِنْ قَبْلَ فَقَالَتْ هَلْ أَدُلُّكُمْ عَلَىٰ أَهْلِ بَيْتٍ يَكْفُلُونَهُ لَكُمْ وَهُمْ لَهُ نَاصِحُونَ ۝ ۱۲ “

[And We had forbidden him to be suckled by any nurse since before. So she said, " Shall I show you a household that will take care of him (yakfulunahu) for you and will be his well-wishers?].

These are the verses which are clearing that looking after a child also can be done through foster mother either to one person or to the group. These verses reflect the word *kifala* as custody of child.¹³

Legality of *Hadānah* in Sunnah

Sunnah also talks about *Hadānah* or custody.

“When the Prophet came out (among the people after the conquest of Makkah) the daughter of Hamzah followed him and called out “Oh uncle, Oh uncle, Therupon Ali caught hold of her hand and told Fatimah “Take care of your uncles daughter. Consequently, the aunt took her up. A dispute arose between Ali Jafar and Zaid on this account. Ali said “I have taken her up as she is daughter of my uncle”. Jafar said “She is the daughter of my uncle too and her maternal aunt

is under my wedlock". And Zaid said, "She is the daughter of my brother". The Prophet decided in favour of the aunt (Jafar's wife) and said, "The aunt (maternal) ranks as mother" ¹⁴

"Amr b. Shuaib narrated from his father and his father from his grandfather Abdullah b. Amr that a woman presented herself before the Prophet and said, "Here is my son, for whom my belly was the vessel, my breath was the water bag and my lap was the refuge. His father has divorced me and wants to take him away from me". The Prophet said, "You have better right to your son till you do not contract another marriage." ¹⁵

"It is stated by abi Maimunah that he was sitting with Abu Hurairah who said that a woman came to the Prophet and said, "My husband wants to take away my son although my son gives me comfort and brings me drinking water from the well of Abu Uyanah. Thereupon her husband appeared denying her claim over his son. The Prophet then said, "Oh child! Here is your mother and here is your father, make a choice between whoever you want". The son caught hand of his mother and she went away with the son." ¹⁶

"It is stated by Amarat al-Jarmi that Ali gave him the authority to choose between the mother and the uncle and then he said about his (Amarah's) brother who was younger than him, "It is proper to do so; I shall give him the same powers when he comes up to your age." ¹⁷

Juristic Views on Rights of Child Custody

All schools Sunni and Shia both agree that either wife is living with husband or separate from him. Child custody will be given to the mother. ¹⁸ However if mother dies or she is incapable to look after the child then jurists have disagreement on it. If mother does not have enough amount to spent on him then child must be given in someone *hadanat* who can bear all the expenditures of the child. Whoever is given child's custody, he or she should provide food, clothes, shelter and good upbringing. ¹⁹ Jurists have mentioned certain degree or right of having custody of child e.g if the *walī* is not found then following will be given this right such as mother, maternal aunt in ascending order, then paternal aunt in ascending order, full sister, uterine sister or step sister having same mother but not same father, consanguine sister, full sister's daughter, uterine sister's daughter, consanguine sister's daughter, maternal aunt, mother father, or paternal aunt. If any of them is not available or all of them are missing then custody right will shift to the father and near paternal relatives in the order such as father, paternal uncle, full brother, consanguine brother, full brother's son, consanguine brother's son, full paternal uncle, consanguine paternal uncle's son, consanguine paternal uncle's son. Jurists generally agree that even if they are missing then uterine brother, his son, father's uterine brother, maternal uncle, mother uterine brother. ²⁰

Hanafī School believes that if mother get second marriage or if she becomes dead or incapable then following can be *Hadānah* i.e. maternal grandmother, paternal grandmother, original sister, maternal aunt or paternal aunt.²¹ If there is no female from side of both father and mother then upbringing will be the right of relatives mentioned in inheritance law. And inheritance right start with father.²² All jurists have unanimous agreement that female child cannot be given in the custody of male cousin from paternal side as he becomes non *mehram* for him.²³

Jurists have disagreement on the issue of Child's custody when he or she becomes seven years old. Although they have agreement that either girl or boy when they are less than seven, then they should be in custody of mother. As per *Shāfi'ī* 'School it is the discretion of boy and girl at the age of seven to decide with whom they want to live.²⁴ *Hanbalis* opine that choosing any of the parents is boy's right only.²⁵ One opinion is that a boy should not be given authority to choose any parent because he will choose the one who gives him lenient behavior. Whereas girl will live with mother till she gets puberty.²⁶

Qualification of the *Hadānah*

Fuqahā have also given certain criteria to fulfill for becoming custodian of a child. A person who will take responsibility of child should be mature, sane, should not be lunatic, Imam Shāfi'ī, Mālik and Hanbal that a person who is custodian should at least be Muslim. Imam Abu Hanīfa says that to be Muslim condition does fit into the mother as custodian.²⁷ All jurists agree that mother as custodian should not be apostate, should not be married with non-prohibited degree of child, then she can become his or her custodian if she gets married with non-prohibited degrees to the child.²⁸

Dar Al Ifta' Al-Missriyyah Fatāwā Regarding Child Custody Custody of Children

The Fatāwa of Egypt and Egyptian courts both have the same opinion regarding the custody of child. As a rule of Islamic Law, the mother has more right of custody than father upon a minor child. The child whom in mother's custody can stay with mother till the age of 15. After this age he can decide with whom he wants to live. In Egyptian courts as well as in Islamic law the interest of child and his/her protection is the basic requirement of custody. If the judge feels interest of child lays with mother, then he decides to give the right to mother.

In Egyptian Fatāwa it is mentioned that the Hanafī law maintained that the child will stay with mother even if she got married with a person who is non-mehram of child with the condition that child has no harm affected in this marriage. If the marriage of mother is harmful for child and the interest of child is affected, then the custody of child will not be granted to mother. It is important for child to have an Islamic environment in which he can learn good habits. There should not be an environment in which child's bodily or mental health may affect.²⁹

Father's and mother's Guardianship

The *Mustafti* asked legal rights of guardianship over the minor child. Secondly, his right of choice of school for child's education and other decisions for child. He also asked his wife right as a guardian of son.

According to the verdict of Muftī a mother is eligible to custody i.e. guardianship over the rearing and bringing up of the child. The child needs mother care in childhood as she can take care of her children more than anyone else. A mother can fulfill the needs of a child.

The father and the mother both are natural guardian of child. The child needs both parents for care and support in every matter of life at different stages of life. If mother and father of child are separated due to any reason, the moth get preference over father to get the custody of minor child. The father has to bear the expenses of the child, who is in custody of mother. It is mentioned by Jurists and the law of Egypt as well; Article 388 of Law no. 21/1929 of the Personal Status law mentioned this duty of husband. The father also has the full authority over child regarding the decisions he wants to take for minor children for his /her education and schooling. Both the parents have right to decide about the education of child. If the dispute arises among them regarding schooling of child, then father has authority to decide the matter. The mother's sole responsibility is to nourish the child and to take care of him/her in their basic needs. The above answers the question and Allah the Almighty knows best.³⁰

Children's expenses

All of the scholars of Juristic schools are agreed upon that the father is responsible to bear the expenses of his children, whether female or male. The Muftī mentioned the reference of Imam Al-Māwardi said in Al-Hawi, "*Fathers bear the expenses of their children based on the Qur'an, sunnah, and scholarly consensus*". The verse 233 of Surah Al Baqara grant this duty to father. This verse proves the duty of father that he is obliged to pay the expenses of child, the mother is not responsible in this matter."³¹The mother is entitled to get the payment from father of child for nourishing the child. She also will receive the amount during pregnancy.³²The ruling given by Egyptian Muftī at the end of explanation that the father is obliged to pay all the expenses of child including food, clothe and the other expenses which are required by the children similar to the social class or customary practices. Allah the Almighty knows best.³³

Is child support nullified when a mother loses her right to custody?

Questioner has inquired about father support towards young child who is not rich and questioner also quoted Qur'ānic verse as Allah says "*It is for the father to provide them and clothe them honorably*" [2: 233].

Muftī has cleared that it is father's duty to provide maintenance to his poor child, even if mother has no more right of custody. Father should no punish girl or boy in the custody of mother by not providing them support. Muftī has quoted from Imam ibn Nujaim that father is liable to provide food shelter and clothes to his children. As Al-Baqarah verse 233 is also quoted which says that maintenance to the children under

mother's custody is duty of father. So, father has to borne al the expenses of the child.³⁴

The duty of children's expenses.

The case is presented that the father is a pensioner and has a child who is studying. The eldest son is the family's breadwinner. The query is whether the father is responsible for the expenses of his adult daughter who cannot work?

The verdict is given on the basis of scholarly opinion and consensus that father is obliged to give the expenses as Allah stated in Qur'ān "... and clothing and maintenance must be borne by the father in a fair manner."³⁵ The tradition of Holy Prophet also proved this that "Hind, Abu Sufyan's wife, when he told her, *"Take what suffices you and your children with fairness"* [reported by Bukhari and others through 'A'isha (RA). *If a child had not been entitled to paternal support, the Prophet (SAW) would not have permitted Hind to take from her husband's money; this is because a Muslim's property is sacred.*" There are some conditions applied to this case in fatwa of Dar ul Ifta' al Missiriya that a father who is obliged to bear the expense must be capable to support a child financially. If father himself is dependent upon someone else for his livelihood, then he is not considered financially capable to support his child. In the case where is unable to pay the expenses of child the duty of payment is ceased. The scholars give the opinion unanimously regarding the paternal support while the child is in custody of mother. The child is belonging to father and attributed to him. He must pay the expenses of child if he is able to pay. If he is disable then the duty is waived off.³⁶

Financial support of child, in case where father is unable to pay the expenses of child

The verdict is given that, in this case where father has no earning and he is unable to support the child, the father will be considered absent. Then the other relatives will support the child. In which the grandfather, brother, paternal uncle and their children are included. The father must pay this amount back to those who paid during his disability whenever he will be capable to pay the expenses. It will be considered debt upon father which he has to pay back.

The father is not obliged to pay the expenses of those children who earns by themselves and able to spend their life by their own means. The children who are studying and cannot afford to support themselves they are dependent upon father then father have to pay the expense of those children, to whom help is required for their future living. Allah Almighty knows best.³⁷

Visit of relatives to see the child

The questioner has asked different questions regarding the right of grandparents visiting grandson who is in the custody of mother. The father of the child is always travelling; that's why grand parents want to know their right to visit children.

Muftī has firstly explained the regulations of child custody that the purpose of custody is the protection and welfare of child. That's why the custody of child is transferred according to the interest and welfare of child. The protection of child includes

physical, moral and religious protection and interest of child. While seeking the interest of child the Egyptian law "Article no. 20 of decree law no.25/1929 as amended by law no. 100/1985 states: *Each of the parents has the right to see the child. Grandparents have the same right in the absence of the charge's parents.*" "In the absence of the charge's parents" means if they do not reside in the same city as the child or are deceased. This right was granted to grandparents because they are granted the status of parents in Islamic Law (if the parents are absent or unable to fulfill the child's rights)."

A mother's custody of her child does not prevent the child's paternal relatives from taking care of him, housing and teaching him while he is in her custody. Since the grandfather is among the paternal relatives, he is explicitly entitled to visit the child of his absent son. "The father and other relatives are entitled to see to the child's education and upbringing while he is in his mother's custody; taking care of the child necessarily involves visiting him."³⁸ The Muftī of Egypt recommended that the paternal relatives should have right to visit their grandson as grandfather is considered father after the death of father in Islamic law as well as in linguistics. If the father is alive and child is in his custody the grandfather and uncles, aunts has the right to meet. Same applies to the meeting and visitation of child during the custodian is mother or maternal grandmother. The requirement of familiarizing the child to perceiving paternal and maternal relationship's rights and protecting them. It also expresses the need of protecting the rights of adult relatives concerning visitations as well as establishing justice and fairness in giving the equal rights to the relatives to whom the custody is not given, as those granted to the person to whom custody is given. This is the requirement of Islamic law imposed by Allah.³⁹

India Fatāwā on Child Custody in marriage

Child's Custody

The sister of *mustafti* is divorced having a son of 2 years. Now she wants verdict that who will get custody of child, whether father of child or mother?

It is told to her that her sister, who is the mother of child will get custody till the age of seven.⁴⁰ It is also elaborated that this ruling of custody till seven years depends upon the mothers who does not remarry. If she marries with a person who is not mahram for child then the right of custody will be cancelled.⁴¹

Meeting with grandson

The grandfather as a *mustafti* asking about his meeting with a grandson who is in custody of mother after the death of his son. The mother of the child and her parents do not allow him to meet with his grandson. The Muftī clarify that grandfather has the right to visit and to meet his grandson. Also, maintenance of the grandson is due upon grandfather. It was suggested to *mustafti* that he should go to Dar ul Qadha, Amarat Milat Islamia Haydrabad to resolve the matter.⁴²

Right of Hadānah

The case is presented for *istifta'*. A person who is died, left one-year daughter. Now who has the right to custody of child? If mother do not take with her, then grandfather

and grandmother do have this right or not? If at any stage mother will be back and ask to take daughter with her, is she eligible? Although the studies and brought up of child can be disturbed due to mother interference at this stage.

The reply given to the questioner is according to the sharī‘ah ruling that mother has the custody right of her minor and nobody can take this right from her. If once she left the custody, then later if she wants to revive the custody, she can have this right as well. If she marries with a person of prohibited degree with child, then the custody will go to maternal grandmother. After that the custody rights will go to paternal grandmother. The mother has the right of custody till the puberty of daughter. After getting puberty the daughter will be handed over to her paternal grandfather. He will be responsible of maintenance of living, education and other expenses of life.⁴³

Custody Right according to Imam Shāfi‘ī

The query is presented that the mother got custody of her son after divorce. The father of the child has not given the maintenance and other expenses of child. Now child reaches the age of seven and father claims the custody. The mother did not remarry because of child. Now what she can do, if she does not want to transfer custody to father?

The Muftī has given her verdict on the basis of Shāfi‘ī ‘Madhab. According to Shāfi‘ī ‘the child has right to choose that he can live wherever he wants. That’s why a child can live with any of the parent according to his wish.⁴⁴

Mother’s meeting with child in custody of father

The woman who is living at her parent’s house without any reason and not divorced by the husband. She also does not seek khul‘. She has for children living with father. They do not want to meet with mother. Mother wants that they must visit after 15 days. The mustafti has presented the question that, is it obligatory for a man to take children to mother for meeting?

The verdict given by the Muftī is. It is not obligatory upon husband to take children to mother house after every 15 days. If children want to meet mother, then father should not stop them to meet their mother⁴⁵.

Pakistan Fawātā on Child Custody

Age of Children at time of Custody

In Mahmood ul Fatwa the query regarding the right of upbringing of children is presented that Sattar Muhammad Mamon divorce to his wife in 1987. The case was brought up in the court and Judgment was given that the divorce affected according to Muslim Law. Now He has for children having age of 10 years of girl, one of boy is 8 years old, the other is 7 years old and the last one is 5 years old. The case is in the court but He wants to take legal verdict of Shariah that who is eligible for guardianship?

The verdict is available in Mahmood ul Fatwa that A boy till seven years and girl till nine years have to stay with mother in case mother marry to someone else or not available then custody goes to maternal grandmother then paternal grandmother. But in case presented above father is eligible to get the custody of three elder children.

The younger one who is 5 years old may remain in the custody of mother.⁴⁶ The age of boy is till he will be able to take care of himself and that seven years defined by fuqaha.⁴⁷

The age of girl in custody of mother

The *istIfa'* presented to Muftī that if husband divorce to his wife. She has one daughter. Who will feed that minor girl? The other question in the same *istIfa'* is, if woman remarry maternal grandmother can have the right of custody or not? If yes, then how many years? The third part of the question is, whether the maternal grandmother, after the remarry of daughter, can give the minor girl to feed her milk. Father of a girl can stop her or not?

The reply is given one by one. Firstly, it is elaborated that mother has the right of custody of her daughter till the age of puberty. Also, the condition of not getting married with a person of prohibited degree is imposed. Secondly if she marries with a person who is non-mahram for a girl, then the custody right will go to Maternal grandmother. She can have this right till puberty of girl. Thirdly, if mother will come to grandmother house to feed her daughter then there will be no issue. But if she wants to take her to her house after marry then father has the right to take her daughter in his custody to take care of his child.⁴⁸

In Ahsan ul Fatāwa the age of children in mother custody, for boy it is seven years and for girls it is nine years. The right of custody is ceased if mother marries to a man, who is non mahram for children. Secondly if she asks for the remuneration of custody, if the other woman of family is offering custody without payment. Thirdly, she needs to go out mostly for her job, due to which the harm may affect the child. Fourthly, if she is involving in any wrong practices, it will also harm the child. If woman is seduced, then the child can stay with her till the age he/she must not be affected by her bad attitude. Furthermore, child can stay with infidel till the age he/she understands about religion. If woman become apostate and left her *Deen*, then the state should keep her in lockup till she comes to her Deen again. The custody of child will be ceased till she come back in Islam. If she rejoins, then child will be given back in her custody.⁴⁹ The girl who is in custody of mother, maternal grandmother or paternal grandmother, in their absence in custody of any other woman, must be till the age of puberty. This is defined by fuqaha is 9 years approximately. Fatāwa has the same opinion.⁵⁰ The boy and the girl in mentioned time, seven years for boy and nine years for girl, will stay with mother. After this period the grandfather is entitled to take care of children. It does not mean not to allow mother to visit her children. It is prohibited to stop the mother to meet her children.⁵¹

Contract between spouses regarding custody

It was decided between spouses at the time of divorce that the baby boy, who is one and half year old, will be given back to man. During the period the father was continuously given the maintenance of child. Now after one-year mother refused to give child back to father. Now the *istIfa'* upon the issue is asked whether mother

refusal is accepted in sharī‘ah? As she committed before to hand over child to father after one year. Now she is refusing.

It is clarified in fatwa that mother has more right of custody upon a minor child for nourishing and upbringing. That’s why due to commitment at the time of divorce, her right of custody is not abrogated. She can refuse to hand over the child to father till seven year of age of boy.⁵²

Father and mother as guardian

The question was asked by Mustafti that in Islamic Law the father has right of control and supervision over his minor child. The mother has the right of custody. The boy should be 7 years old and girl till the age of puberty. What does control and supervision means?

It means that the provision of maintenance is the duty of father. The upbringing and nourishing are the responsibility of mother during custody.⁵³ The father has the right to meet his children while they are in custody of mother. No one can stop this right of father to meet the child.⁵⁴

If child is ill during custody of mother

A question was presented for fatwa in Ahsan ul Fatāwa that zaid has divorced his wife. She has three years’ child in her custody. The child is ill with a dangerous disease. The mother does not have any source to cure him. That’s why it’s dangerous to leave the child with mother. Can Zaid take his child with him for treatment?

The istifta’ is given that if the child has danger while not staying with Zaid then he can stay with zaid.⁵⁵

The expense of children after divorce between spouses

The father will bear the expense of children after divorcing wife whether they live with father or mother.⁵⁶ The mother has preference over father in case of custody of child. In guardianship the father has more right in other matters like marriage or property. But in *Hadānah*, the mother has right. Father will bear the expense of child and mother have right to feed and upbringing.⁵⁷

Entitlement of custody

During marriage the child is in custody of both, mother and father. If both are separated due to divorce or death, mother is entitled for the custody. If mother is not available, then the entitlement goes to the next custodian. After mother the maternal grandmother (and so on in ascending order), paternal grandmother (so on in ascending order), full sister, half-sister from same mother, half-sister from same father, daughter of full sister, daughter of half-sister from same mother, daughter of half-sister from same father and maternal aunt, are the custodians in order.⁵⁸ If the custodians from above orders are not available then then the entitlements will shift to father, then grandfather (so on in ascending order), after that full brother from same father and mother. If they are also not available then half-brother from same father, after that nephew from full brother, nephew from half-brother of same father, Full paternal uncle. In their absence the custody goes to half paternal uncle from same father.⁵⁹

Conclusion

After parent's separation through any way, children's face a lot of problem because they miss their either parent which affects them physically, psychologically and emotionally. Even their position in society is weaken. The Fatāwā of Egypt and Egyptian courts both have the same opinion regarding the custody of child. As a rule of Islamic Law, the mother has more right of custody than father upon a minor child. In Egyptian Fatāwā the child can stay with mother till the age of 15. But according to Indian and Pakistan's Fatāwā the boy can stay with mother till the age of seven and girl till the age of puberty which is considered nine years. According to Dar ul Ifta al Missiriya the child can stay with mother after her marriage with non-mahram to child with the condition of safety of child. But Pakistan's and Indian verdicts are opposite to it that the custody of mother will be ceased upon her marriage to *non-mahram* to child. It is analyzed that all three countries Fatāwā give the right of custody to mother if not mother then hierarchy is given. Maintenance is given by the father as responsibility to the child in custody of mother, is the verdict of all Muftis of Egypt, India and Pakistan.

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