



# Faculty of Legal Studies & International Relations

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## Justice in Child Custody and Family Relations

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- Project Summary:

### **The Problem of Incubation in Sharia and Society**

Divorce happens a lot between any couple anywhere in the world and the divorce rate is rising all over the world and we are no exception to the world that is drowning in the spiral of problems that result from marital disputes and divorce. There is no real percentage of the spread of divorce in the Kingdom, although there are different studies and figures sometimes issued by different quarters about the divorce rate in the cities of the Kingdom, but these statistics are not supported by confirming that these results of the divorce rate in the cities of the Kingdom is true, Rates of divorce.

There are approximately 240 divorce rulings issued daily by the Personal Status Court, which is quite a number. There are approximately 88,000 divorce cases each year, according to the latest official census issued by the Central Agency for Public Mobilization and Statistics in Egypt. According to the latest census, the largest proportion of divorce cases occur among newly married couples, where the divorce rate in the first year to 43%, while the ratio to 21.5% during the second year of marriage. According to another study published by the Information and Decision Support Center of the Egyptian Council of Ministers, Egypt ranked first in the world in divorce rates. The study also confirmed that the divorce rates increased during the last 50 years from 7% to 40% To 240 divorces. The study pointed out that the total number of divorces in Egypt 2.5 million divorced and half of these cases in the first year of marriage, and most of these cases of the age of thirty, noting that most divorces occur at the beginning of marriage, called this divorce as "early divorce."

Whatever the cause of the divorce, the children are the first victims. We can see that the most important problems that occur after divorce are the custody of the children, whether they are young or old in adolescence and beyond. According to the World Health Organization (WHO), childhood is until the age of 18.



And then often things go well, the intellectuals and intellectuals and the owners of scientific and social places, and may have some problems, but is resolved within the understanding between the husband and wife, and things go well and may not affect children.

We find that if the parents think after their separation and the occurrence of divorce in the interest of their children and the future of these children and their lives in the future after years of separation and the end of life between parents, but mature people matter the future of children, and try to deal with their own problems in the interest of children. Unfortunately, not all divorced people are in this state of mind, maturity, and taking into account the psychology of children after divorce.

Serious things often happen to the lives of children after divorce. There is the problem of custody, which wants both father and mother to be the son or daughter under his tutelage, hence the problems that may create an atmosphere of hatred and hatred between the spouses, these problems may bring psychological damage to the children may affect their future and future life as well as their souls and may be affected by Poor child relationships in their lives.

#### **Legal and legal description of the absolute and absolute status of custody:**

It is not surprising that there have been cases of conflict over the custody of children under the Prophet peace be upon him, which is an opportunity for us to learn, and take the legitimacy of them, and from these cases what conveyed to us Abdullah bin Amr, may Allah be pleased with them: "A woman said: God said that my son was my stomach and a pot of his breast and a rock and stone him Eve and his father divorced me and wanted to take it from me and said to her Messenger of Allah peace be upon him: you are entitled to it unless you give up.

It is clear to us that Islam gave women the right to custody of their young children, as long as they remained intact and did not marry. If she married, her custody fell to the child, and this is also in the interest of women because some husbands do not prefer the wife's children to stay. And the differences between them and the new husband, however, the jurists expanded in the case of the mother of the married incubator, continuing to custody of her children as long as her husband's religion and integrity and ethics after the permission of the father of the children in it, if the child reached the age of discrimination, the best between the father and mother, The mother's children he lived in and sponsored For years and thousands and thousands, according to Abu Hurayrah may Allah be pleased with him: "The Prophet peace be upon him is better between his father and his mother." Narrated by al-Tirmidhi.



This approach was followed by the Sahaabah (may Allaah be pleased with them). When Umar ibn al-Khattab, his wife, Um Assem, died in the succession of Abu Bakr al-Siddiq, the Sahaabah spent her right to custody of the children and explained to the attendants the reasons for this ruling. She is entitled to her child unless she gets married. " Then he addressed his words to Omar.

Abu Bakr said: "I heard the Messenger of Allaah (peace and blessings of Allaah be upon him) say:" Do not lend him the mother of her son. "And the meaning of his saying:" Do not tell him "is not separated from him. Intense intensity.

It is also found that Omar ibn al-Khattab spends his time, as the Messenger of Allah, peace and blessings be upon him, and his companion Abu Bakr al-Siddiq. It was narrated that 'Abd-al-Rahmaan ibn Ghunam said: "He broke up with Omar in a boy and Omar said: He is with his mother until he pronounces his tongue.

He said: "I do not know the difference between the forefathers of the scholars and the successor that the divorced woman if she did not marry her son is better than his father, as long as a young child does not distinguish Something if it is in the merit and adequacy, and did not prove them a rascal. "

If the Shari'a has established rules and conditions in the custodial mother, if one of the conditions has been lost or fallen, the right to custody has fallen accordingly. This situation is temporary rather than perpetual, according to the jurisprudential rule: "If the inhibitor fails, the forbidden is returned."

Ibn Qudaamah said in the al-Mughni that this rule is correct, saying: "Every person who deserves the custody of a child is forbidden from stealing, disbelief, marketing, insanity, or smallness. If the impediment is violated, such as relieving the slave and the safest of the kaafir, , Because the reason is existing but abstained to prevent if the impediment is returned to the right reason former lieutenant wife if divorced.

### **Mother's right to custody of her children after divorce:**

In addition to the Maalikis, the Hanafis, Shaafa'is and Hanbalis went and introduced the cases of the incubator, as stated in the footnote of al-Dasouki, on the great explanation of al-Dirdir as next one: The mother is entitled to the custody of her son, if she is not divorced and is not accustomed to the father of her child, and this is not the fare to feed him and save him, and therefore, the parents to his father: the cost of breastfeeding and the cost of custody and maintenance.

If she is divorced or is accustomed to his father from a retroactive divorce, she is not entitled to a salary for the highest childcare or to breastfeeding because she has to have a religion, because marriage is considered as a basis for several divorces. , But if it expires, it has the cost of custody agreement without controversy as do other incubators. If the custodian is forced to custody, if there is no other, the reward of the nursery is due with reparation, because coercion does not contradict the reward of the person who paid it.



If the incubator does not have a place where the child is to be fed, then she has to pay a house.

The jurists also provided for the provision of a servant or servant to the children in the custody of the mother if they needed it, the expenses of the father, if that is the habits of their social status. Shari'a courts or family courts in our Islamic countries usually adhere to these principles and jurisprudential rules concerning the issue of custody, which are included in the laws of Muslim countries, with minor differences in the age of discrimination, such as the law of vision and custody of the Saudi, Emirati, Omani, Kuwaiti, and the Egyptian Nursery Law.

Although, in the case of division, Islam gave parents - both father and mother - the right to custody of their children, the problem lies in the prevalence of random or imported customs, customs and traditions.

The law allows the parents to resort to arbitration in the custody problem, in accordance with Shari'a and law. However, we may encounter the non-compliance of the law and the law of one of the parties with stubbornness, as well as the intransigence of some husbands and revenge against the other and settling his accounts with him, These reasons explain to us part of the many problems existing between spouses and the dispute before the courts on the right to custody. It is incumbent upon the spouses to be pious, to obey God's law and not to prevent each other from his right to custody of the children.

• **Research problems:**

The obstinacy and misconduct of one of the parents after the division of discord and divorce between them can undermine the right of the other in his child, and even deprive him of it, which has the greatest effect in distorting the proper formation of the child, Male or female, because God created people to live in a family, an incubator for a harmonious environment in which a child grows up.

But the most important problems arise:

- Mother's entitlement to custody.
- The father's entitlement to custody.
- Arranging the incubators.
- The right of the young to have a family, and enjoy the kindness and care of grandparents and uncles and uncles.
- Rights of grandparents and uncles and uncles.
- the age of custody, the importance of raising the boy on the approach of men and their behavior and behavior and delusions, and a small right to acquire female behaviors and functions, and the right to enjoy the care of her father and his gang.
- The rights of tunnels, housing, education and study.