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GUARDIANSHIP UNDER ISLAMIC LAW AND ITS FUNCTION IN THE CARE AND UPBRINGING OF A CHILD

1. Introduction

In Islamic Personal Law, guardianship is known as **"Wilayat"**. It refers to the legal responsibility of a person to take care of a child and protect their interests. Islam gives great importance to the welfare, protection, and proper upbringing of children. A guardian is appointed to ensure that a child's **religious, moral, physical, and financial needs** are properly managed.

The concept of guardianship is mainly based on the idea that children are not fully capable of managing their own affairs, so a responsible adult must act on their behalf.

2. Meaning of Guardianship in Islamic Law

Guardianship means the **legal authority and duty of a person to take care of a minor or a person who cannot manage their own affairs**.

In Islamic law, guardianship is not only about legal authority but also about **moral responsibility and protection** of the child.

In simple words:
A guardian is a person who **protects, supports, and raises a child in a proper Islamic way**.

3. Sources of Guardianship in Islamic Law

The concept of guardianship is derived from:

- **Holy Quran**
- **Hadith (Sayings of Prophet Muhammad ﷺ)**
- **Islamic Jurisprudence (Fiqh)**

Islam emphasizes that children must be treated with **care, justice, and kindness**.

4. Types of Guardianship in Islamic Law

Islamic law divides guardianship into different categories:

1. Guardianship of Person (Wilayat al-Nafs)

This means responsibility for the **care, upbringing, education, and marriage of the child**.

- Ensures proper food, clothing, and shelter
- Provides education and moral training
- Looks after health and safety

2. Guardianship of Property (Wilayat al-Mal)

This refers to managing the **property and financial matters of a minor**.

- Protects the child's wealth
- Invests or uses property for the child's benefit
- Prevents misuse of assets

3. Legal Guardianship

This includes authority given by law to act for the child in **legal matters** such as court representation.

5. Types of Guardians in Islamic Law

There are different types of guardians depending on their role:

(i) Natural Guardian

Usually the **father** is the natural guardian. After him, guardianship may pass to the paternal grandfather.

(ii) Testamentary Guardian

A guardian appointed by the father in his **will (Wasiyat)**.

(iii) Court-Appointed Guardian

If no natural guardian is available, the **court appoints a guardian**.

(iv) De Facto Guardian

A person who takes care of the child without legal appointment, but may not have full legal rights.

6. Rights and Duties of a Guardian

A guardian in Islamic law has several responsibilities:

Duties:

- Provide **care, food, shelter, and education**
- Protect the child from harm
- Ensure **Islamic moral upbringing**
- Manage property honestly
- Act in the **best interest of the child**

Rights:

- Authority to make decisions for the child
- Control over education and discipline
- Management of financial matters (if appointed)

Important rule:
A guardian must always act in the **best interest (Maslaha) of the child**.

7. Importance of Guardianship in Child Upbringing

Islam places strong emphasis on proper upbringing of children. Guardianship ensures:

- Moral and religious education
- Protection of rights
- Emotional care and support
- Social development
- Financial security

The Prophet Muhammad ﷺ said that every person is a **shepherd and responsible for their flock**, which includes children.

8. Custody vs Guardianship in Islamic Law

A very important distinction:

Custody (Hizanat)	**Guardianship (Wilayat)**
Physical care of child	Legal authority over child
Usually given to mother (young children)	Usually father or male relatives
Focus on daily care	Focus on legal and financial matters

Example:
A mother may have custody, but the father may still be the legal guardian.

9. Conditions for Becoming a Guardian

A guardian must be:

- Muslim (generally required in Islamic law)
- Adult and mentally sound
- Trustworthy and honest
- Capable of protecting the child's interests
- Not involved in harmful or immoral activities

10. Removal of a Guardian

A guardian can be removed if:

- He is dishonest or misuses property
- He neglects the child's care
- He is mentally unfit
- He acts against the child's welfare

The court ensures that the child's **best interest is protected at all times**.

11. Role of Guardianship in Modern Islamic Family Law

Even today, guardianship is very important in Islamic legal systems:

- It protects orphaned and minor children
- Ensures proper education and upbringing
- Prevents misuse of child property
- Maintains family structure and responsibility

In many Muslim countries, courts apply Islamic principles along with modern family laws to protect children.

12. Conclusion

Guardianship under Islamic law is a complete system that ensures the **protection, care, and proper upbringing of children**. It includes both legal and moral responsibilities. The guardian must always act in the best interest of the child and provide a safe, supportive, and Islamic environment for their development.

In simple words, guardianship in Islam is not just a legal duty but a **trust (Amanah)** that must be fulfilled with honesty and care.