

LAHORE LEADS UNIVERSITY

ASSIGNMENT

Guardianship Under Islamic Law and Its Functions to Care and

Up-Bringing of a Child Personal Islamic Law-II

Subject: Islamic Personal Law

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Guardianship and the Responsibilities of Child Care and Upbringing Under Islamic Law

1. Introduction

Guardianship is an essential concept in Islamic family law that guarantees the protection, care, and proper upbringing of minors who cannot manage their own affairs. Islamic law places special emphasis on the well-being, security, and moral development of minors. Through guardianship, a responsible person is appointed to manage the personal and financial affairs of a minor. Its primary purpose is to protect the child's best interests and ensure a proper upbringing in a safe, healthy, and stable environment.

2. The Concept of Guardianship in Islamic Law

In Islamic law, guardianship refers to the legal authority given to a person to manage the care, property, and well-being of a minor or helpless person. This is called wilayat, which means authority and protection.

Guardians are responsible for the minor's care, education, moral development, and financial security. Islamic law distinguishes between guardianship and care, with guardianship focusing on physical care.

3. Sources of Guardianship in Islamic Law

The concept of guardianship in Islamic law comes from several sources, including:

1. The primary source is the Holy Quran. It emphasizes the guardian's responsibility to protect and manage the property and well-being of children and young people.

2. Hadith (sayings of the Prophet Muhammad) also provide guidance regarding the protection and education of children.

3. Another important source is Ijma (consensus of scholars), through which Islamic legal scholars have developed detailed criteria for guardianship.

4. When no direct guidance is provided by primary sources, Qiyas (analogy) is also used to understand guardianship.

4. Types of Guardianship in Islamic Law

Islamic law recognizes different forms of guardianship based on the nature of the responsibility:
• Guardian of a Person

This type of guardian is responsible for the physical care, upbringing, education, and general well-being of a minor. The guardian must ensure that the minor receives proper moral guidance and proper social development.

• Guardian of Property

A guardian of property is responsible for managing and safeguarding the minor's financial assets. The guardian must ensure that the assets are kept safe and used solely for the minor's benefit.

• Guardian of Marriage

Under Islamic law, a guardian may have the authority to manage or approve the marriage of a minor, especially in some schools of Islamic law.

5. Who Can Be a Guardian?

• Father:

Under Islamic law, the father is the primary and natural guardian of a minor.

• Grandfather:

If the father is absent or has died, guardianship passes to the grandfather.

• Other male relatives:

In some cases, the court may grant guardianship to close male relatives, such as a brother or uncle, if they are capable. • Court-appointed guardian:

If there is no capable relative, the court will appoint a guardian to protect the child's well-being and interests.

6. Guardian's Duties in the Care and Upbringing of the Child

• Education and Moral Guidance:

The guardian is responsible for providing the child with proper education and moral training so that the child grows up to be a responsible and moral member of society.

• Physical Care and Protection:

The guardian must ensure the child's basic needs, such as food, shelter, and medical care, and ensure the child's complete safety and well-being.

• Property Management:

If the child owns or inherits property, the guardian must manage that property honestly and in the child's best interests.

• Religious and Ethical Education:

Guardians are responsible for the child's Islamic religious education. This includes teaching Islamic values, discipline, and good behavior.

7. Termination of Guardianship

• Attainment of Adulthood: Generally, guardianship ends when the minor reaches adulthood and can manage their personal and financial affairs on their own.

• Court Decision: If the court finds that the guardian cannot or will not perform their duties properly, the court may terminate the guardianship.

• Failure to perform duties: If a guardian abuses their power or fails to protect the minor's well-being, guardianship can be revoked.

8. Importance of Guardianship in Islamic Law

The concept of guardianship in Islam emphasizes social responsibility and the protection of vulnerable members of society. It ensures that children receive proper care, guidance, and financial security during their growing years.

Guardianship also helps prevent the exploitation or misuse of children's property and ensures that children grow up with sound morals and religious values.

9. Conclusion

Guardianship under Islamic law is an important system that protects the welfare and rights of minors. It ensures proper care, education, and management of a child’s personal and financial

matters. The main aim is to provide a safe and responsible environment for the upbringing of children until they reach maturity and can manage their own affairs.