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**SOCIAL DEVELOPMENT IN ISLAMIC LAW, A READING OF THE
CONDITIONS OF CUSTODY AMONG THE IMAMATE JURIST**

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Introduction:

Islam is the final heavenly religion and because it cares about guiding human beings towards perfection, it is concerned with laying down the necessary legislation to regulate their social life in the world and caring for people in all matters, which it is urged through its texts in the Noble Qur'an and the noble hadiths. Muslim sages and philosophers have always developed their theories to know the perfect man, whom the systems of heaven and the teachings of the prophets sought throughout the ages to teach, educate and nurture mentally, morally and religiously to become a complete human being with the real meaning of the word.

A newborn who is the beginning of a person's complete journey goes out to life while hit needs someone to provide it with the basics of living and upbringing, so Islam legislated laws for this newborn to protect it from loss and death in all stages of its life, and so that it is not deprived of the kindness of its parents and is inclined to delinquency, crime, and assault on others, or, suffers from a self-incompetent oedipus that might have no remedy Hence making custody a necessity for the newborn because it preserves the building of its personality and protects it from delinquency. The newborn gaining from the custodian kindness during this period specified by the legislature is considered an important element in the formation of its behavior, because it looks to him/her as the hope of its life. If it is separated from her/him, it will be separated from its whole life, and all its hopes were dashed.

Muhammad Taqi al-Falasfi said:> The mother's heartbeat inflicts the child's soul and keener for it from any other tune, and therefore the cuddling centers record the sound of these beats

on a tape, and when the child cries, the tape starts near its ear and calms down in this way <⁽¹⁾.

Sayyid Qutb says:> Scientific experiments have proven that any device other than the family apparatus does not compensate for it and does not take its place, but rather is not free from damages that spoil the formation and upbringing of the child².

Custody is an indispensable humanitarian necessity. The jurists, especially Shiite jurists, have classified over ages great books and precious letters that cannot be counted, containing jurisprudential issues in everything Muslims need from purity to blood money. We may say: The jurisprudential heritage of the Imami Shi'a constitutes a great wealth from the wealth of Islamic law, but despite all of this, jurisprudence is still an area for research. Because jurisprudence is really an integrated program for all actions from the beginning of man's creation to the end of his life. Indeed, man's life in other worlds, such as the isthmus and the Resurrection, depends on understanding jurisprudence and acting on it as it was. Because jurisprudence is the organizer of the matters of the pension, and it shows to the person the importance of attachment to God, the Almighty Lord, and through it the perfection of the human kind in the world and his happiness in the hereafter, but we may find some jurisprudential issues that were not discussed in a comprehensive way, or discussed, but in different sections of Islamic jurisprudence, so that it is difficult for the researcher to reach his goal except hard work, including research related to births and their rulings.

The importance of this research stems from the fact that it sheds light on the interest of Islamic legislation and its focus on the issue of children and their preservation, whereby the protection of mankind to the children is the same as protecting ourselves. The Almighty said: {O you who believe protect yourselves and your families from a fire fueled by people and stones} (³) and ordered his prophet to order his family to pray, said the Almighty: : {And command your family to pray and be patient with it} (⁴). Parents and grandparents should assume their responsibilities towards their children. He also desired and urged children to be sermonized and reminded of their legitimate duties, as the Holy Qur'an referred to the exhortations of Luqman al-Hakim, the Almighty saying: {Luqman said to his son, while he was exhorting him} (⁵).

And the same is the news that urged attention to children's affairs. On the authority of the Commander of the Faithful, Ali bin Abi Talib, he said: The Messenger of God said: "Parents are sentenced for disobeying their children in the same way of their children disobeying them." (⁶). He also said:> Honor your children and improve your manners. (¹)

¹Falsafi, Muhammad Taqi, *The Child Between Education and Genetics: Part 1*, p. 288.

²Qutb, Sayyid, *In Shadows of the Qur'an: Part 3*, p. 178.

³Surah Al-Tahrim, verse 66

⁴Surah Al-Tahrim, verse 66

⁵Surah Luqman, verse 60

⁶Al-Hurr Al-Amili, Muhammad Ibn Al-Hassan, *Waseel Al-Shi'a*, vol. 15, p. 199, chapter 86, from the chapters on rulings of children, vol.

The Master of the Sajidin, our master Ali bin Al-Husayn, said in the Message of Rights:> As for the right of your child, you know that it is from you and added to you in the world of goodness and evil, and that you are responsible for what you have been entrusted with good manners and guidance to his Lord and helping him to obey him in you and in himself, for he will be rewarded and punished. <(²).

Islamic law has taken care of the human being as the caliph of God in his earth and that he needs the elements of a healthy survival, as it gave him all the requirements of a happy life, as all worlds were made ready for his service, starting with the world of angels and ending with the world of creatures. The Almighty said: {We have honored the children of Adam and have carried them on land and sea, and we have provided them with good things. }³

Likewise, the Sharia considers the person as a composite of soul and body, and includes a mind, emotion, body and feelings, whose body does not rise and his limbs are not balanced, unless the leadership of his mind controls his body, soul and feelings. The principle by which he owes is due to the various branches of life, or the varied and balanced laws that include aspects of the soul along with its care for his material affairs.

The importance of custody in the upbringing and raising of newborns:

Custody is of great importance as it is a form of guardianship and the control, and several jurists have indicated that, the incubator has complete control over the child, which is reflected positively and negatively on his upbringing, according to the type of method used in its upbringing, the environment in which it is raised and the food on which it is fed. This affects the upbringing and preparation of the child physically and intellectually, given that this stage is one of the most difficult educational stages that establish his physical and intellectual structure, and from it begins its practical journey towards education that has a great impact on its mind and emotions, and its behavior is like a seed in the soil, Imam Ali says: > Rather, the heart of the event is like an empty land. Nothing was thrown into it but accepted it.⁴

It has been known from psychologists that, on the first day of his birth, the child records all the events that are going on around it, and this affects its future awareness (⁵), and perhaps this is a reason for the holy legislature to emphasize the call to prayer in its right ear, and the eqamat in its left ear. The Messenger of God said:> Whoever has a newborn should call the call to prayer in his right ear, and the Eqamat in the left ear, for it will protect it from the accursed Satan <(⁶).

The custody period is the most important stage in the physical, linguistic, mental and moral development of the newborn, and it is the stage of forming the psychological structure

¹Same reference.

²Al-Harrani, Hassan bin Ali, Masterpieces of Minds: 263.

³Surah Al-Israa: 70.

⁴Al-Laithi Al-Wasiti, Deceiving the Ruling and Derar Al-Kalam, Part 1, p. 24.

⁵Al-Shirazi, Muhammad Husayn, The Jurisprudence of Sociology, p. 76.

⁶Al-Tusi, Muhammad bin Al-Hassan, Tahdheeb Al-Ahkam, part 7, p. 437.

on which the pillars of mental and moral health are based, which requires at this stage special attention in caring for and protecting it and providing what it needs from the elements of physical and spiritual growth to be an effective element in the society.

It is through the custody that the incubator gets to know the child correctly while it is nevertheless constantly following its growth and movement, and it is in full time and in full view and hearing of the child so that he/she becomes aware of its movements, its rifts and what is going on inside it, and through that the incubator can prevent the child from falling into delinquency and the pitfalls of dangerous life.

So, breast milk was emphasized. Because it is a complete food that is not lacking anything, it is a nourishment that inspires strength, intelligence, intelligence and awareness, as the custodian mother does not only breastfeed her child with physical milk, but rather milk mixed with qualities, morals, love and intense passion, and it is the safest and most effective in the upbringing of the newborn from others, such as goat milk or dried milk. Therefore, the mother must pay attention during this period to faith, prayer, love, piety, courage and other qualities that complement the child, and not to take the slanderous characteristics - backbiting, gossip, falsehood, lying, betrayal and sins - in general. Because it affects her milk and the milk affects her newborn, the mother of Sheikh Al-Ansari was told:> May God bless you in your upbringing. To your son, who benefited the Islamic community ... So she would answer: I expected more than that in him, for I breastfed him for two years, and I did not breastfeed him except while I was in a state of purity <¹>.

Accordingly, the custody stage is one of the influential stages that the newborn goes through, as it requires the one in charge of it to take into account all the necessary precautions for its care, maintenance, and upbringing. Because if it is left, it is lost and perished, then it must be preserved from perdition, as he/she must spend on it, and save it from the perishing, and this duty sometimes means the right that is one of the proficiencies of women according to the law, and the other the duty that is one of the proficiencies of the man. Because he is the bearer of his guardianship, so each of them does what suits her/his mission, according to what Sharia stipulates.

Whereas the right of the newborn to healthy development and physical and mental integrity is one of the objective issues that parents should bear; In order to preserve the social order, Islamic law deemed it necessary to take care of the interest of the child in custody, entrusted it to the parents in the event of a stable marriage, and made it an obligatory duty on the heads of families, who were assigned to take care of family affairs, including children.

The concept of custody in the language and terminology:

Custody in Arabic is (حضانة): it is taken from the source verb (حَضَنَ) with fatha on the first and second letters: cuddles the boy) that is to carry his supplies and raise him, and (حَضَنَ) with a Kasra below the armpit, or the chest and upper arms and what is between them, the side of the thing and its side, and its plural: (أَحْضَانُ), embracing the boy, cuddling, and incubation

¹Al-Ansari, Islamic Knowledge: p. 355.

by breaking Put him on his bosom, or raise him like a hug ⁽¹⁾.

And he said in Tahdheeb al-Lugha: <Incubation: the source of the incubator and the incubator, and they are the ones who are entrusted with the boy to raise him and raise him> ⁽²⁾.

Al-Taraihi said:>(الحضانة)with fatha then kasra: a name taken from it and it is the guardianship of the child and the insane for the benefit of his upbringing, and what is related to it from his interest and preservation, and put him in his bed, and raise him, and wash his clothes and body, and comb, and all his interests, Non-breastfeeding. <⁽³⁾

The conclusion from the foregoing is that custody in the language is in the sense of undertaking to raise and preserve the child through carrying out his responsibility and raising him with what he needs.

As for custody idiomatically: the custody of the young is classified in the perceptions of jurists under the title (special guardianship), which is the state that is called in their terminology as (educational guardianship) and it is derived from the special guardianship whose responsibilities fall on the first class, which is the father, mother, grandfather of the father, and the legal ruler Its purpose is to protect the child, raise him, and take care of his interests.

In the Alqauaed, Allama al-Hili said: <Custody is a mandate and a power over the upbringing of a child> ⁽⁴⁾. The second martyr said in al-Masalak: "It is a guardianship over the child and the insane for the benefit of his upbringing, and the interest related to it from keeping him in his bed, lifting him, his eyeliner, his anointing, washing his rags and clothes, cleaning him and so on, and it is with the female more suitable than for the man, for her compassion and her character prepared for that originally." ⁽⁵⁾ . He also mentioned it in Explaining Allama'a Al-Dimishqiya ⁽⁶⁾, and he was followed by Sayyid Ali al-Tabataba'i in Riyadh al-Masa'el ⁽⁷⁾, and by Sayyid Muhammad al-AmiliinNihayat al-Maram ⁽⁸⁾, Al-Muhaqiq al-Sabzawari in Kifayat Al-Ahkam ⁽⁹⁾, Al-Muhaqiqal-Bahrani in Al-Hadaeq al-Nazirah ⁽¹⁰⁾, and al-Allamah al-Kalbasi in Minhaj al-Hidayah ⁽¹⁾.

¹See: Al-Qamoos Al-Muheet: Part 4, P.215, Chapter Al-Nun, Chapter of H, and Lisan Al-Arab, Ibn Manzur: Vol. 13, p. 124, Al-Sahih, Al-Jawhari: Part 5, p. 2102, and Dictionary of the Language of Jurists, Dr. Al-Qalaji: Part 1, p. 181.

²Al-Azhari, Abu Mansour Muhammad, Tahdheeb Al-Lugha, vol. 4, p. 123.

³Al-Taraihi, Fakhr Al-Din, Bahrain Mall, C6, p.176.

⁴Allama Al-Hilli, Al-Hasan Bin Yusuf, QawaedAl-Ahkam (Rules of Rulings): Part 3, p.10

⁵The Second Martyr, Zain Al-Din, Al-Lama'a Al-Dimashqia: Part 5, p. 458.

⁶See: The Second Martyr, Zain Al-Din, Masalik Al-Ifhama: Part 8, p. 426.

⁷See: Al-Tabatabai, Ali, Riyadh Al-Masa'el: vol.10 p. 514

⁸See: Al-Amili, Muhammad, Nihayat Al-Maram: Part 1, p. 46.

⁹See: Al-MuhaqiqAl-Sabzawari, Muhammad Baqer, Kifaya al-Ahkam: Part 2, p. 292.

¹⁰See: Al-Bahrani, Yusuf, Al-Hadaeq Al-Nazerah: Part 25, p.83

But the author of Al-Madarik was confused about defining custody as guardianship over the child, when he said:> He mentioned to him that if custody is a guardianship over his upbringing, it is necessary that it not be waived by aborting the mother, and she must observe that in a way that is not entitled to the fee for her, as is the case in other matters. The states, although there is nothing in the evidence that requires that, but in them something that requires otherwise, such as commenting on her desire and expressing entitlement, but it appears that this entitlement is like the right to breastfeed, and at that time it is not obligatory for her, and she has to drop it and demand a fee for it. It can be said: It appears that custody in its linguistic and customary meaning, and what evidence is learned from the evidence is the guardianship of the father and the mother over it in the sentence, and custody is not the same as guardianship, but guardianship is fixed over custody, so with the mother not extending her guardianship, it is proven to the father, just as with the father not doing something else, the equivalent of guardianship regarding to the custody of the young, as it is fixed for the father and grandfather, and with their not standing fixed for the ruler, and with the ruler not standing up for an obstacle, it proves the fair believers, and the evidence does not indicate otherwise. <(). And this was agreed by Al-Fadhil al-Hindi in his book (Kashf Al-Litham) (2).

Conclusion: The idiomatic meaning of the Imami jurists is the same as the linguistic meaning of what was chosen by the author of Al-Madarik and Al-FadhilAl-Hindi, otherwise, were it not for the confusion about the one who preceded it in its definition, custody would mean guardianship and authority over the child.

Foster Conditions:

By it we mean the one who is in need of custody whether a male or female, and the beginning of the custody has been agreed upon according to the Qur'an texts and the news, but the period of custody includes the opinions saying it is the first two years, the second seven years, and the third in the girl nine years.

The first is based on the Almighty's saying: {And mothers breastfeed their children for about two full years} (3).

The approximation of the inference is that the noble verse, even if it is about determination and clarification of the provisions of breastfeeding, but it indicates custody in an obligatory connotation, that is, that the custody is attached to breastfeeding. By the obligatory meaning not the conforming one, and accordingly, when God Almighty made the two years of breastfeeding complete, it is known that the Almighty did not mention the nominal and linguistic meaning, nor did he say that it is permissible. Because it applies after the two years, and then it is proven that God Almighty wanted legitimate breastfeeding to which the prohibition and prohibition are related. It is only in two years, so it is not free to either want the permissibility of breastfeeding, or sufficiency, or the prohibition, so it is invalid to want the permissibility, because it is permissible without dispute, and it is invalid to want sufficiency because it may suffice without the two years. There is nothing left except that it is

¹See: Al-Kalbasi, Ibrahim, Minhaj Al-Hidayah: p. 345.

²Al-Khwansari, Ahmad, Madrak Al-Ahkam, Part 8, p. 504.

³Surah Al-Baqarah: verse 233.

a limit for this period because the ruling is related to it and not others. ⁽¹⁾.

This is supported by what has been proven in the noble Sunnah, as stated by Judge Ibn Al-Baraj, who said:> A boy should breastfeed two full years according to what is proven in the Sunnah in that. ⁽²⁾.

And the autherr of Al-Hadaeq Al-Nadhirah said:> And she is more entitled to her child to breastfeed him with what another woman accepts. God Almighty says: {A mother will not be harmed by her child, nor will he be with his child and the heir is like that). The boy shall not be harmed nor harmed in his breastfeeding, and she shall not take in his breastfeeding for more than two full years ⁽³⁾.

Sayyid Al-Ardebili said: It seems that breastfeeding in the first two years is obligatory, so it is not understood at that time from the verse, to make it infertile⁴.

The foregoing is also supported by what was mentioned by three of our jurists about determining the duration of breastfeeding by two years, such as the Al-sayyid Al-Gulpaygani, who said:> The mother is more entitled to custody and upbringing of the child and what is related to the interest of preserving it for the duration of breastfeeding for two years, male or female, whether she breastfed him/her herself or by someone else, on the condition that she is free and sane, and that she is a Muslim. If the child is a Muslim, it is not permissible for the father to take him during this period from her ⁽⁵⁾

But Al-Sistani (may God preserve him) said that custody is seven years, and it is the second saying in the questioning, where he said:> It is not permissible for a father to separate his child, whether male or female, from his mother for the period of breastfeeding, I mean two full years, and the absolute precaution is not to separate him from her until he reaches seven years. ⁽⁶⁾.

And this is what is in Sahihat of Ayoub bin Noah ⁽⁷⁾ He said: Some of his companions wrote to him: I had a woman and I had a son, and I divorced her, so he wrote, peace be upon him: "A woman is more entitled to a child until he reaches seven years, unless the woman desires." ⁽⁸⁾

And the Sheikh Al-Mufid doctrine of Al-Muqanna'a 'is nine years, and it is the third saying, where he said:> The mother has the right to have the daughter until she reaches nine

¹See: Al-Tusi, Muhammad bin Al-Hassan, Al-Khulaf, Part 5, p.99.

²Ibn Al-Baraj, Al-Qadi, Al-Muhadhdhab Al-Baree, Part 2, p. 261.

³Al-Muhaqiq Al-Bahrani, Yusef, Al-Hadaeq Al-Zahira, vol. 37, page 77

⁴Ardebili, Ahmad, Zebdat Al-Hakam, p. 557.

⁵Al-Gulpaygani, Muhammad Reda, Hidayat al-Ibad, Part 2, p. 375.

⁶Al-Sistani, Ali, Al-Masa'el Al-Muntakhaba, p. 408.

⁷Several of our jurists have expressed it in al-Sahihah, including: Al-Khwansari, Jami` al-Madrak, vol. 8, p. 5; Al-Tabatabai, Ali, Riyadh Al-Masa'id, c 11, p. 426; Al-Suzwari, Abd al-A'la, Kifaya al-Ahkam, part 2, p. 176.

⁸Al-Saduq, Muhammad bin Ali, Who Does Not Attend Al-Faqih, vol. 3, p. 435.

years of age. <⁽¹⁾

Al-Muhaqiq Al-Bahrani said on the issue - after he reported the difference in the period of custody regarding the girl with whom he differed between the sheikh al-Mufid and the rest of the scholars, including Ibn Idris, to whom he responded violently, - but the scholar did not accept this type of scientific debate because it contains contempt and boldness on scientists, and we transfer this is to clarify this matter:> It was said: The mother has more right to the child if she does not marry. Al-Saduq went to this in the Book of Al-Muqna 'and it was said: The mother is more entitled to the girl unless she gets married, and the boy to seven years. Ibn Al-Junaid and the sheikh chose him in the dispute, citing the consensus of the group and their news, and Ibn Idris denied this saying in his Sara'er and exaggerated his response, saying: What our Sheikh mentioned in matters other than the saying of some of the violators, and what we chose is correct, because there is no dispute that the father has more right to the child in all cases, and he is master and the curators of his matters, so we brought it out by consensus of the two years in the male, and in the seven-year female, so whoever claims more than that needs conclusive evidence, and this is the doctrine of our Sheikh in his Nihaya, and it is surprising that he said at the end of the issue, "Our evidence is the consensus of the band and their news," which makes the bereaved laugh. Whom did he collect with him? And any news for them on that? Rather, our news is different from it, and our consensus is against what he said - may God have mercy on him. The scholar responded in the contradictory to Ibn Idris and exaggerated his crossbreeding and contempt for him with his boldness against the sheikh. I say: There is no doubt that the words of Ibn Idris are good, but it is better to limit himself to clarifying the issue without criticizing the Sheikh - Rahma<⁽²⁾

Until he said:> As for the second opinion, the way in the ruling on dhikr is apparent from what I know. As for the female, and she has been in the custody of the mother for nine years, we have not come across a report that indicates it, and this has been acknowledged by those who came before us as well. As for the third view - which is the doctrine of the Saduq - it indicates the previous narration of Al-Muqri, and the narration of Haf's bin Ghayath and Al-Sheikh - may God have mercy on him. He may carry the narration at times on whether she is vouching for him with what is guaranteed by others, he said: It is possible that what is meant here is a child who is a female, and it is possible that what is meant is what is not weaned. <⁽³⁾.

General custodial conditions:

The first condition Islam:

What is meant by Islam is to believe in God Almighty and to bear witness to the two testimonies, that is, to believe in the general sense, not in the specific sense, which is intended to believe in the Imamate of the twelve Imams of the family of the Prophet (') as testified by the sayings of Imamite scholars and jurists. Imam Khomeini said:> That disbelief corresponds to Islam corresponds to nothingness and possession according to the foundation

¹Al-Mufid, Muhammad Bin Muhammad Bin Al-Nu`man, Al-Muqna'a, p.

²Al-Muhaqiq Al-Bahrani, Yusef, Al-Hadaeq Al-Zahra, vol. 25, p. 88-89.

³ The previous reference

of the legislator, and that what is taken in the essence of Islam is nothing but witnessing the monotheism and the message and the belief in the antecedent without any problem in the first two, and on the possibility of considering the latter also, even if in a general sense, and nothing else is considered in it. Belief in guardianship and others, so the imamate is one of the origins of the sect, not religion¹.

As for Mirza Jawad al-Tabrizi, in detailing the saying about that, he said:> As for the beliefs that must be known to every person responsible in kind, and believing in them is an absolute belief, some of them are from the fundamentals of religion, such as monotheism and prophethood, and the physical restatement, and the other part of beliefs are from the origins of the doctrine, Such as belief in the imamate of the imams after the Prophet (ﷺ), and belief in justice, because it is incumbent upon everyone to believe in it, except that lack of belief and knowledge of the first leaves a person out of Islam, and in the second it does not depart from Islam, but rather deviates from the doctrine ... <⁽²⁾.

Accordingly, what is meant by Islam has been clarified, faith in its general meaning, and Islam has made in this sense a prerequisite for the incubator. Here are the sayings of some of them: Sheikh Al-Tusi said:> And if one of them is a Muslim, then the Muslim is more entitled to him with us, and with most of them <⁽³⁾.

Al-Muhaqiq Al-Hilli said: With regard to custody: the mother has more right to the child for the period of breastfeeding. And it is two years, male or female, if she is free and Muslim. There is no custody of the maid, nor the infidel with the Muslim <⁽⁴⁾, and Al-Fahil Al-Abi agreed with him Kashf Al-Rumuz ⁽⁵⁾, as well as the first martyr in Allam'a Al-Dimishqiya ⁽⁶⁾, as well as Ibn Fahd Al-Hilli in Al-Muhadhdhab Al-Bari ⁽⁷⁾; And Assayyid. Ali Al-Tabatabai in Riyadh Al-Masael ⁽⁸⁾.

The author of Jawahir claimed that there was no disagreement in the matter, as he said:> The mother is more entitled to the child for the duration of breastfeeding, and it is two years whether it is a male or female, if she breastfed it by herself or by another one, without a significant dispute that I find in it, but in Riyadh "in consensus, text and fatwa <⁽⁹⁾.

Accordingly, most of the scholars have stated that the father is entitled to the child if his mother is an infidel, as was stated in Qawa'id Al-Ahkam of Al-Allama al-Hili, where he said:

¹Imam Khomeini, Ruhollah, Book of Purification, Part 3, p. 323.

²Mirza Jawad al-Tabrizi, The Straight Path, Part 3, p. 416.

³Al-Tusi, Muhammad bin Al-Hassan, Al-Mabsut, Part 6, p. 40.

⁴Al-Muhaqiq Al-Hilli, Abu Al-Qasim Najm Al-Din Jaafar Bin Al-Hassan, Shari'at Al-Islam, Part 2, p. 567.

⁵Al-Fadhil Al-Abi, Kashf Al-Rumuz, Part 2, p. 200.

⁶The first martyr, Muhammad bin Makki al-Amili al-Lama al-Dimashqiyya, p. 167.

⁷Al-Hilli, Ibn Fahd, Al-Muhadhdhab Al-Bari, Part 3, p. 426.

⁸Al-Tabataba'ei, Ali, Riyadh Al-Masael, part 10, p.30

⁹Al-Najafi, Muhammad Hassan, Jawaher Al-Kalam, vol. 31, p. 285.

<If the mother is an infidel or possesses, then the Muslim or free father is more appropriate<⁽¹⁾.

And he evidenced that by the Almighty saying: “And God will not place the unbelievers as a way against the believers.” ⁽²⁾

Several investigators have clarified the point of inference by saying:> That is, God will not make in the world of legislation a ruling that is necessary for the infidels to have authority over the believers, and the legislation of the permissibility of the infidel's custody over a Muslim child requires the superiority of the infidel over a Muslim, and this is denied by virtue of the verse, so a rule can be drawn from it which is (The non-permissibility of the infidel's superiority over the Muslims) and it is ruling on the evidence, including the evidence that supports the clarification of the primary rulings, including the rule of custody for a young Muslim boy, and this is supported by the words of the Almighty. If honor is for the believer and not for the hypocrite, how can God Almighty make a ruling and legislate it so that it becomes a cause for the supremacy of the unbeliever over the Muslim, and the Muslim is obliged to comply with that ruling, so that the unbelievers are the proud and the Muslim among the subjugates. <⁽³⁾.

It was also inferred that the prohibition of infidel custody of a Muslim child by the news narrated from the Prophet, in which he stated: <Islam is superior and not superior to it <indicating that the hadith is composed of two sentences, one of which is positive, and the other is negative. The meaning of the positive sentence is that the rulings Legitimacy in Islam with regard to matters between Muslims and infidels, taking into account the superiority of Muslims over the unbelievers, and the meaning of the negative sentence is that the infidel is not superior to the Muslim <⁽⁴⁾.

The author of Al-Masalik said:> That the (incubator) be a Muslim if the child is a Muslim, so the infidel does not have custody of the Muslim child with the Islam of his father. Because he has no chance in raising an infidel. Because she fascinates him against his religion, and he grows up on what he is familiar with of from her; And because there is no guardianship of an infidel over a Muslim for the verse ⁽⁵⁾, and if the child is an infidel according to his parents, then she has custody of it, yes, if the child is described as Muslim, he is removed from his family, and they will not be allowed to bread him him so as not to tempt him to get away from Islam to which he has inclined, and wesay that his Islam is correct. It suffices in the first

¹Allama Al-Hilli, Al-Hasan Bin Yusuf, Qawa'id Al-Ahkam, vol. 3, p.102.

²Surat An-Nisa ': 141.

³Several investigators, Encyclopedia of Rulings of Children and their Evidence, Part 1, p. 343.

⁴ The previous reference

⁵Mean verse number (41) of Nisa, which says: {who are waiting for you, if you had factory from God said weren't we with you?, and though when it is the unbelievers share, they say we acquire you and stop you from believers, God will judge between the Day of Resurrection God will make no way (if victory) forthe unbelievers on the believers }.

place what the jurists inferred that Islam is supreme and not superior to it <⁽¹⁾.

He also evidenced the rule of denying the way, meaning that God will not make the unbelievers a path for Muslims, and the jurists have worked with it in many resources of worship, transactions, and policies. Several investigators said: It is impermissible for an infidel to take custody of a Muslim child according to this rule <⁽²⁾ and it is evident from this condition is to maintain an atmosphere that enjoys intellectual integrity even when the newborn grows up and realizes things and chooses his cosmic vision away from external influences.

The second condition Sane:

And the author of Al-Muhit dictionary defined it: > Knowledge of the qualities of things such as their goodness and ugliness, their perfection and their imperfection, or knowledge of the good of the good people and the evil of the evils, and it was said: The sane and the mind <⁽³⁾.

In the terminology, it was defined by several definitions, including what was mentioned by Khawaja Nasir al-Din al-Tusi, where he said: <It is the abstract essence of itself and its action <⁽⁴⁾

Allama Al-Hilli and Al-Taftazani defined it as: <Knowledge that obligations are obligatory, impossibilities are impossible, and permissibility of permissible <⁽⁵⁾

Therefore, the mind has become one of the pillars of entitlement of the incubator to the child, as the one who lost it cannot manage its affairs, so how can the affairs of others be managed?! With this the Imamate said: Since the insane does not come from him to memorize and pledge, but in himself he needs someone to incubate him. Implementation or roles, unless it occurs rarely and without a prolonged period, so that the right is not nullified ⁽⁶⁾.

Several investigators have explained the reason for the loss of insane's custody of the child, as follows:

First: Because he said: > As for I learned that the law is raised from three, from the boy until he dreams, from the insane until he becomes sane, and on the one who sleeps until he wakes up <⁽⁷⁾.

Second: Delegating the custody order to the insane person is obligatory to lose the rights

¹The second martyr, Zain Al-Din Bin Ali, Masalak Al-Afham: Part 8, p. 422.

²Several Investigators, Encyclopedia of Rulings of Children and their Evidence, Part 1, p. 344.

³Al-Fayrouzabadi, Majd al-Din Muhammad ibn Ya'qub, al-Qamoos al-Muheet: Part 4, P.18.

⁴Al-Tusi, Al-Khawaja Nasir al-Din, The Abstraction of belief: p. 23.

⁵Al-Hilli, Al-Hasan Bin Yusuf, revealed what is meant in Sharh Tjrih Al-Iqdid: p. 10, and Al-Taftazani, Saad Al-Din, Al-Tuwalih to Kashf Al-Taqsid: Part 2, P.157.

⁶Al-Bahrani Investigator, Yusef, Al-Hadaeq Al-Nazarah, Part 25, p.91.

⁷Al-Saduq, Muhammad bin Ali, Al-Khass, p. 94.

of the child, the loss of his rights is detrimental to him, and it is forbidden by virtue of reason and transmission, because God Almighty says: {A mother does not harm her child {Thus custody is a type of guardianship for raising the child, managing his affairs, and no guardianship for the insane ⁽¹⁾. Many jurists have issued a fatwa requiring this condition for the incubator ⁽²⁾.

The third condition is freedom:

It came in the definition of the free meaning against the slave as from the author of Al-Muhitdictionary, where he said:> The free is against the slave, and the free female is against the maid, and the neck is freed, its emancipation, and it was said: the free is against the slave, and the choice of everything <⁽³⁾

The Imami jurists went to the requirement of freedom in the incubator, so that there is no custody of the maid Because her benefit is for the master, and she is occupied with him not free for custody, and because it is a type of guardianship and the rule of preservation, upbringing, and slaves has no guardianship and even if the master has authorized, as mentioned by the scholar al-Hili in a statement that the free mother is more entitled to custody of her child whether his father is an infidel or is owned, even if the father believes or he embraced Islam, so the free Muslim is more important than him, and so if the two parents are lost in a free grandfather, he is more deserving of it than someone else⁴. And his son agreed with him in Edah Al-Fawa'ed ⁽⁵⁾.

Then the author of Al-Masalik said:> That she should be free. There is no custody of the slave, because her benefit is for the master, and she is occupied with him with no full-time for custody, and because it is a kind of guardianship and an obligation to preserve and upbringing, and the slave has no guardianship even if the master authorizes <⁽⁶⁾. And Assayyid Muhammad Al-Amili agreed with him in Nihayat Al-Maram ⁽⁷⁾. As well as Mr. Ali Al-Tabatabaei in Riyadh Al-Masa'el ⁽⁸⁾.

And another support of this ruling is Sahihat⁽⁹⁾ Dawood al-Raqi, he said:> I asked Abu Abdullah Al-Sadiq about a free woman who married a slave and gave her children, then he divorced her and she did not live with her son and got married. When the slave reached that

¹Al-Muhaqiq Al-Bahrani, Yusef, Al-Hadaeq Al-Nazarah, Part 25, p.91.

²See: The Second Martyr, Muhammad bin Makki, Masalik Al-Afham, Part 8, p. 423; Al-Muhaqiq Al-Bahrani, Yusef, Al-Hadaeq Al-Nazarah, Part 25, page 91 Al-Najafi, Muhammad Hasan, Jawaher Al-Kalam, part 31, p. 287; Al-Sabzwari, Abd Al-A'la, Muhdhab Al-Ahkam, vol. 25, p. 289; Several Investigators, Encyclopedia of Rulings of Children and Their Evidence, Part 1, p. 350.

³Al-Fayrouzabadi, Majd al-Din Muhammad ibn Yaqoub, Al-Qamoos Al-Muheet, vol.1, p.7

⁴Allama Al-Hilli, Al-Hasan Bin Yusuf, Qawaed Al-Ahkam, Part 3, p 102

⁵Ibn al-Alamah, Pride of the Investigators, Edhah Al-Fawa'ed, Part 3, p. 264

⁶The second martyr, Zain Al-Din Bin Ali, Masalik Al-Afham: Part 8, p. 423.

⁷Al-Amili, Muhammad, NihayatAl-Maram, vol.1, p. 468.

⁸Al-Tabatabai, Ali, Riyadh Al-Masa'el, c10, p. 522.

⁹It has already been mentioned by some of the jurists that it was authenticated in the first chapter.

she was married, he wanted to take his son from her and said: I am more deserving of them than you. If you got married, then Al-Sadiq said: The slave does not have the right to take her child from her, and if she marries until he is freed, she is more entitled to her child than him as long as he is possessed, and if he freed himself then he is more entitled to them than her <¹>.

And in the narration of Ali bin Ibrahim, on the authority of his father: <Al-Sadiq ruled a child to that who is free among them <²>.

And the narration of Fadil bin Yassar, on the authority of Abu Abdullah:> Whenever a free woman married a slave and gave birth to children from him, she is more entitled to her child than him and they are free, so if the man is freed then he is more entitled to his child than she is to the position of the father <³>

The fourth condition: fidelity:

The author of Al-Muhitdictionary said:> Security against fear, honesty and safety, against betrayal, and the Almighty's saying: (We have offered trust), meaning: the imposed obligations, or the intention that he believes in what appears in the tongue of faith, and performs it from all the obligations <⁴>

Perhaps the legal basis for its definition is that it is against betrayal that leads to loss of rights, lack of faith, and loss of morals, which makes it difficult to unleash chastity with it even though it is present in the human personality. Perhaps he was tempted about his religion <⁵>. Likewise, the first martyr said about the rules and benefits (⁶).

The second martyr said:> To be honest. There is no custody of the immoral, because the debaucher cannot be responsible. And because she does not believe in betraying his preservation. And because he noticed him in her Custody, because he grew up in her way, the soul of the child is like the empty land, what was thrown into it, it accepts it. <⁷>.

And the author of Al-jawahirsaid:> Fidelity in Sharia is justice because an immoral person does not believe in betraying <⁸>.

The Al-Sabzawari investigator said:> To be honest, so there is no custody of the immoral among a group of companions, such as the sheikh, the scholar, and the martyr in Al-Mabsut, Al-Tahrir and Al-Qawa'ed. Some of them did not mention it. Al-Alamah concurred in the

¹Al-Hurr Al-Amili, Muhammad bin Al-Hasan, Wasa'el Al-Shi'a: Vol. 21, p. 459.

²The previous reference.

³Al-Saduq, Muhammad bin Ali, Who Does Not Attend Al-Faqih, Part 3, p. 435.

⁴Al-Fayrouzabadi, Majd al-Din Muhammad ibn Ya'qub, al-Qamoos al-Muheet: Part 4, P.197, Abd al-Qadir, Muhammad, Mukhtar al-Sahih: pg. 26.

⁵Al-Tusi, Muhammad bin Al-Hassan, Al-Mabsut, Part 6, p. 40.

⁶The first martyr, Muhammad bin Makki, Rules and Benefits, Part 1, p. 396.

⁷The second martyr, Zain Al-Din Bin Ali, Masalak Al-Afham, Part 8, p. 224.

⁸Al-Najafi, Muhammad Hassan, Jawaher Al-Kalam, vol. 31, p. 289.

rules not to require justice according to the general nature of evidence. It was said: It is possible to combine not requiring justice with the requirement of non-immorality based on the evidence of the means among the group <⁽¹⁾.

The conclusion is that trust in Sharia is protection, which is against treason, so custody is a trust. Because it is responsible for preserving the young, and the less tolerance in this aspect in Shari'a is considered a betrayal of the right of the young, and therefore the opinions of the jurists were based on saying that it is stipulated in the incubator, and what the Imami jurists went to. Because a slut does not believe in betraying her preservation; And because he has no luck in her custody because it arises according to her way, so the soul of the child is like empty land, what he throws into it of something he accepted, and this is a condition. Her right to custody, as said by the author of Al-Jawahir: <Yes, if it appears that the woman is not trusted with the child, then the case for dropping her custody and not including the generalizations for her. ⁽²⁾

Fifth condition ability:

Its definition came in language in the dictionary:> Richness, left and power, and it was said: A man who has the ability, that is, who has wealth, and the ability to do something, with the ability to do it <³

In the terminology that the incubator is financially capable, that is, financially able, so that he can perform the custody to the fullest, but this may be for those who adopt custody on behalf of the mother or father, otherwise, in some circumstances, the parents' inability to do so may be realized, but we do not believe it is falling from them, yes if the mother is unable to take care because it is one of her rights, then it has fallen from her and the father guarantees her in law, reason and fatwa. Thus, the Imami jurists said, although they did not mention it as a condition among the conditions in their jurisprudential codes, as it is one of the prima facie conditions for the incubators, but they said that it must be met by the incubators.

The author of Al-Masalik said:> In the attachment of chronic disease that has no hope of elimination, such as tuberculosis and cleft, so that pain distracts him from custody and management of its matter in two ways. From their participation in the meaning that prevents the practice of preservation, and the authenticity of non-extinguishment of guardianship with the possibility of obtaining it by proxy, and by it differentiate it from insanity <⁽⁴⁾. And accordingly, the Sabzwari investigator said in Kifayat Al-Ahkam ⁽⁵⁾, and after conveying the words of the second martyr above, Al-Rouhani said:> The most obvious is the second, since there is no doubt that it is not necessary to initiate custody and therefore custody falls with the release of evidence that has no reason. And by this, the weakness of the sayyid of

¹Al-Sabzwari Investigator, Muhammad Baqer, The Adequacy of Judgment, Part 2, p. 294

²Al-Najafi, Muhammad Hasan, Jawaher Al-Kalam: Part 31, p. 289

³Al-Fayrouzabadi, Majd al-Din Muhammad ibn Ya'qub, al-Qamoos al-Muheet: Part 2, p. 114

⁴The second martyr, Zain Al-Din Bin Ali, Masalik Al-Afham: Part 8, p. 423.

⁵Al-Sabzwari Investigator, Muhammad Baqer, The Adequacy of Judgment, Part 2, p. 294

Madarik appears that if the disease was a contagious matter such as leprosy, then it seems clear that the custody has fallen in order to guard against the infringement of the harm to the child. <⁽¹⁾ What is meant by delegating, that is, if the custodian is sick with a disease that prevents him from full care, or that he/she has an infectious disease, so that is not able to direct the child, and perhaps the one who contemplates this phrase will see that the condition of ability here does not mean financial capacity only, but rather the comprehensiveness of the capacity for the incubator for financial, physical and mental, and this is what is understood from their phrases (sanctify their secret). And for that, some stipulated that she should not be ill with an infectious disease. As this robs her of the ability to preserve and protect the child from the harm caused to him, and in the event that the purpose of the custody is the preservation and keeping the child from damage, and there are infectious diseases that humans afflict in different periods of his life, and in such a case that the child is afraid of contracting these diseases. The contagious infectious agent, which has been scientifically proven to be transmitted by touching or approaching the patient, the child's parents or the person responsible for him should keep the child away from these dangerous resources, even if it is necessary to drop the custody or at least be removed during the illness of the incubator, whether it is a mother or a foreigner, until recovered from illness; In order to preserve and protect the child from contracting these infectious diseases that may lead to his death, in order to achieve this purpose, the Imami jurists stipulated that the incubator should not be infected with one of these infectious diseases dangerous to the child's life. The second martyr said:> That there is no disease contagious by leprosy, because of the fear of harm to the child due to her custody, and the prophet, may God's prayers and peace be upon him and his family, said: "Flee from the leper, as you flee from the lion." And it is possible not to fall by that, because he, may God's prayers and peace be upon him and his family, said: "There is no infection or pessimism." These two conditions are not mentioned by the most. <⁽²⁾.

The author of Jawahir said:> Likewise, what is included in the narration about the Qawa'ed of the martyr on behalf of some of them stipulating that there is no contagious disease of leprosy that results from her custody out of fear of harm to the child. The prophet, may God's prayers be upon him and his family, said: "Flee from the leper, as you flee from the lion." The necessity to contradict that also to release evidence, especially after saying, may God's prayers be upon him and his family: (No infection or pessimism) that it is possible to guard against that by directing others with its issues. <⁽³⁾.

And the author of Al-Hadaek said: And if the disease is something that is contagious, such as leprosy, then it seems more likely that her custody has fallen in order to avoid the harm to the child. And it was the same with Sayyid Muhammad al-Amili at Nihayat al-Ahkam (), and the same with al-Sayyid al-Rouhani in the jurisprudence of al-Sadiq ⁽⁴⁾.

Conditions for the mother if she is the custodian:

¹Rouhani, Muhammad Sadiq, *Jurisprudence of Al-Sadiq*, Part 22, p. 307.

²The second martyr, Zain Al-Din Bin Ali, *Masalak Al-Afham*, vol.8, p. 425.

³Al-Najafi, Muhammad Hassan, *Jawaher Al-Kalam*, vol.8, p. 288.

⁴Al-Muhaqiq Al-Bahrani, Yusef, *Al-Hadaeq Al-Nazarah*, Part 25, p.91.

It is in addition to the above required:

First: Absence of a Stranger husband:

Since the purpose of custody of the young child was to take care of him and take care of his private and public affairs, as he is not aware, it was necessary to have the incubator who is not engaged in many work that distracts him from caring for the foster child, and if the woman is married to another husband who has rights to her husband, she must not miss them, and in this picture it is not possible full-time for him; This is because she cannot combine the requirements of the two rights, the rights of the husband on the one hand, and the right of the child on the other hand, and perhaps here the legislator has seen her assignment. As her custody was withdrawn from her in the event of her marriage to another man because of his mercy on the woman; Because she cannot bear the hardships of the two rights.

Perhaps it is also clear that the primary goal of custody is the complete care of the child, and since the goal is similar and the marriage of the female custodian without the father of the child in custody may be preoccupied with the full care of the child, because of the rights of the husband. Therefore, all of this was justified to say that custody is dropped from her in this image, and therefore the Imamate went to say: unanimously on that, as said in Jawahir: As with the condition of marriage, I cannot find dispute. Rather in Al-Rawdah there is consensus on it, which is the argument after Mursal Al-Munqri Al-Munjbar. In fact, the content of Daoud's report of advancement, supporting all of that with the prophet, as he peace be upon him and his family, said: "The mother has the right to custody of her son unless she is married." And that by marriage she works with the husband's rights over custody, and his permission does not work as the master's permission for the possibility of his return, and the child's matter will be confused, and the base is the text and the consensus. As marital rights do not contradict the right of custody. Otherwise, she is denied her custody while she is in his cord, provided that the apparent meaning of the text and the fatwa is the loss of her custody right as soon as the marriage is contracted and if complete marriage does not happen that requires preoccupation with the right of the husband. But it appears that also if the new husband is bound by a legal obligation not to return to her permission in a manner that does not contradict custody or impose marriage in a state that does not contradict the custody. <⁽¹⁾.

And more than one consensus was transferred to it, such as Al-Hada'eq ⁽²⁾, Al-Kifaya ⁽³⁾ and others.

Many jurists have stated that this condition is necessary, such as Sheikh Al-Tusi in Al-Nihaya, when he said: > If she is married, the father was more entitled to her.⁴

And the sheikh al-Mufid said in al-Muqana'a: > The mother is more entitled to bail the daughter until she reaches nine years of age, unless she gets married. If she gets married

¹Al-Najafi, Muhammad Hasan, *Jawahir Al-Kalam: Part 31*, p. 290.

²The same previous reference: *Part 31*, p. 289.

³ The previous reference

⁴Al-Tusi, Muhammad bin Al-Hassan, *Nihayat Al-Ahkam*, p. 504.

someone other than the father, he was more entitled to bail for his daughter at that time. <⁽¹⁾.

And Allama al-Hali said in *Al-Qawa'ed*:> If she marries, her custody is forfeited from both male and female, and the father becomes more senior. ⁽²⁾

The second martyr claimed consensus on that: (If the mother marries someone other than the father with his full presence (her custody is forfeited) to the text and consensus (if she divorces) custody will return as well-known because of the removal of the impediment to her, which is her marriage and her occupation of the husband's rights, which are stronger than the right of custody. And it was said: She does not return because of her departure from the maturity of marriage, so she is accompanied, and its return to her requires further evidence. And it is missing, and he has a good reason, but the first is well-known. Rather, she returns by mere divorce if it is permanent, otherwise, after the waiting period, if some time of the period remains for her, and if the father was not present, her custody is not forfeited by marriage at all <⁽³⁾.

He also said in the *Masalik Al-Afham*:> To be empty of the husband's rights, and if she married, her right to custody was waived, for news indicating it, ... and among them is that a woman said: "O Messenger of God, this is my son, my bottom was his bowl and my breasts were watering him, and my lap was a container for him., and his father divorced me and wanted to take him away from me. The Prophet, may God's prayers and peace be upon him and his family, said: (You are more entitled to what you do not marry) ⁽⁴⁾. And because the marriage distracts her from the right of the husband and prevents her from custody. <⁽⁵⁾.

And the narration of Hafs bin Ghayath said: The Messenger of God said:> The mother has more right to custody of her son as long as she does not marry <⁽⁶⁾

Moreover, the apparent meaning of the text and the fatwa, as claimed by more than one, the loss of her custody as soon as the marriage contract is concluded, and it appears that it includes the temporary and the permanent, whether the consummation happens or not, and whether or not the husband's right occurs. Yes, it may be said that once she divorces from the second husband, she has the right of custody ⁽⁷⁾.

Second: To be present and not traveling:

Giving the right to custody to the mother does not mean giving her the right to guardianship over him, so that the guardianship of the father during the custody period is lapsed, so she has the right, for example, to travel with him to another place without the

¹Al-Mufid, Muhammad Bin Muhammad Bin Al-Nu`man, *Al-Muqna'a*, p.

²Allama Al-Hilli, Al-Hasan Bin Yusuf, *Qawa'ed Al-Ahkam*, Part 3, p 102

³The second martyr, Zain Al-Din Bin Ali, *Al-Rawdah Al-Bahiya fi Sharh Al-Lama Al-Dimashqia*, vol.5, p.

⁴Musnad Ahmad: Part 2, p. 182, Sunan al-Daraqutni: Part 3, p. 22.

⁵The second martyr, Zain Al-Din Bin Ali, *Masalak Al-Afham*, vol.8, p. 424.

⁶Mirza Al-Nouri, Ali, *Mustadrak Al-Wassal*: Part 2, p. 625, section 58, vol. 5.

⁷Al-Shirazi, Muhammad Husayn, *The Jurisprudence Encyclopedia*: Part 68, pp. 160-161.

permission of the father, and for this the imamite jurists stipulated that the incubator be present. If she moves to a place where prayer is shortened and the father does not authorize her to take the child, her right from custody is nullified. Then if the person who is transferred is the father, then the mother is more entitled to him, and if he is said to accompany the child with him and her custody is lost, Sheikh Al-Tusi said in *Al-Mabsut*:> And if one of them is a resident and the other Moving, the distance is not devoid of one of two things, either he may shorten the prayer or not, and if it does not shorten, then the ruling is similar to the presence, and if it shortens, the father is more entitled to her in every case. A people said that if the transferee is the father, then the mother is more entitled to him, and if the mother is a relocation, if she moves from a village to a country then he is more entitled to him, and if she moves from a country to a village, the father is more entitled to him because in countryside, his education and his graduation will fall, and this is strong¹.

This was also reported by the first martyr in *Al-Qawa'ed Wal-Fawa'ed*, he said:> If the father travels, it was said: he has the right of accompaniment of the child, and the mother's custody is waived². Likewise, Al-Miqdad Al-Siyari said it in his book, *Nazd Al-Qawaa'id Al-Fiqhiyyah* (³).

But if she traveled on the Hajj trip or the like, and no one can have custody in that between letting the child die or get sick or the like, and giving him to the incubator and the like, such as a custody house, which requires that he not be returned to the mother even after her coming, the second introduced; In order to provide the right of the child over her right if the matter is between them, then her right is waived because of his right to importance, but rather for the clarity that he made the right to her in terms of his right first and in particular (⁴).

References:

- The Noble Quran
- Nahj Al-Balagha

1. Ibn Al-Atheer, known as Abu Al-Saadat, *The End in Gharib Al-Hadith and Al-Athar*, edited by Taher Ahmad Al-Zawy and Mahmoud Muhammad Al-Tanahi, published and printed by the Ismaili Institution for Printing, Publishing and Distribution in 1364 AH, Qom, Iran.
2. Ibn Hamzah, *Al-Wasila*, Editing by Muhammad Al-Hassoun, published in the library of Ayatollah Al-Marashi Al-Najafi - Qom, i 1408 AH.
3. Ibn Hanbal, Ahmad, *Musnad Ahmad*, published Dar Al-Fikr, Beirut, second edition.
4. Ibn Zahra, Hamza bin Ali, *Ginyat Al-Nuzou'*, Etemad Press, Holy Qom, first edition.
5. Ibn Faris, Ahmad Ibn Faris, *Dictionary of Language Standards*, edited by: Abd al-Salam

¹Al-Tusi, Muhammad bin Al-Hassan, *Al-Mabsut*, Part 6, p. 40.

²The first martyr, Zain al-Din bin Ali, *al-Qawam al-Fawid*, Part 1, p. 396.

³Al-Siyouri, Al-Miqdad, *Nazd al-Qawaa'id al-Fiqhiyyah*, p. 433

⁴Al-Najafi, Muhammad Hassan, *Jawaher Al-Kalam*, part 31, p. 289.

Muhammad Harun, Islamic Media Library - Qom, 1404 BC.

6. Ibn Fahd, Ahmad bin Muhammad bin Fahd, the polite master in Sharh al-Mukhtasar al-Nafaa, the investigation of Muftaba al-Iraqi, published and printed by the Islamic Publishing Institution of the Teachers Group, Gurrah Rajab al-Marjib in 1407 AH, Qom, Iran.

7. Ibn Manzur, Muhammad Ibn Makram, Lisan al-Arab, published the literature of the Hawza - Qom, 1st - 1405 AH, and the Arab Heritage Revival House - Beirut Edition, 1st - 1408AH

8. Ardebili, Ahmad bin Muhammad, Zebdat Al-Ahkam, published by the Razavi Library Reviving the Monuments of Al-Ja`fari, Qom.

9. Al-Azhari, Muhammad bin Ahmed, Tahdheeb Al-Lugha, lithograph.

10. Imam Khomeini, Ruhollah, Book of Sale, the Foundation for Publishing and Organization of the Imam's Antiquities, Al-Arouj Foundation Press, Holy Qom.

11. Al-Ansari, Mortada, Al-Makasib, preparation of the Sheikh's Heritage Investigation Committee at the Islamic Thought Academy.

12. Al-Bahrani, Yusuf, Al-Hadiqa Al-Nazira, published: The Islamic Publishing Institution of the Teachers Group - Qom, 1363 AM edition.

13. Al-Hurr Al-Amili, Muhammad Ibn Al-Hassan, The Shi'a Means of Achieving Sharia Issues, Investigation and Appendix Abd Al-Rahim Rabbani Al-Shirazi, Publication and Printing of the House of Revival of Arab Heritage, Beirut-Lebanon.

14. Al-Harrani, Abu Muhammed al-Hasan bin Ali bin al-Husayn bin Shu'bah, "Tuhaf Al-Uqul" on the family of the Messenger, may God's prayers be upon them, meant to correct and comment on it by Ali Akbar al-Ghafari, published and printed by the Islamic Publishing Institution of the Teachers 'Group, second edition in 1404 AH, Qom - Iran .

15. Al-Husseini Al-Bahsoudi, Muhammad SururAl-Wa'eth, Misbah Al-Usul, Abu Al-Qasim Al-Musawi Al-Khoei Research Report, Al-Dawri Library Publication, Scientific Printing Press, Fifth Edition in 1417 AH, Qom - Iran.

16. Al-Hilli, Abu al-Qasim Najm al-Din, Shari'a of Islam in matters of Halal and Haram, Spreading Independence - Qom, 3rd floor 1403 AH.

17. Al-Hilli, Al-Hassan Bin Yusef, Grammar of Rulings, investigation and publication: Aal Al-Bayt Foundation for the Revival of Heritage - Qom, 1st floor 1413 AH.

18. Al-Hilli, Al-Hassan Bin Yusef, The End of Al-Hakam fi Knowing Al-Ahkam, edited by: Mahdi Rajai, published by the Ismaili Foundation - Qom, 2/1410 AH.

19. Al-Hilli, Muhammad Ibn Al-Hassan, revealed what is meant in explaining the abstraction of belief, the Islamic Publishing Institution of the Teachers Group, Holy Qom, first edition.

20. Al-Halli, Muhammad Bin Mansour Bin Ahmed Bin Idris Al-Ajali, Al-Sirair Al-Hawi for Editing Fatwas, edited, published and printed by the Islamic Publishing Institution of the Teachers Group in Qom, second edition in 1410 AH, Qom, Iran.

21. Al-Khwansari, Ahmad, Jami` al-Madarak, Al-Saduq Library Publishing - Tehran, 3rd Edition - 1455 AH.

22. Al-Khoei, Abu Al-Qasim Ali Akbar, The Path of Deliverance, Report and Commentary: Al-Tabrizi, Mirza Jawad, 1st ed. 1416 AH.

23. Al-Khoei, Abu Al-Qasim Ali Akbar, Al-Salihin Minhaj, The City of Knowledge - Qom Publishing, Edition 28-1410 AH.

24. Al-Khoei, Abu Al-Qasim, Misbah Al-Faqih, Publications of Al-Dawri Library, Holy Qom, First Edition.
25. Al-Zubaidi, Muhammad Murtada, Taj Al-Arous, edited by Ali Sherry, published by Dar Al-Fikr - Beirut, Edition 1-1414 AH.
26. Al-Zamakhshari, Jarallah, Asas al-Balaghah, House of Knowledge, Beirut-Lebanon, first edition.
27. Al-Sabzawari, Abdullah, Muhdhab Al-Ahkam, published by Farvardin Press, Holy Qom, first edition.
28. Al-Sabzwari, Muhammad Baqer, Kifaya al-Ahkam, the Islamic Publishing Institution of the Teachers Group - Qom.
29. Al-Sistani, Ali, The Elected Issues, Aal al-Bayt Foundation, The Holy Qom, First Edition.
30. Al-Suri, Miqdad Bin Abdullah, Composition of the Rules, published by Al-Sayed Al-Marashi Library, Holy Qom, First Edition.
31. The First Martyr, Zain Al-Din Bin Ali, Rules and Benefits, Publication of Al-Mufid Library, Holy Qom, Al-Tiba Al-Awal.
32. The First Martyr, Muhammad bin Jamal Al-Din Makki Al-Jazini, Al-Lama'a Al-Dimashqia, Editing, publishing and printing Dar Al-Fikr for Printing, Publishing and Distribution, first edition in 1411 AH.
33. The Second Martyr, Zain Al-Din Bin Ali, Al-Rawdah Al-Bahiya fi Sharh Al-Lama Al-Dimashqiyya, edited and commented by Muhammad Clanter, published and printed by the Al-Dawri Foundation, First Edition in 1410 AH, Qom - Iran.
34. The second martyr, Zain Al-Din, Masalik Al-Afham, edited by the Islamic Knowledge Foundation, published by the Islamic Knowledge Foundation, 1st ed. 1413 AH.
35. Al-Shirazi, Muhammad Hussein, The Jurisprudence Encyclopedia, published by Dar Al-Jeel, Beirut, first edition.
36. Al-Shirazi, Muhammad Hussein, the jurisprudence of sociology, published by Dar Al-Uloom, first edition.
37. Al-Saduq, Muhammad ibn Ali bin al-Husayn ibn Babawiyah al-Qummi, al-Khisas, correction and commentary by Ali Akbar al-Ghafari, published and printed by the Center for Islamic Publications linked to the University of al-Mudrasurin at the Scientific Hawza in Qom, Dhu al-Qaida al-Haram in 1403 AH, Qom, Iran.
38. Al-Saduq, Muhammad Bin Ali, Who Does Not Attend Al-Faqih, published University of Al-Mudarassineen, second edition. Dar Al-Adwaa Edition - Beirut, 2/1413 AH.
39. Al-Tabatabai, Ali, Riyadh Al-Mashail, edited by the Islamic Publishing Institution of the Teachers Group - Qom, 1st floor 1412 AH.
40. Al-Trabelsi, Abdulaziz bin Al-Baraj, Al-Muhadhdhab Al-Bareeh, the Islamic Publishing Institution of the Teachers Group - Qom.
41. Al-Taraihi, Fakhr al-Din, the Bahrain Council, edited by Ahmad al-Husseini, rebuilt on the first letter of the word and beyond in the manner of modern dictionaries by Mahmoud Adel, published and printed in the Library of Islamic Culture Dissemination, second edition in 1408 AH, Qom - Iran.
42. Al-Tusi, Muhammad bin Al-Hasan, Al-Khulaf, edited, published and printed by the

Islamic Publishing Institution of the Teachers Group, Jumada Al-Akhirah 1407 A.H. Qom - Iran.

43. Al-Tusi, Muhammad Ibn Al-Hasan, Al-Mabsut in the Fiqh of the Imamate, published the Al-Murtazawi Library for the Revival of the Jafari Antiquities, printed the Al-Haidariya Press Safar in 1387 AH, Tehran, Iran.

44. Al-Tusi, Muhammad Ibn Al-Hassan, Tahdheeb Al-Ahkam, Hassan Al-Mousawi's investigation, published by Dar Al-Kutub Al-Islamiyyah. Dar Al-Adwaa Edition - Beirut, 2/1413 AH.

45. Al-Tusi, Muhammad Ibn Al-Hassan, Nihayat Al-Ahkam, Asharat Al-Quds, the Holy Qom, first edition.

46. Al-Amili, Muhammad bin Ali, Modarak Al-Ahkam in Explaining the Shari'ahs of Islam, edited by the Aal al-Bayt Foundation - Qom, 1st Edition, 1410 AH.

47. Al-Amili, Muhammad, Nihayat al-Maram fi A Brief Explanation of Islamic Shari'a ', the Islamic Publishing Institution of the Teachers Group, the sacred Qom.

48. Abd al-Qadir, Muhammad, Mukhtar As-Sihah, published by Dar Al-Alam Al-Milaliyyah - Beirut, 1st Edition - 1415 AH.

49. Several investigators, Encyclopedia of Rulings of Children and their Evidence, published by the Center for the Jurisprudence of the Immaculate Imams, Holy Qom, first edition.

50. Al-Allamah Al-Hilli, Al-Hasan Bin Yusuf Bin Al-Mutahhar, Mukhtalaf Al-Shia in the Provisions of Sharia, edited and published: The Islamic Publishing Foundation - Qom, Third Edition, 1412 AH BC.

51. Al-Fadhel Al-Abi, Zain Al-Din, Kashf Al-Rumouz in Explaining Al-Mukhtasar Al-Nafi ', an investigation by Ali Binna Al-Ashtharadi, published by the Islamic Publishing Corporation 1408

52. The Pride of the Investigators, Ibn Al-Alamah, Idhah Al-Fawa'ed (Clarification of Benefits), published the Scientific Press, Holy Qom, First Edition.

53. Al-Farahidi, Khalil Bin Ahmed, Al-Ain, edited by Mahdi Al-Makhzoumi and Ibrahim Al-Samarrai, published by the Dar Al-Hijrah Foundation, second edition in Iran in 1409 AH, Qom - Iran.

54. Al-Fayrouzabadi, Muhammad Ibn Ya'qub, Al-Qamoos Al Muheet, edited, published and printed, Dar Al-Alam for Millions, Beirut-Lebanon.

55. Qutb, Sayyed, In the Shadows of the Qur'an, published by Dar Al-Shorouk, Beirut, Lebanon.

56. Al-Karaki, Ali Bin Al-Hussein, Al-Rasa'il, edited by Muhammad Al-Hassoun, published by the library of the Grand Ayatollah Al-Marashi Al-Najafi, Khayyam Press, first edition in 1409 AH, Qom, Iran.

57. Al-Kulayni, Muhammad Ibn Ya'qub, Al-Kafi, Dar Al-Kutub Al-Islamiyyah Publishing, Al-Haidari Press, Third Edition, 1388 AH, Tehran, Iran.

58. The Bulgarian, Muhammad Reda, Hidayat al-Ibad, The Noble Qur'an Publishing House, Edition 1-1413 AH.

59. Al-Lankrani, Muhammad Fadhil, Explanation of Sharia in Explanation of Tahrir al-Wasila, Al-Arouj Foundation, Holy Qom, First Edition.

60. Al-Mufid, Abu Abdullah Muhammad Bin Muhammad Ibn Al-Nu`man, Al-Muqna'a, edited and published: The Islamic Publishing Institution of the Teachers Group - Qom, the Supervising Group, 2nd Edition 1410 A.H. S.
61. Al-Najafi, Muhammad Hasan, Jawaher Al-Kalam, investigation by Abbas Al-Qujani, Dar Al-Kutub Al-Islamiyyah Publishing House, 2nd Edition, 1365 AH.