



Delegation of Child Custody in Marriage Contracts: A Reflection on Islamic Jurisprudence and Iranian Law

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Introduction

Given that the concept of *ḥaḍānah* (custody) focuses on the care and supervision of children, the issue of mutual agreement regarding its delegation is of significant legal concern. Jurists have debated the permissibility of stipulating custody-related conditions in marriage contracts, especially considering their implications for public order and mandatory legal provisions. These discussions often seek to harmonize custody arrangements with Islamic legal principles, with the child's best interests as a guiding standard.

This study aims to examine the extent and limits of the spouses' autonomy in stipulating or altering custody provisions within a marriage contract, and whether such stipulations are legally valid or void under Iranian law. Accordingly, this article addresses the following key questions:

1. What are the jurisprudential and legal foundations for delegating custody in Iranian law?
2. If the spouses stipulate within the marriage contract that one of them will forgo custody, is such a condition legally enforceable?
3. Are parents equal in terms of custody rights during the course of marriage?

Research Background:

While prior studies have explored various aspects of custody, particularly the role of will and agreement between parents, they have often done so without a systematic analysis of how these agreements interact with public

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order and mandatory norms. This study differentiates itself by adopting a comprehensive approach that goes beyond contractual autonomy to assess the legal boundaries imposed by imperative rules and the judiciary's role in safeguarding the child's welfare.

Methodology:

This research is theoretical in aim and descriptive-analytical in nature. Data collection was carried out using library-based methods, including the study of primary jurisprudential sources and legal literature.

Findings:

Stipulating the delegation of custody within a marriage contract is generally void and without legal effect—unless it pertains to a period following the dissolution of the marriage, in which one party may validly assign their custodial rights to the other. A distinction is made between delegating custody to the spouse versus a third party, with the latter generally considered impermissible under Iranian law. Additionally, if after such an agreement the custodial parent becomes insane, dies, converts from Islam, or remarries (in the case of the mother), or if the child dies, the agreement is automatically nullified. In exceptional cases, the court may intervene based on the child's best interests. Two criteria derived from legal texts for determining the child's welfare are: lack of proper care and the parent's moral depravity—both applicable only if they pose a serious threat to the child's physical or ethical development.

Conclusion:

In Iranian law, the primary concern in custody matters is the welfare of the child, not merely the will of the parents. Although the principle of contractual freedom allows for parental agreements regarding custody, such agreements are only valid if they do not contradict the child's welfare, public order, or accepted moral standards. This position distinguishes the present article, which, while acknowledging the principle of autonomy, emphasizes the supervisory role of the court in safeguarding the child's interests.

Keywords: Family, Marriage Contract, Delegation of Custody, Child Custody, Custody as a Right

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