

# THE CHILDREN OF SHARI'A

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## INTRODUCTION

*Approximately 500,000.00 Muslims live in Los Angeles, San Bernardino and Riverside Counties. Based on approximately 8% ratio of divorce to population in U.S., there are nearly 40,000 Muslim divorcees in the tri-counties - 2/3 of them immigrants from other countries. These numbers are increasing regardless of origins and nationalities.*

*Muslim litigants bring special issues under Shari'a law to the California courts: First, Domestic violence from Islamic conduct. Second, commencing date of marriage under Islamic marriage. Third, custody disputes over raising a Muslim child. Next are visitation and access to the extended Muslim family. Enforcing executory "Mahr" (the Islamic version of the prenuptial agreement) comes next. Valuation, characterization and division of properties in the native Islamic countries are the next items of dispute. Last, but not least, is registering California divorce in the Islamic countries, which in many cases may require compliance with the localized Islamic law and procedures that the California courts cannot mandate or perform. And there are many more issues.*

*Therefore, knowledge of the Shari'a law for handling Muslim divorces is a necessity, which is increasing daily. Failure to understand the tenets of Shari'a law and its impact on the California Muslim divorcee are time-bombs waiting to go off in any attorney's practice. This article brings to attention the issues of child custody, access and support under 5 Islamic jurisprudence and 15 nations. Closer look at the laws of 5 major Islamic countries is provided. The knowledge provided here is also useful to mediators and therapists working with Muslim clients.*

THERE ARE TWO SOURCES of Islamic law, or shari'a. The first is, the *Koran* and *Hadith*<sup>1</sup>. The other is the application of *Ijma'a* (consensus), *Qiyas* (comparison), and *Aql* (reason) to the source. After Muhammad's death, two sects (Sunni and Shi'a) of Islam emerged. Sunni jurisprudence includes the Hanifi, Maliki, Shafi'i, and Hanbali schools, and Shi'a jurisprudence includes the Zaidayyah, Jafari, and Isma'iliyah schools. Different Islamic nations apply Islamic laws of custody, visitation, child and spousal support differently; these laws are changing.

Under shari'a, those who have custody of younger children are obliged to raise them as Muslims; give them religious, moral, and physical education; allow them access to good friends; and provide them financial support. The mother mostly holds this responsibility, especially if the

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father remarries and the mother remains unmarried. However, fathers are in control of legal custody and may directly control the movement of their children (including change of residence, choice of employment, travel abroad, and obtaining a driver's license or passport). Fathers also have indirect control of the flow of financial support to mothers.<sup>ii</sup>

### **Physical Custody:**

Regarding physical custody, *Koranic* verses provide that mothers have custody of children during nursing and up to the age of two or two and a half. The verses also provide that fathers and mothers should consult each other in raising their children. Muhammad has been quoted as saying that divorced mothers who remain unmarried have a greater right to raising a child.<sup>iii</sup> Islamic jurisprudence differentiates between custody of male and female children. Under Shi'a law, custody typically reverts to father when boys reach the age of two, while for Sunnis the age limit is seven, at which time a boy may choose to remain with his mother or live with his father. With girls, Shi'a custody reverts to the father at the age of sexual maturity, while Sunni rules vary. They include leaving the decision to the girl, continuing custody with the mother or reverting custody to the father. Sunnis and Shi'as also differ as to the age of termination of custody. Most traditions agree that upon sexual maturity, children should be given freedom of choice. Table 1 summarizes physical custody rules under five schools.

Mothers are often awarded custody of children - up to age seven for boys and nine for girls. Exceptions include age two for boys under *Jafari* jurisprudence and mother's continuation of custody of girls to the date of marriage in *Maliki* jurisprudence. Prior to the age at which custody transfers from the mother to the father several factors could disrupt a mother's custody right such as the physical or financial inability of a mother to provide for children, or a finding of her insanity or remarriage; such factors may award custody to the mother's qualified next of kin, starting with the child's father.

Whether paternal custody begins at two, seven, or nine, it may end at the age of puberty for boys or the first menstrual period for girls, when what is known as the age of discretion begins. At that age, children may decide with whom they would like to stay - the choice is not limited to a child's parents; grandparents, aunts, or uncles may also be chosen. A religious judge makes the final decisions on custody disputes. This judge has broad discretion and may consider physical, mental, emotional, religious, financial, or any other relevant factors, including a child's preference.

### **Legal Custody:**

Under shari'a, the father is the head of the family and in charge of the children until termination of custody. The preference for granting physical custody to mothers during a child's tender years does not change this general rule. In addition, because mothers and fathers are mandated to raise their children as Muslims, a non-Muslim (or a Muslim mother who converts to another religion) is not permitted to keep custody of a Muslim child. Fathers must approve of their children's education, including the places, types of schools attended and the type of education received. Although custodial mothers are restricted from remarrying, in some jurisdictions, a father's petition for custody based on a mother's remarriage may be waived if the petition is not raised in a timely manner. Employment of custodial mothers may be substantially curbed if the father

disapproves. The father's obligation to provide a suitable residence for his children limits the freedom of custodial mothers to change their residence or their children's residence. Only the fathers can apply for their children's passports.

In the majority of jurisdictions, children cannot leave a country without their father's permission or a court order. In some jurisdictions, un-permitted foreign travel by a custodial mother is a crime. Financial guardianship is vested in fathers and grandfathers unless transferred by agreement or assigned by the court to mothers or third parties. Fathers are the recipients of a child's earnings after divorce and are authorized to purchase, sell, encumber, and manage a child's properties. This right is especially significant if children receive inheritances or gifts during the marriage. This rule also is relevant when children receive public assistance or private insurance benefits. For example, upon the death of a father, his children's paternal grandfather may receive the death benefits, but the children's mother has the burden of physical and legal custody.<sup>iv</sup>

### **Child Custody by Nation:**

Table 2 summarizes the status of legal and physical custody in 15 Islamic nations representing five Islamic legal traditions. The table shows how custody law in Islamic countries departs from tradition.

The laws of **Bangladesh**, a former colony of England, show the influence of common law. The country's marriage and family laws, however, are numerous, overlapping, inconsistent, and confusing.<sup>v</sup> The Supreme Court of Bangladesh has assumed a very active role in modernizing Hanifi principles.<sup>vi</sup> Divorcing couples are first directed to arbitration council before coming to court.

The court considers the child's preference, welfare, education, and religion in its decision. The law considers the best interest of the child as the paramount factor and provides the courts with flexibility in awarding custody. A mother's remarriage results in loss of custody. In *Md. Abu Baker Siddique v. S.M.A. Bakar*<sup>vii</sup>, the Supreme Court of Bangladesh granted custody of an eight-year-old boy to his mother, finding that the country's custody rules were not based on the *Koran* or *Hadith*; no consensus has been established among Bangladeshi courts, however.<sup>viii</sup>

A Dutch colony until 1945, **Indonesia** operates under civil law that was promulgated during the colonial period. Sources of law include Dutch law, customary law (known as *adat*) and Islamic law. The country has the largest Muslim population of any nation in the world, but Islam is not the official religion. Custody of children is subject to the nation's civil code, which is influenced by Dutch law and Shafi'i jurisprudence. In the absence of parental agreement, the court must make a child's custody as part of a divorce decree. Custody of children under the age of 12 is awarded to the mother, while the father has the responsibility to maintain the children. After 12, the children are free to choose to remain with their mother or go to their father. Here, remarriage of the mother is also ground for loss of custody.

**Iran** is the most populous Shi'a country. Iranian family law statutes include the Marriage Act of Non-Shi'a Muslims of 1933, the Ordinance re Marriage of Iranian Women to Foreign Nationals

of 1967, the Divorce Modification Ordinance of 1993, the Divorce Explanation Ordinance of 1994, the Family Courts Act of 1994, and the Ordinance of Marriage of Iranian Men to Foreign Nationals of 2003. The Iranian Civil Code of 1928-1935 was promulgated by a committee of Iranian jurists who had backgrounds in the civil law of France, Belgium, and Switzerland. These jurists, with the assistance of Shi'a scholars, incorporated the general principles of Islamic marriage, divorce, paternity, guardianship, and probate law into the civil code, leaving many details to the discretion of courts.

Iranian civil law provided priority in custody to the mother of male children up to the age of two and female children to the age of seven. Iranian civil law allowed the court to disregard the age limits based on best-interest principles. After the Islamic Revolution of 1979, and a change from monarchy to governance of Islamic scholars, Islamic criminal law was incorporated in the Iranian legal system, but the pre-revolutionary personal status law remained nearly intact, and to some extent liberalization and equalization of marital rights during and after the marriage were accepted.

In the aftermath of war between Iran and Iraq, the custodial rights of war widows were substantially expanded. In 2003, the age of custodial transfer for boys was raised to seven, at which time custody may revert to the father unless determined otherwise by the court. In making a ruling, the court must consider the child's best interest. A family court may sanction a father's violation of the custodial rights of a mother if he sends their children out of the country, but the court is not authorized to enjoin the child's departure.<sup>ix</sup>

A former colony of France, **Morocco**'s Family Law, is influenced by the Napoleonic Code. Under the Moroccan constitution, Islam is the state religion. The Islamic provisions of the law are inspired by *Maliki* jurisprudence. The Personal Status Law was amended in 1992, 1993, and 2004 in order to increase gender equality. In the event of divorce, children up to the age of 15 stay with their mother, and thereafter may choose to stay with the mother or father. A custodian must be an adult of good character who is able to safeguard the health and moral education of the children and who is free from contagious diseases. Subject to conditions, children remain in the custody of their mother even if she remarries. The children always spend the night at the custodian's house unless a judge decides otherwise. The court may resort to the assistance of a social worker to prepare a report on the custodian's home and the extent to which it meets the material and moral needs of the children.

**Saudi Arabia** is the only Islamic country that does not have a promulgated family code. Religious courts follow *Hanbali* tradition to decide issues of custody. Mothers have custody of children to the age of seven. (On the other hand, **Qatar**, also a *Hanbali* jurisdiction, favors award of custody to the mother of sons up to the age 11 and daughters up to 13.) In order to be granted custody however, the mother must be an adult and be of sound mind. Here too, the mother may lose custody if she remarries someone who is outside the prohibited degree of relationship to the children, or if she does not raise a Muslim child as a Muslim. The emphasis placed upon an Islamic upbringing in an Islamic environment makes it difficult for a non-Muslim or foreign mother to obtain custody of her Muslim children.<sup>x</sup>

## Visitation:

The traditional views of right of access or visitation are reflected in a *Hadith* that states, “[I]f anyone separates a mother and her child, Allah (God) will separate him and his loved ones on the Day of Resurrection.” Under various Shi’a and Sunni legal traditions, non-custodial parents enjoy the right of visitation, but length and frequency varies. Islamic privacy rules create a special problem regarding visitation. Under Islamic law, men and women belong to one of two groups: non-marriageable and marriageable. Women and men who are non-marriageable can freely visit in person, with or without others present, without *hijab* (Islamic practice of dressing modestly in clothing that covers most of the body), and may travel together – they include most family members and people of the same sex. This is not so with marriageables, which generally includes former spouses or others that could legally marry each other. Under the latter circumstances, visitation may violate privacy rules.

In **Bangladesh**, Sections 41-45 of the Divorce Act of 1869 provide the court with the jurisdiction to make *pendente lite* and post-judgment orders. The Guardians and Wards Act of 1890 applies to the issues of custody and visitation. The Muslim Family Law Ordinance of 1961 provides that a court will decide disputes not resolved by arbitration.

In **Indonesia**, the Civil Code of 1847 authorizes non-appealable *pendente lite* orders. Following the judgment granting divorce, the court determines the issue of visitation. The parent who has not been appointed guardian or who has been denied visitation may oppose the ruling and appeal. The court, upon showing change of circumstances, may amend its ruling.

The **Iranian** Civil Code provides for right of visitation of the child by the non-custodial parent, and, absent parental agreement, a court must provide for the time and place of visitation. Failure of a custodial parent to provide the child for visitation is an offense that may result in imprisonment until compliance.<sup>xi</sup> After reaching the age of discretion (15 for boys and 9 for girls), children cannot be forced to visit the non-custodial parent.<sup>xii</sup>

In **Morocco**, the 2004 Family Code dictates the visitation right of non-custodial parent. Visitation is a right and its terms may be reached by an agreement that is included in the custody decree. Otherwise, the court will determine visitation on a case-by-case basis. The visitation order may be modified if it becomes detrimental to the child or the parents. Violation of a visitation decree or deception in its execution is ground for modification. Upon death of one parent, the surviving parent must arrange for the visitation of the children with the parents of the deceased. The best-interest-of-the-child rule applies.

In **Saudi Arabia**, according to the Reunite International Child Abduction Centre, a nonprofit organization in the United Kingdom, although Islamic law confirms that a child should have access to both parents, this cannot be guaranteed in practice. An access order is very hard to implement and the system of sponsorship for entry into Saudi Arabia makes it difficult for a non-Saudi parent to obtain a visa to enter the country for contact visits with their child. It is particularly difficult for a non-Saudi mother who was not married to the father of her child to obtain a visa for entry into Saudi Arabia to visit a child abducted there.<sup>xiii</sup>

### **Child Support:**

In several verses, the *Koran* calls on Muslim fathers to support their children after dissolution of marriage. Sunni and Shi'a jurisprudence agree that during and after termination of the marriage, the father must maintain the children whether the wife is poor or rich.

In **Bangladesh**, the Divorce Act of 1869 provides for maintenance of wives but is silent regarding child support. Accordingly, the general principle of Muslim law regarding the duty of fathers to support children is applicable.

In **Indonesia**, the civil code provides that upon separation from bed and board or divorce, the parents are obliged to support their minor children as decided in Court. The duty to support continues if the court grants custody to a third party or if the child is placed with a public or private guardian.

In **Iran**, the maintenance of the children is the duty of the father. On his death or incapacity for maintenance, this duty devolves upon the paternal grandfather, and then upon the mother, maternal grandfather and grandmother, and paternal grandmother, with preference going to the nearer kin of the father. If the grandparents are similar in degree of kinship, they must pay maintenance expenses equally. The court has power to enforce support against a third party.

**Moroccan** law differentiates between a custodian's salary, payments for the child's breast-feeding, and maintenance. All are payable by the father if he is responsible for the child's support. Children may not be evicted from their parents' conjugal home until the judgment is entered. Upon entry of the judgment, the court must determine the amount and the manner of rent to be paid and define the measures and procedures that will guarantee the execution of the judgment by the father concerned. Maintenance of children shall include cost of food, clothing, medical care, education, and other necessary expenses. If a father is unable to support all the persons he is legally required to support, precedence shall be given to the wife before the children.

### **Spousal Support:**

The *Koran* provides for the support of wives after divorce. This support is defined and limited to the period of *iddah*, which is three months after entry of divorce or duration of a pending pregnancy. During the *iddah*, a husband must support his wife according to his means, which includes residency in the family residence. After *iddah*, support may continue in the form of compensation for breast-feeding.

In **Bangladesh**, in *Muhammad Hefzur Rahman v. Shamsun Nahar Begum*<sup>xiv</sup>, the Supreme Court, relying on the *Koran*, ruled that a Muslim husband's responsibility to maintain his divorced wife does not cease with the expiration of the *iddah*. The court stated that a former husband is bound to provide his divorced wife with maintenance on a reasonable scale for an indefinite period until she remarries.

In **Egypt**, the Decree-Law No. 25 of 1929 provides for two types of alimony: *Iddah* and

*enjoyment alimony*. The law limits *iddah* alimony to one year, even if the court orders a longer time. However, if a marriage is consummated and the wife is divorced without her consent or fault, she is entitled to two years of *enjoyment alimony*, at the rate of *iddah* alimony. In ordering the additional support, the court must consider husband's financial situation, reason for divorce, and the length of the marriage. *Enjoyment alimony* may be paid in installments.

**Indonesia** applies fault-based divorce. The civil code authorizes a wife to claim support for her maintenance during pendency of litigation, provided she remains in the family residence or leaves with the court's permission. Upon death of the guilty spouse, the innocent spouse will inherit all benefits granted to him or her by the other. In the absence of income, support may be satisfied by transfer of assets from one spouse to another. Support terminates upon the death of either spouse.

**Iranian** Civil Code provides for payment of support by a husband to his former wife<sup>xv</sup> and she is entitled to support during *iddah* (In Farsi, the word is pronounced *iddeh*). The Iranian Civil Code also provides for settlement of any unpaid bridal gift or dowry (*mahr*). *Iddeh* lasts for three menstrual periods or three months from entry of divorce. If pregnant, wife is entitled to support until the child is born. The wife's support takes precedence over support of the husband's other relatives, and the wife's claim for unpaid support takes precedence over third-party creditor claimants. In the event of the husband's bankruptcy, the wife's claim must be satisfied first.

The **Moroccan** family code requires support for duration of *iddah* and adds housing accommodation. The law requires the deposit of a sum (decided by the court) by the husband within 30 days of filing for divorce to discharge the support that is due to the wife and dependent children. The amount due to the wife considers any delayed bride price or dowry, maintenance for the period of *iddah*, and the consolation gift, which is assessed based on the length of the marriage, the financial means of the husband, and the reasons for divorce. During *iddah* the wife may remain in the conjugal home or another suitable home, depending on the husband's financial situation. Failing this, the court fixes an amount of money to cover housing expenses. The court ordered maintenance of the wife starts from the date the husband has ceased to pay the maintenance expenses incumbent upon him. The wife may lose her right to maintenance if she refuses a court-ordered return to the conjugal home.

In **Saudi Arabia**, according to one source, "In all cases, the husband is required to pay the wife a one-off payment, pre-agreed at the time of the marriage."<sup>xvi</sup>

In conclusion, modern shari'a law reflects the social, economic, and political values and goals of millions of Muslims. In particular, the family law of various countries reflects not only 14 centuries of shari'a law, but also its more contemporary manifestations. Before representing a Muslim client before a California court, an attorney must understand the underpinning financial and non-financial Shari'a augmenting, cancelling or contradicting the California decisions.

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- i. See, e.g., <http://www.thefreedictionary.com/hadith> (Aa tradition based on reports of the sayings and activities of Muhammad and his companions@).
  - ii. See, e.g., <http://www.onislam.net/>; <http://www.faqsofislam.org/childhood/In-Ke/Islam.html>; <http://coleneallen.blogspot.com/2012/04/rights-of-father-under-sharia-law.html#!/2012/04/rights-of-father-under-sharia-law.html>
  - iii. See, e.g., <http://islamqa.info/en/ref/20473>; <http://www.islamic-haria.org/children/islamic-perspective-on-child-custody-after-divorce-3.html>; <http://muslimmarriagecontract.org/laws.html>.
  - iv. See, e.g., JAMAL J. NASIR, THE ISLAMIC LAW OF PERSONAL STATUS (2002); DAVID PEARL & WERNER MENSKI, MUSLIM FAMILY LAW (1998).
  - v. Simply making list offers an explanation: the Divorce Act of 1869; the Christi an Marriage Act of 1872; the Special Marriage Act of 1872 : the Married Women's Property Act of 1874; the Births, Deaths and Marriages Registration Act of 1886; the Guardians and Wards Act of 1890; the Foreign Marriage Act of 1903; the Anand Marriage Act of 1909; the Child Marriage Restraint Act of 1929; the Parsi Marriage and Divorce Act of 1936; the Arya Marriage Validation Act of 1937; the Muslim Person al Law (Shariat) Application Act of 1937; the Dissolution of Muslim Marriages Acr of 1939: the Hindu Married Women 's Right to Separate Residence and Maintenance Act of 1946; the Muslim family Laws Ordinance of 1961; the Public Servants Marriage with Foreign Nationals Ordinance of 1976; the Dowry Prohibition Act of 1980; and the Family Court Ordinance of 1985.
  - vi. See Alamgir Muhammad Serajuddin, Judicial Activism and Family Law in Bangladesh, J. OF THE ASIATIC SOCIETY OF BANGLADESH (HUMANITIES) (June 2010) [hereinafter *Judicial Activism*] available at [http://www.asiaticsociety.org.bd/journals/June\\_2010/index.htm](http://www.asiaticsociety.org.bd/journals/June_2010/index.htm).
  - vii. *Md. Abu Baker Siddique v. S.M.A. Bakar*, 38 DLR (AD) (1986).
  - viii. See Judicial Activism, *supra* note 4.
  - ix. Consultive Op. No. 7-5263 (1373/08/03, Oct. 25, 1994).
  - x. See, e.g., [http://libguides.law.harvard.edu/islamic\\_family\\_law](http://libguides.law.harvard.edu/islamic_family_law); [http://www.international-divorce.com/qatar\\_child\\_custody](http://www.international-divorce.com/qatar_child_custody).
  - xi. Consultive Op. No. 7-4905 (1379/05/31, Aug. 21, 2000).
  - xii. Consultive Op. No. 7-7626 (1380/08/02, Oct. 24, 2001).
  - xiii. See [http://www.reunite.org/edit/files/Islamic %20Resource/Saudi%20Text.pdf](http://www.reunite.org/edit/files/Islamic%20Resource/Saudi%20Text.pdf)



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- xiv. Muhammad Hefzur Rahman v. Shamsun Nahar Begum, 15 BLD 34 (1995).
- xv. Qanun-I Madani [Iranian Civil Code], Arts. 1078-1101 (marital gift by husband to the future wife).
- xvi. <http://genderindex.org/country/saudi-arabia>.

Table I:  
Custody and Transfer in 5 Islamic Jurisprudence

School	Transfer Trigger	Next Eligible Custodian	Next Eligible Custodian	Next Eligible Custodian
Hanifi (Suni)	Boy: 7 Girl: 9, Marriage	Boy: Either parent Girl: Father	Maternal grandmother or paternal grandmother	Mother's sister
Shafa'i (Suni)	Boy: 7 Girl: 7	Choice of either parent	Maternal grandmother or paternal grandmother	Mother's sister
Maliki (Suni)	Boy: Age 15 Girl: Marriage	Grandmother	Maternal grandmother or Mother's sister	Paternal grandmother
Hanbali (Suni)	Boy: 7 Girl: 7	Choice of either parent	Maternal grandmother or paternal grandmother	Mother's sister
Ja'fari (Shi'a)	Boy: Age 2 Girl: Age 7	Father	Paternal Grandfather	Paternal next of kin

*Notes:* Mothers are granted physical custody of small children in most cases, but custody transfers to the father at the ages shown in the Transfer Trigger column.

In Islamic jurisprudence, a person's age is calculated by lunar year. To calculate age in lunar years, reduce the age in solar years by 8 percent or by a ratio of 336 to 365.

Table II: Age of Transfer of Custody, Discretion, Maturity and Marriage in 15 Islamic Countries

Country	Sect/School	Age of Transfer <sup>1</sup>		Age of Discretion <sup>2</sup>		Age of Maturity <sup>3</sup>		Age of Marriage <sup>4</sup>	
		Boy	Girl	Boy	Girl	Boy	Girl	Boy	Girl
<u>Afghanistan</u>	Sunni/Hanbali	7	9	N/A	N/A	18	18	18	16
<u>Azerbaijan</u>	Shi'a/Ja'fari	N/A	N/A	BIC	BIC	21	21	18	18
<u>Bangladesh</u>	Sunni/Hanifi	N/A	N/A	7	9	18	18	21	18
Egypt	Sunni/Hanifi	N/A	N/A	15	15	15	15	18	18
Indonesia	Sunni/Shafi'i	N/A	N/A	12	12	18	18	19	16
Iran	Shi'a/Ja'fari	7	7	N/A	N/A	15	9	15	13
Iraq	Shi'a/Ja'fari	N/A	N/A	10	10	15	15	18	18
Jordan	Sunni/Shafi'i	N/A	N/A	15	15	18	18	16	15
Morocco	Sunni/Maliki	N/A	N/A	15	15	18	15	18	18
Nigeria	Sunni/Maliki	N/A	N/A	7	9	15	9	15/21	12/18
Pakistan	Sunni/Hanifi	N/A	N/A	7	9	18	18	18	16
Qatar	Sunni/Hanbali	N/A	N/A	11	13	18	18	18	16
Sudan	Sunni/Maliki	N/A	N/A	7E	9E	18R	18R	PUB	PUB
Saudi Arabia	Sunni/Hanbali	N/A	N/A	7	7	18	18	18	18
Turkey	Sunni/Hanifi	N/A	N/A	BIC	BIC	18	18	17	17

Notes: "BIC" indicates best interest of the child. "PUB" indicates puberty.

<sup>1</sup> The age at which the custody right of the mother transfers to the father.

<sup>2</sup> The age at which the child's custody may be transferred from one parent to another, or to a qualified third party, based on the discretion of the child and the court.

<sup>3</sup> The age at which children are recognized as adults.

<sup>4</sup> The age at which children may marry without a court order. In many jurisdictions, age of marriage may be reduced by a year or two. Regardless of age, females cannot get married without the consent of a guardian, normally the father or other paternal next of kin.