

Rights of Humans

The Rights of the Foetus

Man passes through various stages in his life and his rights, liabilities and responsibilities will differ according to his competence.

The Fukaha agree that there are four stages for Man in relation to his competence :

1. Al-Janin - The foetal stage: This stage begins at 40 days into pregnancy and lasts until birth.
2. Al-Tufula - Childhood: This stage begins at birth and lasts until the age of 7.
3. Al-Tamiz - The age of Distinction: This stage begins at 7 years of age and ends at Puberty
4. Al-Bulough - Maturity: This stage begins at Puberty and ends at Death.

[5. The Hanafi School of Thought classify a fifth stage beginning at Death and ending on the Day of Judgement during which period the deceased has the right to be buried, to have his Janaza prayed and for people not to spit on his/her grave etc.. We however adopt the stronger and more popular opinion that these are responsibilities which fall on the living towards the deceased as opposed to the deceased's rights whose Competence ends upon death.]

The foetus from 40 Days into Pregnancy until birth is described as having incomplete competence to be eligible for rights (i.e. Ahliyyat Al-Wujub Al-Naqisa or Ahliyyat Al-Wujub Ijabi). At this stage Islam has not defined any liabilities for the foetus and it has no responsibilities at all, only certain divine rights which do not require its acceptance. These rights however will only be completed upon birth if the Child is born alive. Hence the fuqaha insist on trustworthy witnesses to be present at birth to check for signs of life for if the baby is born dead the rights will not crystallise and any potential right the child might have received will have been lost. (Imam Abu Hanifah insisted on two trustworthy witness at birth, Imam Sha'fi on two trustworthy women and Imam Ahmed bin Hanbal on four trustworthy women). Ibnu Abbass (ra) described the foetus as on the one hand being considered part of the mother whilst on the other an independent human being.

The divine rights of the foetus are four according to the Hanafi and Maliki schools of thought and three for the Sha'fi and Hanbali schools. They differ with regard to whether or not the foetus has a right to the share of income from waqf (i.e. Ghalat Al-Waqf). The reason for the difference of opinion arises from whether or not the income from waqf (i.e. from anything immovable/non-transformable i.e. Thabet which has been given up to Allah (swt) and who's income the state will ensure is distributed among the people) requires the foetus' acceptance or not. The Sha'fi and Hanbali schools of thought consider the distribution of the income a transaction which requires both parties to be mature and for there to be an offer and acceptance. Whereas the Hanafi and Maliki view is that the guardian/parent can invest or transact on behalf of the foetus hence the foetus' acceptance is not required and the income from waqf can be secured for the foetus.

The divine rights of the foetus which are agreed upon among the classical schools of thought are three:

i) Al-Nasab or lineage: the foetus has the divine right to be attributed to its parents

Allah (swt) has promised his curse for those who reject their children (i.e. denounce them)

ii) Al-Mirath or inheritance: the foetus has the divine right to inherit from blood relations under the Islamic inheritance rules.

iii) Al- Wasiyya or inheritance under a testamentary document i.e. a will: the foetus has the divine right to inherit from people outside its blood relations who wish to leave it a bequest in their will.

NB: for ii) above since one does not usually know if the new born baby will be male or female two shares are allotted and if the mother bears twins they will receive one share each.

If the foetus is killed intentionally (i.e. aborted) by the mother, blood-money (i.e. Diyya Ghaliyya) is payable equivalent to one tenth of the blood-money payable for the intentional killing of an adult (i.e. one tenth of a hundred camels of which forty are pregnant NB: ten camels are equivalent to approx. £1,400 sterling). This will be payable to the state for distribution. If however a husband beat his pregnant wife causing miscarriage this same blood-money will be payable to the mother (together with any bequest). Alternatively if the foetus dies naturally before birth, no blood-money is payable however any bequest would revert back to the testator's estate for re-distribution.

NB: Imam Abu Hanifah, through Istihsan, specified half the blood-money of an adult for the foetus as opposed to one tenth since in his time the relevant hadith had not been found by him.

Finally the foetus has been protected by the shariah by Allah (swt) making it's abortion or the infliction of any harm to it (by e.g. a mother smoking) a sin.

Upon birth these three rights (four for the Malikis and Hanafis) will be completed and the new born baby will now have in addition liabilities.

Haq Ul Awlad -

The Rights of Children

Children do not have many rights today and any rights they are given are open to constant abuse. Every year, millions of children are subjected to sexual abuse, starvation, torture etc.. The right to protection from physical and mental harm and the provision of basic material needs is not encapsulated within man-made law. The foetus has no rights and abortion is allowed up until 28 weeks nor is the orphan guaranteed any rights with regard to his/her wealth or welfare. Children are subjected to sexual promiscuity through the media, at school, in the streets etc.. Children are not given the right of lineage since many are conceived through fornication, adulterous relationships, prostitution and consequently have no knowledge of or link with their fathers.

Islam provides a complete set of rights for children from the foetal stage until maturity and obliges the society to fulfil them.

These rights guarantee the protection and healthy development of the child.

Many Muslim parents are not aware of their duties and obligations towards their children and hence cannot fulfil the divine rights of their children.

There are ten rights of children which parents are obliged to fulfil until their children reach maturity.

1. Al Ta'am - Feed: Parents are obliged to feed their children halal food.

During pregnancy, the mother is obliged to eat good food as it is the right of the fetus. Upon birth it is obligatory for the mother to breastfeed her child for 7 days and it is recommended for two years according to the Sha'fi school of thought. For Hanafis it is obligatory for 1 year and for Hanbalis, 2 years. Abu Daud narrated that the Messenger Muhammad (saw) said: "It is enough sin for a person that you don't look after the one you are responsible to feed".

2. Al Maskan - Shelter: Children must be provided with adequate shelter by their parents.

3. Al Himayah - Protection: It is obligatory for parents to protect their children from danger and from any unIslamic i.e. kufr concept or thought whether this takes the form of information from the television, influence at school or college, in the streets or any medium.

NB: This protection extends to ensuring that they are not exposed to any kufr belief e.g. christianity or budism etc. until they reach maturity. Allah (swt) says:

"Protect your children from the hell-fire" [EMQ 66:6]

The Messenger Muhammad (saw) said: "Every child is born on the fitrah. its parents later on make it a Jew, Christian or a Pagan."

4. Al Tilbaba - Medication: Parents must ensure that their children are given adequate medication to protect them from illness and to treat them when they are sick.

5. Al Malbas - Clothing: Children must be clothed in a halal way i.e. the parents must observe Tamayyuz, the distinction between male and female, in the way they dress their children.

The Messenger Muhammad (saw) was asked to perform Tahreek for a baby. He (saw) asked if it was a boy or a girl. When he discovered it was a girl he asked the mother to put an ear-ring in her ear to distinguish her as a girl.

In addition a child's head should be covered from the age of seven.

6. Al Nasab - Lineage: Just as children must attribute themselves to their parents similarly parents cannot denounce their children. Allah (swt) tells us that he will not look at the one who does this on the Day of Judgment and his curse will be upon them.

7. Al Deen - Islam: At 7 years a child reaches the age of Tamiz i.e. distinction and must be taught what s/he needs to know from Islam by necessity before they reach maturity e.g. they must be taught how to pray, that backbiting is haram, that they must work to establish Allah's (swt) deen, rational proof of Allah's (swt) existence. They will be asked to pray and fast at 7 and at 10 they will be ordered to pray and fast and the parents can physically discipline them if they do not obey (it is prohibited to hit the face, head, private parts or to leave a mark).

The Messenger Muhammed (saw) "Teach your children and teach them properly".

And He (saw) said "Order your children to abide by all the commands of Allah and to avoid all the commands of Allah and to avoid all the prohibitions of Allah and by that you protect them from hell-fire".

He (saw) also said "Be generous to your children excel in teaching them the best of conduct".

8. Al Isem - Name: It is recommended to name a child within 7 days of birth but obligatory to give it a good Muslim name, observing the Tamayyuz i.e. not a name which would be used for the opposite sex. The Messenger Muhammad (saw) said "The best name is the one linked to Hamid or Abid" i.e. praise or servant of Allah and He (saw) also said "Every man shares part of his name".

In the time of Omar (ra) a man came to complain about his son to him. He said "My son doesn't obey me." He (ra) asked why and the man replied "Whenever he speaks to me he doesn't obey me." When summoned, his son asked "What are my rights from my parents?" To which Omar (ra) replied, referring to the Prophet (saw) "To be given a good name, to be taught the Quran and to have a good mother chosen for you" The son said "He chose a prostitute as my mother, called me a bat and has never taught me anything from the Quran" Omar (ra) said to the father "How can you expect your rights to be fulfilled if you do not fulfil your sons?"

9. Al Umm - Choosing good parents: Parents are obliged to choose good partners for themselves. The purpose of marriage is defined in Islam as enjoyment and procreation hence choosing a partner with good deen is essential.

10. Al Tazweej - Marriage: Parents must ensure their children marry partners with good deen and they must not refuse unreasonably. The Prophet (saw) said "If anyone comes to you with good deen and asks for your daughter let them marry otherwise there will be oppression" and it is narrated that He (saw) said "People marry for four reasons: wealth, lineage, beauty and good deen. Choose the one with good deen and your children will be safe".

NB: It is recommended to obey your parents in who they choose for you in marriage but it is not fard.

NB: The rights of children to have their parents marry them off remains upon their parents neck even beyond maturity unlike the other obligations. However it is recommended to marry children off as soon as they reach maturity.

We can see from the above that the rights of parents and children are very similar and almost reversed when parents become

old and children reach maturity. The Prophet (saw) said "Honour your father and mother and obey them and your children will honour and obey you" .

The sensitivity of the right of parents over children was well understood by the Sahaba. It is narrated that many of them didn't used to ask their children for anything lest they disobeyed them and were subsequently sinful.

Finally it is reported that the best sadaqah a man gives is what he leaves for his children upon death. Parents must be careful not to betray their children in the event of their death i.e. in inheritance.

HAQ UL-WALEDAIN

The Rights of Parents

There are ten rights which children are obliged to fulfil upon their maturity. These are:

- 1) Al-Ta'am - Food; If parents have no food the children are obliged to provide for them
- 2) Al-Maskan - Shelter; If parents have no shelter children are obliged to provide it for them even if it means sharing their bedroom. In the time of the Prophet (saw) a mother was refused accommodation by her sons wife, she died in another house. The Prophet (saw) remarked that he would never enter paradise.

note: if a son cannot maintain his parents it is up to the daughter to do so and if she cannot her husband should help her.
- 3) Al-Himayah - Protection; It is obligatory on children to protect their parents from back-biting, attack or any other danger. One Sahabi, in the time of our beloved messenger Muhammed (saw) was journeying with his mother and father. Their horses and camels however became tired and they therefore stopped to rest. The sahabi worried about any attack upon his parents spent the night moving around ensuring his parents were safe. They finally completed their journey to Medina. The Prophet (saw) said "I saw this man in Paradise holding a candle and behind him were his mother and father."
- 4) Al-Tilbaba - Medication; Children are obliged to, for example, find a doctor for medication if parents are so needy. In Rasoul Allah (saw)'s time people would ask to go and fight in offensive jihad, or to make hijra but he (saw) asked them to stay with their parents if he discovered they had parents who needed them or did not want them to go.
- 5) Al-Dain, - Debts; Children must pay their parents halal debts after their death.
- 6) Al-Nasab - Lineage; One is prohibited from denouncing ones parents. The Prophet (saw) said, "whoever attributes themselves to anyone other than his parents, Hellfire is for them."

Zaid used to be called the son of Muhammed whereas he was Haritha's son. Allah (SWT) then informed us that there is no adoption in Islam. Zaid was subsequently called Zaid Ibn Haritha.

And Muhammed (saw) said, "one of the obedient deeds towards our mother and father is to keep relationships with them.."

7) Al-Janazah - Prayer; Upon our parents death we are obliged to pray their janazah and to give them an Islamic burial. The Prophet (saw) said, "...Mercy be upon the father whose son carries him to the grave.." and "...to bury them and make janazah for them.." will also be of Mercy to them in another hadith.

8) Al-Wasiyyah - Will; Children must fulfil their parents wishes upon their death i.e. their will.

9) Al-Dua' - Supplication; Some ulama insist that we need to pray for our parents five times a day since the Prophet (saw) said, "...you can thank me and your parents by praying five times a day and doing dua' for them.." We are obliged to ask forgiveness for our

Parents and to ask Allah (SWT) to grant them paradise. The Prophet (saw) said, "If the son of Adam dies all his deeds end except three: the continuous charity, knowledge from which people benefit and dua' that their children make for them."

10) Al-Malbas - Clothing; If needy for clothing and the children can help, they are obliged to help their parents. In the Prophets (saw)'s time, he (saw) discovered that a man could not go out of his home because he did not have enough clothes to cover his awrah but that his son did have enough for his purposes. Rasoul Allah (saw) told the people to "...go and take his clothes and give them to the father.."

In addition to the above Allah (SWT) has obliged upon us obedience to our parents in issues which directly concern them and recommended obedience in other issues. In the collection of Samakaad we find the following ahadith:

Zaid Ibn Ali narrated that the Prophet (saw) said, "If a man disobeys his parents the implication of this is that whatever he may do apart from this he will never enter paradise, as for the one who obeys, no matter what he does apart from this he will enter paradise."

Moreover we are required to respect our parents and to hold them in high esteem. In this regard I quote the following ahadith:

A man by the name of Alkama was not able to say the shahadah on his death bed until his mother forgave him. It was narrated that he would always prefer listening to his wife than to his mother and she hated him for this. The Prophet (saw) asked her if she wanted to see him brought before her and thrown into fire. She said she wouldn't. He (saw) explained that for her not to forgive him would have such a consequence and so she forgave her son and he said his shahadah before passing away.

It is narrated that a man came to complain to the Prophet (saw) that his father would not return his money that he had lent to him. The fathers thoughts of how he always looked after his son and spent upon him without any thought, from infancy to adulthood, were relayed to the Prophet (saw) through Jibrael(as). The Prophet (saw) set up a court with witnesses and called the pair. He told the son that "you and your wealth belong to your father". The Prophet did this publicly in order to give the people a lesson.