

The Impact of Parents' Dangerous Contagious Diseases on Child Custody and Guardianship

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Abstract.

The role of the family in the custody and guardianship of children is undeniable. At times, the foundations of a family weaken due to various causes and eventually collapse, resulting in a loss of functionality and stability. In such circumstances, the issue of child custody becomes one of the most important and sensitive matters requiring legal and ethical attention. Generally, considering the welfare and best interests of the child, the health of society, and the duty-oriented approach to custody, the obligation of parental custody may be removed when a parent suffers from dangerous contagious diseases, based on the legal maxim of *lā ḍarar* (no harm). However, given the rights-based nature of custody and the broad scope of altruistic principles) *i'thār* , (it may not always be possible to rule that it is categorically forbidden for such parents to care for their children. Instead, custody may be temporarily withdrawn and transferred to another qualified individual who is capable of providing proper care and upbringing. The present study seeks to answer the central question :how do dangerous contagious diseases affect child custody and guardianship? Using a descriptive-analytical method and library-based research, the study proposes the hypothesis that under Iranian law, contagious disease can serve as a legal obstacle to custody. The findings show that custody inherently requires direct contact, visitation, and close interaction with the child—requirements that are undoubtedly hindered in cases involving serious contagious diseases. Therefore, in certain cases, revoking custody is justifiable. However, with respect to legal guardianship) *sarparasti* , (which typically involves less direct physical contact, dangerous contagious diseases generally do not constitute sufficient grounds for removal of guardianship or parental authority.

Keywords : dangerous contagious disease, parents, custody, guardianship, child.

Extended Abstract

The family unit has long been recognized in legal, ethical, and religious traditions as the foundational institution responsible for the upbringing, protection, and emotional development of children. Custody and guardianship, as legal and moral constructs ,are central to ensuring the welfare of minors. Yet, the stability of the family is not always guaranteed. Families may become dysfunctional due to various internal or external pressures, including economic hardship, social instability, marital breakdown ,incapacity of parents, or medical conditions that significantly impair parental functioning. Among these disruptive factors, the emergence of dangerous contagious diseases deserves particular legal scrutiny, especially in the wake of recent global health crises such as COVID-19, SARS, and other virulent epidemics. These diseases challenge not only public health systems but also established legal principles governing parental rights, child protection, and family autonomy. The present study examines in depth how dangerous contagious diseases affect the legal standards of custody (*ḥaḍānah*) and guardianship (*sarparasti*) within the Iranian legal system, while grounding its analysis in jurisprudential doctrines such as the principle

of *lā ḍarar* (no harm), the nature of custody as both a duty and a right, and the overarching principle of the child's best interests.

In Iranian law, custody) *ḥaḍānah* (is predominantly understood as both a legal obligation and a moral responsibility, requiring the custodian to provide continuous care, supervision, emotional support, and physical presence. Unlike guardianship) *wilāyah* or *sarparasti* , (which deals primarily with legal and financial decision-making, custody involves daily contact and intimate involvement in the child's life .For this reason, the custodian must possess physical and psychological fitness, as well as the ability to create a safe and nurturing environment. The emergence of a dangerous contagious disease in a parent raises complicated questions: does the disease render the parent legally unfit? Should custody automatically be removed? How should courts balance parental rights with the child's safety and well-being? And to what extent does the principle of *lā ḍarar* override the parent's otherwise legitimate right to custody?

The principle of *lā ḍarar* ,rooted in Islamic jurisprudence, provides that no right shall be exercised in a manner that causes harm to another. The child's health and welfare occupy an elevated position within Islamic and civil law traditions, thus any situation that exposes a child to significant harm may justify the restriction or removal of parental rights. In cases involving dangerous contagious diseases—especially those with high transmission rates or severe health consequences—the risk of harm to a minor is substantial. Custody inherently requires close, frequent, often daily physical contact between parent and child, which makes the transmission of contagious diseases not only possible but likely. Based on this reasoning, the obligation of custody may be temporarily lifted, because the parent, although morally committed to caring for the child, is unable to fulfill the duty without endangering the child's health. The legal and moral interpretation of such cases often depends on the severity of the disease, the mode of transmission, and the availability of safe alternatives.

Nonetheless, the rights-based dimension of custody complicates the application of an absolute rule. Custody is not merely a burden or duty; it is also a right derived from parental identity, recognized under Islamic jurisprudence and codified statutes. The broad concept of *i'thār* (altruism or self-sacrifice) further suggests that parents may willingly choose to care for their children despite hardship or incapacity. Therefore ,removing custody is not always mandated solely by the existence of a contagious disease. Many diseases, though contagious, may be manageable through medical treatment, quarantine, or precautionary measures that reduce the risk to the child. Thus, while the duty-based dimension of custody is suspended under *lā ḍarar* ,the rights dimension requires a more nuanced assessment. Courts must determine whether temporary removal of custody is necessary, or whether supportive interventions and safety protocols can preserve the parent-child relationship without exposing the child to significant danger.

This study argues that dangerous contagious diseases should not be treated as an automatic cause for permanent loss of custody. Instead, such medical conditions should trigger heightened judicial scrutiny guided by the child's best interests, medical evidence, and expert assessments. Temporary suspension of custody, supervised visitation, remote communication, delegation of caregiving responsibilities to relatives, and court-monitored care arrangements may be less intrusive alternatives to complete removal. Such measures respect parental rights while prioritizing the child's safety. The severe emotional impact of separating a child from a parent—especially during

illness—must also be taken into account, as the psychological harm of abrupt separation may, in certain cases, outweigh the medical risks.

A key distinction explored in this research is the difference between custody) *ḥaḍānah* (and guardianship) *sarparasti* .(Guardianship, unlike custody, does not require daily physical proximity. A guardian may continue to make legal and financial decisions for the child without endangering the child's physical safety. Thus, even in cases where a parent suffers from a dangerous contagious disease, their guardianship rights typically remain intact unless the disease impairs their mental capacity or decision-making ability. The study therefore concludes that dangerous contagious diseases rarely justify removal of guardianship, unless accompanied by other disqualifying factors such as severe mental deterioration, inability to exercise judgment, or circumstances where the guardian's decisions directly endanger the child.

The methodology of this study, based on descriptive-analytical research and library sources, emphasizes the interplay between statutory provisions, judicial precedents, Islamic jurisprudential principles, and modern considerations of public health. Comparative reflections show that legal systems worldwide were compelled to revisit custody rules during the COVID-19 pandemic, balancing public health guidelines with the continuity of parental relationships. In many jurisdictions, temporary custody suspensions or quarantined visitation schedules were adopted as emergency measures, illustrating the need for flexible and pragmatic legal standards. These global experiences reinforce the study's core argument that legal systems must adapt custody arrangements in response to medical realities without imposing unnecessary family disruption.

Furthermore, the research underscores that preserving the child's best interests requires a multifaceted analysis. The child's physical safety is paramount, but emotional and psychological well-being cannot be ignored. Medical risks differ: some diseases may be easily transmissible through close contact (e.g., influenza, COVID-19), while others may require more specific modes of transmission. Courts must rely on medical experts to determine the level of risk. The existence of alternative caregivers ,the duration of the parent's illness, the possibility of treatment, and the emotional bond between parent and child should all be evaluated before deciding to remove custody.

Dangerous contagious diseases also raise broader ethical questions regarding discrimination, stigma, and the rights of ill parents. Legal systems must ensure that vulnerable individuals suffering from illness are not unfairly deprived of their parental rights based solely on fear or social prejudice. Custody decisions must be evidence-based and individualized, avoiding blanket assumptions about incapacity. A parent's illness should not automatically be equated with incompetency or neglect. Instead, a contextual evaluation is necessary, grounded in fairness, compassion, and scientific knowledge.

This extended analysis leads to an important conclusion: in cases involving dangerous contagious diseases, custody should be suspended—not permanently removed—if necessary to protect the child. Suspension preserves the parent's right to regain custody once the medical condition improves or the risk of transmission decreases. Meanwhile, guardianship should remain with the parent unless they are demonstrably incapable of exercising it. Courts should prioritize minimal intervention, applying the principle of proportionality and employing the least restrictive measures

necessary to protect the child. Legal reforms may also be needed to specify procedures for temporary suspension, criteria for medical evaluation, and guidelines for maintaining parent–child contact under safe conditions.

The study overall demonstrates that the relationship between parental illness and child custody requires a delicate balance of competing values: the right of the child to safety, the rights of parents to maintain family ties, the duty of the state to protect minors, and the principles of Islamic legal doctrine that shape custody obligations in Iran. Legal and jurisprudential principles such as *lā ḍarar*, *ḥaḍānah*, and *wilāyah* converge with contemporary medical and ethical considerations to form a complex but coherent framework. Ultimately, decisions must reflect not only legal rules but also empathy, scientific knowledge, and the human realities of families facing serious illness.

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