

Parental Responsibility: A child-centered society must shine

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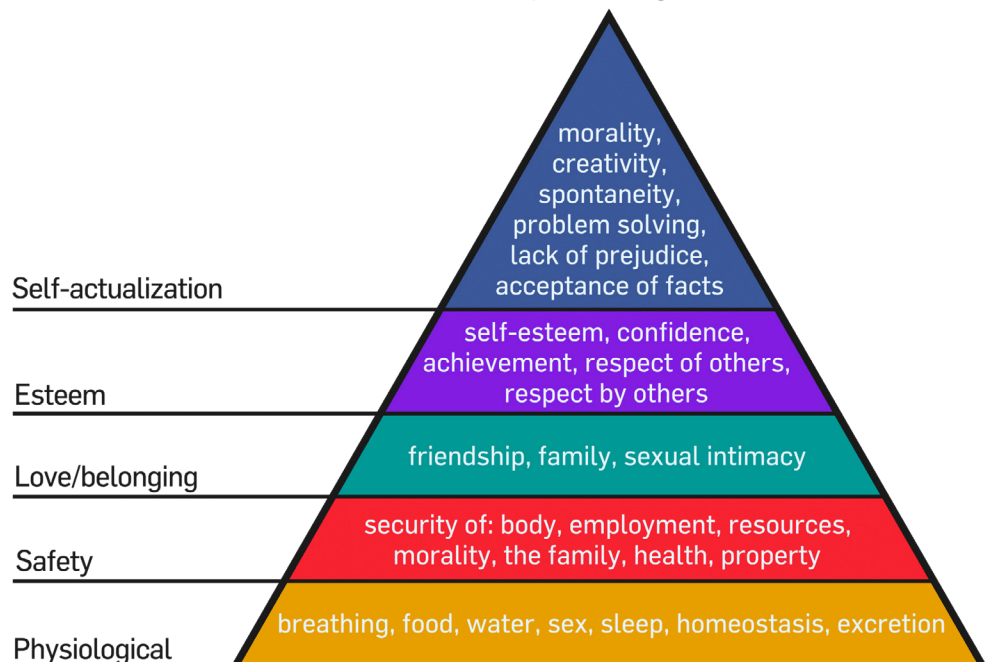
Why aren't co-parents responsible? Toxic parents should get divorced, not the child.

I have written this informative and analytical article for legal knowledge and awareness about parental responsibility towards the child. Multiple events provoke me to write on the topic. During the Covid pandemic and up until 2023, I received numerous calls from Karachi on the same subject while working as an advocate at Sindh Legal Advisory Call Center (SLACC). Callers asked about the procedure of keeping their child or grandchild in the cradle of NGOs such as Edhi and Chhipa, with grandparents or both parents unable to nurture and bring up the child due to inflation and the closing of commercial establishments. Oftentimes the reason is domestic issues between the spouses and their families.

A minor child is dependent on others for his or her survival and basic needs, as well as for the following: personality, development, mental health, dignity, nurturing, morals, social learning, education, safety, financial, and job security. There's a theory on human needs by American psychologist Maslow.

MASLOW'S HIERARCHY: the pyramid shown below explains that the needs lower down in the hierarchy must be satisfied before individuals can attend to higher needs.

The Constitution of Pakistan 1973 safeguards the fundamental rights of an individual. Human rights belong to all children, irrespective of religious beliefs and cultural backgrounds. However, parental responsibility is a major concern nowadays and should be treated by a special law on this subject as an emerging need of society. Married parents may find difficulty in fulfilling their child's needs as per changing circumstances, and warring partners or warring ex-spouses almost definitely deprive the child from their life and livelihood when caught up in a **tug of war**.



Contribution to planning care is inevitable

God hints at this principle of gradual change in some verses in the Quran.¹

"You shall certainly travel from stage to stage." (Al Inshiqaq:19)

"And we shall bring them down step by step from where they will not know." (Al Qalam:44)

These two verses clearly point to the divine principle of gradual change, for better or for worse. The morning breaks gradually and the night also falls gradually. Therefore, nothing in this universe happens all of a sudden. God plans his affairs and executes them according to His principle of gradual development or evolution. This also conveys the message that man should not wait for miracles. His prosperity, success, and dignity depend on his hard work, wise planning, and pure thoughts.

While the Qur'an advocates that change be gradual (Q.3:159), it also stresses the evolution of Muslim society (Q.14:4). There is a need to couch the message of Islam and its spirit of equality in the language of our times, which is one of human rights and equality. The Prophet ordered parents to '[b]e generous, kind and noble to [their] children, Muslims should therefore rather move on the side of generosity than be party to the denial of basic human rights for their children.

An international perspective on parental responsibility

Some basic principles regarding authority over minors according to Dutch family law, Article 1:245:

1. All minor children are subject to authority.

¹ <https://www.newageislam.com/islam-spiritualism/s-arshad-new-age-islam/the-universe-governed-divine-principle-gradual-change/d/124881>

² <https://iclg.com/practice-areas/family-laws-and-regulations/indonesia#:~:text=The%20law%20only%20states%20that,childcare%20and%20child%20education%20expenses.>

2. Authority means parental authority (also known as parental responsibility) or guardianship of minors.
3. Parental responsibility is exercised by the parents jointly or by one of them on his own. Guardianship over a minor is exercised by another person than the minor's parent or parents.
4. Authority over a minor covers the person of the minor, the administration of his property, and his representation in performing acts in the field of civil law, both in and out of court.
5. Authority exercised by one parent together with another person than a parent ('non-parent') pursuant to Article 1:253 or a court order based on Article 1: 253 is called joint responsibility and is treated as a parental authority exercised by parents jointly, unless a statutory provision implies the contrary.

Article 1:247:

1. Parental authority comprises the duty and right of the parent to care for and raise his minor child.
2. The words 'care for and raise' in the previous paragraph include caring and taking responsibility for the mental and physical welfare and safety of the child and promoting the development of his personality. The parents may not use mental or physical violence or apply any other degrading treatment when they care for and raise their children.
3. Parental authority includes the duty of the parent to develop the bond of his child with the other parent.

Indonesian family law on parental responsibility states that the parents have an obligation to take care of the children, and the father has responsibility for all childcare and child education expenses. Both parents must maintain and educate their children throughout the marriage and after divorce until a child marries or is able to support themselves.²

Joint authority of parents during and after their marriage and authority of one of the parents after a divorce.

Dutch civil code Subsection 1.14.2.1 includes two kinds of guardianship;

1. Mentorship in personal matters and relates to care, nursing, treatment, and support in which a guardian other than a parent is appointed as a mentor to make these decisions.
2. Fiduciary administration in financial matters of the property of the minor.

The Dutch civil code Article 1:251 on the joint authority of parents during and after their marriage;

1. During their marriage the parents jointly exercise authority over their minor children.
2. When the marriage has been dissolved for another reason than the death of one of the spouses or a legal separation, the parents who had joint authority over their minor children during that marriage, will keep having joint authority over these children after the dissolution of that marriage.

Dutch civil code Article. 1:253 states that the district court may on the joint application of the parent who is charged with parental responsibilities and a person other than a parent who has a close personal relationship with the child, charge them with joint parental responsibilities. The idea behind this rule is that 'it is in the child's best interest to clarify the position of the **'social parent'**.

Furthermore, Article 1:227a and 1:227b of the Dutch civil code on **Maintenance of personal relationships** states that a parent without parental responsibilities has the right to maintain a personal relationship with his child (contact and information). The same applies to parental responsibilities after divorce, even though this as such is not explicitly stated in the civil code.

In the Netherlands, the civil code defines parents who are married or in a registered

partnership to automatically acquire joint responsibility for the children born to them, or which they adopt, during their marriage. In other cases, parents have to report to the court that they intend to conduct parental responsibility. And in a civil partnership of marriage, if children are born before marriage to the spouse, joint parental responsibility also lies upon the married couple.

According to the Australian Family Law Act 1975, there is a presumption that both parents will have equal parental responsibility- that is, they will both have a role in making decisions about long-term issues such as where the child goes to school or major health issues. As per the 1980 Hague Convention, Article 5 relates to the right of access and Article 3 relates to child abduction.

Co-Parenting

Dutch civil code Article 1:251, on a request to convert joint authority into exclusive authority after the marriage has ended:

1. After the marriage has been dissolved for another reason than the death of one of the spouses or a legal separation, the court may order, upon the request of one or both of the parents, that only one of the parents shall have authority over the child, if:
 - a. there is an unacceptable risk that the child would get lost or jammed between the parents and it is not to be expected that this situation will sufficiently improve within a foreseeable period of time, or;
 - b. for another reason a change in authority over the child is necessary in the best interest of the child.

Article 2 of Brussel II regulation:

Right of custody shall include rights and duties include relating to the care of person of a minor and in the particular right to determine the child's place of residence.

Right of access: a right to a child to a place other than his or her habitual residence for a long period of time.

Place of residence: parents with parental responsibilities are free to determine the place of residence of the child unless a family court order is in place in case of litigation.

Dutch civil code Article 1:249 on the **Duties of the minor child:**

A minor child must observe the rights and powers that are granted to his parent or guardian in connection with the exercise of authority and he must take into account the interests of the other members of the family of which he forms a part.

Singapore Parental responsibility law:

Section 46(1) of the Women's Charter 1961 reflects the general principle of law that both parents shall generally have equal parental responsibilities, whether in the running of the household or safeguarding the welfare of the child.

As per the Turkish law:

The custody is regulated under Turkish Civil Code No. 4721 which stipulates that the mother and the father have custody rights from the birth of a child until he/she is 18 years old. If they are divorced, the custody is given to one of the parents, if the child was born during the marriage, and to the mother if she gave birth outside a conjugal union.

Conclusion

In this discussion, I have presented numerous international laws on the same subject of parental responsibility. There is an emergent need to amend the law of the Guardian and Wards Act 1890 in Pakistan, through which parental responsibility must be defined. Divorce must not affect the basic rights of the child, he/she must be brought up in a loving environment, and ex-spouses must not fight or make character assassinations of each other, especially in the presence of the child. Divorce should not affect the child, and society too must care for the child.

Spouses are divorced, not parents.

Therefore, parental responsibility is not affected after the annulment of marriage, divorce, or legal separation, but exists the same as before. In the case of unmarried parents, by operation of law parental responsibility lies upon the mother over her child from the very day of his/her birth, due to the child and mother's civil relationship.

I would like to specifically highlight some points of the productive laws mentioned above, from which we can learn and adapt our own laws. The Brussels II regulation provides the right to access which is beneficial for a child to freely go places other than his residential place, including within the



country and internationally. Dutch civil code provides for the maintenance of personal information for the parent without parental custody as he/she must be informed about the residence, contact, and all whereabouts of the child. Lastly, Indonesian family law gives responsibility to parents after divorce until a child marries or is able to support themselves.

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law of parental responsibility. Children need development rules be made at the earliest. If society wants to shine, each and every child must be nurtured and allowed to grow.

Pakistan's law for Guardian and Minor must be renovated, and Pakistan must have the



Advocate Tabassum Aijaz providing free legal advice at SLACC

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³ <https://iclg.com/practice-areas/family-laws-and-regulations/indonesia#:~:text=The%20law%20only%20states%20that,childcare%20and%20child%20education%20expenses.>