



Supervised Dissertation

ON

**‘STEP-FATHER’S RESPONSIBILITY TO MAINTAIN A
CHILD: A CRITICAL ANALYSIS’**

Course Title: Supervised Dissertation

Course Code: Law406

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Semester: Fall 2023

Date of Submission: 14 January, 2024

CONSENT FORM

The dissertation titled “**Step Father’s Responsibility to Maintain a Child: A Critical Analysis**” prepared by AnisaManzurKannoka, ID- 2019-1-66-006 submitted to Nadia Rahaman, Senior Lecturer, Department of Law, East West University for the fulfilment of the requirement of Course 406 (Supervised Dissertation) for LLB (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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DECLARATION

I, Anisa Manzur Kannoka, hereby certify that the research contained in this undergraduate thesis is entirely original and my own. Nothing from this thesis has been used without the appropriate authorization and credit. I have completed this work on my own, and I have not previously submitted it to any other organizations or institutions for consideration of any academic credentials, diplomas, certificates, or degrees. I certify the veracity and integrity of the data presented in this thesis and undertake full responsibility for its substance, analysis and conclusions.

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ACKNOWLEDGEMENT

I consider myself extremely fortunate to have benefited from the support and advice of several people throughout the course of my studies. First of all I'd like to express my sincere thanks to my family members for being constant support throughout the journey.

I'd like to express my sincere acknowledgement to our honorable Chairperson Dr. Nabaat Tasnima Mahbub for letting me conduct my research on this very topic. I'd also like to thank Dr. Md Mehedi Hasan for his support and dedication. Again, I'd like to also thank Mohammed Pizuar Hossain, Senior lecturer, East West University for conducting a class on 'How to write a research paper' which was very helpful for me to conduct the research. I would also like to thank Dr. Rumana Islam, Professor, Faculty of Law, University of Dhaka and Commissioner, Bangladesh Securities and Exchange Commission (BSEC) helping us to conduct our research by taking two valuable classes on 'Research Methodology'.

My profound appreciation goes to my supervisor, Nadia Rahaman (Senior Lecturer, Department of Law, East West University), for all her constant guidance, time, and effort throughout the preparation of this thesis. This would not have been without her unconditional support.

TABLE OF CONTENTS

ABSTRACT.....	6
Chapter 1: INTRODUCTION	7-10
1.1 Introduction	7
1.2 Research Question	7
1.3 Literature Review.....	7-8
1.4 Objectives	8-9
1.5 Methodology	9
1.6 Significance.....	9
1.7 Limitations	9
1.8 Chapter Organization.....	10
Chapter 2: THEORETICAL FRAMEWORK.....	11-14
2.1 Introduction	11
2.2 Definition of Child.....	11
2.3 Role of A Father in Children’s Life.....	11-12
2.4 Definition of Stepchildren and Stepfather.....	12-13
2.5 Definition of Responsibilities	13
2.6 Responsibilities of A Muslim Stepfather.....	13
2.6.1 When the Stepchildren Have Legitimate Guardian	13
2.6.2 When A Stepchild Has No Such Legal Guardian from His/Her Biological Paternal Family	14
2.7 What Does Maintain A Child Mean.....	14
2.8 Conclusion.....	14
Chapter 3: SARIAH LAW’S EXISTING POLICY TO HELD STEPFATHER RESPONSIBLE	15-23
3.1 Introduction	15
3.2 Liabilities of Step Father under Different Sources of Muslim Law	15
3.2.1 Quran	15-18
3.2.2 Hadith.....	19-21

3.2.3 Ijma.....	21
3.2.4 Qiyas.....	21-22
3.3 Shortcomings of Sharia Law.....	22
3.4 Reason for Making the Stepfather Liable.....	22-23
3.5 Conclusion	23

Chapter 4: LAWS, CASES, AND PRACTICE INDIFFERENT COUNTRIES..... 24-28

4.1 Introduction	24
4.2 Practice in Bangladesh.....	24-25
4.3 Practice in Pakistan	25-26
4.4 Practice in Indonesia.....	26-27
4.5 Judgment in USA.....	27
4.6 Rules in Australia.....	27
4.7 Conclusion	27

Chapter 5: RECOMMENDATIONS AND CONCLUSION..... 28-30

5.1 Introduction	28
5.2 Findings	28
5.3 Recommendations	30
5.4 Conclusion	29-30

Bibliography	31-35
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ABSTRACT

The thesis provides a critical evaluation of responsibility of stepfather towards a stepchild. The aim of the thesis is to find the responsibilities of a stepfather towards a stepchild where the child has lost his father due to father's death and also in the case where there is biological father but he is not willing to accept the responsibilities. The research will be conducted through a qualitative research methodology. This research also tries to give a legal frame on stepfather's responsibilities by evaluating the importance of father figure in child's life. When a father and mother of a legitimate child separate, the mother typically retains custody while guardianship is vested upon the biological father. But when the father is not alive or not willing to have the guardianship then mother alone have to take care of all the needs of a child. In that situation if mother marries another male then what his contribution will be towards the stepchild and what should be his contribution will be evaluated in these thesis reviewing different literature reviews, the sayings of Shariah laws including Quran, Sunnah, Ijma, Qias and over-viewing the practicing laws, customs and case laws in different Muslim countries. This thesis recommends on the creation of new policies and rules regarding stepfather's responsibilities in accordance with Islamic Shariah law to give better shape to child's welfare and best interest.

Chapter 1

INTRODUCTION

1.1 Introduction

A non-biological male parent who is married to a person's biological female parent is known as a stepfather or stepdad. Every human bond has a distinct set of obligations and liabilities that need to be met in a sincere and individual way. The needs of any relationship are unique, and this is also true of the bond between stepfather and stepchildren. It's critical to realize that, as a stepfather, he has more responsibility because he is raising someone else's child as if it is his own. This is due to the fact that he should be cautious about his relationship with the child as well as his relationships with the child's biological mother. The dynamics between a stepfather and stepchild are undoubtedly complex, and despite his best efforts to be his stepchild's best parent, the reality that they are not biologically his own child will never change. Therefore, the best course of action in managing such a difficult and complex relationship is to recognize his rights and responsibilities legally as a stepfather and use it as the foundation for any legal agreement.

1.2 Research Question

1. What are the current practices regarding the responsibilities of a stepfather to maintain a child in a Muslim family?
2. How a structured mechanism can be designed to ensure the rights of a child and to make the responsibilities of a stepfather legally binding?

1.3 Literature Review

There are numerous opinions which talk about step father's negligence towards a stepchild and also show the reason of such negligence. Such as Choudhury, T., Sultana, S. & Clisby, S. have narrated in an article that children in Bangladesh who live with their mother after she remarries may face serious challenges due to socio-legal dynamics, as there is little social pressure in Bangladeshi society for the stepfather to demonstrate that he is a good father to the stepchildren and custodian mothers are not the children's legal guardians. All of their participants—aside from two—talked about how their second husbands were harsh to their stepchildren and unwilling to provide even the most basic needs—like food, clothing, or education. The study

also carries some real life examples of stepchildren who are suffering due to stepfather's harsh behave towards them.¹

In addition, a research of Dr. Sakina Riaz displays the Pakistani scenario where the kids had diverse perspectives on the stepfather role. Gender role changes have an impact on changes in capacity in this way. For example, girls tend to be more aloof and exhibit more adjustment issues than boys. Children generally gave their stepfather positive feedback about his social functioning, which was higher in joint families and reflected in quality relationships. What's more, reports of it were made. The research additionally emphasizes Financial concerns are a significant factor in a mother's second marriages. In fact, in any stepfamily, the stepfather has extra responsibilities to take care of the children's standard financial responsibilities.

Evergreen Psychotherapy Center, a world renowned attachment treatment and training center has stated in a article of their that Fatherlessness negatively impacts families and children's psychosocial growth due to lack of co-parents, financial strain, emotional stress, and hostile caregivers. Single mothers often have the lowest incomes, and children witness or experience abandonment, leading to emotional stress and isolation.²

There exists articles relating scarcity of proper specific law to recognize stepfather's responsibilities. For example Omam Khalid has stated about stepparents responsibility towards a stepchild. The author has shown that Shariah law hasn't provide any hard binding on stepfather but Islam encourages good work and good behavior towards a stepchild .He also narrated that behave towards a stepchild depends on the equation of stepfather with the child's biological mother.³

Katya Ivanova's research helps us to determine the bonding between the stepfather and the stepchildren. His work shows us that the children in USA feel stronger bonding with their stepfathers than the divorced biological father. This will help to incorporate proper policies.⁴

¹Tanzina Choudhury, Sumena Sultana and Suzanne Clisby, 'Conjugal Relations and Stepchildren's Well-Being: Exploring the Experiences of Remarried Women in Bangladesh' (2020) 41 Journal of Family Issues 1033.

²'The Importance of Fathers - Evergreen Psychotherapy Center' <<https://evergreenpsychotherapycenter.com/importance-fathers/>> accessed 22 December 2023.

³'Stepparents: Rights & Duties' (*IslamicFinder*) <<https://www.islamicfinder.org/news/stepparents-rights-and-duties/>> accessed 13 December 2023.

⁴Maaiké Hornstra, Matthijs Kalmijn and Katya Ivanova, 'Fatherhood in Complex Families: Ties between Adult Children, Biological Fathers, and Stepfathers' (2020) 82 Journal of Marriage and Family 1637.

1.4 Objectives

1. To detect the current practices regarding the responsibilities of a stepfather to maintain a child in a Muslim family.
2. To identify what responsibilities does a step father have towards his step children according to the Sharia law.
3. To find out the provisions in different countries in this regard.
4. To determine to which extent stepfather can be made responsible by forming a codified law

1.5 Methodology:

Researcher has followed qualitative research method to complete this paper. The objectives and the nature of this paper demands a qualitative method to draw a perfect framework as well as to reach an appropriate destination for conclusion. Both primary as well as secondary sources are used in this paper for a detailed analysis. Here primary source includes statutes, laws, provisions, Acts and Orders. Books, journals, articles and online database are considered as secondary sources. Besides, case laws are also one of the most reliable primary sources found relevant for this research.

1.6 Significance

The research paper may bring a significant change in Muslim family law as it will contribute to ensure the rights of the children by making their stepfathers legally responsible who are not staying with their biological fathers rather living with their stepfathers under his authority. The outcome of the paper will grab the attention of the policy makers and the legal practitioners to improve the Muslim family law of Bangladesh in the particular sector.

1.7 Limitations

Few limitations of this research are:

1. To be more specific this paper only focuses on Muslim family law.
2. Due to time constraints this research doesn't include all the aspects of Muslim law.
3. This paper only concerns about Bangladeshi legislation and does not cover practices in all over the Islamic countries of the world.

4. Due to strike, it was not always possible to reach out the university library and gather all existing publications regarding it.
5. Due to sudden change in the deadline of submission of the thesis, the thesis couldn't meet all the expectations as it was structured before.

1.8 Chapter Organization:

Chapter one contains the introduction as well as the research proposal which describes the context, necessity and goal of this research. This part of the research also includes research questions, objectives, methodology, significance of this study, and lastly it also adds the limitations of this study, and research methodology.

Chapter two introduces the terms used in this research. The definitions are here and the meaning of the words is clarified as well. In this Chapter the theoretical framework is drawn.

Chapter three has detected what is said in the sources of Shariah law about this issue and to which extent do those make the stepfather responsible for maintaining his stepchildren.

Chapter four includes the existing practices and circumstances in Bangladesh as well as in other Muslims countries about the mentioned issue and also it states about existing laws and cases.

Chapter five shows the overall findings and recommendations which also offer suggestions for further study as well as recommendations for practices

Chapter 2

THEORETICAL FRAMEWORK

2.1 Introduction:

In this chapter the detailed description of the words used in the title will be introduced. Here, the variation of responsibilities is also discussed briefly under different circumstances. The gravity of such liability and the validity of making liable to follow such responsibilities are the issues of this chapter.

2.2 Definition of Child:

There are different ways to define a child.

According to Cambridge Dictionary-

“A boy or girl from the time of birth until he or she is an adult, or a son or daughter of any age.”⁵

However, different statutory laws of Bangladesh have defined a child in the following way-

Section 3 of the Majority Act, 1875 states that every person under the age of 18 is considered as a minor.⁶ So it can be presumed that person under age of 18 is a child according to the Majority Act, 1875 as who is not major is a child.

There is a separate Act to ensure children’s right which is Children’s Act,2013. According to this Act of 2013 child means-

“All persons up to the age of 18(eighteen) years shall be regarded as children”⁷

Here in this thesis male child under the age of eighteen will be considered as children following different statutes of Bangladesh. On the contrary, the term ‘child’ shall be used as offspring for the female child as they require to be maintained till their marriage.

2.3 Role of a Father in Children’s Life:

Fathers are essential members of the family unit who mold their kids’ lives and have a long-lasting effect on their growth. A father’s presence and leadership are priceless, providing a solid foundation for their children’s success. The following are some of the roles that fathers play, emphasizing the importance of their contributions and the responsibilities they bear-

⁵CHILD | English Meaning - Cambridge Dictionary’ <<https://dictionary.cambridge.org/dictionary/english/child>> accessed 13 December 2023.

⁶The Majority Act, 1875 | 3.Age of Majority of Persons Domiciled in Bangladesh’ <<http://bdlaws.minlaw.gov.bd/act-33/section-652.html>> accessed 13 December 2023.

⁷‘[□□□□□□□□, □□□□ | □□ □□□□□□](http://bdlaws.minlaw.gov.bd/act-1119/section-42714.html)’ <<http://bdlaws.minlaw.gov.bd/act-1119/section-42714.html>> accessed 13 December 2023.

- **The Savior:** Fathers are protective beings who prioritize family safety, teach children to look both ways, and provide comfort in an unpredictable world through their unwavering presence and careful observation.⁸
- **The Provider:** A father’s unwavering dedication to his children’s financial needs, demonstrating love, tenacity, and responsibility, is seen as a testament to diligence and a commitment to growth..⁹
- **The Instructor:** Fathers are lifelong educators, teaching values like integrity, discipline, and resilience, shaping their children’s personalities and moral compass. Their guidance, tolerance, and support contribute to their children’s personal development.¹⁰
- **The Guide:** Fathers play a crucial role in mentoring their children, providing guidance, and inspiring them to pursue their passions and achieve success through personal experiences.¹¹
- **The Friend:** Fathers foster lasting family relationships through trust, sympathy, and support, while also participating in activities like camping, catch, and hobbies.¹²
- **Builder of Trust and Strong Relationship:** Dr. Jessica Myszak explains that fathers form early attachments in children, laying the groundwork for future interpersonal relationships, trust, and reliance.¹³

2.4 Definition of Stepchildren and Stepfather:

The children of a person’s wife from her previous marriage are the stepchildren of that person. Oxford Learners’ Dictionary has set the definition of stepchildren in the following way-
 “A child that your husband or wife has from an earlier marriage or relationship with another person.”¹⁴

Cambridge Dictionary has fixed the definition of stepfather in the following way-

⁸‘Beyond Breadwinning: Embracing the 7 Essential Roles of a Dedicated Father’ (*Floweraura Blog*, 12 June 2023) <<https://www.floweraura.com/blog/beyond-breadwinning-embracing-7-essential-roles-dedicated-father>> accessed 25 December 2023.

⁹ibid.

¹⁰ibid.

¹¹ibid.

¹²ibid.

¹³‘The Role of a Father: Responsibilities and Importance | Psych Central’ <<https://psychcentral.com/lib/fathering-in-america-whats-a-dad-supposed-to-do#childhood-development>> accessed 25 December 2023.

¹⁴‘Stepchild Noun - Definition, Pictures, Pronunciation and Usage Notes | Oxford Advanced Learner’s Dictionary at OxfordLearnersDictionaries.Com’ <<https://www.oxfordlearnersdictionaries.com/definition/english/stepchild>> accessed 13 December 2023.

“a child of a previous marriage of either a husband or a wife.”¹⁵

In this paper the term ‘Step Father’ will not be extraordinarily interpreted rather the researcher has used the literal interpretation of this term. According to Cambridge Dictionary a stepfather is

“A man who is married to the mother of a child but is not the biological father.”¹⁶

Oxford Learners’ Dictionary has defined stepfather as follows –

“A man who is the husband or partner of your mother but who is not your birth father.”¹⁷

Here Oxford Learners’ dictionary’s definition of stepfather and Cambridge Dictionary’s definition of stepfather defray the same meaning in different words.

In this regard Muslim Shariah law doesn’t provide any definition of stepfather.

2.5 Definition of Responsibilities:

In this paper the ordinary meaning of the term ‘responsibility’ will be used. However, here responsibility will include not only providing maintenance and offering financial support but also giving mental support and also taking proper care of them. Cambridge Dictionary has defined it in following words-

“Something that it is your job or duty to deal with.”¹⁸

2.6 Responsibilities of A Muslim Stepfather:

The responsibilities of a Muslim stepfather may not be the same always. It may vary on situations and circumstances. The relationship between a stepfather and his stepchildren is complicated, and while Islamic law does not impose any strict obligations on stepfathers, it does promote good deeds and conduct toward their stepchildren. The probable situations are mentioned below.

2.6.1 When the Stepchildren Have Legitimate Guardian: Firstly this paper will focus on the responsibilities of a stepfather towards his step children when they have guardians

¹⁵‘STEPCHILD | English Meaning - Cambridge Dictionary’
<<https://dictionary.cambridge.org/dictionary/english/stepchild>> accessed 13 December 2023.

¹⁶‘STEPFATHER | English Meaning - Cambridge Dictionary’
<<https://dictionary.cambridge.org/dictionary/english/stepfather>> accessed 13 December 2023.

¹⁷‘Stepfather Noun - Definition, Pictures, Pronunciation and Usage Notes | Oxford Advanced American Dictionary at OxfordLearnersDictionaries.Com’
<https://www.oxfordlearnersdictionaries.com/definition/american_english/stepfather> accessed 13 December 2023.

¹⁸‘RESPONSIBILITY | English Meaning - Cambridge Dictionary’
<<https://dictionary.cambridge.org/dictionary/english/responsibility>> accessed 13 December 2023.

(e.g. their biological father or grandfather or anyone else from his biological father's side) and they are in the custody of their mother with the stepfather. The researcher will determine what responsibilities do the stepfather have in the abovementioned circumstances as the children are in his family and under his authority as well.

2.6.2 When a Stepchild Has No Such Legal Guardian from His/Her Biological Paternal Family: However, the paper also includes the stepfather's responsibilities under the circumstances when the children have none else as valid guardians except their mother. In such a circumstance though the guardian of the children is their mother, they are in the same family with their biological father and under his absolute authority. So, of course he must have some responsibilities towards them. This research will bring those issues under light.

2.7 What Does Maintain a Child Mean: Maintenance refers to the legal obligation to provide necessities for another person, such as a minor, such as housing, food, clothing, healthcare, and education. In a legal situation where the biological father chooses to marry the mother and accepts her raising the children, the stepfather assumes the role of Ameer, providing food, clothing, and shelter, assuming the responsibility of the children's mother.

2.8 Conclusion:

This chapter tries to specify a child and also tries to find out father's responsibilities towards a child so that it can help to give a structured and well framed responsibility on a stepfather which will have legal binding authority following the forthcoming verses and statements of Quran and Hadith regarding stepchildren.

Chapter 3

SARIAH LAW'S EXISTING POLICY TO HELD STEPFATHER RESPONSIBLE

3.1 Introduction:

In this chapter researcher will focus to identify the responsibilities of a stepfather according to the primary sources of Muslim law and relate those findings together to make a full sense so that the stepfather can be make liable to provide maintenance to the step children in order to ensuring the security as well as a safe future for the stepchildren who are under the authority of the stepfather.

3.2 Liabilities of Step Father under Different Sources of Muslim Law:

To make a stepfather liable to provide his stepchildren maintenance first of all it is necessary to identify what the sources of Muslim law say in this regard. The primary sources of Muslim law are: Quran, Hadith, Ijma and Qiyas.¹⁹ The findings from these sources on this issue are discussed below-

3.2.1 Qur'an: Qur'an is the first and most important source in Sharia law.²⁰ In Qur'an there is no clear saying about the responsibilities of a stepfather. However, there are several verses by which the stepfather can be made responsible to take care of his step children:

- **Custody of the children belongs to the mother and legal guardian is father:**

When a child is in someone's custody, he/she is bound to take care of the child. So, it is a binding duty for the mother to take the proper care of her child when the child is in her custody. However, it is not easy for the mother to do everything by herself to maintain a child or taking his/her absolute care. So, she needs the help of her husband in this regard. A verse of Surah An-Nisa can be referred here:

“Men are the protectors and maintainers of women because Allah has made one of them excel over the other.”²¹

¹⁹Nisar Ahmad Ganai, 'Review of MULLA'S PRINCIPLES OF MAHOMEDAN LAW (19th Ed.)' (1991) 33 Journal of the Indian Law Institute 294.

²⁰'Quran as Law Text' (*UOLLB First Class Law Notes*) <<https://uollb.com/blog/law/quran-as-law-text>> accessed 13 December 2023.

²¹'Surah An-Nisa - 1-176' (*Quran.com*) 84 <<https://quran.com/an-nisa>> accessed 13 December 2023.

(Al Qur'an, 4:34)

So, according to this verse of Qur'an it is very clear that husbands are the protectors and maintainers of their wives. That is why it is their duty to assist their wives to perform the responsibilities. In this sense the responsibilities of a wife can be considered as the responsibilities for her husband as well. As part of his responsibilities he may bring the children to school and drop them back home, take them to hospital for health issues, take them out for entertainment and other purposes and buy them necessities. Thus a step father can be responsible to maintain his step children in the following circumstances.

- **Biological father passes away and none exists as legal guardians of the children:**

In this scenario the step father has to perform the same responsibilities mentioned above as in such circumstances, the custody of the children will continue with the mother.

In addition, Allah says:

“Give the orphans their property, and do not replace the good with the bad, and do not eat up their property [by mingling it] with your own property, for that is indeed a great sin.”²²

(Al Qur'an, 4:2)

The biological father of the orphan children or any male member of his family does not exist to be the guardian of the children but left any property over which the children have legal right, the step father should deal with the property and use that for the maintenance of those children and of course must not use it for his own interest.

Again in verse 10 of Surah An-Nisa it is prescribed that:

“Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire. And they will be burned in a Blaze.”²³

(Al Qur'an, 4:10)

In addition, in Surah Al-Isra Allah declares:

²²Surah An-Nisa - 1-176' (n 21).

²³ibid 78.

“And come not near to the orphan’s property except to improve it, until he attains the age of full strength. And fulfil (every) covenant. Verily! The covenant, will be questioned about.”²⁴

(Al Qur’an, 17:34)

It is clear from the verse that orphans’ property can’t be taken while taking care of it but improvement can be done to the property. This creates a clear indication on others that guardianship doesn’t come with taking care of the child. Child’s property can be taken care of while he is in your custody

Furthermore, in Surah Al-Baqarah Allah has warned not to mix the affairs of the orphans with theirs and so has said in the Qur’an-
“To this world and the Hereafter. And they ask you about orphans. Say,“The best thing to do is what is for their good.”²⁵

(Al Qur’an, 2:220)

Through the verses it is clear that Allah has not created any obligation to perform responsibilities towards a stepchild if it is for welfare of that child. However, in case there is no guardian to bear the cost of maintaining the children, someone has to bear it. Following Qur’anic verses a step father can not be made bound to bear such cost. However, some Qur’anic verses ensure the right of such orphan children who have lost their father and some verses encourage to maintain such orphans. Some of those are mentioned bellow.

In Qur’an instructed to behave well and not to be harsh with the orphans.
“... and do good to parents, kinsfolk, orphans, Al-Masakin (the poor), the neighbor who is near of kin, the neighbor who is a stranger, the companion by your side, the wayfarer (you meet), and those (slaves) whom your right hands possess.”²⁶

(Al Qur’an, 4:36)

“Worship none but Allah; treat with kindness your parents and kindred, and orphans and those in need; speak fair to the people; be steadfast in prayer; and practice regular charity.”²⁷

(Al Qur’an, 2:83)

²⁴Surah Al-Isra - 1-111’ (*Quran.com*) 285 <<https://quran.com/al-isra>> accessed 13 December 2023.

²⁵Surah Al-Baqarah - 1-286’ (*Quran.com*) 35 <<https://quran.com/al-baqarah>> accessed 13 December 2023.

²⁶Surah An-Nisa - 1-176’ (n 21) 84.

²⁷Surah Al-Baqarah - 1-286’ (n 25) 12.

“So, do not be harsh with the orphan”²⁸

(Al Qur’an, 93:9)

This verse gives guidelines about the appropriate behavior that should be done to the child who has no father. The same goes with stepfather that he should behave well with his Stepchildren who has no father as well as well with the children who have their own father but not willing to perform as legal guardian as Islam doesn’t support to misbehave with anyone.

Those who treat the orphans rudely, doubting their faith Allah declares in Qur’an that:

“Have you seen the one who denies the Recompense?

For that is the one who drives away the orphan and does not encourage the feeding of the poor.”²⁹

(Al Qur’an, 107:1-3)

This verse is an indication for all as well as for stepfather to provide orphan Children with their first basic need which is food.

Again, Allah promises to reward those who spend his wealth for the welfare of the orphans stating in Qur’an.

“It is not righteousness that ye turn your faces to the East and the West; but righteous is he who believeth in Allah and the Last Day and the angels and the Scripture and the prophets; and giveth the wealth, for love of Him, to kinsfolk and to orphans and the needy and the wayfarer and to those who ask, and to set slaves free; and observe proper worship and pay the poor-due.”³⁰

(Al Qur’an, 2:177)

Thus, in different ways Allah ensures and promotes the rights of the orphans and also encourages to take their responsibilities in Qur’an. Quran has emphasized a lot on the children who lost their father but hasn’t specifically tell anything about the one who doesn’t lost their father but their father is not willing to carry the responsibilities. In Quran there are multiple repetitions on the behavior towards Orphan.

²⁸Surah Ad-Duhaa - 1-11’ (*Quran.com*) 596 <<https://quran.com/ad-duhaa>> accessed 13 December 2023.

²⁹Surah Al-Ma’un - 1-7’ (*Quran.com*) 602 <<https://quran.com/al-maun>> accessed 13 December 2023.

³⁰Surah Al-Baqarah - 1-286’ (n 25) 27.

3.2.1 Hadith: Hadith is the second most reliable source in Muslim law. The teaching of Prophet Muhammad (Sm) is called Hadith. It includes all his words, actions and the things he approved are included as Hadith.³¹

Prophet (Sm) directed to consider the step children as own children by doing the same in his life. After the death of Abdullah bin Abdul-Asad when Prophet (Sm) proposed to marry his widow wife, Umm Salama, she denied on the ground that she had four children to look after. Hearing this Prophet (Sm) replied that her children would be considered as his own.³² By doing this prophet has set an example and gave a message to all the Muslims to treat their step children as their own.

Stepchildren especially who are orphan have been emphasized more to be taken care of. There is a Hadith regarding orphan who haven't their biological father. According to the hadith, the Holy Prophet (PBUH) stated that it might even be encouraged:

“I and the one who looks after an orphan will be like this in Paradise, “showing his middle and index fingers and separating them.”³³

(Bukhari 5304)

In addition, the stepfather has a tie of kinship with his stepchildren. So, it is responsibility to take care of them.

“No one who severs ties of kinship will enter Paradise.”³⁴

(Sahih Bukhari: 5984)

(Sahih Muslim: 6200)

However, after the death of the biological father the children become orphans. There is strong evidence in both deeds and words in the Hadith to establish and promote the rights of orphans.

Before marrying Prophet (Sm), Umm Salama was married to Abdullah bin Abdul-Asad and had four children. After the death of Abdullah bin Abdul-Asad Prophet (Sm) married Umm Salama and took the responsibility of the four

³¹John Burton, ‘An Introduction to the Hadith’, *An Introduction to the Hadith* (Edinburgh University Press 2022) <<https://www.degruyter.com/document/doi/10.1515/9781474465564/html>> accessed 13 December 2023.

³²Abdul Wahid Hamid, *Companions of the Prophet: V. I* (2r.e. edition, MELS 1995).

³³‘Divorce - Sunnah.Com - Sayings and Teachings of Prophet Muhammad (صلوات الله عليه)’, <<https://sunnah.com/bukhari/68>> accessed 13 December 2023.

³⁴‘Good Manners and Form (Al-Adab) - Sunnah.Com - Sayings and Teachings of Prophet Muhammad (صلوات الله عليه)’, <<https://sunnah.com/bukhari/78>> accessed 13 December 2023; Abdul Hameed Siddiqui, *Sahih Muslim* (LUSHENA BOOKS Incorporated 2002) 1539.

orphan children. Umar, the step son of the Prophet (Sm) explained how affectionately the Prophet (Sm) treated him and built his food habit.³⁵ This example is enough to establish that how a relationship between a stepfather and a stepchild should be and how affectionately the stepfather should take care of his stepchildren.

Even a step father should treat the stepchildren well for being orphans. The Hadith regarding the rights and the way of treatment to the orphans are:

Prophet (Sm) said that:

“Whoever takes in an orphan among the Muslims to raise, to feed him and give him drink, Allah admits him into Paradise without a doubt, unless he has done a sin for which he is not forgiven.”³⁶

(Jami at Tirmidhi: 1917)

Again, he said,

“One who looks after the orphan whether he is his relative or not, I and he would be together in Paradise like this, and Malik (explained it) with the gesture by drawing his index finger and middle finger close together.”³⁷

(Sahih Bukhari: 6005)

(Sahih Muslim: 7108)

Prophet (Sm) has announced for gifts so that Men take the responsibilities of an orphan child and for this they can be their stepfather by way of marrying their biological mother.

It is narrated on the authority of Abu Huraira that Prophet (Sm) advised to avoid the seven noxious things which includes consuming the property of an orphan.³⁸

(Sahih Muslim: 161)

Both Quran and Hadith has encouraged to take care of the orphans by any means but nothing is told in Quran and Hadith about the children whose father is divorced

³⁵Hamid (n 32).

³⁶Chapters on Righteousness And Maintaining Good Relations With Relatives - Sunnah.Com - Sayings and Teachings of Prophet Muhammad (صلی اللہ علیہ وسلم) <<https://sunnah.com/tirmidhi/27>> accessed 13 December 2023.

³⁷Good Manners and Form (Al-Adab) - Sunnah.Com - Sayings and Teachings of Prophet Muhammad (صلی اللہ علیہ وسلم) (n 29); Siddiqui (n 29) 1773.

³⁸The Book of Faith - Sunnah.Com - Sayings and Teachings of Prophet Muhammad (صلی اللہ علیہ وسلم) <<https://sunnah.com/muslim/1>> accessed 20 December 2023.

with the mother of the child and is not willing to fulfill his father's duty. Both the sources haven't given any guidance about how they should be treated but Muslim Shariah law always prioritize children's welfare. Children can't be sufferers for their parents' relationship with each other. So the thesis will give the guidelines about the responsibilities of a stepfather considering both situations as same in regard of children.

3.2.2 Ijma: Ijma also plays a very important role as a source of Muslim law. It is the third source which is exercised when people fail to get solution from upper two sources. Universal and irrefutable agreement of the whole Muslim community or decision taken by some Muslim scholars is called ijma.

In the issue of maintaining the stepchildren by the stepfather Fataawa al-Lajnah ad-Daa'imah (17/367) has said that the husband needs to understand that being kind to his wife includes being kind to her children as well. The stepfather and stepchildren both should respect each other and treat each other with kind. Allah and the Prophet (Sm) instructed each Muslim to be kind to the fellow Muslims. However, though it is not obligatory for the stepfather to maintain the stepchildren, he may maintain the stepchildren and in response the stepchildren may assist him. Thus harmony can be created in the family which is the goal of Islam.³⁹

Again, according to the Standing Committee for Issuing Fatwas (25/296) as the stepchildren are living in the family of the stepfather, they have family ties among them and so the stepfather is responsible to maintain his stepchildren.⁴⁰

3.2.3 Qiyas: This is the last stage in which using the deductive power is emphasized. In absence of clear saying from the above three sources qiyasis needed to be exercised to solve any issue.⁴¹

Though we have found some passive saying about the responsibilities of a stepfather in the upper three sources, we are seeking for a better outcome here.

According to Mufti Waseem Khan in absence of the biological father of the children, the stepfather would be assumed as their guardian who has to take their responsibilities. As by marrying their mother he has decided to accept her with her

³⁹'Rights and Duties of the Mother's Husband and the Stepdaughter - Islam Question & Answer' <<https://islamqa.info/en/answers/104805/rights-and-duties-of-the-mothers-husband-and-the-stepdaughter>> accessed 13 December 2023.

⁴⁰ibid.

⁴¹'Qiyas | Sharia, Sunnah, Jurisprudence | Britannica' <<https://www.britannica.com/topic/qiyas>> accessed 13 December 2023.

children and the children are under his authority, he needs to look after them. According to this scholar the stepfather has to maintain them providing them food, clothing and shelter. And, he has to maintain them until the male child reaches at the age of getting employed and till the marriage of the female child.⁴²

Al-Khateeb Ash-Shirbeeni a scholar from the Shaafi'i school mentions in Tuhfatul-Muhtaj that living with the stepfather is okay for a stepdaughter as he is a mahram for her declared in Qur'an. This indicates that in absence of any legal guardian from the biological paternal family of the child and even in absence of the mother a stepdaughter is allowed to stay with her stepfather.⁴³

3.3 Shortcomings of Sharia Law: No sources of Islamic law make the stepfather liable to take care of his stepchildren strictly or specifically. If the biological father becomes unable (e.g. for becoming bankrupted or passed away) or unwilling to pay the maintenance of his children, what will be the consequences are not clarified in sharia law. Though Prophet (Sm) has set an example in this regard, no further interpretation or elaboration is made by Quran or Hadith or ijma to make it obligatory for the stepfather to maintain his stepchildren. Consequently in such circumstances the future of the stepchildren becomes unsecured, uncertain and unsafe as well in some of the cases where he or she lives his or her mother along with stepfather where his or her biological mother is under the authority of the stepfather.

3.4 Reason for Making the Stepfather Liable: Though it is not mandatory for a stepfather to maintain his stepchildren by Qur'anic verses, he can not deny his social responsibilities as the children are under his authority. Besides staying with the mother in family is necessary for a child for his/her natural upbringing and mental support. Usually the custody of the child goes to its mother and after marriage the husband becomes her guardian and as a consequence the responsibilities of her child passively go to the husband who is the stepfather of the child. In addition, if the stepchild is a girl then of course it will be better and safe for her to stay under the authority of her stepfather even if the mother of the child passes away because the stepfather is a mahram for her. In Qur'an Allah says-

⁴²IslamQA, 'Responsibilities towards Stepchildren.' (*IslamQA*, 10 March 2021) <<https://islamqa.org/hanafi/darululoomtt/150327/responsibilities-towards-stepchildren/>> accessed 13 December 2023.

⁴³'An Adult Daughter May Stay with Her Divorced Mother Who Remarried' <<https://www.islamweb.net/en/fatwa/308878/>> accessed 20 December 2023.

“Prohibited to you [for marriage] are your mothers... and your step-daughters under your guardianship [born] of your wives unto whom you have gone in.”⁴⁴

(Al Qur’an, 4:23)

Considering all these a stepfather shall be made responsible to maintain his stepchildren.

3.5 Conclusion: To conclude it can be said that sharia law doesn’t make the stepfather directly responsible to maintain the stepchildren but there is a lot of supportive statements to make them responsible. So, statutory law should be formed to make this effective.

⁴⁴‘Surah An-Nisa - 1-176’ (n 21) 81.

Chapter 4

LAWS, CASES, AND PRACTICE IN DIFFERENT COUNTRIES

4.1 Introduction: As there is no binding rule in Islam to make a stepfather responsible for maintaining his stepchildren, the practice in this issue is not the same everywhere. However, some scholars have expressed their opinion which is accepted and followed in some countries. In addition, in different countries where problems arose regarding this issue the judiciary of such countries has used their prudence to provide a proper solution. To deal with this issue always the best interest of the child prevails first. The court always tries to ensure the children's safety. It is discussed below how and when child goes under the custody of the biological mother and the trend of different countries. Here the discussion of the mother's custody is important because when a child goes in the custody of his/her biological mother only then he/she is in the authority of the stepfather.

4.2 Practice in Bangladesh:

Since custodian mothers are not their children's legal guardians, these socio-legal dynamics can cause serious problems for the children who live with their mother after she remarries. According to White and Booth the basic reason of problems in the second marriage is the children of the mother from her first marriage.⁴⁵ In Bangladeshi society, there is also a little social pressure on the stepfather to demonstrate that he is a good father to the stepchildren. In the article of Tanzania Choudhury, Sumena Sultana and Suzanne Clisby, 'Conjugal Relations and Stepchildren's Well-Being: Exploring the Experiences of Remarried Women in Bangladesh' all of the participants—aside from Kochi and Chayarun—told stories about Firoza described how her second husbands became aggressive towards her children over time, beating them without cause, and how they were unfriendly towards their stepchildren, refusing to provide even basic necessities like food, clothes, or education. When they reached school age, he had no intention of sending them to school, would never purchase a gift for them, or education, as Firoza clarified: Over time, he turned hostile toward my kids and began beating

⁴⁵Nurul Alam, Sajal K Saha and Jeroen K Van Ginneken, 'Determinants of Divorce in a Traditional Muslim Community in Bangladesh' (2000) 3 Demographic Research 5.

them up for no apparent reason. He never considered them as his children, so he would never buy them a present, take them to school when they were old enough, or show them empathy.⁴⁶

According to the mothers in this study, stepdaughters between the ages of 11 and 15 were the most at risk. Poppy's story provided an example of child abuse in this particular setting. Her teenage daughter was beaten with a stick by her second husband when she was gone, and on one occasion, he hit her as hard as he could before slamming her head against the wall. No matter how hard their kids tried, Rubina, Meena, and Poppy told that it never seemed to be enough for their husbands, and even though they made obvious contributions, they might not get enough food. As reported by Rubina:

“My son began working as a bus attendant when he was twelve years old because his stepfather constantly reprimanded him. Once he starts working, he gives him 2000 Tk. Every month. Nevertheless, my spouse never stops griping about how much food he eats, how he eats like a dog, etc. My spouse occasionally loses his temper with my son to the point where he grabs his dinner plate and discards it.”⁴⁷

Meena concluded, “Remarriage can never be a solution for children, indicating that for these women, it did not result in increased security or happiness. My second husband did not have any time for them and he did not spend even a single cent for the marriage of my daughter [his stepdaughter]. One can never be a biological father and a stepfather.”⁴⁸

4.3 Practice in Pakistan: In Pakistan children's perspectives on stepfather roles vary, with gender roles impacting capacity. Children generally give positive feedback about their stepfather especially in joint families, indicating quality relationships.⁴⁹ Pakistan has an Act named **The Guardian and Wards Act, 1890** but in this Act nothing specifically mentioned about the guardianship of the stepparents.⁵⁰ In Pakistan, sharia law determines child custody based on the child's best interest. Minor males are compared to their biological mother or stepmother, with biological mother custody often preferred, even if the mother remarries.⁵¹

⁴⁶Choudhury, Sultana and Clisby (n 1).

⁴⁷ibid.

⁴⁸ibid.

⁴⁹Sakina Riaz, ‘CHILDREN PERCEPTION ON SECOND MARRIAGES AND STEPFATHER RELATIONSHIPS: EVIDENCE FROM KARACHI, PAKISTAN’ (2022) 1 Journal of Research in Social Development and Sustainability 47.

⁵⁰‘The Guardian and Wards Act 1890 | PDF | Legal Guardian | Child Custody’ (*Scribd*) <<https://www.scribd.com/document/100052449/The-Guardian-and-Wards-Act-1890>> accessed 20 December 2023.

⁵¹‘Pljlawsite’ <<http://www.pljlawsite.com/html/gawa25.htm>> accessed 20 December 2023.

The stepfather's attitude and status significantly impact a child's custody, necessitating a codified duty to ensure their welfare.

To ensure the welfare of the child it should be codified what the stepfather's duty should be. In Pakistan if the mother remarries generally she becomes disqualified for being the custodian.⁵²The mother may lose her custodian rights if she marries a stranger, but if she marries the child's mahram, she can still have custody, especially if the child stays with stepfather's siblings.⁵³A stepfather's responsibilities should include keeping his stepdaughter separate from his brothers and sons from his previous marriage, as they are not mahram for her.

In *Muhammad Bashir v Ghulam Fatima* and *Amar Elahi v Rashida Akhtar*, it is discovered by the Lahore High Court that mother's disqualification of being custodian for remarriage is not mentioned in the Qur'an.⁵⁴Lastly, on October 2022 in *Raja Muhammad Owais v. Nazia Jabeen* case Justice Ayesha A. Malik of the Supreme Court of Pakistan said remarriage can not be the only thing of the disqualification of claiming custody.⁵⁵

When the biological father denies to take the custody of the child, it goes to the mother who had remarried even though the paternal grandmother of the child claimed the custody Court refused in *Mst. Hifsa Naseer v ADJ Gujar Khan* case.⁵⁶

In some cases in spite of the presence of the biological father the mother of the child has to take all the responsibilities. For example, when the father becomes bankrupted or for some reasons fails to pay the maintenance of the child. In *Amar Ilahi v Rashida Akhtar*, the Lahore High Court decided that the father who fails to pay the maintenance of the child loses his right to custody as well as guardianship.⁵⁷

4.4 Practice in Indonesia: In Indonesia, women are considered better caregivers due to Muslim law and the Child Protection Law, 2002. Financial stability does not make a father

⁵²Dinshah Fardunji Mulla, *D. F. Mulla's Principles of Islamic Law (Muhammadan Law): With 'Survey of Case-Law' from the Superior Courts* (Al-Qanoon Publishers 2021).

⁵³'Law on the Custody of Children in Pakistan: Past, Present and Future | SAHSOL' <<https://sahsol.lums.edu.pk/node/12832>> accessed 20 December 2023.

⁵⁴*Muhammad Bashir v Ghulam Fatima* (1953) Lahore 73 PLD (Lahore High Court); *Amar Ilahi v Rashida Akhtar* (1955) Lahore 412 PLD (Lahore High Court).

⁵⁵Nimra Mansoor, 'RAJA MUHAMMAD OWAIS V. MST. NAZIA JABEEN AND OTHERS'.

⁵⁶*Mst. Hifsa Naseer v ADJ Gujar Khan* (n 49).

⁵⁷*Amar Ilahi v Rashida Akhtar* (n 56).

eligible for child custodian. In December 2007, the Supreme Court declared a father as custodian if the mother's negligence or incapacity was proven.⁵⁸

Indonesia's laws discriminate between biological and stepchildren, leading to the concept of 'step child adoption'. This legal recognition aims to strengthen family bonds and provide mental support to stepchildren, despite not being recognized in Islam or Indonesian law.⁵⁹

4.5 Practice in USA: In the judgment of a case between MILO LAZAREVIC, and JAN FOGELQUIST the Supreme Court, New York County had allowed to move a 6½-year-old child, Adrian Fogelquist Lazarevic from America to Saudi Arabia with his mother and stepfather. Here, the Court refused the petition of the biological father of the child and declared the mother as custodian of the child. So, it is very clear that the Court did not consider the stepfather as a threat rather ensuring the child's welfare and betterment Court declared such decision.⁶⁰ In USA children feel stronger bonding with their stepfathers than the divorced biological father.⁶¹

4.6 Rules in Australia: Though following the general rule in Australia only the biological parents are responsible to maintain their children and stepparents have no responsibility to the stepchildren. However, the Family Court of Australia may order the stepparents to pay the expenses of their stepchildren if it thinks fit.

4.7 Conclusion:

In most of the Muslim Countries children's custody go to it's mother and it doesn't matter whether it's mother is living with the person whom she has remarried or not. So ultimately in this regard a child goes under the authority of a stepfather. This practice also can be seen in developed countries and non-Muslim countries. But it is seen in the chapter that child's right under its stepfather is not protected by any specific provisions of law in any country. So in this regard being a developing country Bangladesh can set out a good example by introducing a

⁵⁸'Step Father Adoption - Child Custody in a Divorce Case in Indonesia' <<https://www.stepfatheradoption.com/blogs/child-custody-in-a-divorce-case-in-indonesia>> accessed 20 December 2023.

⁵⁹AsepWijaya, 'Wijaya & Co. Full Service Indonesian Law Firm | Indonesian Legal Services | Indonesian Lawyers | Law Firm in Indonesia - Stepchild Adoption in Indonesia Is Your Family's Best Hope: Here's What You and Your Spouse Can Do to Keep Your Happiness Alive' <<https://www.wijayaco.com/library/stepchild-adoption-in-indonesia-is-your-family-s-best-hope-here-s-what-you-and-your-spouse-can-do-to-keep-your-happiness-alive>> accessed 20 December 2023.

⁶⁰Lazarevic v. Fogelquist, 175 Misc. 2d 343 | Casetext Search + Citator' <<https://casetext.com/case/lazarevic-v-fogelquist/>>accessed 20 December 2023.

⁶¹Nawaf Al Faryan, 'Exploration of Child Protection in Kingdom of Saudi Arabia: Policy, Practice and Knowledge' (La Trobe University Bundoora, VIC, Australia 2014) 111, 159.

new provisions in the Muslim Family Law Ordinance 1961 regarding securing stepfather's liabilities. So Child's right to a secure and healthy life by implementing certain responsibilities legally and morally will be the ultimate goal of the following chapter.

Chapter 5

RECOMMENDATION AND CONCLUSION

5.1 Introduction:

The chapter offers recommendations for the policy makers to incorporate some policies which can legally create obligation for stepfather in specific matters like security, food, clothes, healthy environment, proper education, emotional availability and to the rights and liabilities between stepfather and stepchildren to fill the gap of a father which will ensure the proper upbringing as a good human being of a child. This chapter also tries to give some instructions to a stepfather that how he should behave with a stepchild so that their mutual equation can be enough good to make the child comfortable with him.

5.2 Findings:

This study shows a significant vacancy in the Shariah law which is the specification and prioritization of the role of stepfather in the life of a stepchild who has no biological father either because of his father's death or the reason of his father's unwillingness to take the responsibilities. Children are given great importance in the Shariah law. This study has pictured Quran's and Hadith's verses and statements which are regarding orphan children. According to the verses and statements it is quite evident that people are encouraged in Muslim sharia law to take care of the orphan children and their property. This study shows father's obligation towards his children. In the study we can see that fathers are the protector, mentor, supply chain, emotional relationship and trust builder. He is the first hero of his child's life. It is seen that children who are deprived of their father's love or affection suffer from depression or are more prone to violence.

The study also highlights that although there are many affirmative statements in Sharia law that hold the stepfather accountable, the stepfather is not directly responsible for providing for the stepchildren. In the study it is seen that there are many supportive statements about doing things which are needed for the welfare of the orphans and Allah and His prophet has encouraged human to do good things for children whose fathers are not alive.

It is seen that in Bangladesh stepchildren are not treated well by their stepfather, even their daily basic requirements are overlooked by their stepfather and the mothers have complained about it.

Father along with a mother teach a child to behave well outside the world and teach certain manners which we have seen the practice of Prophet (Sm) included in the study. In the previous chapters we have seen that in the Muslim Countries child's custody are often given to the mother irrespective of their remarriage. It's the responsibility of the custodian to ensure physical and mental well-being of the child and it is already established by the study the mother that mother can't ensure this alone as she is under stepfather's custody. The rule of Muslim law is letting stepchildren to stay with its stepfather but no clear provision is there which bears any legal obligation for stepfather. Staying with someone means consider him as a family member. All the relationships have duties and liabilities which are stated clearly in Quran and Hadith. So in this matter stepfather's should be made responsible legally by implementing certain laws and rules.

5.3 Recommendations:

From the previous chapter it is already established by real life examples in Bangladesh that there is lack of social pressure on stepfather to do their duty towards stepchildren. I recommend some changes in Muslim Family Law Ordinance 1961 to cope up with the situations as making a separate law is a lengthy process. Some of the provisions which can be added as provisions:

- i. Incorporate specific provisions in Family Law Ordinance to specify stepfather's responsibilities which will have binding authority.
- ii. Incorporate provisions with a view to ensuring five basic needs of human within the family and of course under the authority of stepfather.
- iii. Marriage is a contract between two parties. So remarriage should be designed as such a special kind of marriage where the responsibilities of a child from previous marriage should be bestowed on stepfather legally as a term of consideration so that marriage after divorce or death of previous husband doesn't stop any women to rethink about second marriage.
- iv. Stepfather may be appointed as legal guardian in some cases where there is none in father's family to be appointed as legal guardian following the policy of 'Best interest of the child'.
- v. Only law making won't be enough in this regard, the law should be implemented fully by creating awareness.
- vi. People should be made aware of this law by law awareness campaigns which can be initiated by fresh law students, law graduates, academicians, judges, lawyers, NGOs.

5.4 Conclusion:

Islam has always encouraged remarriage of widow. Sometimes women find it hard to make the decision of remarriage when they have children in their custody from previous marriage as in stepchildren's needed is neglected by stepfather and also sometimes they are exploited by their stepfather. So in order to change the behavior of stepfather's towards stepchild certain provisions should be introduced in the Muslim law.

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