

## Protecting the child's relationship with parents amid family disintegration: Visitation Rights – A legal and judicial approach

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**Abstract**---Visitation is among the most important rights that preserve a child's connection with their family environment. It helps maintain the child's identity and meet emotional and psychological needs that are essential for healthy development. To ensure this right, the legislator has established several safeguards. Chief among these is the requirement to consider the best interest of the child. The judiciary is entrusted with upholding and enforcing this interest within its broad discretionary powers. Following the divorce of parents, the child is often required to live with one of them due to the dissolution of the marital bond. If custody is granted to one parent, the other retains the right to visit the child. One of the essential aspects of the child's well-being is the continued connection with the non-custodial parent. Proper care is not complete without a reasonable degree of visitation and the involvement of both parents in the child's upbringing.

**Keywords**---visitation, best interest of the child, supervision, monitoring.

### Introduction

Family disintegration often leads to a reduction in parental supervision. Ongoing conflicts and disputes within the family can deprive the child of a sense of security. The child may become emotionally detached from the family atmosphere, which transforms into a source of psychological stress. In some cases, the child may physically distance themselves, yet they remain psychologically affected. This

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internal tension may result in behavioral issues, including aggression or rejection of social norms and values.<sup>1</sup>

Following the divorce of the parents, the child is required to live with one of them due to the dissolution of the marital bond. If custody is granted to one parent, the other retains the right to visit the child. One of the most important emotional needs is for the child to maintain a relationship with the non-custodial parent. This care cannot be considered complete without an adequate level of visitation and the involvement of both parents in the child's upbringing.<sup>2</sup> When the court grants custody to one of the parents, it must also rule on the right of visitation in favor of the other. Just as the child needs a mother to care for, raise, and support them, the child also needs to see and know their father, and to experience his parental authority.<sup>3</sup> It is a right for the non-custodial parent, just as it is a right for the child to enjoy seeing his non-custodial father.<sup>4</sup> Therefore, every effort is made to compensate the child for what he has lost due to the separation from his parents, by organizing visitation rights, in a way that preserves the parents' rights and the child's safety.<sup>5</sup> This is what will happen. This prompts us to raise the following question: How effective are legislative texts in ensuring... right foster child on the visit? In Algerian legislation?

To answer the question, we divided our study into: The following demands:

The requirement the first: Rulings right Visit.

Branch the first: concept Visit.

Branch the second: importance right Visit

The requirement the second: to organize right Visit.

Branch the first: times Visit.

Branch the second: place Visit.

The third requirement: disputes Related to organizing visitation rights

## **The requirement the first: Rulings right Visit**

### **Branch the first: concept Visit**

**1. Definition Right of visitation language:** Visitation comes from the verb "visit": he visited him - he visits him - a visit - a visit - a visit - and he visited him with the intention of meeting him, so he is a visitor.<sup>6</sup> And the visit is a source of the lie, meaning inclination or desire towards one side and turning away from another (the letters zay, waw, and ra) with one root that indicates inclination and turning away, for from here came the word "visitor" because whoever visits someone has inclined towards him and turned away from another.<sup>7</sup> It means that

<sup>1</sup> Charitable Khalil Al-Jumaili, previous reference, p. 72

<sup>2</sup> Muhammad Aliwi Nasser, previous reference, p. 220

<sup>3</sup> Touati Bin Touati, Al-Mubasit in Royal Jurisprudence with Evidence, Volume Four, (no date), Dar Al-Wa'i, Algeria, 2009 AD, p. 887

<sup>4</sup> By Hussein bin Sheikh Ath Malouya, A Treatise on Divorce (A Comparative Legal, Jurisprudential and Judicial Study), (No. 1), Dar Houma, Algeria 2013, p. 228

<sup>5</sup> Ahmed Bakhit Al-Ghazali, Abdul Halim Muhammad Mansour Ali, Family Provisions in Islamic Jurisprudence and Practice in Egypt and the Gulf Cooperation Council Countries, (no date), Dar Al-Fikr Al-Jami'i, Alexandria, 2009 AD, p. 464

<sup>6</sup> beauty Al-Din Muhammad ibn Makram Abu al-Fadl Ibn Manzur, Lisan al-Arab, Volume 4, (no date), Dar Sadir, Lebanon, 1968 AD, p. 335

<sup>7</sup> Ahmed son Faris bin Zakariya Abu Al-Hussein: Dictionary of Language Standards, Vol. 2, (n.d.), Dar Al-Fikr, (n.d.), 1979 AD, p. 357

one person comes to another to see him and stay with him for a certain period of time, or to receive a visitor.<sup>8</sup>

**2. Definition The right to visit in terms:** But The right to visitation, in its technical sense, is the person who has the child in custody enabling the person with the right to visit to see him, sit with him, and talk to him.<sup>9</sup> It is a vision of the child in custody and reviewing his living, educational, health and moral conditions in the same place where the child in custody is located<sup>10</sup> And looking into the affairs of the child in custody, his upbringing and education, and taking into account his circumstances, guiding him and examining him, with the mother or guardian exercising full guardianship over his child, to strengthen the bonds of sympathy and family harmony and kinship ties, and to rid the child in custody by means of this follow-up of the impurities that cling to his psyche<sup>11</sup>.

### **3. Definition of the right to visitation according to the law:**

Article 64 of the Algerian Family Code states that “when the judge rules on the award of custody, he must also rule on the right of visitation.”

From the text of the article, we conclude that the Algerian legislator has explicitly recognized the right of visitation, and has obligated the judge, when ruling on the award of custody, to rule on the right of visitation on his own initiative, that is, even if the parties did not request it, knowing that there is a legal rule stating that the judge cannot rule on what the parties did not request, and the legislator in this article has excluded the judge from this rule.<sup>12</sup> The style of the article came as an obligation.<sup>13</sup> Because custody and what results from it are public order<sup>14</sup> The last sentence ordered the judge to grant the right to visitation even if the person concerned neglected it, and that the ruling would be flawed if it declared the granting of custody without stating the right to visitation, and the logic of that is not in the interest of others as much as it is dedicated to the interest of the child in custody who should not be cut off from his family at all<sup>15</sup>

### **Branch the second: importance right Visit**

That in visit The foster child importance adult, It is right Scheduled Legally And legally For connection the womb between The little one and parenthood as that it From the heart an interest The foster child so that for him need no maybe Dam it unless via visit parenthood-or from for him Right in that-It is for him and it is

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<sup>8</sup> Rushdie Shahata Abu Zaid, Conditions for Proving the Right to Custody in Islamic Jurisprudence and Personal Status Law (A Comparative Study), 1st ed., Al-Wafa Legal Library, Alexandria, 2012 AD, p. 74

<sup>9</sup> Same reference, p.31

<sup>10</sup> slaveDear Saad, Marriage and Divorce in Algerian Family Law, previous reference, p. 297

<sup>11</sup> Muhammad Aliwi Nasser, previous reference, p 191

<sup>12</sup> SaadFadil, previous reference, p. 297

<sup>13</sup> Badis Diaby, Antiquities Dissolution of the marital bond (compensation - alimony - waiting period - custody - property) studySupported by judicial reasoning, (n.d.), Dar Al-Huda, Algeria, 2008 AD, p. 90

<sup>14</sup> NouraMansouri, Divorce and Khula According to Islamic Law and Sharia, 1st ed., Dar Al-Huda, Ain Mlila, Algeria, 2012

<sup>15</sup> Badis Diaby, previous reference, p. 159

revealed This interest in Two things They represent Basically Objectives The intended Achieve it from Visit, They are:

That in Empowerment Owners Right in Visit From him a guarantee For supervision on The little one And his supervision And his care Given Because of his weakness And his need to from He manages his affairs And he looks His affairs from not sitter, because Singling out The last In small no achieves care Complete for him And so The visit tool To take care of the child.this what Confirmed it The court Supreme in Justifications One Its decisions By saying:«...because the goal from Visit he monitoring The foster child At the incubator

That right Visit And the vision tool To strengthen Relationships and links Family And empowerment The foster child from all compassion And care who he Yesterday need To them It is)any Visit(no Standing when Censorship The little one And take over His affairs but rather In it like that investigation For a connection And affection And standing on His conditions character, and thus It is Contribute in formation a personality The foster child And documentation His relationship With his parents like that The order For relatives The foster child who Includes Visit survival Association kinship And affection And the connection Between them And between The little one And I stressed The court Supreme on this side from Goals Visit in resolution she has, where came In it:«...that Visit It is not vision The foster child Only but rather she Follow up on his affairs And standing on His affairs It is necessary that Consolidation relationship Visitor In custody And strengthen it especially if He was Visitor he father same or the mom if The nursery was For others.

That importance Visit Made The legislator decides she has protection from type private And that By including it she has within Issues that It is permissible in it asylum to judiciary Urgent, To get on management temporary In it to very the chapter in pedigree Right, This Frankly The material<sup>57</sup>Duplicate Q.family.like that make The legislator Visit first right He rules To him judge directly After Its chain of transmission Nursery To those who deserve it, And it will be The ruling Automatically and without waiting Request it from opponents, but rather that The ruling Related In the nursery He is defective if what I neglected judge In it a report Visit, because the visit no Related With edges The dispute The foster child Only but rather she right general as that it from core an interest The foster child that The judge is investigating it always when Its release Rulings Related In the nursery, And he is what I decided it The court Supreme:"right visit boys The children in custody from subsidiary rights on divorce same And the chapter In it from essentials in the topic-judiciary To him Don to request not exceed border conflict .

### **The requirement the second: to organize right Visit.**

#### **Branch the first: times Visit**

sheThe duration of the visit that the beneficiary spends on. The principle is that the times for seeing and visiting the child in custody are a matter based on flexibility and expansion between the parties concerned in a way that achieves the

best interest of the child.<sup>16</sup>, for beingA consensual matter in which the parties agree to specify a time and place.<sup>17</sup>and asIt is not specified in the law. It happensThe matter is in the hands of the judge, who has been empowered by the legislator to decide on all matters related to visitation. What has been settled by the Algerian judiciary is that the right to visitation is granted on weekly and seasonal holidays, holidays, and religious and national occasions.<sup>18</sup>And it is doneVisitation is usually once a week for parents and less than that for others<sup>19</sup>, in his reportThe father is entitled to visitation periodically, at least once a week.<sup>20</sup>AM to 4 PM<sup>21</sup>thisWhat the Supreme Court went to in its decision: "When the provisions of Article 64 of the Family Law require the judge, when he decides to award custody, to rule on visitation, then it is necessary that the arrangement of this right be a flexible arrangement according to what the condition of the children requires. The father has the right to see his children at least once a week to take care of what they need and to sympathize with them. Therefore, the decision to arrange the father's right to visit twice a month would have violated the law.",And when?It was also necessary to overturn the contested decision.<sup>22</sup>In another decision, it ruled that "a visitThe father has the right to his child who is in the custody of someone else, and it is not linked to a specific age.<sup>23</sup> However, if the child in custody is an infant, the visitation must be less than that for his own good.What the Supreme Court has established in its decisions, where it ruled that "the duration of visitation may be reduced due to the age and interest of the child in custody, provided that the duration of visitation is subject to review after the child in custody reaches three years of age, and in all cases the interest of the child in custody must be taken into account<sup>24</sup> and ruled that "it is subject toThe issue of estimating the duration and location of the infant's visit is at the discretion of the judge.<sup>25</sup>and whenIf the child in his mother's custody has passed the breastfeeding age, the father remains entitled to visit his son according to the times specified for him<sup>26</sup>. As for relatives, it is the same.With the right of his parents to visitation, but it differs in duration He wasIt is once a month<sup>27</sup>, and takes overThe family affairs judge determines the right to visit the child in custody based on data related to the child in custody, the child's age and health condition, so that if he was DistinctiveIt was permissible for him to spend the night with both his parents and visit them.<sup>28</sup>, Taking into account the times

<sup>16</sup> Mustafa Abdul Ghani Shaiba, *Family Provisions in Islamic Law (Divorce and Its Effects)* 1st ed., Sabha University Publications, Libya, 2006, p. 242

<sup>17</sup> Badis Diaby, *op. cit.*, p. 92

<sup>18</sup> Same Return, p. 160

<sup>19</sup> RamadanAli Al-Sayed Al-Sharnabasi, Jaber Abdul Hadi Salem Al-Shafei, previous reference, p. 604.

<sup>20</sup> Khaled Nawaf, Zaki Sulaiman Nashwan, "Watching the Child in Custody: A Comparative Study," *Journal of the College of Law and Political Science, University of Kirkuk*. Volume 04, Part 1, Issue 15, 2015 AD, p. 406

<sup>21</sup> For Hussein Ben Sheikh Ath Malouya, *Al-Muntaqa fi Qada' al-Fiqh al-Sayyid al-Dhahabi*, previous reference, p. 520

<sup>22</sup> The court Supreme Court, Personal Status Chamber, Decision dated 04/16/1990, File No. (59784), *Judicial Reasoning magazine*Judicial, No. 04, 1991, p. 126.

<sup>23</sup> The court Supreme Court, Personal Status Chamber, Decision dated 01/04/2006, File No. (350942), *Supreme Court Journal* Issue 1, 2006, p. 455.

<sup>24</sup> The court Supreme Court, Personal Status Chamber, Decision dated 05/09/2013, File No. (722681), unpublished.

<sup>25</sup> The court Supreme Court, Personal Status Chamber, Decision dated 07/08/2009, File No. (505325), unpublished.

<sup>26</sup> The court Supreme Court, Personal Status Chamber, Decision dated 04/14/2011, File No. (617123), unpublished.

<sup>27</sup> Badran Abu Al-Ainain Badran, *rights Boys in Islamic Sharia and Law*, Previous reference, p.86

<sup>28</sup> slaveAziz Amer, *Personal Status in Islamic Law*, 1st ed., Dar Al-Kitab Al-Arabi, Egypt, 1961 AD., p425

Suitable for visiting, not at night or late at night<sup>29</sup>, pushed to harm both the child in custody and the person entitled to visitation, because night is a time of rest and relaxation.<sup>30</sup> Therefore, it is necessary to determine the visiting times according to the change in the age of the child in custody, such as being divided equally between the father and mother on holidays and occasions. However, if the child in custody is in school, the father must be given authority that allows him to intervene, because the father represents the stronger side in the family relationship<sup>31</sup>.

### **Branch the second: place Visit**

Place a visitation place is a place where the child in custody enjoys the care of his visitor, even if it only takes a few hours. Therefore, the place of visitation cannot be one that causes embarrassment to the visitor, such as the divorced woman's residence, for example, because she has become a stranger to him.<sup>32</sup> This is what the Supreme Court went to in its decision, where it stated: "It is not permissible in Sharia law and it is not valid to limit the exercise of the husband's right to visitation in the home of the divorced wife because the respondent, after her divorce, became a stranger to the appellant, and the purpose of the right to visitation is not achieved in the present case except when the daughter enjoys the care of her father, even if for specific hours."<sup>33</sup> The origin of the visitation must be agreed upon in a specific place or method to enable the person entitled to visit to do so, otherwise the matter will be referred to the judge.<sup>34</sup> Which regulates the visitation periods, time and place in a way that prevents, as much as possible, fraud in implementation, taking into account the situation of the divorced spouses in addition to the age and health condition of the child in custody. And so for example, the judge may decide that the visitation will take place at the custodian's residence if the child in custody is an infant who cannot do without his mother and cannot bear to be separated from her. If the child in custody has passed that stage, the family affairs judge may also permit the person with the right to visitation to go out with the child in custody, especially on holidays and festivals, as is the practice in reality<sup>35</sup>.

### **The third requirement: disputes related to organizing visitation rights**

#### **The first branch: Abuse of visitation rights**

Parents often misuse the right of visitation because of the divorce and disagreements that occurred between them, and the children covered by custody often fall victim to these disagreements. If custody is awarded to the mother, we find her arbitrarily preventing the father from visiting his children on a regular

<sup>29</sup> fairMusa Awad, The Rights of the Child in Custody Over the Custodian and the Right to Maintenance: A Jurisprudential Study, Symposium entitled The Impact of Contemporary Changes on Custody, Islamic Jurisprudence Assembly, Umm Al-Qura University, Mecca, 1436 AH, p. 54

<sup>30</sup> Ahmed victory Al-Jundi, Divorce and Repudiation and Their Effects, previous reference, p. 666

<sup>31</sup> For Hussein Ben Sheikh Ath Malouya, Al-Muntaqa fi Qada' al-Fiqh al-Sayyid al-Dhahabi, previous reference, p. 519

<sup>32</sup> Badis Diaby, previous reference, p. 160

<sup>33</sup> The court Supreme Court, Personal Status Chamber, Decision dated 12/15/1998, in File No. (214290), Judicial Magazine 2001, Special Issue, p. 194

<sup>34</sup> Othman Al-Takroui, previous reference, p. 280

<sup>35</sup> Mohammed Al-Lajmi, previous reference, p. 485

basis, as she prevents them from seeing the father. The same applies if custody is awarded to the father.<sup>36</sup>And from itThis right must be regulated so that it is not used as a pretext to harm the child in custody.<sup>37</sup>, becauseThe relationship between them has mostly become a conflict between the parents, and the children become a pressure card on the other party without regard for their feelings, their humanity, or their interests.<sup>38</sup>Neither of them has the right to deprive the other of seeing his child.<sup>39</sup>...and taking the child as a means of plotting and spite against the other party, as this may cause harm to the parent and the child, as God Almighty says: "A mother shall not be harmed on account of her child, nor a father on account of his child."<sup>40</sup>Because the child in custody needs his mother to supervise his care, he also needs to see his father and communicate with him.<sup>41</sup>This is what the Supreme Court went to in its decision, where it ruled, "...thatThe right to visit and see the children is the right of the father, just as it is the right of the mother. The latter does not have the right to deprive the father of visiting and seeing his children. He has the right to take sufficient time to see them, just as it is the right of the mother.<sup>42</sup>So, if the child is with his or her guardian or someone else, then the one for whose benefit custody has been decided has no right to prevent the other spouse or anyone who has a right to see and visit the children, such as her permanent absence from the house or changing her place of residence. In this case, the Algerian legislator did not stipulate changing the place of residence to see the child in custody and informing the father of that, and this is a legal loophole that must be addressed. However, it does not compel him to be sent to his place of residence, but rather it is sufficient to take him out to a place where he can be seen.<sup>43</sup>Here, the legislator must create actual and realistic oversight of the right of visitation related to the difficulties in implementing this right resulting from the lack of respect for judicial rulings and decisions and the fabrication of excuses for not implementing them, and controlling the implementation of the right of visitation with legal texts to prevent arbitrary use of it. Because the harm primarily affects the child in custody and then the child's father.<sup>44</sup>Examples of abuse of visitation rights include:

### **Obstruction of Visitation Rights by the Custodial Parent<sup>45</sup>**

In many cases, the custodial parent—often the mother—acts abusively by preventing the father from visiting his child. This is done by refusing to open the door or by being consistently absent from the residence where custody is exercised. In such situations, the non-custodial parent has no choice but to seek legal recourse. This begins by filing a report of non-compliance with the help of a

<sup>36</sup> Abeer Rabhi Shaker Al-Qudomi, *Abuse of Rights in Personal Status*, 1st ed., Dar Al-Fikr, Jordan, 2007 p. 174

<sup>37</sup> Rushdie Shahata Abu Zaid, previous reference, p. 172

<sup>38</sup> Muhammad Samara, previous reference, p. 403

<sup>39</sup> Ahmed victory Al-Jundi, *Little Vision*, op. cit., p. 15

<sup>40</sup> Ahmed victory Al-Jundi, *Custody and Expenses in Sharia and Law*, previous reference, p. 74

<sup>41</sup> Al-Tawati Ben Touati, previous reference, p. 887

<sup>42</sup> The court Supreme Court, Personal Status Chamber, Decision dated 02/13/2014, File No. (790501), unpublished.

<sup>43</sup> sonHebry Abdel Hakim, previous reference, p. 262

<sup>44</sup> Amroulssa Al-Faqih, previous reference, p.238

<sup>45</sup> BadranAbu Al-Ainain Badran, *Jurisprudence Comparative study of personal status among the four schools of thought*,Previous reference, p.567

judicial officer. The report is then submitted to the Public Prosecutor, who may issue an order for law enforcement to assist in enforcing the visitation.

Judicial precedent has affirmed this approach. It has been held that: “When a series of reports, prepared by several judicial officers, show that the respondent repeatedly visited the appellant’s residences to see his children but found her absent and the doors closed, and thus could not fulfill his visitation right, this confirms the presence of real obstacles. In such a case, the court’s decision to uphold the initial judgment—which changed the visitation schedule and the location of custody—is a correct and sound application of the law.”<sup>46</sup>.

### **Changing the Custodian's Place of Residence**

A custodian may at times act arbitrarily by changing the residence where custody is exercised without informing the non-custodial parent. This change can come as a surprise, driven by motives of retaliation and aimed at preventing the other parent from exercising their visitation rights. As a result, when the non-custodial parents attempt to carry out visitation, it often coincides with weekends, national holidays, or religious occasions. In such cases, when a report of non-compliance is filed, the court officer or the public prosecutor may be unavailable due to the holiday. Police authorities often refuse to intervene unless there is a direct order from the public prosecutor.

### **Section Two: Refusal of the Non-Custodial Parent to Exercise Visitation Rights**

Among the challenges faced by children of divorced parents is the refusal of the non-custodial parent—often the father—to exercise visitation rights. This may be through ignoring scheduled visits or severing contact entirely. Such behavior can cause psychological harm to the child, leading to feelings of guilt, disappointment, and abandonment. The child may endure a difficult emotional experience that leaves a negative impression of family life and the marital relationship. This emotional detachment can lead to a loss of security, especially in light of the instability and division within the family. Often, this behavior is justified as an attempt to forget a failed marriage, followed by ongoing conflicts for which the child bears the consequences.

### **Conclusion**

The efforts made by the Algerian legislator in protecting the rights of the child, particularly in securing the right to visitation, represent an important step in preserving family ties even after parental separation. Legal provisions have been enacted to guarantee the exercise of this right in a way that aligns with the best interest of the child. The judiciary plays a key role in interpreting and applying these legal texts, guided by the child’s status as a vulnerable being whose physical and mental development is still in progress—and who is among the first to be affected by family breakdown.

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<sup>46</sup> The court Supreme Court, Personal Status Chamber, Decision dated 02/13/2014, in File No. (790168), Supreme Court Journal Unpublished.

Thus, ensuring visitation rights is one of the essential mechanisms for providing the child with a sense of psychological and social stability. It helps create a supportive environment for healthy growth and resilience in facing future challenges.

Despite the Algerian legislator's efforts to regulate visitation within the framework of custody through the amendments introduced by Ordinance 05-02 to the Family Code, and its commitment to securing the child's best interest by maintaining their connection with the non-custodial parent, there remain significant gaps in enforcement. In many cases, the implementation of visitation rights faces complex practical realities, hindered by social and procedural barriers. This often leads to the child being effectively deprived of this essential right—a right that is fundamental to preserving their family relationships and promoting their overall well-being.

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