

Where her marriage
by talaq. the court
observed



**ASSIGN
BUSTER**

Where the child is a son, the mother is entitled to his custody till he attains the age of seven years. Where the child is a daughter the mother's right to the custody continues till the daughter attains puberty (fifteen years). It may be noted that mother is entitled to the custody of her child (under the age of seven years or below puberty, as the case may be) even if she has been divorced by the husband or has become widow provided she remains unmarried. In *S. Rehan Fatima v. Syad Bdinuddin Perviz*, the dispute was regarding the custody of a child aged three years six months.

The Andhra Pradesh High Court held that under Muslim law, the mother's right to the custody of her child continues even after the dissolution of her marriage by Talaq. The court observed further that in absence of any other alternate arrangement, under the Guardians and Wards Act too her right to the custody of child continues even after the divorce. Being a legal privilege, the mother's right is not lost even if she ceases to be a Muslim. In *Zaynab v.*

Md. Ghouse, the Madras High Court has held that conversion of the mother to any other religion does not deprive her of the right of Hizanat. In this case, the court allowed to the mother the custody of her child although she had become a Christian. It was also observed by the court that even if the mother was living separately, she would not lose her right to the custody of her child. As discussed earlier, the mother is given the custody because of her typical relationship with the child therefore; she cannot surrender it to another person.

Poverty or inability of the mother to maintain the child can neither deprive her of the right to custody nor can she surrender this right on the ground of

her poverty. In case where the mother is poor, the father has an obligation to provide for the child during the custody of its mother.