

Kafālah and Foster Care for Abandoned Children in the Light of the United Nations Convention on the Rights of the Child (CRC)

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ABSTRACT

This research will look at whether the concept of kafālah, which is promoted by some many Muslim countries and has been recognized by the United Nations Convention on the Rights of the Child (CRC), and the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption (Hague Adoption Convention), and the 2009 United Nations Convention on the Rights of the Child (UNCRC), is applicable to child support. In layman's terms, the phrase refers to carrying another's expenditures, while in fiqh literature; the term kafālah refers to the ideas of surety and guarantee, as well as bail, in the context of criminal law. Does this idea of child support have anything to do with the Arabic word kaf, which means assurance or surety? If this concept is permitted by Sharī'ah, are adults obligated to assist and care for abandoned and underprivileged children? This study will make an effort to define the kind of obligations that the Sharī'ah imposes in such situations. It is well known that Islam forbids adoption. What options for orphanages, foster homes, and other arrangements does the Islamic legal system provide in such a circumstance? The response of Islam must be compared to equivalent institutions developed and put into place in Western civilization.

Keywords: *Kafālah, Sharī'ah, Adoption, CRC, Guarantor.*

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1-Introduction

Child abandonment is on the rise in Pakistan¹ due to inefficient administrative and judicial procedures. Although Pakistan has ratified the CONVENTION ON THE RIGHTS OF CHILDREN (CRC)² it has not yet put Article 4 into effect, which mandates that every state party have extensive child protection measures in place. There are now a number of regulations, including the constitution that deal with child protection, however there are no laws in Pakistan that protect or uphold the rights of abandoned children. The National Database Registration Authority (NADRA), which keeps track of registrations, is unable to register abandoned children and orphans without knowing who their true biological parents are.

The lack of registration of abandoned children denies them a legal standing in society and prevents them from exercising any of the legal rights that regular children have. NADRA has now made a policy of registering abandoned children in the name of their guardian, who shall be the head or chairperson of various charity and welfare organizations, bureaus, centers, trusts, etc., thanks to the efforts of various welfare organizations and NGO's, but the majority of the children remain unregistered, demonstrating the system's inefficiency.

Problem Statement

Children without parental care and child abandonment are global issues that affect practically all nations. One or both parents' passing, domestic abuse or poverty is some of the causes for the emergence of this category of children. Many Islamic Countries have developed alternative forms of care systems in place to deal with these children.³ Numerous literary works support the idea that familial environment is the ideal environment for children to develop at a high rate, which goes hand in hand with *Shari'ah*.

Methodology

The methodology adopted for this research is comparative and analytical. The research aims to examine and compare significant laws in Islamic and Pakistani legal system addressing the protection of abandoned children's rights.

Significance of Study

Any society's social and economic development is impacted by child abandonment, regardless of the cause. Adoption is a significant issue with abandoned children because there are no laws in Pakistan that control adoption and its legal repercussions. Unfortunately, Pakistan is lagging behind in creating an effective system and regulations to protect abandoned children and their rights. Islamic law creates an appropriate system and rules for abandoned children and the protection of their rights. These difficulties will be brought to light through this study.

2-Abandoned Child Defined

It is termed child abandonment when a parent, guardian, or other adult in charge of

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a minor leaves the child without taking into account the child's physical health, safety, or welfare or when they fail to provide the care that a child living in their house needs.⁴ Physical child abandonment,⁵ such as leaving a toddler on a stranger's doorway while no one is home, is the most common sort of child abandonment. It might also cover extreme instances of emotional abandonment. Sadly, neglected or abandoned youngsters (also known as "foundlings") who do not have their basic needs fulfilled may develop low self-esteem, emotional dependency, helplessness, and other problems as they get older.

For leaving an infant, parents or relatives in Pakistan commit a variety of terrible crimes. Putting them in cloth or plastic bags and throwing them away in garbage, gutters, and trashcans, for example, where various wild creatures devour or severely injure them. Such heinous deeds result in the deaths of countless innocent newborn babies, regardless of their gender.⁶

3-Child Abandonment Causes

The following are the most prevalent reasons for child abandonment in Pakistan and other developing countries throughout the world, as well as their explanations.

3.1 Poverty

Poverty is one of the leading reasons of child abandonment. Insufficient financial circumstances or financial troubles, a lack of sexual health education, poor information about family planning, limits on abortion access, the kid having some type of impairment, and the child being HIV positive are all examples of poverty. Poverty is intimately connected to child abandonment since parents cannot afford to care for all of their children, pay their medical costs if any of their children are disabled, or offer healthcare or medical aid to their children.

Poverty is the leading cause of child abandonment in Pakistan. The Edhi Organization's headquarters takes in roughly 300 abandoned newborns each year, and about 50,000 youngsters rely on the foundation for their survival at any one time.⁷ Unknown infants die violent deaths in large numbers, yet no one is aware of this number. Every year, hundreds of infants are said to have been abandoned at landfills all around the city, but there are no official records to act as an accusation. Neither the Edhi Centre nor the Chippa Welfare Association have a system in place to manage or track the actual number of children rescued from garbage sites or given up for adoption. No one has accurate information on similar instances in the country. Both, however, provide estimates. Only a small percentage of abandoned children, according to Chippa, are born outside of wedlock. Most of the children abandoned after illegitimacy are due to poverty.⁸ Poverty is so crippling that the parents intentionally leave their children in the child protection bureau by abandoning them forever.

3.2 Illegitimacy

Abortion is generally illegal in Pakistan⁹, (Ref) as it is in many other Muslim countries.

Many children who are abandoned are the result of their parents' illicit relationships or are born out of wedlock. Illegitimacy leads to child abandonment in Pakistan. The Edhi Welfare Organization have made a slogan on the cradles for the people who abandon their children as;

QATL NA KAREIN JHOOLAY MAI DAL DEIN, AIK GUNHA KAR KAY DOSRA GUNHA KYUN MOL LAITAY HO, JAN ALLAH KI AMANAT HAI.

The slogan clearly warns the people who abandon their illegal children by committing adultery, or are engaged in illegal relationships and are involved in prohibited physical/ sexual activities that not to kill children.

Pakistan has ratified both the Universal Declaration of Human Rights, which declares that "all children, whether born in or out of wedlock, shall enjoy the same social protection," and the United Nations Convention on the Rights of the Child, 1989 (UNCRC), which calls on states to "take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the child's parents' status."¹⁰ Children born outside of marriage do not have legal standing in the eyes of the state. Due to institutional inefficiencies in the state's registration of abandoned children, the children that survive death do not live in perfect conditions. As a result of this disregard, Pakistan ranks third among countries with the highest percentage of unregistered children.¹¹

Nobody is aware of how many unidentified newborns tragically die each year.¹² Every year, hundreds of children are allegedly abandoned at landfills around the country, but there are no official records to serve as an accusation. UNICEF lacks detailed statistics on comparable occurrences in the nation, and neither the Edhi Centre nor the Chippa Welfare Association have a system in place to handle or track the precise number of children rescued from rubbish dumps or given up for adoption. In contrast, both offer estimations.

3.3 Want of Son

Another reason for child abandonment in Pakistan is the absence of a son. Parents often view girls as a burden when they are born. Only a small percentage of abandoned children, according to reports, are born out of marriage; the majority is abandoned because of poverty or want of a boy. Many households already have daughters but want for a son; when a new daughter is born, they feel pressured to get rid of it.

Leading causes of child abandonment include the aforementioned issues, and it is impossible to estimate how many of these children are left to perish alone because the state does not actively provide for or promote the welfare of children; instead, the task is largely carried out by unregulated private charities.

4- Concept of *Laqīṭ* (Abandoned child) and *Sharī'ah*

The term *laqīṭ* means a foundling, that is, an abandoned child who is found by

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someone. The child may have been abandoned by its family due to poverty, the apprehension of the accusation of *zinā*, or another reason. The immediate taking of the child into protective custody is deemed an act of piety of the highest order as it amounts the saving of life, which is required by the *sharī'ah*. The finder will, as soon as possible, bring the matter to the notice of the sultan or the court for the completion of the necessary formalities. The child is treated as a free person and is assigned all the rules of free persons, except that one accusing the child's mother of *zinā* is not to be awarded the *ḥadd* of *qadhf*.

An abandoned child is treated as Muslim, unless it is found abandoned in a Church or a Synagogue in which case the child will be assigned the religion of the finder.¹³

According to all schools of Islamic law, caring for a foundling is the community's duty unless the child is in imminent danger of death, in which case the person who finds the infant is personally responsible. The person who finds a foundling should take on the role of the child's guardian and look out for its best interests. If there is a dispute, the guardianship of an abandoned child will be decided by a court, even if it is customary to give preference to Muslims. The legitimacy of a child is established if a person asserts paternity of a foundling believing it to be his child as long as the requirements of a valid acknowledgement are met.¹⁴

All schools of thought will assume the child is a Muslim if they find him or her in a Muslim neighborhood. It will be considered that the abandoned youngster practices the same religion as the area where it was found.

When searching for a foster home for the child, the State will keep the child's best interests in mind. The person who found the child and took it into protective care will be given top priority when it comes to finding the child a home since they performed a deed of piety that the *Sharī'ah* advises to save lives.

The *walī* of the child is always the State. The child can alter this through the contract of *muwālāt* with the finder or another person, on attaining puberty. The child is not permitted to enter into such a contract if the sultan has paid *diyyah* on his behalf by acting as his *'āqilah*.¹⁵

Any property found on the child or with him belongs to the child. The finder is under no obligation to bear the expenses of the child and any expenses he may have incurred, with the permission of the court, are to be reimbursed by the treasury. He is not entitled to reimbursement if the court had not granted permission. The finder or the foster parent cannot recover the amount spent without permission from the child either when the child attains majority. However, if the guardian spends money on the foundling, the sums are recoverable either from the public funds or from the foundling when he or she reaches adulthood.

The foundling's maintenance is the responsibility of the treasury. The protection of life for all people, regardless of their legal standing, is at the core of Islamic law's

precepts regarding abandoned children. One of *Sharī'ah*'s key goals is to ensure that human life is preserved.

The Head of State is regarded as the "*Walī*" (Guardian) of all such children who are without parents and are unaware of their parents due to abandonment, and the state, as *Walī*, is responsible for their maintenance, security, and welfare, it is commonly acknowledged by all schools.

4.1 Rules for *Kafālah* of an Abandoned Child under *Sharī'ah*

In Islamic law, the term *kafālah* has a variety of meanings. It also has additional connotations in layman's words that aren't utilized in the legal sense. The Muslim world as a whole understands this layman's meaning. Thus, in Arab nations, the term *kafālah* refers to being financially responsible for a child as well as physically caring for the child. This term describes the financial and foster care provided by a family to a child who has been separated from his or her family for whatever reason because adoption is not permitted in Islam.

The system of child care and the assignment of responsibilities stems from Islamic law's well-known *laqīṭ* system. The *laqīṭ* system works in tandem with the *wilāyah* system, which centers on the Muslim family and its well-being. Due to the disintegration of the joint family system, the later system of *wilayah* is no longer in use; nevertheless, a system based on the idea and legal principles of *laqīṭ* can be formed independently of the *wilayah* system. The primary distinction to be made is that, while *kafālah* is not a legal term, it only relates to the person in charge of the child's physical care, the system based on the idea of *laqīṭ* imposes duties on both the state and the person in charge of the child's physical care and well-being.

It is crucial to start by replicating Article 20 of the Convention on the Rights of the Child in order to comprehend this last argument (CRC). This article's first two paragraphs impose obligations on the states. The first two sentences are as follows:

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.¹⁶

It can be seen from these two paragraphs that the primary duty is upon the state to give "special protection and assistance" to all children in need of it in the best interest of the child. Paragraph 3 of Article 20 then turns to the role and of individuals who will handle the details of the system that is set up.

3. Such care could include, inter alia, foster placement, *kafālah* of Islamic

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law, adoption or if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

As a result, the concept of *kafālah* as a personal obligation has been introduced in this paragraph. This line also covers "adoption" in addition to *kafālah* and placement in a foster home. It is important to note that several States Parties had expressed concerns about adoption on the grounds that it is against Sharī'ah law. These were rejected by the objecting governments on the grounds that national laws could not be used as justification for rejecting Convention provisions.

It was, however, suggested by the CRC in clause 3 of Article 20 mentioned above that the rule of *kafālah* of Islamic law may be employed instead. Later writings have hailed this as a significant development in the sense that the "The inclusion of *kafālah* in CRC is the first time an exclusively Islamic concept is recognized in a binding international instrument."¹⁷

The questions we must address are: Is *kafālah*, as defined in this article, a concept of Islamic law when applied to the foster care of a child? What kind of obligations does it impose and on whom in the context of child welfare if it is an Islamic law concept or rule? If it is not, and is just a phrase for carrying a child's expenditures in layman's terms, does it evoke the laws of surety and guarantee, or even indemnification, as the legal term *kafālah* does in fact, or does it have some specific connotation comparable to foster care? Is there any law, principle, or institution that fulfills this role or suggests foster care if *kafālah* does not relate to foster care or something similar, referring entirely to the kid or his or her best interests?

We'll try to address as many of these questions as we can in these few pages, and as completely as we can. The first step is to determine the various definitions of *kafālah* as they are employed in Islamic law. We're talking about conventional Islamic law here. If the phrase is employed in Egyptian law but not in traditional Islamic law, it is just an Arabic term with no bearing on Islamic law.

4.2 The Meaning and Nature of *Kafālah* as Used in *Fiqh* Literature

Joining or merging is the literal meaning of the word *kafālah*. The *dhimmah* (faculty through which a person bears responsibilities) of the guarantor is joined to that of the guaranteed in order to establish the original bearer's debt or other responsibility as a joint liability of the two of them, Combining the debtor's duty with the guarantor's

obligation. As a result, we can describe *kafālah* as a contract where the guarantor assumes the guaranteed party's agreed-upon financial responsibility alongside them. The goal of *kafālah* is to provide assurance that the guaranteed party's obligation will be carried out.

4.2.1 The Components of *Kafālah*

- (a) Contracting parties, namely the guarantor, beneficiary and the guaranteed party.
- (b) Offer and acceptance; and
- (c) Subject matter, that is generally monetary. The parties in the *kafālah* contract are the guarantor (*kafīl*), the beneficiary (*makfūl lahū*) and the guaranteed party (*makfūl 'anhū*). The guarantor must be of legal age to enter into the agreement. The parties to the agreement must be either natural people or legal entities. More than one guarantor may guarantee a single guaranteed party. The contract of must begin with an offer and acceptance, just like all other contracts. The offer may be made verbally, in writing, or through any other means that could be supported by the necessary records.

4.2.2 The Subject matter of *kafālah*

- (a) Guarantee of a debt liability; and
- (b) Promise to produce a tangible asset or else assume financial liability.

The subject matter of the *kafālah* may also be:

- (a) A current or upcoming established financial burden or obligation of the party providing the guarantee;
- (b) Execution of a specific action by the guaranteeing party;
- (c) Personal commitment of the Guaranteed Party is performed; or
- (d) A composite of any or all of the aforementioned.

The aforementioned literal and legal interpretations of *kafālah* demonstrate that the meaning envisioned in the CRC and in daily English is not the legal meaning of the term. We cannot infer legal obligations from such a phrase if it does not have a legal meaning. To put in place a foster care system, we'll need a list of responsibilities that Islamic law recognizes.

5. The Meaning of *Kafālah* as adopted internationally and in Arab Law

The term *kafālah* used in the third paragraph 3 of Article 20 of CRC is not accompanied by any explanation. According to Egyptian findings and suggestions, the name was accepted. However, there is no legal foundation for this idea in the legal literature with regard to the child's welfare. As previously stated, all of the definitions are

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derived from the layman's use of the phrase. Because Islamic law prohibits adoption, the term *kafālah* has been offered as an alternative.

It was stated that, despite Islam's broad prohibition on adoption, adoption occurs in a variety of ways within the *kafālah* umbrella. Adoption is recognized as guardianship in Bangladesh, Iran, and Pakistan, when a child is legally placed in the custody of a capable family while being made sure that the child is aware of his or her paternity.

This may be accurate; however, the guardianship system does not include a foster care system. Although this might be true, there is no foster care system in the guardianship system. Filiation, a substitute for adoption in Syria, calls for the child to be of unknown parentage or the product of an illicit union. In reality, adoption laws may vary among different Muslim countries, but this depends on how thoroughly Islamic law is upheld in each of these nations. For instance, adoption of non-Muslim children is legal in Egypt, Pakistan, and Lebanon even though the *Sharī'ah* forbids it for Muslims. However, individuals who were lost or abandoned as newborns or babies can be adopted. In reality, permission to adopt a lost child who is old enough to know his name is rarely granted since it is expected that the family is looking for him. Contrarily, the latter category of children is presumed to be illegitimate in terms of recognisable familial ties, and because of the significant social shame associated with this in Islamic society, adoption becomes an option for them. For instance, adoption (including international adoption) is legal in Egypt, albeit with restrictions. It is acceptable, for instance, for a relative to formally adopt an orphan. Adoption of children from unrelated families is regarded as another social welfare approach to meet the needs of abandoned children.

Adoption and foster parenting have gradually gained popularity in some nations, such as Indonesia, while in South Asia, some groups permit adoption since it is not seen as a prohibited activity but rather one that is unaffected by religion and is permitted under the concept of *Mubāh* (Permitted, Neutral and indifferent).

Our focus is with Islamic law, not with what is applied in Muslim States, as it would need more research. We may now turn to the definition of *laqīṭ*¹⁸ to see how it might be changed to fit the requirement for a modern fosterage system, given that we've discussed the legal and "popular" meanings of *kafālah*.

Wilayah used to be the cornerstone of the Islamic family structure. No child was left without assistance in this system, and obligations were imposed on close paternal relatives first, then maternal relatives and this system functioned whether or not the

child in need of protection and support had his own riches. This technique addressed about ninety percent of the issues that a youngster may encounter. In summary, a child was always looked after by a relative, and the *qaḍi* kept a close eye on this arrangement. Unfortunately, as Western culture advanced and penetrated Muslim nations, this structure disintegrated. The first right recognised in Islam is the establishment of parentage through blood ties; all other rights derive from this.²⁰

The other 10% were made up of *laqīṭ*, or abandoned slave children and, in some cases, illegitimate children. With the second *wilāyah* system no longer functioning, this system may easily expand to perform the duties of both systems. The obligations placed on the government and other parties in charge of the child's care can be used to design and run a first-rate, cutting-edge foster care system.

As previously stated, the term *Laqīṭ* refers to a foundling, or an abandoned kid who is discovered by someone. The child's family may have abandoned him or her owing to poverty or another cause. It might also refer to a kidnapped youngster who manages to flee his captors or is abandoned by them. In other words, any youngster who has been deprived of a "family atmosphere" might be affected. Any child who needs aid and family love can be helped by this approach. The majority of the expenses incurred in maintaining the kid specified in this declaration must be covered by the Imam or the State. The state will take the child's best interests into account when deciding which foster family to place the youngster in. The finder of the child will be given first preference in finding the child a home because they carried out a good deed that the *Sharī'ah* foresaw would save a life.

These laws come from the reality that, since the *wilayah* system has collapsed, each such child's *walī* is always the sultan or king. When the child enters maturity, he can reinforce his relationships with the family who has raised him and enter into a *muwālāt* contract with the finder or another person, which would provide for joint inheritance. As previously indicated, the Treasury is responsible for the child's upkeep and all costs until he reaches majority. Any item discovered on or with the youngster is his or hers. The finder is not obligated to pay for any expenditure he may have incurred; nevertheless, with the court's consent, he may be repaid.

6. Duties Imposed by *Kafālah* for Purposes of the CRC and their Basis in *Sharī'ah*

As previously stated, the notion of *kafālah* as it pertains to children in foster care is a novel one. *Kafalah* is similar to (long-term) foster care in the conferment of some (not full) parental rights and responsibilities for a child's upbringing in respect of

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both the person and property of the child. In terms of foster care, it has no basis in Islamic law. It is difficult to assign obligations to persons and institutions when the law does not recognize a notion because they are not supported by evidence from the Qur'an and the *Sunnah*. When such an idea is presented as an Islamic concept, it offers individuals a lot of latitude to suggest whatever they want. This may be beneficial in certain aspects, but it will not be supported by Islamic law. The child's financial assistance is the sole idea that *kafālah* can sustain.

Keeping in view the Islamic provisions regarding a *Laqīṭ*; we may say that the maximum that *kafālah* can provide for the child is an assurance of financial support for the child. We have indicated above that the duty to provide funds for the child under Islamic law is primarily that of the state. Foster care, on the other hand, is total care for the child and his upbringing. In most systems such families who take care of the child are paid by the state or child welfare institutions. In certain jurisdictions, in the absence of national applications for *kafalah* makes international *kafalah* an option to be considered, provided certain conditions are fulfilled.²¹

Conclusion

It's difficult to separate the day-to-day difficulties that foster care faces in many Muslim countries from the government's policy of family-based alternative care.

Governments need to publicly support foster care based on *kafālah*, which is demonstrated by providing the necessary financial and human resources to enhance the program. The government can rely on civil society groups like orphanages or national and international organizations that work in the field of alternative care to help with service delivery when it comes to professional development, placement evaluation, and placement monitoring.

Finally, we may conclude that all Islamic states should adopt the notion of *laqīṭ*. The state has a major responsibility under this notion to offer cash to the individual who will provide foster care for the child. All orphanages are subject to the state's responsibility. In fact, the government should not allow private groups to create orphanages since this might lead to child abuse. The idea of *laqīṭ* also places a responsibility on the state to guarantee that the correct individual is chosen for each kid and that the child is cared for compassionately throughout his or her childhood until he or she reaches majority.



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References and Notes:

¹<https://www.dawn.com/news/1150336#:~:text=%E2%80%9CNearly%2098%20per%20cent%20are,to%20get%20rid%20of%20it.%E2%80%9D>

² In 1989, world leaders made a historic commitment to the world's children by adopting the **United Nations Convention on the Rights of the Child** (CRC) – an international agreement on childhood. Children's rights are economic, social and cultural rights, such as **the right to education, the right to a decent standard of living, the right to health**, etc. Children's rights include individual rights: the right to live with his or her parents, the right to education, the right to benefit from protection, etc.

<https://www.unicef.org/child-rights-convention/convention-text> (Last Visited May 2022).

³ Despite the prohibition of adoption in Islam generally, adoption takes place in various alternative forms under the umbrella of *kafālah*. In Bangladesh, Iran and Pakistan, for instance, adoption is recognised as guardianship, under which a child is placed in care of a competent family by judicial decree while ensuring the child's knowledge of his or her paternity. In Syria, the adoption alternative is known as 'filiation', in which case the child must be of unknown parentage or the offspring of an unlawful marriage. This is unlike adoption where one or both parents of the child may be known. This approach is tied to the need to preserve family lineage through bloodlines. In Islamic states that permit adoption generally for their non Muslim population, there are certain circumstances in which it is permitted even for Muslims to adopt under the concept of *kafālah*. Egypt is again an example (besides Tunisia, Morocco, Pakistan and other parts of South Asia) where, adoption (even intercountry) is allowed though on a limited basis. For instance, the outright adoption of an orphan (*yateem*) by a relative is allowed.

⁴ When a parent, guardian, or other adult in charge of a child deserts the child with the intent to completely leave them, they are said to have abandoned them. In other cases, they may have neglected to give the child living in their care the protection that they require. While leaving a child at a stranger's doorway while no one is home is an extreme example of physical abandonment. For details see Imran Ahsan Khan Nyazee, **Outlines of Muslim Personal Law**, (Lahore: Federal Law House, 2012), p. 119.

⁵ <https://www.findlaw.com/criminal/criminal-charges/child-abandonment.html> (last visited January, 2019).

⁶ <https://www.thenews.com.pk> (Published on 23rd August, 2020: Emad Ahmed).

⁷ This past year has seen a surge in the number of abandoned children with 636 reported cases, most of them aged between 16 and 18. In fact, the last two months alone witnessed 11 underage children being dropped off at the Edhi centre and police stations in various parts of Karachi. Though in rare cases parents have returned to take their children back when their economic

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condition had improved and they were able to afford them, many are left 'orphaned' forever. Published in The Express Tribune, October 30th, 2017.

⁸ News reports of children abandoned mostly assumed born out of wedlock, left at trash sites around the city each year clamber into the hundreds, but there are no official records that can serve as an indictment. UNICEF has no authentic statistics of such cases in the country, while the Edhi Centre and Chippa Welfare Association have no mechanism that regulates or records the exact figures of children recovered from trash sites, or given away for adoption. Both, however, provide estimates. Chippa puts the number of such cases at "15 to 20 per month". "We rarely find children alive from trash sites," says Chippa. "Out of the scores recovered, at most four are found alive per year." Reported by Atika Rehman for Dawn, December 14th, 2014.

⁹ The Pakistan Penal Code deals with the issue of causing miscarriage/abortion in §§338, 338A, 338B, and 338C. The two offences dealt with are *isqāṭ ḥaml* and *isqāṭ janīn*. The distinction between the two offences is based on whether or not the organs of the baby in the womb are formed.

¹⁰ Article 2 of UNCRC Says;

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

¹¹ Pakistan is one of the countries with especially low rates of birth registration. The Pakistan Demographic and Health Survey (PDHS 2017-18) found that only 42% of children aged under five had their births registered. A promising digital initiative is being implemented in Punjab and Sindh provinces.

¹² 9% of the world's 166 million unregistered children are in Pakistan (UNICEF, 2019:16). While progress has been made in recent years, gaps remain, and some population groups have been left behind, including the poorest households, and those speaking languages other than Urdu and Punjabi (i.e. minority ethnic groups). There are significant interprovincial and rural-urban disparities in birth and death records, as well as across wealth quintiles. The Digital Birth Registration (DBR) is a promising initiative in Punjab and Sindh provinces, which uses facilitators (e.g. lady health workers and nikah registrars) who directly access families with newborns and mobile technology to enter data for birth registration.

For details see; " *Increasing birth registration for children of marginalised groups in Pakistan*", Iffat Idris, GSDRC, University of Birmingham (July, 2019).

¹³ Nyazee, *Outlines of Muslim Personal Law*, pp. 119, 120.

¹⁴ Burhan al Din al Farghani al Murghinani, *Al Hidayah*, (England: Amal Press Bristol), Translated by Imran Ahsan Nyazee. Vol-II (2008), pp. 349-356.

¹⁵ The tradition of the Propphet Muhammad (peace be upon him) says:

"Sultan is guardian of the one who does not have a guardian", is a part of a tradition that Hazrat 'A'isha has narrated from the Holy Prophet concerning a woman's getting married without permission of her guardian. (Suyuti, Jalal al-Din, *Al-Jami' al-Saqir fi Ahadith al-Bashir al-Nadhir*, 2 vols. 1st edition, Dar al-Fikr, Beirut, 1401/1981, 1/457, No. 29630; Abi Dawud, Sunan, 1/462, No. 2083;). The literal meaning of the term muwālāt is cooperation, alliance. Taking coustody of foundling is recommended and if there is a fear of death it becomes obligatority. A minor will remain bound to to the person acting as his guardian if diyah i.e financial compensation paid to victim or heirs of victim in case of accidental murderor bodily harm by the guardian/ Wali, otherwise on attaining the age of puberty he will be free to enter into any such contract with another person of his choice. See Imran Ahsan Khan Nyazee, *Outlines of Muslim Personal Law*, (Lahore: Federal Law House, 2012), pp. 119, 120.

¹⁶ Article 20 Convention on the Rights of the Child (CRC) provides an alternate to adoption in clause (3);

i. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

ii. States Parties shall in accordance with their national laws ensure alternative care for such a child.

iii. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

¹⁷ Ibid.

¹⁸ This term is used for foundling. Taking coustody of foundling is recommended and if there is a fear of death it becomes obligatority. For details see Burhan al Din al Farghani al Murghinani, *Al Hidayah*, (England: Amal Press Bristol), Translated by Imran Ahsan Nyazee. Vol-II (2008), p.351.

¹⁹ S. Ishaque '*Islamic Principles on Adoption: Examining the impact of illegitimacy and inheritance related concerns in the context of a child's right to identity*', *International Journal of Law, Policy and the Family* (2008).

²⁰ Generally, there are three approaches to international *kafalah*, determined by state law and practice: countries which strictly do not recognise or permit international kafalah (Egypt, Iran, Mauritania); countries that deal with international kafalah on a case-to case basis (Algeria, Morocco, Jordan, Pakistan); and countries that provide legislation on adoption or the conversion of kafalah into adoption, where relevant (Tunisia, Indonesia).