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Ibn Warrāq and Qur'anic Scepticism: A Representative Face of Modern Apologetic Orientalism

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ABSTRACT

In this evaluative article, we critique the works of the Islamic scholar and Orientalist Ibn Warrāq. An anonymous author, Ibn Warrāq is widely recognised by scholars of the field as a pseudo-scholarly prominent figure with highly polemical tendencies. There can be no doubt that healthy revisionism is the epitome of academic learning and intellect, but the writer in question betrays very little ability or desire for serious knowledge, that can only be gained through meticulous scholarship and an impartial demeanour. As such, I contend that Ibn Warrāq can be more accurately regarded as an ex-Muslim representative of a particular group of Orientalists with conspiratorial tendencies. This group, which also includes figures such as the more scholarly Michael Cook and Patricia Crone, is unambiguously the implicit harbinger of the modern political agenda of right-wing Islamophobia, which has been in the making throughout Europe and North America since at least the early-1970s.

Keywords: *Apologetic Orientalism, Islamophobia, Polemics, Pseudo-Scholarship, Qur'anic Scepticism, Revisionism.*

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1.1 Ibn Warrāq and Qur'ānic Scepticism

The faceless Islamicist Ibn Warrāq offers a fascinating specimen for both anthropologists and religious scholars alike. His is a classical example of a political activist seeking wider approval for his work by masquerading as an earnest intellect. As many renowned scholars of the field have repeatedly noted, Ibn Warrāq's work contains little to no originality and certainly no central theme or coherent thesis beside an unsatiable lust for throwing doubts – as well as undisguised insults – at all that Muslims hold dear. A ruthless reactionary ideologue to his core, Ibn Warrāq has been clearly unable to separate his alleged scholarly endeavours from his political agenda and personal feelings about Islam.

A short note on our methodology might be warranted before we delve into this dilettante 'Native Orientalist' in more detail. This article will **not** focus narrowly on the specific critiques and comments in Ibn Warrāq's works, made by him or his contributors, in a neutral fashion. That undertaking would require infinitesimally more effort, and we certainly cannot address it adequately in a short article. Rather, our aim here is to reveal the low credibility of Ibn Warrāq as a scholar in particular, while critiquing the broader literature of revisionist Islamicists in general. For this purpose, we rely on our own observation and extensive (but admittedly not exhaustive) reading of more than a dozen of Ibn Warrāq's writings, while not shying away from reliance on other scholars for in-depth discussions regarding specific comments and theories.

1.2 Ibn Warrāq the Man

When it comes to the personal biography of Ibn Warrāq as a man, a detailed or multifaceted view is a lost cause. The only lead we have are his own descriptions of his early life and education. From whatever we do know, it is fairly certain Ibn Warrāq's extreme views were born out of an unrelenting hatred of Islam, and a reaction to his own childhood experiences. The only reason we bring this up at all is to assess just how this so-called ex-Muslim, an affiliation that he has built his entire public persona around, came to identify so closely with the new far-right in the West during the early-twenty-first century.

In fact, Ibn Warrāq hardly qualifies as a freethinking apostate at all. Born in the Indian state of Gujarāt, he grew up in the city of Karachi shortly after the end of colonial control in South Asia. It is more than clear that he was born in an unstable family. Forced to undergo religious education at an early age by his mother, Ibn Warrāq grew

resentful towards religion as a whole and Islam in particular. His father's response was swift; instead of providing parental care and love, along with a reasonable freedom to pursue his passions, he was sent away to a boarding school in England while still a kid, never to return to his homeland again. He thus effectively grew up orphaned and irreligious, likely blaming the Muslim society and culture that he was born in. Such a background hardly makes for a courageous, honest social justice activist who thought his way out of the flawed values he was raised into, but rather a disillusioned and rebellious radical hell-bent on destroying the foundations of the social environment that allegedly ruined his early life. After all, he has never really lived in an Islamic society as an adult, and the only memories he has of doing so are those of family dispute, obligatory religious education and being compelled to leave home alone as a young boy.

Ibn Warrāq has confessed, multiple times, that the reason he started writing in the first place was the outrage that many Muslims felt at Salman Rushdie's ludicrous and intentionally-provocative insults against the Prophet of Islam (peace be upon him), along with "The rise of Islam" (not *Islamism*) in the last few decades of the twentieth century, as he puts it.¹ By this time, Ibn Warrāq was obviously a staunch atheist, as his immediate reaction to the story was to publish a series of opinion pieces defending Rushdie's work and adding to it.² Sometime in the 1980s or 1990s, he became associated with organised atheist movements, and started one himself (the Institute for the Secularisation of Islamic Society or "ISIS") in 1998. Branding himself as a former Muslim critical of Islam (again, something that is hardly even technically accurate), Ibn Warrāq found a receptive audience in the newly-rising Islamophobe right in Europe and the Anglophone world despite the poor scholarship prevalent in his work. Ever since, Ibn Warrāq has openly aligned himself with the growing anti-leftist, proto-fascist 'culture war' movement re-emerging in the Anglophone world since at least the Reagan and Thatcher era. The bogeyman he chose to create for this purpose was 'Islam' as opposed to 'The West', a premise straight out plagiarised from Samuel Huntington's classical but controversial 1996 theory.³ In other words, Ibn Warrāq is most likely trying to simply benefit from what the American researcher AbuKhalil As'ad calls 'The Islam Industry'.⁴

1.3 Ibn Warrāq the Activist

Ibn Warrāq, pure and simple, is an anti-Islam activist and a self-declared humanist pushing for the secularisation of all Muslim communities and the dismantling of Islamic

ideals in favour of Western-style liberalism. This is all undeniably true, and Ibn Warrāq himself would hardly argue to the contrary. After all, the names of a few of his volumes read as “Why I Am Not a Muslim” (1995), “Defending the West” (2007),⁵ “Which Koran (2008)?”,⁶ “Why the West is Best” (2011),⁷ and “Leaving the Allah Delusion Behind (2020)”.⁸ Furthermore, the topic he seems most passionate about is the act of ‘apostasy’ itself, to which he has devoted two whole works (2003⁹ & 2020¹⁰) to date, along with ‘rationality’, ‘free thought’, ‘freedom of speech’, and other libertarian tropes. And of course, this Englishman pretending to be an apostate also uses the name of a tenth-century (along with an affectionate *Ibn*) dissident as his *nom de plume*. This is hardly a résumé for a serious academic, because Ibn Warrāq simply is not one.

Therefore, it is not hard to see how neatly Ibn Warrāq falls into the category of modern apologetic Orientalists more concerned with national, cultural and political identities than scholarship or the advancement of human knowledge. For this reason, he has a good working relationship with other anti-leftist activists (almost all populist neoconservatives) to whom he owes his popularity and probably wealth, despite being a militant atheist himself.¹¹ This relationship is far from implicit or hidden, as Ibn Warrāq has openly worked with notorious Islamophobes through his platform at ISIS, or even by directly contributing articles to alt-right websites.¹² Unsurprisingly, he has sometimes betrayed his dislike for the establishment academia for their “Misplaced concern for the sensibilities of Muslims” and their supposed move “From objectivity to Islamic apologetics pure and simple”¹³, even though he has never written directly about the subject. He loves to lament the leeway Western Islamicists supposedly give to Islam and Muslims, even though they clearly do not.¹⁴ In case it needs mention at all, he has – of course – also fed unfounded conspiratorial fears about the impending Islamisation of Europe and ranted about multiculturalism, moral relativism, and anti-racism at length.¹⁵

In fact, Ibn Warrāq is so blatantly and unambiguously Islamophobic that he is not mentally capable of acknowledging Islam as one of the most influential civilisations in history, and hence a contributor to human culture. He has to childishly deny the attribution of anything remotely positive or productive to ‘Islam’, as he perceives it. In one especially telling moment, he boldly declares: “Without Byzantine art and Sassanian art [*sic*] there would have been no Islamic art” (no comment required). Islamic “Philosophy” and “Science” are similarly depicted as solely dependent on their Greek antecedents.¹⁶ In the same work, he smears the entire spectrum of Islamic Mysticism or

‘Sufism’ by declaring that it “Owes as much or more to the influence of Christianity, Neoplatonism, Gnosticism, and Buddhism” than to the Holy Qur’ān.¹⁷ This is not anything remotely thoughtful or provocative, but ill-conceived and obvious propaganda Ibn Warrāq probably plagiarised from a reactionary booklet or weblog.

Of course, Ibn Warrāq is also highly invested in some other ‘culture wars’ of the present time. A notable example would be his obsession with the works of his ideological opposite, the Palestinian scholar and activist Edward Said. Said’s much more scholarly work primarily focuses on the intellectual legacy of European Colonialism and the Israel-Palestine conflict. Here, Ibn Warrāq saw an opportunity and went for it, evidently ignorant of the huge gap in learning between himself and Said. To date, Ibn Warrāq has authored or edited three whole volumes to refute Said’s work specifically, none of which has received any serious attention from the academia or the general public, and for good reason.¹⁸

1.4 Ibn Warrāq the ‘Scholar’ and the ‘Sceptic’

As the author/editor of over a dozen books in more than two-and-a-half decades, Ibn Warrāq has surprisingly little to show for his efforts. Yet, this is hardly surprising, given that the writer in question is an amateur writing with a clear political agenda, desperate to find and publish anything he assumes would be damaging to ‘Islam’, while presumably earning fame and fortune for himself as an aside by declaring himself the ‘editor.’

After all that we have seen, it would be hardly surprising if none of Ibn Warrāq’s books passed the requirements of any academic publisher. This is precisely what has happened. Despite his popularity, Ibn Warrāq has been unable to get a single of his works published by any press with quality standards. It cannot be emphasised enough that all of his ‘scholarly’ volumes have been published by purely partisan and specialised publishers. In fact, barely any serious expert has even bothered to review his work at all since the early-2000s, as we shall see.

Most of Ibn Warrāq works, including all of his eight volumes until 2010 (when his views were still relatively obscure), were published by Prometheus Books. Based in Amherst, New York, Prometheus does not shy away from its ideological bias and describes itself as “Provocative, Progressive and Independent”.¹⁹ It is famously known as one of America’s largest and oldest atheist publishers. It is also an incredibly inapt facility for publishing serious works of Oriental studies. One very telling admission from Ibn Warrāq himself must be quoted at length here:-

“In 2004, I sent to Prometheus Books, along with my own longish introduction

on variants and a short essay on pre-Islamic poetry, approximately forty-five articles by distinguished scholars in the form of photocopies, some barely legible, as they were copies from fragile journals dating from the early 1900s; many contained Arabic, Hebrew, Syriac, and Greek scripts. The staff at Prometheus Books made two decisions: first, they decided to divide the book into two; forty-five articles would have made for a book of over a thousand pages. The two volumes are Which Koran? Variants, Manuscripts, Linguistics, which came out in December 2011, and the present work, Koranic Allusions. Second, they insisted on keeping the house look and the house format and fonts; in other words, they elected to reset all the articles in a unified style; whereas I was ready to accept the tradition established by Ashgate–Variorum Press whereby the original articles are photographed and reproduced without any attempt to change any of the layout, font, or style, to the extent of keeping the original page numbers. There was, however, the unresolved problem of the original Arabic, Hebrew, and Syriac scripts. The staff at Prometheus elected to photograph each Arabic or Hebrew word as a separate individual image, which was then slotted, one by one, into the appropriate place in the reset text. There were several thousand such images. Such a procedure was time-consuming, which explains to some extent the delay in publishing the two anthologies, but it also posed special worries for me, the editor, since the chances for error were multiplied a hundred-fold. If it was difficult for the editor, it was a nightmare for the typesetters, in-house editors, and members of the art department, who handled the copying of the different scripts, treating each word as a separate piece of artwork. None of the latter knew the Semitic languages and scripts concerned. Hence their work was nothing less than heroic, and I should like to thank them for their extraordinary labors [sic].”²⁰

Needless to say, this “Heroic” and extremely unprofessional publisher also probably did not have any specialist to critique and further editorialise Ibn Warrāq’s work before publication. It is not surprising then, that they are also the publishers of Nevo & Koren’s infamous 2003 work²¹, which the well-known archaeologist Colin M. Wells has compared to Holocaust Denial and Creation Science,²² but which our pseudo-scholar predictably thinks is “Unjustly neglected”.²³ Two of the remaining of his works were published by the New English Review Press (based in Nashville, Tennessee), a notorious right-wing publisher known for giving a platform to people like Michael Rectenwald and Phyllis Chesler.²⁴ One of his volumes has also been published by the

conservative Encounter Books.²⁵ His latest work as of early-2022 was released by Verlag Hans Schiller.²⁶ Ibn Warrāq almost certainly approached this Berlin-based house through the medium of Christoph Luxenberg, another amateur Native Orientalist whose work is also published by Verlag and to whose theories the former has dedicated one whole volume.²⁷

Given this lazy choice of publishing houses, it would be baffling if Ibn Warrāq himself was not aware of what he was doing, or still sincerely believed his work to be anything approaching scholarly or well-argued. After all, he has also deliberately kept a low profile, and will likely never confront real-time, sustained criticism from a *bona fide* expert in his life. With this in mind, it is hard to miss the point that Ibn Warrāq is nothing more than just another political activist seeking to benefit from the current wave of Islam-hatred in the West.

Not much can be said about the academic qualifications of this anonymous ideologue, but judging from his work, it is probably a good guess to say that he is mostly self-taught at best, and has very little access to or interest in the primary sources key to understanding the early history of Islam and the Qur'ān. This brings us to our central theme: The quality of Ibn Warrāq's scholarly endeavours as a whole. Here, we must pause to ask a breath-takingly obvious question: *Which Work?*

It is not an exaggeration to say that Ibn Warrāq has very little to show for his work over the past three decades. It might be interesting to note the sheer proportion of his 'edited' compared to authored works. Out of the fourteen book-length works he has produced thus far, ten list him as an 'editor'. Two (1995 & 2010) of the remaining four are simple collections of his previous essays, with only his two latest works (2017 & 2020) remotely requiring much effort on his part. His contribution to the field of Islamic Studies is probably best described, to appropriate his own words, as providing an "Extended annotated bibliography"²⁸, but not a very useful one, coming from an ideologically-biased and poorly-trained source.

We put 'edited' in quotation marks for a reason, because the quality of his 'editing' is just as brilliant as would be expected from a self-taught but enthusiastic amateur who puts out a bulky volume every few years or so. As might be guessed from a look into the footnotes of this article, Ibn Warrāq's own writings are often limited to simple introductions at the start of a volume or a part of the volume.²⁹ Even those introductions are not very helpful, with poor engagement to the material being presented and absolutely no effort to develop an alternative central theme beyond blindly throwing

doubts at the mainstream understanding of Islam. The articles collected in his volumes are often wildly contradictory, but Ibn Warrāq's response to these differences is to simply ignore them, probably in the hope that his readers are not mentally equipped enough to notice. There is not a single new idea, theory or finding about the early history of Islam or its sources that can earnestly be attributed to Ibn Warrāq.

Apart from the introductions, his 'edited' volumes are simple collections of the most radical, mostly disproven and revisionist, works he can find. Of course, the inclusion process is extremely selective and focuses around the two core groups of classical sceptics, most of them of German heritage,³⁰ and its modern counterpart (commonly known as the 'Revisionist' school) inspired by John Wansbrough. He is indeed very fond of these revisionists and misses no chance of embracing them, as we have seen in the examples of Luxenberg and Nevo & Koren already. So far, Ibn Warrāq has failed miserably to even once engage with any establishment scholar for more than a few sentences in his fourteen volumes, let alone try to honestly understand and refute their much-better argued line of reasoning. Even ignoring the selection bias, the role of Ibn Warrāq himself is more or less limited to editing the language of the text for publication. No analysis or commentary is provided even for works more than a century old. It is hard to understand why anyone would want to re-publish such well-known texts in such a raw form, especially ones that have already been incorporated into later scholarly work in the field, apart from personal or ideological interests.

We do not know how to delicately say this, but the lack of originality in Ibn Warrāq's work is truly astonishing to any well-informed reader. As unimportant as it may sound after all we have already gone through, the fact that he has frequently (and admittedly) plagiarised even the titles of his books³¹ and articles³² is perhaps a good micro indicator of the way his populist 'scholarship' functions.

Finally, with such a blatantly partisan and hateful content, Ibn Warrāq has also accumulated a number of 'flattering' reviews to his name. Often, his books will now simply be ignored by mainstream scholars, but when some known Islamicist does manage to spare the time to go through one of his works, they are often legitimately frustrated by what they find published in the name of scholarship and 'secular humanism'. After all, Ibn Warrāq had had the honour of being called "triply unqualified" and "religious polemic attempting to masquerade as scholarship" by Fred Donner,³³ while Daniel Varisco had to earnestly state that:-

"This modern son of a bookseller imprints a polemical farce not worth the 500-

plus pages of paper it wastes."³⁴

Often, the only positive reviews Ibn Warrāq would ever get for his work are from "Jihad Watch" (where Ibn Warrāq has been writing himself since 2015) or other notorious neo-fascist conspiracy groups.³⁵ Whatever neutral or positive remarks he will get from other scholars, often boil down to an appreciation of his 'boldness' rather than the quality of his arguments.³⁶ The only single genuinely positive review Ibn Warrāq ever got from an acclaimed expert in his twenty-five years of publishing was apparently so encouraging that he had to cite it in the introduction to a 2013 work.³⁷ This should give us an idea of how incredibly controversial Ibn Warrāq is in an industry *designed* to provoke and introduce new ideas, and at the same time his desperation to be seen as at least reaching the minimum threshold of impartial scholarship.

1.5 Ibn Warrāq the Revisionist

One of our main themes in this article is the assertion that Ibn Warrāq is simply one (albeit very obvious) example of how modern apologetic Orientalists function, often under the cover of 'scepticism' or 'revisionism'.³⁸ The most common cover for radical revisionism – like all conspiracy theories – is a relentless detestation for mainstream scholarship and the inability to understand its arguments. Ibn Warrāq, of course, excels at this, and there is hardly any lengthy article or 'introduction' written by him that does not explicitly bring this up.

We might as well look at the introduction to one of his most well-known works to realise the kind of tactics apologetic Orientalists utilise to make their points. Predictably, Ibn Warrāq is wildly confused throughout the work as to why "Most modern scholars ... accept more or less the traditional account ... without *giving a single coherent reason* [his emphasis]" without every trying to actually engage with any mainstream work in detail. Ironically, while throwing doubts at the 'traditional' understanding, Ibn Warrāq is absolutely sure when it comes to the conclusions of whom he himself calls "Wansbrough and his disciples", for he confidently declares *all* traditions regarding the early collection of the Qur'ān as "Exceedingly late, tendentious in the extreme, and all later fabrications" without even adding 'perhaps' or 'probably', as a more scholarly revisionist would prefer to do. He continues with even more bizarre and confused questions like: "Are we really to believe that Muhammad remembered it exactly as it was revealed?" and "We seem to assume that the Companions of the Prophet *heard and understood* him perfectly".³⁹

When he does get into specific criticisms, he is almost always simply borrowing the

arguments of another, more scholarly revisionist. Whenever Ibn Warrāq does eventually try to add something of his own, it is often in the form of clearly-incoherent statements born out of frustration rather than healthy and rational scepticism. Consider the fact that this serious scholar actually took the time to write a fictitious apologetic “Dialogue” between two people in one of his few prominent works, which mostly boils down to – if we may be blunt about it – an overly simplified rant about Ibn Ishāq’s oral tradition being the first and only source of *Sīrah* we have today.⁴⁰ The mistake most revisionists make is to discredit or ignore the Muslim Arab sources for early Islamic history as a whole, and rely solely on non-Muslim⁴¹ or archaeological⁴² sources. Ibn Warrāq, on the other hand, does not seem well acquainted with any of these sets of sources, or the principles and methodologies of modern historical criticism.

Often, Ibn Warrāq’s own analysis only adds even more extreme and often ridiculously ill-educated claims to the existing revisionist literature, such as “We can see the Muslim *hijra* ... as an emigration of the Ishmaelites (Arabs) from Arabia to the Promised Land” instead of from Mecca to Medina, “For no early source attests to the historicity of this event”, despite the fact that documents from as early as 643 C.E. contain the Hijra dating.⁴³ This is not even an extreme example, but rather illustrative of how Ibn Warrāq functions as a self-made ‘scholar’. Such sad and desperate conjectures contribute nothing to human learning, but can have disastrous social consequences and embolden the rising alt-right Islamophobes in Europe, which is the only thing that Ibn Warrāq is – consciously or unconsciously – accomplishing.

1.6 Conclusion

We culminate our survey of Ibn Warrāq’s (still-growing) legacy by addressing one final point. We do understand the criticism that might be directed at us because of our minimal engagement with the actual content of Ibn Warrāq’s ‘evidence’. But again, it needs to be emphasised that he objectively does not have any new or original arguments to begin with. Regardless, other – more capable – experts have already addressed some of Ibn Warrāq’s specific points,⁴⁴ and adding one more to it might not do much good in the long run. It is not that we refuse to discuss his work in detail or ‘ignore’ it out of spite or a threat to *status quo*, – as Ibn Warrāq probably thinks of his critics – our decision to limit our analysis to a holistic approach merely reflects the fact that Ibn Warrāq simply is not worth the time. He might be influential in the far-right circles of Europe and North America, but only because he writes a lot and cites a lot,

regardless of the quality of his interpretations or lack thereof. The best course for a serious scholar, in our opinion, is to simply understand the situation as a whole, and move on to a more productive activity.



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References & Notes:

¹ Such as in the introduction to his first published work, along with a number of interviews, see: Ibn Warraq, *Why I Am Not a Muslim* (Amherst, New York: Prometheus Books, 1995), XIII-XIV.

² For an excellent analysis of his early life and declaration of apostasy based on the best interviews available, see: Dr. Muḥammad Fairouz al-Dīn Shāh Khagga, *Muṭālī'a e Islam aur Istishrāqī Tanqīdāt* [Urdu] (Lahore, Pakistan: Aks Publications, 2019), 198-200; cf. Ibn Warrāq, *Virgins? What Virgins? And Other Essays* (Amherst, New York: Prometheus Books, 2010).

³ See: Samuel P. Huntington, *Clash of Civilisations and the Remaking of World Order* (New York City, New York: Touchstone, 1996).

⁴ Abu Khalil As'ad, *The Islam Industry and Scholarship: Review Article* ("The Middle East Journal", vol. 58, no. 1, 130-137).

⁵ Ibn Warraq, ed., *Defending the West: A Critique of Edward Said's Orientalism* (Amherst, New York: Prometheus Books, 2007).

⁶ Ibn Warraq, ed., *Which Koran?: Variants, Manuscripts, and the Influence of Pre-Islamic Poetry* (Amherst, New York: Prometheus Books, 2008).

⁷ Ibn Warraq, ed., *Why the West is Best: A Muslim Apostate's Defence of Liberal Democracy* (New York City, New York: Encounter Books, 2011).

⁸ Ibn Warraq, *Leaving the Allah Delusion Behind: Atheism and Freethought in Islam* (Berlin, Germany: Schiller & Mücke GbR, 2020).

⁹ Ibn Warraq, ed., *Leaving Islam: Apostates Speak Out* (Amherst, New York: Prometheus Books, 2003).

¹⁰ Cf. Footnote 8.

¹¹ A comparison with figures like Adam Carolla, Bill Maher, George Carlin, Jordan Peterson, and Sam Harris, among others, might help us better understand this phenomenon.

¹² See footnote 35.

¹³ Ibn Warraq, *Leaving Islam*, 19-20.

¹⁴ This is a common complaint by revisionists, who often offer studies of Christianity and Jesus as poor comparisons. However, it is more likely, as the religious scholar Herbert Berg has pointed out in one of the rare studies comparing Islamic and Christian scholarly disciplines, that scholars of Islam simply have much less resources than those studying Christianity, and

given this disparity, the Islamic scholars have in fact accomplished much more disproportionately positive results. He also notes that they are far less biased in favour of the Prophet of Islam [ﷺ] than Jesus, and that the Islamic sources themselves are much more rich and authentic than the gospels and other early-Christian texts, which allows for a more objective research. See: Herbert Berg, *The Historical Muḥammad and the Historical Jesus: A Comparison of Scholarly Reinventions and Reinterpretations* ("Studies in Religion/Sciences Religieuses", vol. 37, no. 2, 271-292).

¹⁵ For instance, see: Ibn Warrāq, *Not a Muslim*, 351-360.

¹⁶ Ibid, 2.

¹⁷ Ibid, 276-281.

¹⁸ The three works in question are "Defending the West" (2007), "Why the West is Best" (2011), and "Sir Walter Scott's Crusades and Other Fantasies" (ed., Nashville, Tennessee: New English Review Press, 2013).

¹⁹ See the official webpage for the publisher: www.prometheusbooks.com/about.

²⁰ Ibn Warraq, ed., *Koranic Allusions: The Biblical, Qumranian, and Pre-Islamic Background to the Koran* (Amherst, New York: Prometheus Books, 2013), "Preface, Acknowledgments, and Advertisement for Myself".

²¹ Yehuda D. Nevo & Judith Koren, *Crossroads to Islam: The Origins of the Arab Religion and the Arab State* (Amherst, NY: Prometheus Books).

²² Colin Michael Wells, *Crossroads to Islam* [reviewed] (Bryn Mawr Classical Review, 2004.02.33, retrieved 6/2/22, <https://bmcr.brynmawr.edu/2004/2004.02.33>).

²³ *Koranic Allusions*, 1.1.

²⁴ *Sir Walter Scott's Crusades and Other Fantasies* (2013), & *The Islam in Islamic Terrorism: The Importance of Beliefs, Ideas, and Ideology* (2017).

²⁵ *Why the West is Best*.

²⁶ *Leaving the Allah Delusion Behind*.

²⁷ Ibn Warraq, ed., *Christmas in the Koran: Luxenberg, Syriac, and the Near Eastern and Judeo-Christian Background of Islam* (Amherst, New York: Prometheus Books, 2014).

²⁸ *Why I Am Not a Muslim* XV.

²⁹ A good example might be that of his 2002 work: *What the Koran Really Says: Language, Text and Commentary* (Amherst, New York: Prometheus Books), that contains five 'introductions' of varying length by Ibn Warrāq, to the volume and its various parts.

³⁰ Such as Ignác Goldziher and Joseph Schacht.

³¹ The title of his year-2000 work: *The Quest for the Historic Muhammad* (Amherst, New York: Prometheus Books) is derived from the incomparably more serious work of Albert Schweitzer.

³² His introduction to Part III of his book is named *The Allah that Failed* after a famous anti-Communist work from 1949.

³³ Fred Donner, *The Quest for the Historical Muhammad, Edited and Translated by Ibn Warraq* [reviewed] ("Middle East Studies Association Bulletin", vol. 35, no. 1, 75-76). Some other observations worth quoting from the review are that Ibn Warrāq and a fellow anonymous revisionist Ibn Rāwandī contribute no 'original arguments to this debate', and that his selection of material is 'one-sided' and characterised by 'favouritism' that is 'likely to mislead many an unwary general reader'. His 'agenda' is 'Not scholarship, but anti-Islamic polemic'. In the end, he calls the work 'A monument to duplicity'. Keep in mind that Fred Donner is a very serious and audacious scholar himself, to the point that Mun'im Sirry considers him an effective revisionist (*Controversies over Islamic Origins: An Introduction to Traditionalism and Revisionism*, Newcastle upon Tyne, United Kingdom: Cambridge Scholars Publishing, 2021, XVII-XVIII).

³⁴ Daniel Martin Varisco, *Orientalism's Wake: The Ongoing Politics of a Polemic* ("The Middle East Institute Viewpoints", 2009, no. 12). He also criticises "Defending the West" in particular as "Aptly titled but badly edited".

For two other particularly telling reviews by actual scholars, see: Yasin Dutton, *The Origins of the Koran: Classic Essays on Islam's Holy Book* [reviewed] ("Journal of Islamic Studies", vol. 11, no. 2, 229-232), & Alfons H. Teipen, *The Quest for the Historical Muhammad* [reviewed] ("Journal of Ecumenical Studies", vol. 40, no. 3, 328-329).

³⁵ For two examples of reviews by different contributors on Jihad Watch, see: <https://www.jihadwatch.org/2014/11/ibn-warraqs-christmas-in-the-koran-a-new-challenge-to-the-standard-account-of-islams-origins> & <https://www.jihadwatch.org/2017/05/hugh-fitzgerald-a-review-of-ibn-warraqs-the-islam-in-islamic-terrorism>. For a series of articles reviewing one of Robert Spencer's (the website's founder) recent books by Ibn Warrāq, see: <https://www.jihadwatch.org/2021/07/spencer-has-laid-out-with-exemplary-clarity-the-problems-with-the-traditional-account-of-the-life-of-muhammad>.

³⁶ For instance, see this French review by a professor of Arabic: Pierre Larcher, Untitled [Review of Christmas in the Koran, 2014] ("Arabica", T. 62, Fasc. 5/6, 756-763).

³⁷ See: *Koranic Allusions*, "Preface, Acknowledgments, and Advertisement for Myself". For the original review, which again is primarily praising his 'courage' in taking a revisionist stance, see: David Cook *Virgins? What Virgins? and Other Essays* [reviewed]. "Reason Papers", vol. 34, no. 2, 234-238. Not-so coincidentally, David Cook also provided the only positive review of Nevo & Koren's work as well ("Crossroads to Islam", in *Middle East Quarterly*, vol. 13, no. 4, Fall 2006), and has himself written multiple works on the notion of modern 'Jihad', see, for instance: *Understanding Jihad* (Berkeley, California: University of California Press, 2005) & *Martyrdom in Islam* (Cambridge, United Kingdom: Cambridge University Press, 2007).

³⁸ At least one scholar has explicitly made the connection between neo-conservatism and revisionist Islamicists, see: Aziz al-Azmeh, *Islamic Origins for Neo-Conservatives*. Central European University (no date).

³⁹ See the complete text in: Ibn Warraq, ed., *The Origins of the Koran: Classic Essays on Islam's Holy Book* (Amherst, New York: Prometheus Books, 1998), "Introduction".

⁴⁰ See: *The Quest for the Historic Muhammad*, 38-43.

⁴¹ Such as Patricia Crone & Michael Cook, in *Hagarism: The Making of the Islamic World* (Cambridge, United Kingdom: Cambridge University Press, 1977).

⁴² Such as Nevo & Koren, *Crossroads to Islam*.

⁴³ *The Origins of the Koran*, under "Skepticism of the Sources" in Chapter 1. For the papyrus PERF 558, the earliest attestation of the Hijra dating, see: Alan Jones, *The Dotting of a Script and the Dating of an Era: The Strange Neglect of PERF 558* ("Islamic Culture", vol. 72, no. 4, 95-103). Ibn Warrāq statement can only be considered woefully ignorant and ill-informed, unless he believes that the Hijra calendar was actually dated from a mysterious event that everyone apparently forgot about, or that all the Islamic world somehow unanimously decided to name it after the supposedly-fictional 'Hijra' was invented.

⁴⁴ For instance Ḥafṣah Naṣrīn discusses the introduction to "What the Koran Really Says" (*Qur'ān Karīm kī Zubān: Ibn Warrāq kī Ārā kē Tanāzur mēn* [Urdu], "Jihāt al-Islām", vol. 10, no. 2, 31-54), while Waraich (Dr. Muhammad Nasir Mahmood, *Orientalists on the Early History of the Compilation of the Quran: A Study of "The Origins of the Koran" by Ibn Warrāq*, "Al-Qamar Bi-Annual Research Journal", vol. 1, no. 2) refutes his unwarranted scepticism concerning the early compilation of the Qur'ān. Also see some of the reviews of his books by specialists, as cited in footnotes 33 & 34.

Foundling and Abandoned Children: A Critical Analysis in The Light of Islamic and Pakistani Law

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ABSTRACT

The history of children and the family includes the study of foundlings and abandoned children. The terms "foundlings" and "abandoned children" are substitutable. This work highlights the children who are abandoned at the time of birth including children who are a result of rape. Rape is one of the most widespread sexual assaults against women in Pakistan. Pregnancy is a potential result of rape. The author through the light that Rape is not the only issue, but there are several other problems associated with it. One of them is children born as a result of rape and that need to be addressed. The children born as a result of rape must be recognized as a victim. So such children must be discussed under the topic of abandoned children. This paper also analyses the law regarding the maintenance of illegitimate children and its interpretation by the courts. The paper promotes the idea that explicit legislation must be established to guarantee the rights and safety of abandoned children. In addition to making substantial efforts to raise public awareness about the rights of abandoned children, it is important to channel and regularise the concept of kafalah. In this research paper, pertinent Islamic and Pakistani legal rules are discussed and examined.

Keywords: *Abandoned, Rape, Child, Status, Illegitimate, Kafalah, Pakistan Law, Compensations, Islamic Law.*

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1. Introduction

The concept of rights on earth started with the evolution of human beings. Human rights are of great prominence as evident from the fact that it is receiving a distinct place in every religion that existed in the contemporary world. Pakistan's society is mostly professing the Islamic religion and pursues its injunctions in their daily lives. It is the right of every individual living in the country to be protected from all sorts of things which can affect him and for that reason strict legal and administrative measures should be taken. Therefore, it is the duty of the concerned authorities to make sure that vulnerable sections of the community are specially secured, profited, receiving sufficient care and have proper accommodation¹. Prior to the 1947, children's related legislation already existed which ensured protection against all sorts of abuses to this vulnerable section of the society, which then rulers (Britishers) set-up to provide children protection and to punish the violators. Subsequently, at the separation's time, the nation acquired a legacy of child welfare committed principally to curative administrations. In Pakistan, the Constitution of 1973 was the main document that guaranteed the fundamental rights for every citizen without any discrimination of language, color, creed or caste, etc. The children Rights Convention (CRC) Article 1 defines, "A child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier²." Child Rights may be defined as "The rights, which are concerned both with the protection of the individual child and with the creation of the conditions in which all children can develop to their full potential³. Islam is the state religion of Pakistan⁴, which is controlled by Islamic laws. As a result, Shariah standards and principles apply to the rights and obligations of Pakistan's citizens. Pakistan has obligations under international law and is a party to international agreements like the Convention on the Rights of the Child (CRC). "The child shall be registered immediately after birth and has the right to a name and nationality and to know and be cared for by his or her parents," according to Article 7 of the CRC. Similar to Article 18, Article 19 requires member states to take appropriate legal, administrative, educational, and social action to protect children from abuse, whether they are in the care of parents or guardians, from all types of exploitation. According to Article 2, a child who loses his or her familial environment either temporarily or permanently is entitled to particular protection and help from the State. States Parties shall ensure alternative care for such a child in line with their national laws, which

may include adoption, foster care placement, kafalah under Islamic law, or necessary placement in competent institutions for child care. The desire for continuity in a child's upbringing as well as the child's ethnic, religious, cultural, and linguistic background must be taken into consideration when coming up with solutions. The CRC is the only international document that specifically discusses Islamic law. A facility to care for children who have been abandoned by their relatives is referred to in Article 20 as the kafalah. Kafalah is mentioned in this article in relation to adoption and foster care. Children adopted under kafalah do not adopt the adoptive family's name, but they are still entitled to care, support, and education. Such a youngster won't receive an inheritance from the adopted parents. Since Article 20 specifically specifies kafalah as an Islamic alternative to adoption.⁵

1.1 Abandoned Children in Pakistan

The Pakistani government established the National Commission for Child Welfare and Development (NCCWD) in 1979. It operated under various administrative structures until being located under the Ministry of Human Rights. Monitoring and assessing whether children are obtaining their legal, administrative, and constitutional rights is the responsibility of the NCCWD. Additionally, it makes recommendations for constitutional and statutory modifications and develops national policies and laws for the welfare, advancement, and protection of children. The NCCWD has suggested a number of amendments and improvements to current laws and regulations, some of which have been incorporated into the Pakistan Penal Code (PPC) and the Constitution, but their actual execution still leaves a lot to be desired. The Pakistani Constitution mandates free education for all children aged 5 to 16 and outlaws child labour and child marriage. This objective is far from being accomplished, despite these laws and the ongoing efforts of numerous state and non-state agencies. The government of Pakistan ratified the Convention on the Rights of the Child (CRC) as a legal document for children's rights that establishes standards in health care, education, security and legal services, civil and social services, as the following significant event in the history of child welfare. Since then, the nation's dialogue around children's rights has begun to gain momentum. To address child sexual abuse, exploitation, child pornography, prostitution, health, housing, poverty, child labour, education, and child mortality, the National Plan of Action (NPA) for Child Protection was established. In order to establish an institutional framework for child abuse prevention, child abuse protection, and child abuse rehabilitation, a child

protection bill was drafted in 2006. Child Protection Courts (CPC) are a provision of the Punjab Destitute & Neglected Children Act 2007, which stipulates that the government may, by notification, create one or more such courts under this Act as warranted. The situation on the ground is unchanged notwithstanding the aforementioned initiatives. Recent occurrences covered by the media also emphasise.⁶ Children born as a result of rape who are abandoned by their families and society need to be addressed as a big issue. Abortion is prohibited in Pakistan, so it creates a circumstance where children born outside of marriage are clandestinely murdered every year. According to the “Edhi Welfare Foundation”, more than 1,100 infants were killed and dumped in the garbage in 2014 only, and this is the figure only from the big cities of the country, and the figure can be much bigger nationally. According to the manager of the Edhi Foundation, Anwar Kazmi, a child who was six-days old was burnt to death. There have been cases where corpses of babies have been found hanged or eaten by animals. There was another case in which a child was left in front of a mosque by a woman expecting that someone would take him but that child was stoned to death by the people on the order of the cleric of the mosque.⁷

Under Pakistani Law, a mother is authorized to the custody and guardianship of illegitimate children. The father has no legal tie with such a child, even though he is the biological father. However, an illegitimate child has a complete legal tie with his mother and there is no hindrance in the way of the child inheriting from his mother.⁸ In **Nadeem Masood v. The State**⁹ case, a revolutionary decision was made by Lahore High Court that has a potential to economically empower children born as an effect of rape. The court ordered the appellant, Nadeem Masood, to pay Rs. 1,000,000 to his illegitimate daughter born as an outcome of rape. By dispensing such an order, the LHC invoked the right of appellate courts to order compensation to be paid under Sections 544-A and 545 of the Criminal Procedure Code 1898. The illegitimate children born as a consequence of rape have never been specifically compensated by the Pakistani courts and their mental anguish and psychological damage was never been considered before. Justice Anwaarul Haq established that it is a legal right of such children to be compensated for the trauma they suffer. The Lahore High Court justifies this right to compensation in two ways. Firstly, the judgment looks at the precedents set by the “Supreme Court of Bangladesh” and the “Indian Supreme Court” to conclude that a child holds an unquestionable right of life and that has to be secured by the biological parents and the State. This right also covers the children given birth

as an outcome of rape and cannot be rejected due to the inauspicious circumstances of their birth that they had no control over. Secondly, the judgment elucidates Sections 544 and 545 of the Cr.PC to conclude that an appellate court can pass an order in favor of a child born as a consequence of rape committed by the accused. The analysis of Section 545-A makes it absolute that the court directed compensation is not limited to the victim or legal heirs of the victim, but can be stretched to any individual who has undergone the mental agony or psychological impairment triggered by the crime. Furthermore, under section 544-A (5), the appellate court has a right to modify judgments concerning the compensation allocated to all entitled parties. Thus, appellate courts can apply these provisions to modify the trial court's judgment and order compensation to be paid to any person i.e. the child born as a consequence of rape¹⁰. The monetary compensation for illegitimate children can help in financially empowering women who raise them and get rid of some social stigma attached to their birth. This small glimpse into the psychological torment that blights the life of a rape victim and any child born as a consequence is simply aggravated by the fact that rape is not a ground on which Pakistani law allows abortion. While that doesn't preclude those who seek out the option, granting monetary compensation is only humane for women and children trapped in such situation, especially when the State doesn't even provide rape victims the choice of abortion. Therefore, this judgment has established a precedent for other courts to follow and it can financially and socially help the rape victims. In Pakistan, no legislative action has yet been taken to specifically protect the rights of children born due to rape.

The maintenance of a child under Pakistani Law is an obligation which is primarily upon the father. Although it is not defined in the statutes, it can be concluded from the precedents that maintenance consists of the provision of food, clothing, housing, and other indispensable expenses to promote the mental and physical wellbeing of the child.¹¹ This definition of maintenance is not decisive and exhaustive, and may vary in specific circumstances. The law relating to the maintenance of a child is contained in sections 488-490 of the Code of Criminal Procedure 1898 (Cr.P.C.). According to the Section 488 of Cr.P.C it is obligatory upon the father to maintain his wives, and children: both legitimate and illegitimate. Under this section, the monthly allowance for maintenance is not to be exceeded than four hundred rupees. If the order of the court to pay maintenance has not fulfilled it will result in imprisonment. For a legitimate child, it is an established right, which cannot be disputed. However,

the liability of the putative father to maintain his illegitimate child under section 488 of Cr.P.C is greatly criticized by different sects. The Federal Shariat Court (“FSC”), which enjoys the authority to declare a law null and void if it is against the injunctions of the Qur’ān and Sunnah,¹² has defended this provision as follows:

It was said that there is no concept of a putative father in Islam, but the law as envisioned above does not give any right to the person who has a adulterous relationship with the mother of the child resulted in his birth. According to the Sunnah, the child is considered the child of his mother and does not inherit from the person who is responsible for his earthly existence, nor does such a person inherit from the child. The above subsection does not, in any manner, belittle or make any invasion on this well-known principle. For the limited purposes of the Act, it merely makes him responsible for bearing the expenses of the child. The Shari’ah proposition (the parentage is determined by the conjugal bed, and the person committing adultery has only disappointment,) applies to the right of being a parent. It does not concern itself with liability. The words ‘putative father’ does not mean that any paternal right is to vest in him. This is only a manner of description to make him responsible for the maintenance. The same liability is fixed in S. 488 Cr. P. C., which was not held to be invalid by the Council of Islamic Ideology vide its report on Criminal Procedure Code.¹³

The Federal Shariat Court seems to take the duty to maintain an illegitimate child as a punishment for the father. According to this interpretation, such a father does not have any rights on the child but should have responsibilities. Despite this defence, the law was abrogated by considering it to be against traditional Islamic law. These sections were repealed in 1981 during the period of Islamization of laws and it was held that under Islamic law, illegitimate children have no right of maintenance and inheritance from their fathers, and no other alternate legislation was introduced to guard the rights and benefits of illegitimate children.¹⁴ This is very ironical because the teachings of Islam direct that state and lawmakers should care for the rights of children and women and protect them against physical and moral humiliation. There is a need to draft a law to encompass all aspects of child maintenance. In Pakistan, after the annulment of the above-mentioned sections, the Muslim Family Laws Ordinance 1961 and the West Pakistan Family Courts Act 1964, deal with issues related to the maintenance of the child. However, these statutes give very few rules regarding maintenance. Cases related to the maintenance of children are decided in

light of legal precedents.

In Pakistan, the documents known as Form B and the computerized national ID card (CNIC) are the backbone of every person's right to survival in their country. The registration of Form B and CNIC is a major issue for the illegitimate child, the difficulty arising due to the names of their parents being unknown to authorities. There must be a special consideration for such cases the Parliament need to bring forward any bill in this context. Starting from the process of obtaining basic ID documents, therefore, it is very difficult for the illegitimate child to survive in society. In the case of **Levy vs Louisiana**, the US Supreme Court held that the illegitimate child is not a "Non-person." They are human, alive and have their being. They are clearly "persons" within the meaning of the Equal Protection Clause of the US Constitution. This judgment provided a milestone toward the equality of the illegitimate child with the legitimate child. Many of the enactments from this point onwards made discrimination against the illegitimate child unconstitutional. In the US, a child born out of wedlock enjoys all legal rights as a legitimate child, except inheritance from the father. During the tenure, former President Asif Ali Zardari, he took a positive step in favour of children of unknown parentage and directed the NADRA authorities to use his name as a father's name in official documentation for any abandoned child. This step provided legal status to many unknown children.¹⁵ Therefore, the purpose of above debate is that the author wishes to underline that anytime there is discussion on children rights protection, rape victims' children must be considered, and there must be major and distinct laws that address the welfare of such children. According to article 25 of the constitution of Pakistan, the state is required to make special provision regarding child protection. The "Child Protection Welfare Bureau" (CPWB) is a self-governing body which was set up under the "Punjab Destitute and Neglected Children's Amendment Act-2007". Its centers are in different cities of Punjab, and its purpose is to provide amenities for children once it adopts them.¹⁶ The alternative care which is provided by the state and private sector for abandoned and illegitimate children are clearly insufficient and very low. There is a heavy deal of fear involving the handling of children in the institutions. The societal prejudice against illegitimate children is yet more. Even in adoption, there is a strong inequity against such children. In Pakistan, the Edhi Foundation has a scheme of accommodating the disown babies called jhoola since 1952. There are two most important and appreciated adoption centers in Karachi named as "Kashana-i-Atfal's Naunihal Baby Centre" and the

"Bilquis Edhi Foundation". In Lahore and Rawalpindi there is an "SOS Children's Village."¹⁷

1.3 Foundling/Abandoned Children in Islamic Law

It is an established fact that in the early period of Islam adoption existed and was practiced by Muslims. Later, when the Prophet exhorted the Arabs to give up the unreasonable, unnatural and inhuman practices of pre-Islamic Arabia, he also gave them higher ideas of the domestic relationship and explained to them in full that adoption similar to what was practiced in the "Days of Ignorance" created no such ties between the adopted son and the adopting father as resulted from blood relationship. Under the classical Muslim Law adoption gives no right of inheritance to the adopted child in the property of the adoptive parents, nor to the adoptive parents in the property of the adopted child.¹⁸ Islam fully supports the concept of helping the orphan and poor, and taking them under the wings. If there is no one to take care of the orphan and poor children, then this responsibility falls upon the Islamic government. Islam differs on the implications and legal consequences of adoption. It is this part of the adoption procedure that Islam does not accept. However, changing the family name of the adopted child is not allowed. If the child is two years old or less and is also breast fed directly by the adoptive mother for at least a day and a night (or fifteen times consequently), then the child will become mahram to the new family. If the child is not breastfed as mentioned above, then he or she will remain non-mahram to the new family. Adoption in *rizâ'i* or non-*rizâ'i* form does not give the adopted child a right to inherit the estate of the adoptive parents nor does it deprives him or her from inheriting the estate of the real parents.¹⁹ (However, the adoptive parents have the option of writing up to one-third of their estate for their adopted child.) Islam focuses on *kafalah* as an alternative care option for children deprived of a family environment in comparison with other forms of alternative childcare. The inclusion of *kafalah* in the Convention on the Rights of the Child (CRC) is the first time an exclusively Islamic concept is recognized in a binding international instrument. Prior to this development, however, *kafalah*, as a subject of international law was first mentioned in the 1986 United Nation Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (1986 Declaration). The 1986 Declaration contains the first internationally agreed upon standards of care for children whose parents are unavailable or inappropriate. *Kafalah* is also recognized in the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-

operation in Respect of Parental Responsibility and Measures for the Protection of Children. It is provided as one of the measures that can be taken to ensure the protection of the person or property of the child. In the United Nation Guidelines, kafalah is recognised as an 'appropriate and permanent solution' for children who cannot be kept in, or returned to, their original families.²⁰

Consequently, caring for orphans and vulnerable children generally is a key tenet of Islam in order to provide them with the safety and security that a family environment offers. Indeed, there is greater agreement between the major Islamic sects on the matter of caring for such children than on any other matter of law, and the Qur'an provides specially for the subject. For instance, upon taking in a 'foundling' (laqit), the child must never again be abandoned. There is a moral duty and an obligation to render social assistance to children (and adults) who lack the basic necessities of life, whether or not they ask for it.²¹

In Islam, it makes no difference whether or not these children have parents. The emphasis is on ensuring their sustenance through the provision of basic needs. Poverty is thus a cause for concern in relation to the proper care of children. The Islamic law defines the magnificent advantages and blessings that one receives in adopting and caring for a foundling. The term laqit is used in Islamic Law, which means taking into custody. Taking child into custody is recommended as in this, there is a survival of the child and it becomes obligatory if the person is convinced that the child will die. The Bayt al-mal is responsible to maintain the foundling because he is the person who is unable to earn and has no wealth and relatives. If any person takes foundling into custody, then no other person has a right to take such child away from him. Furthermore, foundling is a free person and if some wealth is found tied to him, then it belongs to the foundling, the finder of the child has the authority to hold onto it and to buy things necessary for the foundling. But, he does not have authority to undertake transactions in the wealth of the foundling. He can accept a gift on behalf of the foundling. The person who finds a child has no authority to marry her.²²

Most of the jurists believe that collecting the abandoned and neglected children and taking care of them is a collective or communal act. It is obligatory to collect the unattended and abandoned children, shelter them, and fulfill their needs. There is larger unanimity among the Muslim Jurists on the subject of taking care of foundling children than on any other problem of law, and the Qur'an provides clearly for this issue. The taking upon foundling known as laqit and it is required that such child

should not ever again be left alone. There is a liability and moral responsibility to provide social support to such children. The concept of kafalah is there in Islamic law under which there is a pledge to willingly take care of a minor in the equal manner as a father would do it for his son. There is no right of inheritance of a child who is adopted under kafalah from the adoptive family, but inheritance can be assigned to such child through testamentary succession²³. According to some Shafi'i jurists, the presence of a witness is necessary when picking the abandoned child because such child must remain secure both in terms of life and parenting. While some jurists argued that the presence of a witness is not obligatory. A group of jurists also believes that if the founder of the child (multaqit) is a just person, there is no need for holding a witness, however, if his or her justice is not manifest, taking a witness is obligatory, as this would produce more confidence in that individual.²⁴

In Europe, from at least the 12th century in the middle ages, societies have established means to shelter the abandoned babies. There was a crib system known as "baby hatch" placed outside a hospital or any other area where people could securely drop off a baby. This was because Catholic Church did not allow the abortion and so required a place for undesirable babies. There used to be a circle in a wall in which a baby could be placed and be safe, known as foundling wheel. In the United States, there were laws known as safe haven and their purpose was to put the welfare of the infant at priority. In some states, a woman was allowed to give birth to an illegitimate child in the hospital safely and secretly leave without the baby. These unlucky children are usually found deprived of shelter, inhabitation, starving in the streets under the relentless open sky. The society due to its carelessness and acute indifference dispossess the human rights of such children and in the end, lead them towards baneful destructive activities like begging and drug addiction.²⁵

Conclusion

The proper and complete support system should be offered by the government that should include financial help for raising such children and most importantly the respectable status in society. As far as the rights of children born due to rape are concerned, no legislative action has yet been taken in Pakistan. The infanticide is on the rise in Pakistan, the number of children murdered has escalated gradually over the past five years. According to welfare organizations "The Edhi Foundation", Pakistan's leading welfare agency, the number of dead babies its ambulances pick up has augmented by almost 20 percent every year since 2010. Every year in Pakistan,

thousands of children go missing or are abandoned on the streets. Some are found dead on the streets amid piles of trash. All religious scholars in Pakistan should consider the authentic descriptions of Islamic law on the issue and have to bring these into confidence in parliamentary procedure to solve these matters. Pakistani Law is failing in protecting the lives and rights of abandoned children. As said earlier, a system of kafalah should be established to take care of such children. The rehabilitation and welfare institutes should be established to ensure the housing, education and healthcare of such children. The hundreds of unwanted children that are born in Pakistan each year will seem to have no purpose in life as long as they are homeless, without a family, and without a reason to live. Since all children are equal, they have a right to the same necessities of life. Each year, Pakistan sees the disappearance or abandonment of thousands of kids. However, there are fewer social and legal initiatives to protect them.



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