

Honoring the Sacred Duty: Orphan Care in Islam and Pakistan

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Abstract

Orphans are facing various issues. Caring for orphans holds a sacred position in Islam. It is a sacred duty that has been emphasized in the Quran and Sunnah. This paper examines the practices of orphan care within the Islamic framework. It is an attempt to declare that orphans are never alone, within the Islam. The concept of orphan care in Islam differs from traditional adoption practices in Western societies. Islamic law offers a unique approach that safeguards the orphan's original biological identity in case of adoption. The Islamic system for orphan care through adoption establishes a temporary arrangement that obliges guardians to safeguard and provide the orphan with all their physical, emotional, and spiritual requirements, as well as guard their property as a trustee. This system ensures that orphans receive the love and support they need while also preserving their identity and connection to their heritage, as well as inheritance. Islamic law provides a comprehensive framework for caring for orphans. Pakistan, as an Islamic republic, adheres to Islamic law and is therefore bound to design policies for orphan care in accordance

with the injunctions of the Quran and Sunnah, as highlighted in this paper.

Keywords: Orphan, Identity of Orphan, Guardianship, Obligation towards Orphans, Adoption in Islamic Law.

Introduction

Pakistan has a large population of children under 18, with over 102 million¹. Its population is growing rapidly. One day, these children will become youth of Pakistan. Male and female youth already make up a significant portion of the population of this country, at around 13% each. There are a total of 58.7 million young people in Pakistan², and 102 million will be an addition to it. This country owes a duty for the welfare of this population³. However, more issue is that it has a large population of children, with over 4.6 million orphans⁴. The global orphan crisis is even worse, with millions of children losing parents each year. As of 2019, it is estimated that 2 to 8 million kids are living in orphanages worldwide and over 150 million children have lost one or both parents⁵. Physical and mental health of citizens in any society is considered essential for the overall well-being of that society; however, the orphans, which are often overlooked, are facing exceptional challenges to play their effective role in society. Early interactions and bonds with parents always play a crucial role in psychological development of every child, and orphans sometimes experience anxiety and other psychological issues due to the lack of these bonds. In the absence of comprehensive research, it is estimated that around 4.5 million children in Pakistan are orphaned, and most of them are residing in special care houses that are trying to provide essential support in the absence of parental care⁶, but whether they are successful in it is another question. Further, various studies have been made to examine the circumstances of children residing in alternative or institutional care in Pakistan⁷. They shed light on the challenges they face and the support they need. All are aimed at enhancing their overall well-being. However, the findings underscore the need of family-based care substitutes for them⁸. Islamic law is dynamic, adjusting to stay pertinent to the evolving needs of circumstances. However, a significant issue that has not captured the

attention of scholars in Pakistan is the law regarding the status of an adopted child⁹. Additionally, identity issues are another challenge for orphans. The National Database and Registration Authority (NADRA) provides identity cards to the citizens of Pakistan¹⁰. Despite being an efficient institution, the National Database and Registration Authority lacks a provision to issue national identity cards to orphans without the requirement of producing their parents' records, which is surprising¹¹. The unclear policy of the NADRA regarding the registration of orphans has often been criticized¹². NADRA is not issuing ID card to orphans¹³. This is a serious issue affecting their lives¹⁴. Islam offers remedies for this problem. In Islam, it is the entitlement of every child to receive protection and care in all aspects. These rights remain unchanged even when the child becomes an orphan. Prophet Muhammad (صلى الله عليه وسلم) experienced orphan hood himself. In Islam, orphans are defined as children left without protection due to the passing of their parents or a guardian to provide for them. Therefore, in Islam, it is the responsibility of the Muslim community to interfere and support orphans, even when their mother is still alive¹⁵. The purpose of this research is to examine the importance of orphan care within the Islamic framework, and to ensure that they receive the love, support, and care they need. The research methodology employed in this study is a literature review of existing research on issues of orphan and provision of guidelines provided for their care in Islam. This will be done through analysis of the relevant verses from the Quran and practices of Sunnah. The findings of this research suggest that Islamic law provides a comprehensive framework for caring for orphans that is rooted in the principles of love and compassion, equity and justice. This research offers valuable awareness for policymakers in Pakistan to enhance and refine orphan care policies in accordance with the injunctions of Islam.

Issues of Orphans

Orphans face many issues, as shown in a study conducted in District Malakand. Researchers interviewed ten orphans between the ages of 5 and 12. The findings revealed that orphans face various challenges, including stigma, social isolation, discrimination, food insecurity, sexual abuse, exploitation,

and poor health outcomes. The study also proposed intervention strategies to address these issues and protect the well-being of orphans in orphanages¹⁶. Such children often become soft targets as victims of militancy¹⁷. In state-sponsored orphanages, they are also facing the same issues¹⁸. They face severe psychological¹⁹ and emotional problems²⁰, social issues²¹, psychosocial²², identity²³, as well as health issues²⁴. At these houses, their caregivers are often not well-trained to fulfill the psycho-socio-economic needs of children²⁵. The self-esteem of children living with parents and under orphan houses is different²⁶. There is always a call for communities, NGO's and governments to gear up their support of these houses in order to increase the positive impact on the wellbeing of orphan²⁷. Orphan care²⁸ is a collective issue, but the times demand not only care for orphans but also justice²⁹ for them. Further, a study exploring the mental health of orphans and non-orphans in Pakistan revealed that orphans face higher levels of anxiety, depression, and stress. Based on their findings, they recommend increased awareness and support for orphans that includes providing therapeutic programs, incorporating regular depression screenings and mental health support into their healthcare, and equipping them with life skills to manage stress³⁰. Studies indicate that stigma significantly influences the development of depression and anxiety in these children³¹. Identity³² is also a primary concern for these children³³. Islam offers solutions to these problems by extensively dealing with the issue of orphans in the Quran and Sunnah.

Guidelines in Quran

The word "yatim" is used in the Quran to refer to an orphan, which is a child who has lost one or both parents. This term is equivalent to the English word "orphan" and the Latin word "orphanus," both of which have their roots in the Greek word "orphanos"³⁴. Allah SWT instructs us for standing up for yatim's rights³⁵ in the Quran, and ordains that we are obligated to protect orphans and ensure their financial security. Those who took the responsibility as guardians, they should manage their properties and wealth responsibly until they reach at the age of maturity. When orphans become capable of managing their own affairs, their properties should be returned to

them. No one is allowed to misuse or consume their properties and wealth. If the trustee himself is financially well-off, he should not take any compensation for their security job or guardianship. Allah SWT will hold all everyone accountable for ones actions, including guardians if they neglect their responsibilities or take undue advantage from of it³⁶. Quran pays much attention on the affairs of orphans. Allah SWT commands "... do not oppress the orphan"³⁷, and provide them food³⁸, and must act with them graciously³⁹ and with kindness⁴⁰, and spend on them⁴¹. The Quran also instructs us to handle properties and wealth of orphans with due care and attention. Those who take responsibility for it, they are bound to utilize their properties and wealth only for the purpose of improvements in their financial positions and not for own personal gains⁴². The Quran also teaches to give orphans their properties when they reach at the age of maturity and of sufficient understanding, and it forbid to exchange one's worthless possessions for their valuables; no one is allowed to cheat them by mixing the wealth and properties of orphan with their own. It is regarded as a great sin⁴³. And those who illegally and unlawfully consume their properties and wealth: Quran says, they "in fact consume nothing but fire into their bellies. And they will be burned in a blazing Hell"⁴⁴. Furthermore, the Quran promotes fair and just treatment of orphaned women, even after marrying them⁴⁵. In Islam, Muslims are obligated to pay special attention to orphans, the poor, and the needy travelers⁴⁶ in their expenditures. Regarding orphans, the Quran commands, even in the case of partnership with them, to work for their improvement. It is stated in Surah Al-Baqarah, "improving their condition is best"⁴⁷. They are entitled to charity⁴⁸, and kindness⁴⁹. Furthermore, in Surah Al-An'am there has a clear message for us that underscore the sacred responsibility to protect the wealth and properties of orphans and to ensure their financial well-being as trustees of their properties until they reach adulthood. It prohibits the misappropriation their assets for personal gain. It also emphasizes the principles of transparency, honesty, and justice in all transactions, regarding them⁵⁰.

Guidelines in Sunnah

The teachings and practices of Prophet Muhammad (صلى الله عليه وسلم) also placed a high value on orphan care and for improving their lives⁵¹. This can be seen in the following hadiths. It was narrated from Abu Hurairah that the Prophet Muhammad (صلى الله عليه وسلم) gives emphasis to the caring for orphans by mentioning that the best Muslim household is one that treats orphans well, while the worst household is one that mistreats orphans⁵². There is a great reward for those who care for orphans. As in a hadith, Prophet Muhammad (صلى الله عليه وسلم) compares the closeness, in Paradise⁵³, between a person who looks after an orphan to his own middle and index fingers which are inseparable⁵⁴. There is a great reward for those who take in an orphan and provide them with care and necessary sustenance. It was declared by Prophet Muhammad (صلى الله عليه وسلم) that such individuals will be granted admission to Paradise without judgment, except for any unforgiven sins they may have committed⁵⁵. The guardians or those in charge of the properties of orphans are obligated to care for the properties with due diligence and attention. Even if a guardian is financially struggling, they are only allowed to take a fair and reasonable portion of the orphan's inheritance to cover their own expenses⁵⁶. In Islam, the primary responsibility of the guardian is to manage the orphan's properties for their benefit, not for personal gain. Further, no one is allowed to misuse their property, even husbands. There was a man who was entrusted with the care of an orphaned girl. He married her solely for her wealth, specifically her date palm garden, not out of love or affection. This situation prompted the revelation of a specific verse in the Quran: "If you fear that you shall not be able to deal justly with the orphan girls..." (Al-Quran 4:3)⁵⁷. All the more so, they cannot be forced to marry without their consent⁵⁸. The paramount thing is to work fairly and honestly in while dealing with their property⁵⁹, because warnings have been issued concerning the rights of the two weak ones: Orphans and women⁶⁰. Their rights are inviolable⁶¹.

Adoption of Orphans

Adoption basically involves the establishment of a legal parent-child relationship amongst a child and his or her non-biological parents; it grants

them the same rights and duties as that of the biological parents⁶². This is a legal arrangement that creates a familial bond analogous to a parent-child relationship amongst a child and non-biological adults, without separating or disregarding the his biological ties⁶³. The adoption of orphans is not prohibited in Islam; it is a misconception that it is prohibited⁶⁴. In the West, this misconception is not new; it has deep roots⁶⁵. However, according to Islamic scholars, adoption in the Western sense is not permitted under Islamic law⁶⁶. Discussion of adoption in Islam always attracts the concept of kafala. This word is derived from the Arabic word for "feeding," literally translates to "sponsorship" but more accurately embodies the notion of "legal fostering" or "foster parenting"⁶⁷. Jamila Bargach symbolizes adoption mainly as an act of providing care, not the replacement for biological heredity⁶⁸. Kafala involves the obligation of raising the adopted kid as of their own. It seeks a harmony amid fostering the child within the adoptive family and preserving the identity of the adopted kid⁶⁹. The aforementioned Quranic verses and Sunnah dealing with the treatment of orphans and vulnerable children, principally in matters of property and inheritance, give emphasis to their well-being while keeping justice.

There are several distinct characteristics in Western and classical Islamic law perspectives on adoptions⁷⁰. The Western concept of adoption causes severing all bonds between the adopted child and their biological parentages. The adoptive parents are lawfully deemed the new only parents; it creates a lawful fiction that removes the orphan's biological lineage⁷¹. On the other hand, in Islamic jurisprudence, it is prohibited to create a fictive kinship, because it disturbs the continuity of biological lineage. According to traditional Islamic scholars, adopted kids cannot be considered part of the adoptive family's lineage⁷². The Islamic notion of guardianship, which proposes a more elastic substitute to perpetual adoption, is a more apposite arrangement for orphans paralleled to the Western practice of perpetual adoption⁷³. In Western adoptions, the inheritance of the kid is transferred from their biological parents to their adoptive parents⁷⁴. This is not allowed in Islam⁷⁵. In Islamic jurisprudence there are ample safeguards for an adopted

child's properties by prohibiting adoptive parents from joining their assets with those of their adopted child. However, the law allows adopted kids to get a portion of their adoptive parents' property, up to one-third of the total inheritance⁷⁶, as a gift. Moreover, there are many stories in Pakistan of mothers who have given up their children for adoption⁷⁷. Though there is always grief associated with relinquishing an infant for adoption⁷⁸, but this happens. Such persons in life always need counseling⁷⁹, such parents need treatments⁸⁰, and such children deserve welfare⁸¹. Astonishing fact is that this country has no independent law regarding adoption of orphans⁸²; rather the existing laws are being used⁸³. Presently, in Pakistan, the family court can arrange for guardianship under The Guardians and Wards Act, 1890, for persons seeking to adopt orphans or, in this case, abandoned newborns⁸⁴. Adopting a child globally is a challenging and time-consuming process. However, when obstacles arise due to the lack of legislation or social stigma, as is evident in Pakistan, the process becomes nearly impossible⁸⁵. Although governments make promises each year for independent legislation on adoption, yet they are behaving negligently⁸⁶.

Conclusion

Children born without legal wedlock, considered 'unwanted,' need to be rescued⁸⁷. As per a Population Council report, approximately 890,000 abortions are conducted annually. Meanwhile, data from the Edhi Foundation indicates that more than 10,000 bodies of newborns are discovered in dumpsters across the country⁸⁸. Despite the dynamic nature of Islamic law, the status of adopted children remains a largely neglected area of study among Pakistani scholars⁸⁹. Orphans are facing various issues in Pakistan⁹⁰, including the identity-related problems⁹¹. The NADRA liable for issuing national identity cards to Pakistani citizens astonishingly lacks a provision for allowing such cards to orphans⁹². This poses a significant obstacle to their well-being. Therefore, it is high time to reconcile the ambitious objectives of the injunctions of Islam in the context orphans. The paramount importance of child welfare, as evident from the above referred verses in the Qur'an and hadiths in Sunnah, should be stressed. This can be

achieved by reinterpreting and reforming the policies regarding rights of orphans in specific historical and social contexts of Islam⁹³. Furthermore, Pakistan urgently requires legislation to address the welfare of unattended orphans. The Unattended Orphans (Rehabilitation and Welfare) Act of 2016, a proposed law which was passed by the Pakistani Senate was a good step in the right direction. It focuses on safeguarding the rights and rehabilitating children without proper care. The proposed law establishes a welfare fund for these children, starting with an initial grant of fifty million rupees, and permits donations from individuals, organizations, and financial institutions. Moreover, the law makes it mandatory to register unattended orphans with the National Database and Registration Authority (NADRA)⁹⁴. However, the law has not been passed by the parliament to be enacted. Pakistan urgently requires legislation in this area.

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