

ISLAMIC PERSPECTIVE OF THE CHILDREN'S RIGHTS: AN OVERVIEW

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ABSTRACT

The paper presents an overview of the rights of the children as discussed by various jurists on the general understanding of Islamic principles. The Quran and the traditions of the Prophet Muhammad ﷺ form the basis and foundation of the Islamic perspectives of the children's rights, especially the treatment of the orphans. It is observed that the protection of the children's rights in Islam can be traced to the verses of the Holy Qur'an and thus highlights the importance of this vital study aspect. In Islam, securing the rights of the children is considered a part of the commendable religious deeds that Muslims should perform in order to gain rewards in the hereafter. The behavior of Prophet Muhammad ﷺ towards orphan children was demonstrably kind.

Keywords: Children, orphans, protection, rights, Sharia (Islamic law).

INTRODUCTION

The responsibilities of believers towards children are inviolable rights of the children because in Islamic jurisprudence rights and duties are correlated with each other. Children are enormous blessings from Allah; at the same time they are Amanah or trust from Him to us. The ultimate aim of preserving that trust is to do our best to protect them from hell-fire in the after-life, "O You Who Believe! Protect yourselves and Your Families from that fire, whose fuel will be humans and stones." (Al-Qur'an: 66: 6). All children, not just orphans, come into the category of 'vulnerable' – their parents and society as a whole need to ensure they are looked after, not only because children have intrinsic rights, but because Muslims have a duty to be charitable. Islam regards safeguarding children's rights as important because all human life is sacred to Allah.

CHILDREN'S RIGHTS IN ISLAM

The nature of the rights of children could be inferred from the following anecdote: "One day a man came to Umar ibn al-Khattab to complain of a disobedient son. So Umar had brought the boy to him and he blamed him for his disobedience. Then the boy addressed Umar by saying 'O Commander of the faithful: Are there no rights for a boy against his father?' Umar said "Yes". Then the boy said 'What are these rights O Commander of the Faithful?' Umar said, 'To choose a good mother for him, to select a good name to him and to teach him the Quran'. Then the boy said: 'O Commander of the faithful; my father has not accomplished any of these rights. As for my mother, she was a black slave for a Magian; as for my name, he has named me Jual (beetle); and he has not taught me even one letter from the Quran'. Then Umar turned round to the man and said 'You came to me complaining disobedience on the part of your son, whereas you have not given him his rights. So you have made mistakes against him before he has made mistakes against you.'^[1] To violate children's rights is to contravene the Shariah and to disobey Allah. Traditional records reveal that the Prophet Mohammed prophesied that 'the Muslim community would earn a name among other

communities for its kindness to children' ^[2]. Our beloved Prophet taught us that we all are shepherds (responsible) and we all shall be asked about our responsibilities. So, definitely we shall be asked about our children, how much effort did we exert to fulfill their rights, to make them grow up as responsible and educated members of society? Our Prophet also said that righteous children shall remain as on-going charity (sadaqa jariyyah) for us even after our departure from this world and we shall be continuously receiving rewards of their righteous actions while we are in our graves ^[3]. Therefore, whatever efforts we put as Muslim parents to raise our children are efforts that we exert for our benefit and salvation-here and hereafter.

In the light of Sharia (Islamic Law); some of the rights of the children are as follows-

Right To Noble and Charactered Parents

One might ask where and when does a child's rights begin? According to the Prophet, it begins before the beginning. The Prophet cautioned us and called upon us to be careful in our choice for spouses. He is reported to have said, "Make a good choice for (your) spouse, for blood will tell" (Ibn Majah). This highlights the effect of heredity on the infant. It is therefore the right of the child to have parents who are affectionate and of noble and righteous character ^[4]. The Prophet of Islam taught us to choose righteous spouses. He told young men to give preference to women who are pious and told guardians of young girls to give preference to those young men who are known for their Deen (religion) and their character. Thus, a man chooses beforehand who shall be the mother of his children. By choosing a good mother for his children, he fulfills a right of his children even before they are born. Islam also discouraged marriage within very close family members, today it is proven medically that marriage within close family members often cause different genetic problems for the child and the child suffers developmentally with respect to physical and intellectual health.

Rights of the Unborn Child

After conception, the rights that Allah has prescribed for unborn children, in the Islamic Law, then take effect. Allah, subhanahu wa ta'ala, describes the persons who kill their children, prior or after their birth, as lost, misguided and ignorant, "Indeed lost are they who have killed their children, from folly without knowledge and have forbidden that which Allah has provided for them, inventing a lie against Allah. They have indeed gone astray and were not guided" (Al-Qur'an: 6:140). This is a clear prohibition against aborting the unborn. The person who aborts a child is punishable by paying 'diyah' reparation, known as algharrah. Based on person's understanding and assessment, some may accept varied reasons for aborting the unborn. However, Allah the All-Mighty has decreed, with His prior Knowledge, the right of the infant for sustenance and He guaranteed such rights. As a result, He soothes the hearts of those who may fear poverty, "And kill not your children for fear of poverty. We provide for them and for you. Surely, the killing of them is a great sin" (Al-Qur'an: 17:31). The father should also do everything in his power to preserve the life of the unborn child, Allah says, "And if they are pregnant, then spend on them till they deliver" (Al-Qur'an: 65:6).

Doing well to the expectant woman is mandatory, even if the mother had committed a crime or an offense against society. Her guardian should delay her punishment so that the unborn will not be affected by it. The evidence used here is the order given by the Prophet to the guardian of the woman, who had committed adultery and was pregnant, to be kind with her (Ibn Majah). The manner of the child's birth is not his sin, "And no soul shall bear the sin of another" (Al-Qur'an: 35:18). No matter how a child comes into the world, all of his rights, including rights for sustenance remain valid under Islamic Law ^[5].

Right to Nurture

“The mothers shall give such to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear Allah and know that Allah sees well what ye do” (Al-Qur’an:2:233).

Islam has prescribed breast-feeding and commanded that children be breastfed until they attain their full power and strength, for breastfeeding has a great impact on the growth and development of the child.

If the mother is not divorced, she should breastfeed her child as a religious obligation and not because she is the natural mother. If she is divorced then nursing is dealt with as nafaqah (financial support). This is established within the shari’ah. The nafaqah of the child is the responsibility of the father. The father has to give the mother compensation for her nursing. If she refuses to nurse then it becomes incumbent upon the father to find and hire a wet-nurse for the child. However, scholars have made it mandatory upon the mother to nurse her child if the child refuses to be nursed by other than his mother or if the father doesn't have sufficient funds to hire a wet-nurse^[6].

He Right to Life

As a fundamental principle, Islam has guaranteed the right to live for all human beings except for clearly defined crimes in the shariah due to which a person loses his/her right to live. “For whosoever kills a soul unless for murder or spreading mischief in the land-it would be as if he/she has killed the whole of humankind and whosoever helps to save a soul, it is as if he/she has saved the whole of humankind” (Al-Qur’an: 5:32). Say: "Come, I will rehearse what Allah hath (really) prohibited you from": Join not anything as equal with Him; be good to your parents; kill not your children on a plea of want; - We provide sustenance for you and for them; - come not nigh to shameful deeds. Whether open or secret; take not life, which Allah hath made sacred, except by way of justice and law: thus doth He command you, that ye may learn wisdom” (Al-Qur’an: 6:151).

During the days of ignorance, some people used to kill their children due to superstitions and fear of poverty. Especially a female child was considered a sign of weakness and humiliation for the family, so they used to bury their female children alive. Allah (SWT) has prohibited and condemned this evil practice in the strongest of terms:

“When any one of them is given the good news of a female child, his face turns dark out of deep sorrow and suffers from mental agony. He hides himself from his community due to shame of that news. He thinks-will he let her live in spite of humiliation or shall bury her in the ground. Beware, evil indeed are the decisions that they make” (Al-Qur’an: 16: 58-59).

At any rate whatever the reasons for and the frequency of infanticide, Islam categorically condemned the practice and reaffirmed the infants’ right to life and equal life chances. Parents and others used to discriminate between male and female children, with their favours showered on the former. The Quran disproved of this discrimination and admonished parents to receive their infants, male or female, joyfully as the gift of Allah. It reproached those who were disposed to gaiety upon the birth of the baby boy but prone to depression, anxiety or shame if the infant was a baby girl (Al-Qur’an, 16:56-62; 42:49-50; 43:15-19). The Prophet

showed in words as well as in practice that the birth of the child should be a festive occasion marked with joy, charity, and thankfulness^[7].

The Child's Right to General Care

To take good care of child and show compassion toward children is one of the most commendable deeds in Islam. Interest in and responsibility for the child's welfare is question of first priority. According to Prophet's instructions, by the seventh day the child should be given a good name and its head should be shaved, along with all other hygienic measures required for healthy growing. This should be made a festive occasion. At any rate the child's right to care is so inalienable that not even a mother, the closest person to the child, can tamper with it, as the following point indicates. Some jurists argue that, since the mother is the first adult entitled to take charge of the child's nursing and general care, it is her personal obligation to discharge this duty, which she can't relinquish so long as she is fit. Other jurists contend that it is the mother's right to take care of the child, if she surrenders this right, the child shall be placed where its own rights are best safeguarded.

Responsibility for and compassion toward the child is a matter of religious importance as well as social concern whether the parents are alive or deceased, present or absent, known or unknown, the child is to be provided with the optimum care. Whether there are executors or relatives close enough to be held responsible for the child's welfare, they shall be directed to discharge this duty. But if there is no next of kin, care for the child becomes a joint responsibility of the Muslim community, designated officials and commoners alike^[8].

Right to Lineage

Islam not only designates rights of children after they are born, but also they have rights before their birth. It is their right to have a legitimate birth (being born from parents who are legally married). Those who give birth to children outside of wedlock deprive these children from that right of theirs and commit a heinous act of oppression upon them. When the child's parents are unknown, no other parent(s) may claim parenthood of the child by way of direct or indirect adoption^[9]. The Quran states that the adopted children are not the real offspring of the adopters; they must be related to their true procreators when known or knowable. Otherwise they are the brothers in faith and clients of their fellow Muslim (Al-Qur'an: 33:4-5).

An orphan or other vulnerable children are never to be denied their original identity. By hiding the lineage of the Kafalah child through fictive paternity denies the child the right to know the biological parents and the choice to maintain a relationship with them. There are several other grounds upon which one may argue for a Kafalah child's right to information concerning its identity. These include the need to trace one's genetic lineage for medical purposes, which also forms the basis for the concern associated with incestuous marriages/relationships. As stated earlier, since lineage is considered to be the backbone and most fundamental organising principle in and of Muslim society, arguably the knowledge of one's lineage contributes towards the prevention of incestuous relationships unknowingly developing with a biological sibling^[9].

In these days of test-tube babies, ultimately these children are left asking the questions- 'where do I come from and who is my family?' Under Islamic Law, it is the specified right of every child to know the answers to these questions.

Child's Right To Socialization [Right Tarbiah]

Tarbiah is a very comprehensive term. Right tarbiah is a right of children upon their parents, guardians and the Muslim society at large. Some important aspects of tarbiah in the light of Qur'an and Sunnah are as:

The Prophet said, "Order your children for salat when they are seven, discipline them for it when they are ten and separate their beds" (Abu Daud). Parents have to do their best to make sure the wellbeing of their children both here and hereafter. The Prophet said, "It's better to leave your children self-sufficient than to leave them on the mercy of others" (Tirmidhi). Parents will have to work to develop hatred within their children against (Akhlaq Al Dhameemah) all aspects of bad character and to culture within them the love for (Akhlaq Al Hameedah) praised attribute of character. Our children have to internalize Islamic values and principles. Tarbiah in Islam primarily means to let our children know their Creator, inculcate love for The Prophet, faith in hereafter, divine books, angels, prophets and other important aspects of our Deen (way of life). Purification of the soul (Tazkiatun Nafs) is a natural consequence of such tarbiah.

When both the parents are Muslims and fulfill their parental obligations adequately, the child's socialization to Islamic environment will in all probability be successful. Part of their religious responsibility is to raise the child as a Muslim and in the best possible Islamic way. However, they may not, even if they could, impose their religion on the child, which becomes accountable upon reaching the age of majority, usually marked by puberty. By this time the child is presumed to be capable of making responsible decisions. What parents are enjoined to do then is to show the child in words as well as in deeds the Islamic way of life, hoping that this early socialization will be effective in later years. But if the parents do not follow the same religion, the minor child will follow the parent with the better religion. This is tantamount to saying that the child shall follow the father and shall be considered for all practical purposes a Muslim. It is forbidden for the Muslim women to marry a non-Muslim man, but not vice versa, and since Muslims believe their religion to be the "best religious choice", it is evident therefore, that the minor child shall follow the "better" religion and the "better" parent, i.e., Islam and the father respectively^[10].

Child's Right to Just and Equal Treatment

Children are entitled to just and equal treatment. No child should be given priority or any type of preference over the others in terms of gifts, grants, ownership or inheritance. Similarly, all children must be equally treated in terms of kind treatment and good behaviour. An unfair treatment to children may result in bad behaviour towards either or both parents in old age. Any unfair treatment to children may also cause hatred towards one another. This is derived from the Hadith, "Oh, Prophet of Allah! I want you to offer a share to one of my children and I want you to be witness to that. Upon hearing this man's request, the Prophet asked, are you offering the gift to all of your children? The man who asked replied, no. I am not! The Prophet commented – then seeks someone else to witness your gift as I will not witness to an unjust and unfair situation. Be mindful of Allah. Be fair, just and equal in treatment of your children"^[11].

Child's Right to Maintenance

Maintenance generally means the responsibility to spend one's own earning or property for the sustenance of some other person. Here maintenance means making all the arrangements necessary for the sustenance of a child out of one's own pocket. It includes the expenditure for nourishment, health, education and training. Under Islamic law it is the father who is

responsible to provide maintenance to his children, whether in his own custody or in the custody of someone else. The extent of his liability depends on his financial position and the situation of the child. The daughters are entitled to be maintained till they get married; even if the marriage takes place after attainment of puberty. A male child can claim maintenance from father until he attains puberty. The father is liable to maintain the child even when the child is in the custody of divorced mother. The father's liability ceases only when he is refused the custody of the child for no justifiable cause. Where the child's separate living is justified the father continues to be liable^[12].

In case of orphaned child, the burden shifts to the grand-parents. Where the grand-parents are dead or unable to provide maintenance to the child, the obligation devolves on the collateral relations of the child. However the obligation is restricted to the collaterals within the prohibited degrees of relationship by priority of being entitled to inherit from the child, had the child been dead. The obligation is absolute, even though the child has no property. It is sufficient that they would have been entitled to inherit had there been any property of the child. These relations primarily include uncles and aunts of the child and to provide maintenance to the child, their liability is joint, but proportionate to the share of each in the property of the child had it been dead.

There are certain obligations on which the parents must fulfill irrespective of the child's religious identity. They are responsible for their minor poor children, whether or not these adhere to the same religion as their parents. As long as the child is poor and a minor, it is the father's duty to support it. These rights of support and maintenance overrides the father's desire to have the child adopt the same religion as his own and does not depend on the child's particular religious inclinations. But if the child happens to have means, conceivably through gifts, bequests, endowments, etc., then the child's expenses should be drawn from its own resources so long as these are adequate for its material needs^[13].

Right to Basic Education

Allah states in the Holy Quran: "Say: Are those equal, those who know and those who do not. It is those who are endowed with understanding that receive admonition" (39:9). "Allah provide for you. And when you are told to rise up, (then) rise: Allah will rise up, to (suitable) ranks (and degrees), those of you who believe and who have been granted knowledge. And Allah is well acquainted with all you do" (59:11). Children have the right to education^[14]. A saying attributed to Prophet Muhammad relates: "A father gives his child nothing better than a good education"^[15]. Education in the Islamic society is not a mere right for its individuals. In fact, an Islamic government is required and demanded to prepare and provide, when possible, all means that help individuals in the Islamic society to earn a better education^[16]. This concept is based on the Hadith of the Prophet, "Seeking knowledge (better education) is an obligatory on every Muslim (male or female)"^[17]. Furthermore, Islam considers seeking a better education as a type of Islamic strife or jihad that the Almighty Allah rewards, the Prophet stated, "He who travels to seek any knowledge is considered as a person who is struggling in jihad for the cause of Allah until he returns (home)"^[18]. In fact, Islam considers it unlawful to withhold any useful knowledge that one possesses but do not share with others to benefit them, the Prophet says, "Whosoever withholds the dissemination of (a beneficial) knowledge (to others who may need or benefit from it) will be tortured with a harness of fire on the Day of Judgment"^[19].

From the above it is clear that it is the basic right of every child to get beneficial education. Therefore, it is the duty of parents to educate their wards. So far as the parentless or neglected

children are concerned, Islamic state is under an obligation to provide every possible facility for the same.

Rights of Orphans

In the Islamic faith, all children have various rights. These rights don't end when children become orphans, whose caregivers are primarily responsible for protecting orphans and instilling the values of the Qur'an and an appropriate reverence for Allah. In the sense that the key posture toward orphans should be kindness, orphans belong to the entire community, and everyone takes responsibility for their welfare. According to Cheryl Floyd ^[20] despite common misunderstandings about the Islamic faith, one thing is certain: Muslim orphans are not ever in a position to be alone.

In addition to above mentioned rights of the children, Sharia prescribes certain directives upon Muslim ummah which in turn are special rights of orphans. The Qur'an has referred to the welfare of the orphans and to the attitude of kindness and affection that should be adopted towards them at various places. They can be summarized as follows-

1. Guardians of the orphans should return their wealth to them and should not think of devouring it themselves. They should know that unjustly consuming the wealth of orphans is like filling one's belly with fire. Furthermore, this will lead them to the fire of Hell in the Hereafter. So no one should try to swap his poor merchandise and assets for their good ones. Neither should a person try to benefit from their wealth while mixing it with his own feigning administrative ease. If such intermingling needs to be done, then it should only be for the orphans' welfare and well-being and not to usurp their wealth.^[21]
2. Protecting the orphans' wealth and safeguarding their rights are significant responsibilities. If it becomes difficult to fulfill these responsibilities alone, and people think that ease and facility can be created by involving the mothers of the orphans, then they can marry the lawful among them. Their number should not exceed four. However, such multiple marriages should only be resorted to if a person is able to deal justly with the wives. If they think that they would not be able to do so, then even for an objective as noble as welfare of the orphans they should not marry more than once. Justice should always reign supreme. Moreover, while entering into marriage, the mothers of the orphans should also be given mahr (dower) just as other women are given. The pretext that marriage has been contracted with them for the welfare of their own children is not acceptable in this regard. However, if such a mother gladly forgoes a portion, or all, of the mahr amount, then of course this generosity can be accepted.
3. Wealth is a means of sustenance and subsistence for people. It should not be wasted. Consequently, the directive of returning to orphans their money should be carried out when they reach maturity and are able to properly manage their wealth. Prior to this, it should remain in the protection of their guardians, who should continue to judge the orphans regarding their ability to manage and handle daily affairs. In this interim period, however, the orphans' needs and welfare should be provided for.
4. Although the shares of the heirs to a deceased are fixed, yet if at the time of distribution of inheritance some close relatives, orphans or poor people are present, then even though they may not have any legal right in the inheritance, they should be given something and be spoken to in a befitting manner at their departure. On such occasions, a person should always keep in mind that his own children can

become orphans and he may one day have to similarly leave them at the mercy of others.^[22]

5. Orphans, poor and needy people are entitled to a fair right and share of the Islamic treasury.^[23] This is based on the Hadith, “Whoever leaves behind a legacy (wealth and estates) will become entitled to his heirs. As for the persons who leave behind poor and needy members of his family, Allah and His Messenger will take care of them”.^[24]

Additionally, other voluntary donations, gifts, financial commitments and the like are given in a good cause to please the Almighty Allah, and extended willingly to the poor and needy members of the Islamic society. This is also based on the Hadith of the Prophet : “Any group of people who reside in a specific Islamic community who do not care for the hungry person among them shall not be considered by Allah and His Messenger as committed Muslims”^[25]. Food and decent sustenance are secured for people in an Islamic society by availing decent and suitable work opportunities for work force in the society. As for individuals who can no longer work due to old age, inability to work, chronic diseases or the lack of bread earner in the family, such individuals becomes entitled for public aid and assistance from the Islamic government. Zakah represent a full mechanism of social integration among the various individuals of the Islamic society. This is based on the Hadith of Prophet in an advice to his Companion Muaaz bin Jabal while sending him in a Dawah, call to Islam mission, to Yemen saying, “Tell the people of Yemen that Allah has prescribed a certain percentage of their wealth as Zakah. Such Zakah will be taken from the rich members of the Islamic society and given to the poor and needy ones”.^[26]

CONCLUSION

Muslim jurists have based their discussion about rights of children on the general understanding and commandments of the Quran and Sunnah (traditions of the Prophet Muhammad). In the Islamic faith, all children have various rights. The rights of the children are well protected in Sharia (Islamic law). Islam not only designates rights of children after they are born, but also they have rights before their birth. So far as the rights of orphan children are concerned, Holy Quran makes special reference for protecting their rights.

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