A Contemporary Islamic Hermeneutical Approach to Adoption: Challenging Its Prohibition



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Allah says in the Qur'an,

> **"Did He not find you an orphan, then sheltered (you), and He found you misled, then guided (you), and He found you needy, then sufficed (you), Hence, oppress not the orphan." Q. 93:6-9**

Prophet Muhammad (ﷺ) said,

> **"I and the person who looks after an orphan and provides for him, will be in Paradise like this." Putting his index and middle fingers together.**

A White Paper, "Every Child Matters"

> "Safeguarding and promoting a child's welfare, proprietors need to be concerned with the health, happiness and proper physical, intellectual, emotional, social, and behavioural development of that child as well, of course, as protecting him [her] against the risk of suffering significant harm or neglect."[1]

[1] At paragraph 2.4.1 cited in Helen Fenwick, (2007), *Civil Liberties and Human Rights,* 4th Edition, p. 8.

Abstract

This thesis analyses the practice of adoption, particularly in light of earlier studies from a theological perspective that have shown it to be prohibited in Islam. Employing a hermeneutical approach, the study examines the historical customs preceding Islam in the Arabian Peninsula, as well as references in the Qur'an, *ahadith*, and Islamic jurisprudence regarding the prohibition of adoption. The findings reveal that the customary practices identified in the Arabian Peninsula were not synonymous with adoption but rather constituted security pacts known as *wala* in Arabic. These pacts, unlike adoption, do not establish a parent-child relationship and primarily serve the purpose of security and compensation for members of the pact. Furthermore, the study highlights the implications of these practices on the treatment of enslaved individuals and those of low social status, shedding light on the changes that occurred with the rise of Islam. The study also examines the specific revelations in the Qur'an associated with the prohibition of adoption and their implications for vulnerable children's rights. Ultimately, while the Qur'an and *ahadith* address the care and support of vulnerable children, they do not prescribe any specific mechanism. However, references to adoption, guardianship, and *kafala* in pre-Islamic events are noted in the Qur'an.

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This study could not have been completed without the support of my supervisor, Dr. Katherine Brown. Her thoughtful encouragement kept me going during challenging times. I am immensely grateful for her time and support. I am also thankful for the unwavering support of my family in helping me complete this thesis. I would like to express my sincere gratitude to everyone who has supported me in any capacity. Lastly, I dedicate this study to my late father, Muhammad Khan, who passed away in March 2014.

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Definition of Key Terms

Arabic terms are in italics, except names, which have English translations. “Ancient” and “pagan” are used interchangeably to refer to pre-Islamic people in the Arabian Peninsula. “Arab nomad” refers to desert dwellers before and after the advent of Islam.

Qurʾan references: This is in the sequence of the Qurʾān, Q, Chapter 33, followed by passages/verses, numbered after the colon, e.g., Q. 33:4. The primary reference for the Qurʾan is from Quran.com for Sunni *fiqh*. This search engine features multiple English translations by different scholars of the Sunni Madhahib. Similarly, al-Islam.org, for Shi’a sources, also references Sunni Madhahib. Additionally, the study utilises hard copies of the Qurʾan provided by several scholars, and references are included within the thesis.

Contemporary research includes academic studies conducted by both Muslim and non-Muslim scholars regarding adoption from a theological perspective, particularly concerning Islamic law. These studies range from the late 20th century to the early 21st century. Historical research comprises theological studies from the early period of Islam, spanning the 7th century to the present, as well as English translations from the late 20th century to the present.

Unless stated otherwise, the law referenced in this thesis pertains to international and domestic law within the UK, covering England, Scotland, and Wales. The sources include statutes, common law, regulations, guidance, and procedural notes, with cases outlined in the appendices’ “table of cases” section.

Chapter. 1

Prohibition of Adoption in Islam and Its Impact on Children's Rights

1. Introduction

This chapter introduces the research problem and its significance. It demonstrates why adoption is important and how it protects the rights of vulnerable children when they cannot be cared for by their biological parents for any reason. It highlights the barriers to the care and adoption of Muslim children in the UK, the challenges they encounter, and the impact on their welfare and identity while under local authority care. The latter part of the chapter analyses previous studies on adoption in Islam to identify the gaps in knowledge that this thesis will address. Finally, it discusses the methodology and structure of the thesis.

1.1 Why does adoption need studying, particularly from a theological perspective?

Adoption serves some of the most vulnerable members of the community - children deprived of their biological parents' care. In the UK, adoption is a legal mechanism that protects the rights of vulnerable children and may be the only means for some to achieve stability in their early lives when their biological parents are unable to care for them. It is a powerful tool that ensures vulnerable children have families, providing them with a vital upbringing and safeguarding their fundamental rights to education, health, and identity. Each year in the UK, thousands of vulnerable children are placed in local authority care and, where possible, are matched with suitable families. The number of children in need of support continues to rise annually. Statistics from AdoptionUK reveal that in March 2014, 64,840 children from various backgrounds were in local authority care across the country. This figure increased to 69,540 in 2015, 70,440 in 2016, and 72,670 in 2017. In 2020, this total rose to 80,080, with emerging evidence indicating that it could reach 100,000 by 2025. Most of these children reside with foster families. According to AdoptionUK, nearly 4000 British children in local authority care homes are awaiting placement in new homes at any given time. This highlights a shortage of families for all vulnerable children in care. However, the need is even more pressing for Muslim children in care, as demonstrated by the following campaigns.

According to Ibrahim Kala from the Bolton Council of Mosques (BCom), they supported carers and adopters from all backgrounds. However, they were explicitly *"…*trying to address the particular shortage of Muslim carers within this group."[2] In recent years, there have been several public campaigns to recruit adopters and foster families specifically for Muslim children in the care of local authorities. UK Carers for Muslim Children launched a campaign in Lancashire and Manchester in 2014 to raise awareness of the plight of Muslim children in their local authorities' care.[3] Brighton and Hove Muslim Forum also stated that their local authorities could not find families for children in their care. Some of these children were of Pakistani and African Muslim backgrounds. They were referred to 'BeMyParent' to help find Muslim families.[4] Warwickshire Race Equality Partnership also campaigned and stressed England's desperate shortage of Muslim carers. Nationally, in 2016, the charity Penny Appeal launched a campaign to recruit around 10,000 fosterers and adopters from Muslim backgrounds.[5] Penny Appeal produced a report in 2016 showing an increase of unaccompanied children by 56% (3,043) between 2014 and 2015, the majority originating from Muslim countries.[6] Refugee children are more vulnerable than those children born in the UK because of their horrific journeys and trauma suffered at their place of origin.[7] Such children

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[2] Bolton Community Voluntary Services. *Launch of support …adopters of Muslim children,* Op. Cit.

[3] Bolton Community Voluntary Services. *Launch of support …adopters of Muslim children,* Op. Cit.

[4] BeMyParent, http://www.bemyparent.org.uk, accessed 20/06/2022

[5] The charity also wanted to raise awareness around Islamic law adoption and provide help and support for families interested in this subject. See Penny Appeal, Muslim Fostering, available at https://pennyappeal.org/appeal/muslim-fostering, accessed 22/07/2017.

[6] Penny appeal, Fostering and Adoption: Guide for Applicants, 2016, available at https://pennyappeal.org/storage/app/media/appeals/Adoption%20and%20Fostering/Adoption%20and%20Fostering/Islamic%20Guide/PA_welcomeBookletForApplicants.pdf, accessed 20/08/2017

[7] The National Child Traumatic Stress Network, Refugee Trauma, https://www.nctsn.org/what-is-child-trauma/trauma-types/refugee-trauma, accessed 11/07/2023; Sarah Davidson, UK Trauma Council, How to Support refugee and asylum-seeking children and young people who have experienced trauma, published 6th December 2021, available at: https://uktraumacouncil.org/research_practice/refugee-asylum-seeking-resources?cn-reloaded=1, accessed 11/07/2023,

could particularly benefit if they have Muslim parents and carers.[8] Besides the above campaigns, other evidence shows a significant shortage of minority carers.[9]

A recent BBC report based on Ofsted data shows that 146 local authorities provide fostering services in England. This report indicates that 54,870 children were in foster care in England on 31 March 2019. Of these 54,870 children, 76% were white and 23% were BAME (Black Asian Minority Ethnic). 99 out of 146 local authorities "… had a shortage or undersupply of foster carers from a BAME background." There are no official statistics on specifically Muslim children or the reasons for them not being adopted because religiously affiliated data is not publicly available. Data from Penny Appeal showed that in 2015, around 2000 children were Muslim in care, from a total of 70,000. Penny Appeal's data was incomplete because some local authorities do not record data on religious affiliation. The actual number could be higher. However, ethnicity is recorded and is often a proxy variable; for example, we know approximately 90% of those of Pakistani background are Muslim. BAME data is therefore relevant. In the UK, the Muslim community accounts for 4.8% of the total population. Islam is the second-largest religion in the country, with 2.7 million followers. Although this data highlights the scale and scope of the problem, it does not explain why there is a shortage of Muslim carers or the impact this has on children in care.

1.1.1 Impact on Vulnerable Children Due to the Lack of Diversity in the Care System

From the local authority's perspective, when safeguarding concerns arise, they must intervene and address them appropriately to protect vulnerable children, as

[8] Network, F. (2019). Muslim fostering project report. London: Fostering Network. https://thefosteringnetwork.org.uk/sites/default/files/content/muslimfosteringprojectreport2019.pdf, accessed 11/07/2023; Wood S, Ford K, Hardcastle K, Hopkins J, Hughes K and Bellis MA (2020). Adverse Childhood Experiences in Child Refugee and Asylum Seeking Population. Cardiff: Public Health Wales NHS Trust. Available at: https://www.wmsmp.org.uk/wp-content/uploads/ACEs-in-Child-Refugee-and-Asylum-Seekers-Report-English-final.pdf, accessed 11/07/2023

[9] Network, F. (2019). Muslim fostering project report. London: Fostering Network. https://thefosteringnetwork.org.uk/sites/default/files/content/muslimfosteringprojectreport2019.pdf, accessed 11/07/2023

per their statutory duty. A negative assessment of parents' abilities to care for their children may lead to an alternative placement for a child, including adoption, for the protection of the children's welfare.[10] Children without other relatives to care for them may also be placed with available foster carers.[11] For those children without extended family, a family of a similar background would contribute to a child's future upbringing, helping to build their religious identity and well-being.

I have worked with local authorities for two decades, primarily alongside professionals involved in children's safeguarding, which often leads to fostering and adoption. As a professional, I have worked with many families whose children were placed into care for various reasons.[12] Frequently attended safeguarding assessments and contact sessions with families with social workers. I came across many children placed in culturally, ethnically, and religiously different households from their own. These children struggled with culture, food, language, and religious environment, as evidenced by qualitative research by Cheruvallil-Contractor et al. and Pitcher and Jaffar.[13] Being a practising Muslim and coming from a South Asian

[10] S. 46 and S. 47 of the 1989 Act S. 43 of the 1989 Act; Reg. 3 of The Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015 ('the CPF Regs 2015'), and Reg. 2 Care Planning in The Children Act 1989 guidance and regulations Volume 2: care planning, placement, and case review. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/441643/Children_Act_Guidance_2015.pdf, accessed 20/08/2019.; Fostering does not terminate parental responsibility and other rights of a child from their biological parent. See Reg. 2.3: *Care Planning.* Op. Cit.; S. 1 and S. 18 of the Adoption and Children Act 2002 ('the 2002 Act'); Reg. 2.3 Permanence planning. Op. Cit.

[11] For connected persons, see Reg. 24(1) a and b of the Care Planning, Placement and Case Review (England) Regulations 2010 ('the CPPCR Regs 2010'). Available at: http://www.legislation.gov.uk/uksi/2010/959/regulation/24/made, accessed 10/05/2018.; Reg. 26 of the CPPCR Regs 2010. Op. Cit.

[12] Ward. E., Munro. E. and Brown. B., *Protecting and Promoting the Wellbeing of Very Young Children.* 2010. Centre for Child and Family Research, the University of Loughborough, available at: http://www.adoptionresearchinitiative.org.uk/briefs/DFE-RB053-WEB.pdf, accessed 20/05/2015

[13] Sariya Cheruvallil-Contractor, Alison Halford, Mphatso Boti Phiri, The Politics of Matching: Ethnicity, Religion and Muslim-heritage Children in Care in the UK, *The British Journal of Social Work*, Volume 52, Issue 8, December 2022, Pages 4571–4587, https://doi.org/10.1093/bjsw/bcac068; Pitcher, D., & Jaffar, S. (2018). 'To another's house': the experiences of Muslim young people in foster care. *Adoption & Fostering*, *42*(3), 219-233. https://doi.org/10.1177/0308575918790437; Cheruvallil-Contractor, Sariya, Alison Halford, and Mphatso Boti Phiri. 2021. "The Salience of Islam to Muslim Heritage Children's Experiences of Identity, Family, and Well-Being in Foster Care" *Religions* 12, no. 6: 381. https://doi.org/10.3390/rel12060381

background, I could understand why these children and their families found such placements challenging. Before fostering or adoption, some children and families may not have experienced people outside of their religion or culture. Several studies have highlighted these challenges in placements.[14] It has also been reported publicly.

For instance, a report in *The Sun* by Perrie indicates that a judge rebuked the local authority for Muslim children being fed bacon sandwiches in their placement.[15] In my experience, Muslim parents were often distraught when non-Muslim parents fostered or, in some cases, adopted their children when the local authority could not find a suitable Muslim family for their child.[16] The parents were concerned their children would lose their identity, and research shows this could be the case.[17]

Anecdotal experiences also suggest that the lack of carers from similar backgrounds significantly impacts children's well-being. For instance, in one case, a toddler from a Pakistani Muslim background could only speak Urdu and Punjabi. Although she was born in Britain, she spent three months with her paternal grandmother in Pakistan before being placed in the care system. The toddler was placed with an English foster family who did not speak her language. The social worker who arranged this placement believed the toddler merely babbled and lacked communication skills appropriate for her age. However, when the carer went to

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[14] Sariya Cheruvallil-Contractor, Alison Halford, Mphatso Boti Phiri, The Politics of Matching: Ethnicity, Religion and Muslim-heritage Children in Care in the UK, *The British Journal of Social Work*, Volume 52, Issue 8, December 2022, Pages 4571–4587, https://doi.org/10.1093/bjsw/bcac068; Al Jawdah, Catherine. 2020. "Challenges to the Fostering and Adoption of Muslim Children in The British Care System". *Journal of the Contemporary Study of Islam* 1 (2). https://doi.org/10.37264/jcsi.v1i2.6.; Miller, E., & Butt, I. (2020). Fostering and adoption in the UK within British Muslim Communities.; available at: https://www.azizfoundation.org.uk/wp-content/uploads/2024/03/Bridge-Adoption-report.pdf, accessed 10/11/2023

[15] Robin Perrie, "FAITH ROW Judge slams council after three Muslim children were 'fed bacon sandwiches while in foster care, published online 10/11/2019, available at Judge slams council after three Muslim children were 'fed bacon sandwiches while in foster care' – The Sun, accessed 20/05/2021

[16] Not all children entering the local authority's care have biological parents or relatives. There are undoubtedly unaccompanied children, which I will discuss later. I have no direct experience working with unaccompanied children from a safeguarding perspective.

[17] Pitcher, D., & Jaffar, S. (2018). 'To another's house': the experiences of Muslim young people in foster care. Op. Cit.

collect her other child from school, the toddler spoke to other parents and children who shared her language. I accompanied the social worker to facilitate communication with the toddler, who began conversing with me in a mix of Punjabi and Urdu. I explained to the social worker and the foster carer that she could communicate effectively for her age (nearly three years) and was not merely babbling as they had thought. After a few minutes, while I was there, the child started clinging to me, repeatedly asking me to take her with me. She told me that she was hungry and wanted to eat chicken curry. I explained that this was not my house and that she needed to speak to her foster carer. She replied in her native language, "No, I do not want to ask her." I felt this child could not identify with the carer, and the lack of communication exacerbated the situation for her.[18] Since this child was not in nursery or school, she had limited experience with English culture and food. This toddler's case was not the only one I encountered professionally. Other professionals I have spoken with informally share similar concerns, and comparable views can be found in the public domain.

1.1.2 Muslim children's identity and breach of their fundamental rights

According to Jiva (a social worker),

> *"…* many Muslim children are living in children's homes and with non-Muslim carers who would be better placed with Muslim carers. We recognise that Muslim children who live with foster or adoptive families have religious and identity needs that are probably not being catered for."[19]

As Jiva shows, the care system does not meet Muslim children's religious and identity needs due to the lack of Muslim families. The reports from the BBC and the

[18] On this visit, an Asian social worker was also present from a different team who witnessed this account because she spoke Punjabi. She saw how distressed the infant was and moved the toddler with an Asian foster carer on the same day.

[19] Bolton Community Voluntary Services. *Launch of a support group for foster carers and adopters of Muslim children,* Published. 22nd July 2014, available at: http://www.boltoncvs.org.uk/news/2014/jul/launch-support-group-foster-carers-and-adopters-muslim-children

campaigns by several organisations cited earlier show an acute shortage of carers from ethnic minority backgrounds across the country. The lack of diversity in care provisions affects Muslim children's rights in terms of their identity and well-being. Research shows that religion is quite significant for Muslim children. Young Muslims identify with faith more than race and nationality.[20] According to Cheruvallil-Contractor, "… faith remains salient to children's identities and that sharing faith-identity with their carers helps children settle down faster and enhance their sense of wellbeing."[21]

A study by Becher and Husain also shows that religion is a vital aspect of identity for British children of Muslim heritage.[22] Similarly, Scourfield also shows that placements help Muslim children develop their religious identity. According to Scourfield, religion is central to the routines of Muslim children, and time spent at home and religious places "become intrinsic to their sense of identity and religion becomes part of their lives without them needing to make a conscious choice to embrace it".[23] According to a study by Selwyn, having similar backgrounds among adopters and adoptees helps children develop a stronger sense of identity.[24]

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[20] Philip, Lewis. *Young, British, and Muslim.* London: Continuum. 2007. pp. 30, 129; Cheruvallil-Contractor, Sariya, Alison Halford, and Mphatso B. Phiri.. "The Salience of Islam to Muslim Heritage Children's Experiences of Identity, Family, and Wellbeing in Foster Care" 2021. *Religions* 12, no. 6: 381. https://doi.org/10.3390/rel12060381; Becher, Harriet, and Faitma Husain. *Supporting Minority Ethnic Families—South Asian Hindu and Muslims in Britain: Developments in Family Support*. London: NFPI. 2003; Madge, Nicola, Hemming Peter, and Stenson Kevin. *Youth on Religion: The Development, Negotiation and Impact of Faith and Non-Faith Identity*. London: Taylor and Francis. 2014; Peele-Eady, Tryphenia. Constructing Membership Identity through Language and Social Interaction: The Case of African American Children at Faith Missionary Baptist Church. *Anthropology & Education Quarterly* 2011. 42: 54–75; H Afshar, R Aitken, M Franks - Muslim Diaspora, 2007 - https://www.taylorfrancis.com/chapters/edit/10.4324/9780203961254-20/islamophobia-women-pakistani-descent-bradford-crisis-ascribed-adopted-identities-haleh-afshar-rob-aitken-myfanwy-franks

[21] Cheruvallil-Contractor, Sariya, Alison Halford, and Mphatso B. Phiri. "*The Salience of Islam to Muslim Heritage Children's Experiences of Identity, Family, and Wellbeing in Foster Care*" 2021. *Religions* 12, no. 6: 381. https://doi.org/10.3390/rel12060381

[22] Becher, Harriet, and Faitma Husain. *Supporting Minority Ethnic Families—South Asian Hindu and Muslims in Britain: Developments in Family Support*. London: NFPI. 2003

[23] Scourfield et al. 2010, .3, cited in, Cheruvallil-Contractor, Sariya, Alison Halford, and Mphatso B. Phiri. "*The Salience of Islam to Muslim Heritage Children's Experiences of Identity, Family, and Wellbeing in Foster Care*" 2021. *Religions* 12, no. 6: 381. https://doi.org/10.3390/rel12060381;

[24] Selwyn, Julie. *Pathways to Performance for Black, Asian, and mixed ethnicity children,* 2010. p. 4. Available at: http://www.adoptionresearchinitiative.org.uk/summaries/ARi_summary_6.pdf

According to Cheruvallil-Contractor et al., Muslim children suffer significantly when placed with different cultures and religions.[25] Confirming my professional experiences, such children particularly struggle with food and the practice of religion. Racial identity is also significant for children's development. An empirical study by Shireman and Johnson shows that the racial identity of black children was affected when white parents adopted them.[26] All these studies demonstrate that a similar background for children's placements is crucial for their identity, development and overall well-being.

As shown earlier, local authorities place some children with a different background than their own because of a shortage of Muslim families able and willing to adopt. The lack of Muslim adopters and foster families of similar backgrounds, therefore, impacts vulnerable children's identity, development and well-being. These are children's rights. It is well-established that living within a family environment is in the 'best interests of a child'.[27] Article 3 of the United Nations Convention on the

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and also on http://www.adoptionresearchinitiative.org.uk/, Accessed on 26/01/2015; A longitudinal study by Shireman and Johnson (1986) found that "the majority of children adopted transracially had a good Family Relations sense of racial identity, but Black children adopted by Black couples had a stronger racial identity." This study demonstrates the importance of racial identity and that having a similar religious background for a child is crucial for a religious upbringing. See Horner, R. D. *An Essay for practitioners: A Practitioner Looks at Adoption Research,* Family relations [0197-6664], 2000. 49 (4). p. 474

[25] Cheruvallil-Contractor, Sariya. et al. A*mong the last ones to leave? Understanding the Journeys of Muslim Children in the Care System in England,* published 2019, available online, muslim-children-in-care---research-report.pdf (coventry.ac.uk), pp.15-16, accessed 20/12/2022

[26] Shireman, Joan F., and Penny R. Johnson. "A Longitudinal Study of Black Adoptions: Single Parent, Transracial, and Traditional." *Social Work* 31, no. 3 (1986): pp. 172-76. www.jstor.org/stable/23713191. Accessed on 26/01/2015.

[27] The term 'best interests are interchangeably used with 'the welfare of the child principle' and the 'paramountcy principle. See Jane, Fortin. *Children's Rights and the Developing Law.* 3rd edition. Cambridge: Cambridge University Press, 2009. p. 290; A study by Literacy Trust found that families and parents are critical for children's attainment. "The home is crucial… Parents have the greatest influence on the achievement of young people through supporting their learning in the home rather than supporting activities in school." See Bonci. A., National Literacy Trust, (A research review: *The Importance of Families and the Home Environment,* 2008, (revised 2010 and March 2011); available at http://www.literacytrust.org.uk/assets/0000/7901/Research_review-importance_of_families_and_home.pdf, accessed 20/07/2017

Rights of the Child 1989 (CRC) enshrines the principle of the child's best interests.[28] It states that the child's best interests should be of primary consideration in all actions concerning children, whether by public or private organisations, including the court of laws, social welfare institutions, and legislative bodies.[29] According to Article 3, local authorities must fulfil these requirements in any decision concerning children's care, whether this involves a temporary protective intervention or long/short-term care, including adoption.

A child's best interests, referred to as the welfare principle, are the benchmark for every legal adoption case in the UK.[30] The current legislation governing the position of children in the UK is the Children Act 1989 (the 1989 Act).[31] The 1989 Act outlines the fundamental background for decisions regarding children's welfare.[32] According to S. 1 (1). "When a court determines any question with respect to— (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration."[33] The welfare principle covers a child's emotional needs, background, and characteristics that the court considers relevant to the child's upbringing.[34] A child's background is vital for their welfare. The law says when

> "Safeguarding and promoting a child's welfare, proprietors need to be concerned with the health, happiness and proper physical, intellectual, emotional, social, and behavioural development of that child as well, of

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28 Schiratzki J., last modified 22nd April 2013, *Best Interests of the Child*, DOI: 10.1093/OBO/9780199791231-0109, available at: http://www.oxfordbibliographies.com/view/document/obo-9780199791231/obo-9780199791231-0109.xml, accessed 30/04/2015; The National Archive, available at: https://www.legislation.gov.uk/ukpga/1989/41/section/1, accessed 20/04/2015

29 Harris-Short, Sonia. Miles, Joanna. George, Rob. *Family Law: Texts, Cases and Materials.* Oxford: Oxford University Press. 2015. 3rd Ed. p. 543

30 The term 'the best interest of a child' or 'the welfare of the child'' are practically the same but are utilised variably by different mediums.

31 Available at: http://www.legislation.gov.uk/ukpga/1989/41/contents, accessed 20/062017

32 S. 1 of The Children Act 1989

33 S.1(1)a, (3) band (3)d of the Children Act 1989

34 S.1 (3) b, (3)d of the Children Act 1989

course, as protecting him [her] against the risk of suffering significant harm or neglect."[35]

The law is quite clear that a child's placement should be able to meet their health, social, emotional, and physical needs. A study by Kurk also shows that a child has "… social, moral, and spiritual needs".[36] According to Kurk, these needs are "… a little more ambiguous, yet no less essential for the wellbeing of children… ."[37] As Kurk shows, these psychological needs are even more significant than physical needs because they help children overcome trauma. Over the years, several studies have assessed children's psychological state in care and the importance of the family environment, including children's development, behaviour, and educational needs.[38] Most studies concluded that a family environment is crucial for children's development and well-being.[39] The research shows that a family environment helps to develop a stronger identity and caters for a child's emotional, social, and spiritual well-being.[40] A family environment, particularly one that is faith-compatible, can help children overcome these needs. Religion, culture, and linguistic backgrounds are vital for children in care. As shown in the case study of a Pakistani toddler earlier, the lack of communication could affect a younger child's physical and emotional well-being.

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[35] In paragraph 2.4.1 cited in Helen Fenwick, (2007), *Civil Liberties and Human Rights,* 4th Edition, p. 8.

[36] Kruk. *What Exactly Is "The Best Interest of the Child"?* 2015. Op. Cit.; Edward, Kruk. *Social Justice, Spirituality, and Responsibility to Needs: The "Best Interests of the Child" in the Divorce Transition*, Journal of Spirituality in Mental Health, (2013), 15:2, 94-106, DOI: 10.1080/19349637.2013.776450

[37] Kruk. *What Exactly Is "The Best Interest of the Child"?* 2015. Op. Cit.

[38] For various reasons, the literacy Trust and Adoption Research Initiative has conducted seven studies on children under local authorities' care. Available at http://www.adoptionresearchinitiative.org.uk/studies.html, accessed 13/05/2016.; Bonci, A., National Literacy Trust, (A research review: *The Importance of Families and the Home Environment,* 2008, (revised 2010 and March 2011); available at http://www.literacytrust.org.uk/assets/0000/7901/Research_review-importance_of_families_and_home.pdf, accessed 20/07/2017

[39] Literacy Trust and Adoption Research Initiative, Op. Cit.

[40] See Mullan, Killian and Higgins, Daryl. *A safe and supportive family environment for children: essential components and links to child outcomes.* Paper no. 52, Australian Institute of Family Studies. 2014, available at: https://publications.aston.ac.uk/id/eprint/39632/1/op52_safe_families_final_accessible_pdf_6_8_14.pdf, accessed 16/04/22018. P. viii

These are not just children's needs. They have their legal rights. For children in care, these rights can be achieved through a family environment and, most importantly, through a similar background of adopters and adoptees. Religion helps build an identity for children in care and is vital for their development and well-being. Article 9 of the Human Rights Act 1998 (HRA) guarantees the right to religion.[41] According to Article 9, it is a child's legal right if religion is linked to their health. Article 9 (1) states that the freedom of religion should be allowed for one's health and morals.[42] This connection between well-being and religion is not a new phenomenon, as identified by current research. In the early 20th century, International law, as outlined in the Declaration on the Rights of the Child in 1924, also known as the 'Declaration of Geneva', recognised this right to spiritual support for children, a time when there was little emphasis on children's rights or development.[43] The fourth principle of this Declaration remains relevant almost a century later, stating that spiritual support is essential for the normal development of children.[44] The documentation of such rights in the early 20th century shows that meeting physical needs is insufficient for children's development. In the early 20th century, one did not have the advantage of research on the trauma suffered by vulnerable children due to separation from biological parents.[45] The health and well-being of children in care should be a priority because they are more susceptible than an average child living with their birth parents. However, as the discussion above highlights, minority children may be deprived of their fundamental rights when in care.

Article 30 of the Convention on the Rights of the Child 1989 states,

> "The importance of the traditional and cultural values of each people for the protection and harmonious development of the child" must be taken

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41 Article 9 (2) HRA; The National Archive, available at: https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/8, accessed 18/01/2019.

42 Ibid. Article 9(1)

43 Fortin. *Children's Rights.* Op. Cit. p. 37

44 Fortin. *Children's Rights.* Op. Cit. p. 37

45 Christine, Gordon. and Karen, Wallace. *The Trauma of Parenting Traumatised Children*, available at: https://www.researchunbound.org.uk/trauma/3-how-does-trauma-apply-to-looked-after-children/, published 2015, accessed 13/08/2017.

into account (Preamble of the CRC 1989). Every child who belongs to an "ethnic, religious or linguistic" minority or indigenous group has "the right, in community with other members of his or her group, to enjoy his or her culture, to profess and practice his or her own religion, or use his or her own language." [46]

Article 30 shows that culture and traditions are essential for a child's development. The local authorities in the UK are not fulfilling their legal obligations when they place vulnerable children in placements where they cannot sustain their culture, religion, or language. Adoption was legalised in the early 20th century in the UK when it was not widely applicable to Muslim children because Muslim communities from South Asia only started migrating significantly in the 1960s and 1970s.[47] The preliminary legislation on adoption in 1926 did not emphasise family environment or similar background in adoption placement. The recommendation for a family environment was made by the Curtis Committee two decades after the initial adoption law was enacted.[48] From 1948 onwards, the advice was that the best place for children in local authorities' care was with families. Foster care through the family environment was a significant development in children's welfare. This recommendation was for fostering in the mid-20th century, when Muslim or minority children were not seen as statistically relevant for UK legislators. In the 21st century, the UK is a multi-cultural and multi-religious society. Children in local authorities' care come from different backgrounds. Thus, the specific needs of vulnerable Muslim children, like culture and religion, are affected when they cannot find a suitable family environment due to an acute shortage of Muslim adopters. Although many issues exist within the care system, some of which have been raised by the studies referenced earlier in this chapter, this thesis does not aim to explore

[46] Article. 30 of the CRC 1989, See, Appendix A

[47] See the following link for information on the Muslim population and other religions—Office of National Statistics. Published on 11th December 2012, *Religion in England and Wales 2011,* available at: http://www.ons.gov.uk/ons/dcp171776_290510.pdf, accessed on 26.01.2015.

[48] It stated, "the institutional care of the children was damaging and should be replaced by 'the free conditions of ordinary family life' provided, if necessary, by foster care." See Curtis Committee report on the Children Act 1948 and made these recommendations; Frost and Stein, 1989; 33-4; Parton, 1985; Cited in P. Scraton (Edit), 1997, p. 11.

all of them. It does not address the issues facing Muslim children in care from a legal perspective. Instead, having identified the significance, scale, and scope of this social issue, this thesis utilises a modern hermeneutical approach to explore adoption from a theological perspective, as one of the reasons for the shortage of Muslim families is associated with its prohibition in Islam.

The lack of knowledge on adoption in Islam has implications for Muslim children worldwide, particularly those living in non-Muslim countries as a minority, as shown earlier, where it is one of the legal instruments to support vulnerable children. According to Jiva, their research showed that many Muslim people have poor knowledge of adoption, which deters them from coming forward.[49] He says, "Many of them incorrectly think adoption is a sin…."[50] I do not have access to Jiva's primary research, the basis of its analysis, or data. However, in my professional experience, I often heard this statement in my interactions with the Muslim community and professionals working with children. The case law also shows that the prohibition of adoption in Islam has been argued in courts.[51] The studies to date on adoption from a theological perspective also show that it is prohibited in Islam.[52]

1.2 Studies on Adoption Showing Its Prohibition in Islam

Adoption is subject to discussion in many Islamic law textbooks concerning divorce, child custody and maintenance, but often, these discussions are very brief. There are no substantial studies on adoption from a theological perspective compared to those from a legal perspective. I employed several research strategies to identify the studies. I searched different platforms with terms such as 'adoption or fostering in Islamic law', 'adoption in *Shariah*', 'care of vulnerable children or orphans in Islam', *'tabanni* in Islam' and '*kafala* in Islam'. The platforms included the digital

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[49] I did not have access to this research directly; these views are from the same source as referenced earlier, see Horton. *Charity Launches Drive to Recruit Muslim Adopters.* 2017. Op. Cit.

[50] Horton. *Charity Launches Drive to Recruit Muslim Adopters.* 2017. Op. Cit.

[51] *Newcastle City Council v Z* [2005] EWHC 1490 (Fam)

[52] Ibrahim, A.F. (2019). Care of Abandoned Children in Sunni Islamic Law: Early Modern Egypt in Theory and Practice. In: Yassari, N., Möller, LM., Najm, MC. (eds) Filiation and the Protection of Parentless Children. T.M.C. Asser Press, The Hague. https://doi.org/10.1007/978-94-6265-311-5_1;

search of Birmingham University's library, HeinOnline, Cambridge University Press, and Google Scholar. Many studies on adoption in Islam have been conducted since the early 20th century.[53] Some of these studies are presented in the form of textbook chapters, while others are published in articles.[54] I followed up on references within the studies and articles on adoption, physically scanned the library's shelves and checked all books in the history and theological study sections relevant to Islam, the Arabian Peninsula, and Islamic jurisprudence. I found many constructive references through the latter process. The Encyclopaedia of Islamic Studies, as well as the Oxford and Cambridge History of Islam, were other helpful resources because they featured brief articles on adoption, children, and slavery, referencing relevant scholars and their work.[55] As a result, I compiled an extensive list of multidisciplinary

[53] The earliest academic study on adoption in Islam that few scholars have highlighted was by Pesle, Octave. *L'adoption en droit musulman*. Thèse pour le doctrorat ès-sciences juridiques présentée et soutenue publiquement, le 12 April 1919. However, I could not access this study because it is not in English, and I do not know whether it is available in English. However, later studies have referenced its findings. which does not impact the current research because I will yield primary data from the Qur'an and *ahadith*. Other studies include Naqvi. "Adoption in Muslim Law*".* Op. Cit. pp. 283-302; Powers. *Adoption.* Encyclopaedia of Islam. Op. Cit.; Roberts, Robert. *The Social Laws of the Qorân: Considered and Compared with Those of the Hebrew and Other Ancient Codes*. Paperback ed. London: Atlantic Highlands. N.J: Curzon Press; Humanities Press. 1990. p. 49

[54] Buchler, Andrea, and Eveline Schneider Kayasseh. "Fostering and Adoption in Islamic Law-Under Consideration of the Laws of Morocco, Egypt, and the United Arab Emirates." *Elec. J. Islamic & Middle EL* 6 (2018): 31.; Sonbol, Amira al-Azhary. "Adoption in Islamic society: A historical survey." In *Children in the Muslim Middle East*, pp. 45-67. University of Texas Press, 1995.; Yusuph, Abdulraheem Abdulwahid. "Adoption under Islamic Law: Correcting Misconceptions." *ICR Journal* 9, no. 2 (2018): 189-204.; Yassari, Nadjma. "Adding by choice: adoption and functional equivalents in Islamic and Middle Eastern law." *The American Journal of Comparative Law* 63, no. 4 (2015): 927-962.; Ishaque, Shabnam. "Islamic principles on adoption: examining the impact of illegitimacy and inheritance related concerns in context of a child's right to an identity." *International Journal of Law, Policy and the Family* 22, no. 3 (2008): 393-420.; Naqvi, Ali Raza. "Adoption in Muslim law." *Islamic Studies* 19, no. 4 (1980): 283-302.; Kutty, Faisal. "Islamic Perspectives on Adoption." 239.; Suyatno, S. H., and M. Hum. "Comparison of child adoption from perspective of Islamic law, western law, and customary law." *JL Pol'y & Globalization* 84 (2019): 78.; Muniroh, Siti, and Khoiruddin Nasution. 2021. "The Adoption of Found Child According to Islamic Law and Law No. 3 of 2006 on Religious Courts in the Perspective of Maqasid Al-Shari'ah". *Millah: Journal of Religious Studies* 21 (1):89-112. https://doi.org/10.20885/millah.vol21.iss1.art4.; Mousavi, S. M. S., & Talebi, A. (2019). The Impact of Social Expediency in Jurisprudential Law of Adoption in Islamic Denominations. *Fiqhe Moqaran*, *6*(12), 77-109.; Pollack, Daniel, Moshe Bleich, Charles J. Reid Jr, and Mohammad H. Fadel. "Classical Religious Perpsectives of Adoption Law." *Notre Dame L. Rev.* 79 (2003): 693.; Sonbol, Amira al-Azhary. "Adoption in Islamic society: A historical survey." In *Children in the Muslim Middle East*, pp. 45-67. University of Texas Press, 1995.

[55] Gibb, Hamilton Alexander Rosskeen. *The Encyclopaedia of Islam*. Brill Archive, 1960.; Holt, P. M., Ann K. S. Lambton, and Bernard Lewis, eds. *The Cambridge History of Islam*. Cambridge: Cambridge University Press, 1977.

sources and materials, i.e. those considering adoption from historical, theological and social perspectives, to avoid limiting potential insights. These studies also explored broader social issues related to the practice of adoption and possible reasons for its prohibition in Islam. This gave rise to a range of issues that needed to be explored in the thesis. The criteria for selecting studies from this collection for analysis in the literature review are that adoption is the central question and that they discuss how it is prohibited in Islam. The studies are examined chronologically, starting from the earliest identified in the initial research to identify the grey areas or questions that require in-depth exploration from a theological perspective, based on the Qur'an and *ahadith.*

1.2.1 Naqvi, Adoption in Muslim Law, 1980

"*Adoption in Muslim Law*" is a study by Naqvi on adoption in Islam published in the 1980s, and it is the only study that defines adoption from a theological perspective.[56] According to Naqvi, people in the Arabian Peninsula before Islam practised adoption, like communities in other parts of the world, such as Greeks, Romans, Hindus, and Chinese, who adopted for religious and financial reasons.[57] Childless people utilised adoption to fulfil their religious obligations. Other times, adoption was practised to protect family wealth or legitimise their illegitimate children.[58] Naqvi defines adoption as "the voluntary acceptance of a child of other parents to be the same as one's own child" … or "the taking of an outsider into a clan or tribal group and investing him with the rights and responsibilities of the original members."[59] Naqvi further shows that adoption before Islam was an institutional and socially accepted practice whereby an individual born to one family was taken by another.[60] Adoptees or individuals were considered biologically

[56] Ali, R. Naqvi, "Adoption in Muslim Law"*. Islamic Studies* 19, no. 4 (1980): pp. 283-302. Available at: http://www.jstor.org/stable/20847150. accessed 29/04/2017., p. 282

[57] Naqvi. "Adoption in Muslim Law". Op. Cit. p. 284

[58] Naqvi. "Adoption in Muslim Law". Op. Cit. p. 283

[59] This statement is a direct quote from Naqvi's study. See Naqvi. *Adoption in Muslim Law.* Op. Cit. p. 383, He did not reference this quote despite having quotation marks and including an ellipsis within his statement within his study, so it is difficult to evaluate whether this is an opinion or adapted from another source.

[60] Naqvi. "Adoption in Muslim Law*".* Op. Cit. p. 383

related by adoptive families. The newly formed relationship between adoptees and adopters often supersedes biological kinship, either partially or wholly.[61] In his conclusion, Naqvi stated that adoption is prohibited in all theological sources in Islam; he found that the Qurʾanic injunctions, Prophet traditions, and legal precedents support this prohibition.[62]

Naqvi's definition of adoption, as shown, has significant issues. He used terms like 'clan', 'tribal group', 'their members', 'institutional practice', 'socially accepted' and 'replacing biological kinship fully or partially', which are without any reference or explanation for the shift in language and terminology and hints at ambiguity and lack of clarity despite his claims of certainty regarding prohibition. According to Naqvi, the clans and tribes invested the same responsibilities and rights in individuals as original members.[63] However, Naqvi's definition of adoption shows a two-fold policy. The definition states that parents accept a child and consider him their own, while at the same time, it states that tribes or clans accept a person. This framing does not distinguish how children or their adoption serve clans and tribes. Further, Naqvi did not explicitly explain these partial or completely superseding relationships in the context of adoption or any conditions or requirements that graded such a degree of kinship. Likewise, some of the reasons for adoption shown by Naqvi, like the childless person's desire for parenthood or legitimising illegitimate children, are not harmonious with communal adoption by tribes and clans of accepting a person. Naqvi needed to demonstrate the relevance of these terms to adoption practices for vulnerable children in 1980 when Naqvi was writing this study, as some of the rationales and practices were not comparable with the then or now contemporary practices and principles.

Naqvi explored adoption in Islam within the context of the Arabian Peninsula and compared it with practices in other communities worldwide. He showed historical and cross-cultural reasons for adoption. Naqvi's definition and explanation show that adoption was a well-established and socially accepted institution in the Arabian

[61] Naqvi. "Adoption in Muslim Law". Op. Cit. p. 383
[62] Naqvi. "Adoption in Muslim Law". Op. Cit. p. 298
[63] Naqvi. "Adoption in Muslim Law". Op. Cit. p. 383

Peninsula. Yet Naqvi did not paint a clear picture of adoption or its practice. Naqvi's blanket approach to adoption for communities of other faiths and cultures across the Peninsula does not help to identify the actual adoption practices in the nascent Muslim community. The discussion on different communities' adoption practices would have been more effective if Naqvi had presented the Arab Peninsula's practices or their motives in a comparative method. His study does not develop past his initial statements to show the purpose of adoption or offer evidence of this institution from theological, historical or social perspectives. Naqvi stated that adoption serves the welfare of children. Still, he did not explain how protecting children's welfare continued once/if adoption was prohibited in Islam. Naqvi's discussion is surprisingly limited in its coverage of specific issues related to adoption. Indeed, despite the reference to children in the study, there is no discussion on the age limit, causes of vulnerability, and how to establish that children require care, a mandatory consideration for successful legal adoption.

Naqvi's study explains adoption from a theological perspective, specifically within the context of Islam. There are no references from the Qurʾan, *ahadith,* or scholarly opinions for Naqvi's definition, apart from the reasons for its abolition (inheritance, religious). Naqvi did not present references in the Qurʾan prohibiting adoption or an alternative mechanism for providing care for vulnerable children deprived of their birth parents in the case of the prohibition of adoption. The absence of references in Naqvi's work also makes it challenging to evaluate his findings and determine whether he drew any inferences from theology, social conventions, or the civil law of any country or community.

Naqvi's study is brief for such a significant subject and overlooks many crucial questions. He briefly mentioned two events in Islam regarding the prohibition of adoption. First, Zayd ibn Harithah's adoption and second, Zaynab bint Jash's marriage to the Prophet Muhammad.[64] According to Naqvi, these events were responsible for the prohibition of adoption in Islam. However, there is no explanation for why these events are relevant to modern-day children's adoption,

[64] Naqvi. "Adoption in Muslim Law". Op. Cit. p. 283

as both involve adults. Likewise, Naqvi needed to scrutinise the historical theological sources more closely to demonstrate how these findings were deduced, including whether these events or cases prohibited adoption and whether the rulings on these cases applied to children or adults. The secondary theological literature requires further scrutiny in light of current developments in adoption and children's rights within a contemporary context. A thorough analysis of these events in historical literature should help clarify the actual circumstances surrounding these cases and ascertain whether they have any consequences for children's care or adoption.

1.2.2 Sonbol, *Adoption in Islamic Society, A Historical Survey*, 1995[65]

"Adoption in Islamic Society, A Historical Survey" is a chapter by Sonbol in *Children in the Muslim Middle East.* It shows the motivations for adoption in the Arabian Peninsula.[66] According to Sonbol, in the Arabian Peninsula, adoptions served both military and socioeconomic purposes.[67] A later study by Yassari in 2015 also showed that adoption in the Arabian Peninsula was practised to build military strength by recruiting adult men. According to Yassari, tribes recruited stronger men to enhance their power through this mechanism, which was framed as adoption.[68] This indicates that adoption did not involve children. As shown earlier, Naqvi argued that historically, in adoption, parents voluntarily accepted a child.

These different purposes of adoption shown by these scholars reveal that adoption still needs to be fully understood from a historical perspective. If this was to recruit strong men for defence, then this had nothing to do with the care of vulnerable children or parents accepting a child voluntarily. The case for misunderstanding

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[65] Amira. A. Azhary, Sonbol. *Adoption in Islamic society. A historical survey*, in Elizabeth Warnock Fernea (ed.), Children in the Middle East (Austin 1995), pp. 45–67 or Sonbol, Amira al-Azhary. "ADOPTION IN ISLAMIC SOCIETY: A HISTORICAL SURVEY" In *Children in the Muslim Middle East,* edited by Elizabeth Warnock Fernea, 45-67. New York, USA: University of Texas Press, 1995. https://doi.org/10.7560/711334-005, accessed 20/03/2023

[66] Sonbol. *Adoption in Islamic society.* Op. Cit. p. 46

[67] Sonbol. *Adoption in Islamic society.* Op. Cit. p. 46

[68] Nadjma, Yassari. *Adding by Choice: Adoption and Functional Equivalents in Islamic and Middle Eastern Law.* 63.4 Am. J. Comp. L. (2015). p. 927

adoption is further cemented because scholars disagree on its frequency. According to Sonbol, adoption was widespread in pre-Islamic Arabian communities.[69] Landau-Tasseron, whom I will discuss later, disagreed with Sonbol. Landau-Tasseron stated that she only found a few cases of adoption.[70] The difference in findings by Sonbol and Landau-Tasseron is significant. Both scholars show that adoption in the Arabian Peninsula was practised to build tribal manpower and had socioeconomic reasons. Thus, it needs to be explored further whether this was indeed 'adoption', an instrument to serve vulnerable children, or as practised by some people for parenthood. This will help to understand whether the disagreement on the frequency of adoption in the Arabian Peninsula by Sonbol and Yassari is due to a lack of understanding of adoption, i.e., what it represents. The in-depth analysis of adoption from a historical perspective will help establish whether it was intended to serve children as understood today or whether this was a regional custom representing a strategy to build military and enhance the socioeconomic status of the community, which is not adoption.

Sonbol's study does not identify any significant concerns regarding adoption in the Arabian Peninsula that would warrant its prohibition. Her study revolves around the nuclear family, *nasab* (lineage), and inheritance. According to Sonbol, inheritance did not cause friction in adoption because the tribal system did not recognise individual land ownership.[71] Sonbol does not show why inheritance was reformed in Islam. However, she shows that in Islam, individuals were prioritised based on their blood relation to households to determine their share of the inheritance in a nuclear family.[72] The closer the connection to the family gets, the more significant the inheritance share, rather than an equal share among everyone as administered by pagan tribes.[73] Although Sonbol has discussed inheritance and the nuclear family concerning adoption, these reasons do not sufficiently explain the theological basis for its prohibition.

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[69] Sonbol. *Adoption in Islamic society.* Op. Cit. p. 46
[70] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. p. 189
[71] Sonbol. *Adoption in Islamic society.* Op. Cit. p. 46
[72] Sonbol. *Adoption in Islamic society.* Op. Cit. p. 58
[73] Sonbol. *Adoption in Islamic society.* Op. Cit. p. 49

These scholars from earlier studies highlight social issues that could have impacted adoption. However, their lack of in-depth analysis of these social issues does not show the rationale or their impact on the adoption practice. They have pointed out the inheritance and nuclear family concept; however, they did not explore the rationale for revelation in the Qur'an on these issues to show the association with the prohibition of adoption. For example, Sonbol does not show any problem around inheritance because she states everyone had an equal share before, yet she shows that biological children were prioritised in Islam. According to Sonbol, "Perhaps because tribal grounds were the property of the tribe as a whole, and there was no private ownership of land, the issue of inheritance did not cause a problem when it came to adoption."[74] Sonbol's explanation of inheritance concerning adoption is not clear as to why biological children were subsequently prioritised in Islam if there was no issue or reason for reforming inheritance.

In contrast, as discussed earlier, Naqvi offers a different perspective on inheritance for adoptees. According to him, inheritance distribution was unjust because adoption allowed an equal share for adoptees, which disadvantaged biological children. Hence, adoption was prohibited to make inheritance a right reserved for biological children.[75] Inheritance is not a primary consideration in adoption in the UK, as adoptive parents have well-established laws regarding inheritance and other financial arrangements. Parents can use these laws to make a Will according to their beliefs and desires if they feel that their biological children are going to be disadvantaged by adopting another child or if they believe equal share provisions would go against their faith. Nevertheless, exploring inheritance from pre- and post-Islamic perspectives can demonstrate whether this was a reason to prohibit adoption in Islam.

Another area for improvement in these earlier studies is that they have identified a variety of issues linked to adoption without providing much clarity. Inheritance is not the only factor shown to be responsible for the prohibition of adoption. Sonbol

[74] Sonbol. *Adoption in Islamic society.* Op. Cit. p. 46
[75] Naqvi. "Adoption in Muslim Law*".* Op. Cit. p. 299

offers a few other rationales for the abolition of adoption in the Quran. According to Sonbol, the Qur'an emphasises a nuclear family structure. Hence, Prophet Muhammad discouraged tribes and clans because he wanted to promote nuclear families according to the principles in the Qurʾan.[76] Earlier, Sonbol showed that adoption was intended for military purposes. Here, Sonbol shows that the purpose of adoption was to create large families or tribes rather than for the care of vulnerable children or to create families for those who are parentless. She finds that since the structures of families changed in Islam, the emphasis shifted away from tribes or clans. Therefore, adoption did not have a role in society on the Arabian Peninsula. This rationale for a social change does not demonstrate that adoption was prohibited because there are no claims (in Islam or by Sonbol) linking these changes to overcoming harm in a society when it is organised in a large tribe or clan.

Furthermore, Sonbol stated that adoption did not continue due to a decline in its practice – it became obsolete. According to her, the early Islamic era was a period of revolutionary change. Under a new world order, some existing practices were adopted or continued, becoming law, while others were abandoned.[77] Sonbol stated, "But in the new system, informal adoption declined, for the Qurʾan forbade formal adoption."[78] One cannot claim a prohibition if there is no direct reform to outlaw a widely practised convention, such as adoption before Islam. Simply falling into disuse does not prove it is prohibited or invalid. Moreover, Sonbol did not identify any references from the Qur'an that forbid formal adoption. Sonbol Satated, it's the law of family in the Qur'an that seems to discourage adoption.[79] According to her, prohibition stems from Islamic jurisprudence (*fiqh).*[80] On the other hand, she stated that it is not supported by a direct reference from the Quran. In other words, Islamic jurisprudence does not offer a direct reference from the Qur'an, but rather it is based on the deductions of scholars. Therefore, it is difficult

[76] Sonbol. *Adoption in Islamic society.* Op. Cit. p. 47
[77] Sonbol. *Adoption in Islamic society.* Op. Cit. p. 47-48
[78] See the section on *the coming of Islam.* In Sonbol. *Adoption in Islamic society.* Op. Cit. p. 47
[79] See the section on *the coming of Islam.* In Sonbol. *Adoption in Islamic society.* Op. Cit. p. 47
[80] *Fiqh* is an analogical deduction from *Madhahib (*Jurisprudence doctrines), human reasoning (*ijtihad*), developed by Jurists and scholars of Islam. See, Doi. *Sharīʿah: The Islamic Law*, Op. Cit. p. 2; Gleave and Kermeli. *Islamic Law: Theory and Practice*. Op. Cit. pp. 24-43, 119-129

to substantiate her claims for the prohibition of formal adoption, even if her reasoning for the decline of informal adoption is reasonable.

The issue with these earlier studies on adoption in Islam is that they provide differing rationales for its prohibition. There needs to be a clear understanding of why it is prohibited in Islam and what theological sources support this prohibition. For instance, Sonbol's first position is that Qur'anic provisions emphasise nuclear families, which leads to the formal prohibition of adoption in the Qur'an. Her second position is that this prohibition stems from Islamic jurisprudence, as the Qur'an does not explicitly indicate prohibition. The discrepancies in rationale seem to arise from a lack of thorough analysis of primary sources (Qur'an and *ahadith)* and secondary sources (fiqh /Islamic jurisprudence), which could have yielded a more accurate position. Consequently, an in-depth analysis of the Qur'an and *ahadith* is required to ascertain the actual stance on adoption. Adoption also needs to be redefined or revisited from a historical perspective. Both Sonbol and Naqvi demonstrate that adoption played a role in tribe and clan building; however, the presence of tribes did not negate the existence of a family structure prior to Islam.

An analysis is also needed to determine why tribal adoptions contradict the Quran and *ahadith*, as well as the actual concerns that led to the prohibition. Further investigation is required to understand why a tribal system was contrary to Islamic belief, or how it disadvantaged individuals and communities advocating for the prohibition of adoption. Tribes and tribal infrastructure still exist in many parts of the world, including Muslim-majority countries. Sonbol's claim that adoption was falling into disuse due to its non-practice also requires further exploration. These inconsistent findings indicate that theological sources on adoption necessitate a thorough analysis, which could have provided a more precise understanding of Islam's stance and the actual authority prohibiting it, whether in the Qur'an or theological jurisprudence, if any.

Sonbol, like Naqvi, also stated that adoption continued even after the Quran's revelation, and people were forbidden to change the adoptee's surname or father's name. Sonbol recommended further study on biological identity to establish the

actual reasoning behind this position. However, if adoption had continued and the new Muslims were only forbidden to change the adoptees' surname or father's name, it indicates that adoption was not prohibited. Thus, it can be argued that a person can adopt but should not change the child's biological father's name or, in other words, the child's biological identity. One of the questions surrounding adoption for this thesis is why some Muslim individuals continue with adoption if it is prohibited in Islam, or whether they have found some theological grounds that permit adoption.

1.2.3 Landau-Tasseron, Adoption, Acknowledgement of Paternity and False Genealogical Claims in Arabian and Islamic Societies, 2003

As mentioned earlier, Landau-Tasseron also explored the topic of adoption in Islam.[81] She offers an alternative perspective on the prohibition of adoption in Islam, differing from those of Naqvi and Sonbol. According to Landau-Tasseron, Islamic law prohibits adoption because individuals were falsifying children's genealogy through adoption.[82] She stated that adoption aided in covering up illegitimacy and, in her lengthy analysis of the acknowledgement of paternity and genealogy, showed that the Qurʾan prohibits adoption. According to Landau-Tasseron, the Qurʾan made an equation between the derogatory term "أَدْعِيَاء" (*adi'yah*) and adoptees to outlaw adoption.[83] Further, she stated that the exegete scholars construed this term "أَدْعِيَاء" (*adi'yah*) as adopted since they were satisfied that the verses (Q. 33:3-5) referring to Zayd ibn Harithah.[84] This term in the Qur'an is translated as 'an adopted child' (pl. of *da'iyy).*[85] However, Landau-Tasseron does not elaborate on why "أَدْعِيَاء" is considered derogatory and how it impacts adoption.

It seems that Landau-Tasseron develops Zayd's association with adoption because his name appears in the same chapter, in verse Q. 33:37, which follows the verses

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[81] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. pp. 169-192

[82] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. pp. 169-192

[83] The term " أَدْعِيَاء" (Ad'iyah) is plural دْعِي (da'iyi), See, Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. cit. p. 185

[84] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. p. 185

[85] Badawi, Elsaid. M. and Haleem, Muhammad Abdel. *Arabic-English Dictionary of Qur'anic Usage.* Leiden: Brill. 2008. p. 309

associated with adoption Q. 33:4 and Q. 33:5. However, Landau-Tasseron needed to demonstrate the rationale upon which Islamic scholars have relied to establish Zayd's connection with verse Q. 33:5. Landau-Tasseron's findings on adoption have two areas for improvement. First, they lack an explanation regarding the concerns surrounding a recognised form of a child's status, what constituted illegitimacy, or the cause for the regulation of this social issue.

Notably, almost all studies analysed in this section demonstrate that Zayd was the adopted son of Prophet Muhammad.[86] Other scholars have also linked these verses (Q. 33:3-5) to Zayd's adoption. Unlike Landau-Tasseron, they only indicated that his biological identity changed and made no normative judgement about "أَدْعِيَاء" (adi'yah) or the customs that this term entails.[87] Thus, it is crucial in this thesis to explore Zayd's relationship with Prophet Muhammad, considering whether he was an adopted son, the dynamics of their relationship, and why this relationship was deemed derogatory, ultimately leading to the revocation of adoption. Additionally, I will examine Zayd's connection to the verses Q. 33:4 and Q. 33:5 in the Qur'an. Likewise, given the lack of evidence in Landau-Tasseron, I will investigate whether adoption has historically been regarded as a derogatory practice.

Furthermore, the use of the terms 'adoption' and 'adoptees' in English translations of the Qur'an merits investigation to understand why exegetes interpreted "أَدْعِيَاء" (*adi'yah*) as referring to adoptees, considering the potential ambiguity in meaning that arises from the translation from Arabic to English.

Despite arguing against the prohibition of adoption in Islam, Landau-Tasseron states that the ahadith, fiqh, tafsir, historical sources, and poetry do not provide substantial evidence for or against adoption. There is only one case, with a few others mentioned in most sources.[88] As Landau-Tasseron acknowledges, the classical law books do not address adoption. However, she needs to clarify why this

[86] Naqvi, Sonbol, Landau-Tasseron, and Powers, are discussed in this section.

[87] Most scholars claimed this term referred to the adoption of Zayd Ibn Harithah, and the words in verses are translated as your adopted. Please see chapter four which included the analysis of the change of biological identity, and the only evidence is a *hadith* by Umar Ibn Kitab.

[88] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. pp. 169, 171

might be the case. Despite claiming to have found little evidence of adoption, Landau-Tasseron presents a lengthy analysis of forgery in genealogy, demonstrating that it was a common practice both before and during the early Islamic period.[89] She connects this genealogy forgery to adoption. According to Landau-Tasseron, the ban on adoption affected the recognition of paternity.[90] She argues that adoption was often conflated with declaring the paternity of illegitimate children, which made adoption a contentious issue.[91] However, the question arises as to how paternity recognition relates to adoption. Landau-Tasseron fails to demonstrate how paternity recognition benefited a needy child or those engaged in genealogy forgery, nor does she illustrate the negative consequences of this practice that led to its prohibition.

As shown, Landau-Tasseron also presents multiple rationales for the prohibition of adoption and does not clarify the core concern, whether it is illegitimacy per se or the acknowledgement of paternity. The central question in Landau-Tasseron's study is adoption. However, her analysis focuses on genealogy, neglecting an in-depth exploration of adoption. Landau-Tasseron briefly discusses 'istilhaq and suckling as an alternative to adoption.[92] The subject of 'istilhaq and its process remains unclear in her study. She states it was a practice for acknowledging the paternity of a child, which can be considered adoption in disguise.[93] Under 'istilhaq, a child's paternity can either be known or unknown, and the person claiming paternity may or may not be biologically related.[94] It is challenging to comprehend how this istilhaq is an adoption in disguise, since it serves a very different purpose than adoption, which I will further explore in Chapter Six.

[89] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. p. 189
[90] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. p. 189
[91] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. p. 172
[92] According to Landau-Tasseron, this was a similar process to acknowledging paternity. See, Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. p. 187
[93] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. p. 187
[94] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. p. 188

Istilhaq appears to set a perilous precedent. Sonbol and Naqvi also demonstrated that adoption was often misused to conceal illegitimacy.[95] If this is the case for an individual asserting paternity, there is no recognisable marriage contract or any other formal procedure linking the child to the paternity. This could lead to accusations of concealing an illegitimate birth and may be subject to severe punitive measures under Islamic principles. Historically and in contemporary times, illegitimacy carries extreme consequences from social, legal, and religious perspectives. The punishment for adulterers in Islam is severely harsh. According to the Qur'an, both male and female fornicators can receive a hundred lashes each.[96] In the case of enslaved women, the punishment is half that of a free woman.[97] At the same time, the ahadith recommend the death penalty.[98]

Furthermore, if '*istilhaq'* was deemed acceptable*,* this appears to provide an easy means for individuals to acknowledge paternity for their illegitimate children rather than opting for adoption. The rationale surrounding the issue of illegitimacy, which carries severe penalties under Islamic jurisprudence, is challenging to grasp, particularly since adoption is prohibited. A thorough analysis of *'istilhaq'* in the context of paternity acknowledgement will elucidate whether this was simply a form of adoption in disguise or if alternative explanations exist. The reasons for prohibition from a genealogical perspective also warrant further exploration to determine whether the primary concern was a child's status within a formally recognised relationship, such as marriage, that necessitated acknowledgement. If the sole issue was paternity acknowledgement, one might question why Zayd ibn Harithah is linked to adoption, or whether he was an illegitimate child. Despite

[95] Naqvi. "Adoption in Muslim Law*".* Op. Cit. p. 299; Sonbol. *Adoption in Islamic society.* Op. Cit. p. 50

[96] Q. 24:2

[97] Q. 4:25

[98] "Narrated Ibn `Abbas: `Umar said, "I am afraid that after a long time has passed, people may say, "We do not find the Verses of the Rajam (stoning to death) in the Holy Book," and consequently they may go astray by leaving an obligation that Allah has revealed. Lo! I confirm that the penalty of Rajam be inflicted on him who commits illegal sexual intercourse if he is already married and the crime is proved by witnesses or pregnancy or confession." Sufyan added, "I have memorised this narration in this way." `Umar added, "Surely Allah's Messenger (ﷺ) carried out the penalty of Rajam, and so did we after him." Sahih al-Bukhari » Limits and Punishments set by Allah (Hudood), hadith 6829, Book 86, Hadith 55 Available at: https://sunnah.com/bukhari:6829, accessed 24/05/2022

limited evidence, Landau-Tasseron concluded that Islamic law forbids adoption. As mentioned earlier, the evidence suggests that historically, the practice of adoption may have differed significantly from contemporary understandings.

Landau-Tasseron identified suckling as an alternative to adoption but has yet to clarify how it serves as such. Suckling has implications for adoption regarding the prohibited degrees of marriage (*mahram*)[99] (those individuals with whom one cannot legally marry).[100] Some studies suggest that suckling, veiling, and mahram or modesty are the reasons for the prohibition of adoption, as adopters and adoptees do not share blood ties and thus have no barriers to marriage. However, this does not substantiate suckling as a viable alternative to adoption. Consequently, suckling requires further investigation from a historical and cultural perspective, as well as in the Quran, to understand the rationale behind the revelation of suckling and its impact on adoption practices.

1.2.4 Powers, *Adoption,* 1980

Power's brief study is highly influential, as almost all the aforementioned studies reference it regarding adoption in Islam. However, Powers also provides differing reasons for the prohibition of adoption in Islam. According to Powers, adoption was explicitly abolished in Islam's fifth year (CE 627), leading to alternative arrangements for the care of orphans and vulnerable children.[101] The first reason Powers provides for the prohibition of adoption is the marriage of Zaynab bint Jash to Prophet Muhammad. According to Powers, this was an incestuous marriage, as it involved a father-in-law (Prophet Muhammad) and a daughter-in-law (Zaynab bint Jash).[102] Adoption was dissolved in Islam to avoid this controversial marriage. Historical sources present differing explanations for Zaynab bint Jash's marriage to

[99] "Arabic محرم, also transliterated *mahrim* or *maharem,* is unmarriageable kin with whom sexual intercourse would be considered incestuous, a punishable taboo." See Islamic terminology, https://islamic-dictionary.tumblr.com/post/4965813263/mahram-arabic-محرم, accessed 20/03/2019

[100] Peter, Parker. "Milk Kinship in Islam. Substance, Structure, history. Social Anthropology", 13: (2005). 307–329. doi:10.1111/j.1469-8676. 2005.tb00015. x., p. 307

[101] Powers. "Adoption*". Encyclopaedia of Islam*. Op. Cit.

[102] Fat-al Bari cited in Powers. *Adoption.* Encyclopaedia of Islam. Op. Cit.

the Prophet Muhammad.[103] There is no evidence suggesting that it pertains to adoption. Although incest is claimed in this case as a reason for the prohibition of adoption, it does not appear that this marriage relates to incest. Therefore, questions surrounding incest, marriage, or gender interaction in the context of adoption could clarify whether such concerns contributed to the prohibition of adoption.

Another theory Powers offered for the prohibition of adoption in Islam is the prophecy of the Prophet Muhammad. He stated that a verse cited in the Qurʾan, at Q. 33:40, was inconsistent with previous prophecies.[104] The statement is, 'Prophet Muhammad is the last Prophet, and he is not the father of any man'.[105] According to Powers, historically, prophecy was lineage-based. As Prophet Muhammad had an adopted son, this presented a direct empirical contradiction of the statement in Q. 33:40 if taken literally. To resolve this contradiction in Q. 33:40, adoption was repudiated.[106]

In summary, the analysis of these recent studies reveals multiple claims regarding the prohibition of adoption in Islam. These claims include inheritance, nuclear families, illegitimacy, prophecy, incest, paternity, biological identity, and the declining practice of adoption. However, other studies have presented suckling, veiling, and mahram or modesty as the reasons for prohibiting adoption, as adopters and adoptees have no blood ties and face no barriers to marriage, leading to the prohibition of adoption. From these earlier studies, there is no clear pattern of adoption before Islam nor any indication that it was against Islamic principles, which ultimately led to its prohibition. I argue that these contemporary scholars have misunderstood Islamic attitudes towards adoption. The analysis

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[103] Shaykh. Safiu-Rahman Al-Mubarakpuri et al. *Tafsir Ibn Kathīr (10 Volumes; Abridged)*. 2000a. Vol.7. p. 635

[104] Powers. "Adoption*". Encyclopaedia of Islam*. Op. Cit.

[105] See the translation of Sahih International Qurʾan 33:40 "*Muhammad is not the father of [any] one of your men, but [he is] the Messenger of Allah and last of the prophets. And ever is Allah, of all things, Knowing."* Available at: https://quran.com/33/40?translations=17,18,19,20,21,22,31,84,85,95,27,101, accessed 05/06/2017.

[106] Powers. "Adoption*". Encyclopaedia of Islam*. Op. Cit.

demonstrates significant differences in their understanding of adoption in Islam. The only evidence that most studies provide for the prohibition of adoption, apart from three verses, namely Q. 33:4, Q. 33:5, and Q. 33:37, is the case of Zayd ibn Harithah regarding adoption.[107] An in-depth analysis of Zayd Ibn Haritha's adoption should reveal whether he was adopted in the way we understand adoption today.

A brief analysis of the revelations associated with adoption in verses Q. 33:4 and Q. 33:5 in *Surah Al-Ahzab* in the Qur'an reveals various issues regarding the abuse of people's rights.[108] For example, in Q. 33:4, the discussion centres on divorced women in society and their poor treatment in dysfunctional marriages, where they are effectively trapped in marital homes with their children without any financial support.[109] It is crucial to apply an in-depth hermeneutical approach to these verses to understand the rationale behind their mention of the abuse of women in verses that scholars claim prohibit adoption. What harm was adoption causing, as looking after a child or welcoming them into one's family does not seem detrimental? These verses need analysis and evaluation in light of the political, social, and economic context of the early 7th century when the Qur'an was revealed. During this period, real concerns surrounded lineage,[110] Children's abductions,[111] marriages, inheritance, and cultural issues due to the near-constant conflict in the Arabian Peninsula.[112] Most people in the Arabian Peninsula were nomadic, and the continuous population movement created a socio-economic and political environment that was very different from today's.[113] This thesis will focus on these concerns, including historical understandings of adoption and practices in the pre-Islamic world, to evaluate the underlying reasons for the revelations in the Qurʾan related to adoption. An in-depth analysis of different cultures, environments, and

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[107] The scholars claimed that Prophet Muhammad adopted Zayd ibn Harithah, and I will analyse his case in chapter four to evaluate whether this was indeed an adoption.

[108] Sahih International. Qurʾan 33:4-5; Jane, Dammen McAuliffe. (Editor). "Adoption": *Encyclopaedia of the Qur'ān*. Leiden: Brill, 2003. Vol 1 A-D. p. 302; Shaykh. Safiu-Rahman Al-Mubarakpuri et al. *Tafsir Ibn Kathīr (10 Volumes; Abridged)*. 2000a. Vol. 7. p. 635

[109] Q. 33:4, the thesis will have a complete analysis of these practices.

[110] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit.

[111] Montgomery, W. Watt. *Muhammad at Mecca.* Oxford: Oxford University Press, 1953

[112] Watt. *Muhammad at Mecca.* 1953. Op. Cit.

[113] Watt. *Muhammad at Mecca.* 1953. Op. Cit.

the care of vulnerable children will further help clarify whether the practice of child adoption was legal or merely customary during the early period of Islam, or whether it existed at all.

An in-depth analysis of *ahadith* is necessary to understand the rationale and ascertain if there is any connection to adoption. The *hadith c*oncerning paternity manipulation requires further justification to establish its relevance to adoption. The first *hadith* is by Abu Dharr, in which he states,

> "he heard the Prophet, may Allah bless him and grant him peace, say, "A person who knowingly claims a father other than his own has disbelieved. A person who claims to be from a people when he is not one of them will take his place in the Fire. A person who calls a man an unbeliever or says, 'Enemy of Allah,' when that is not the case, will have that come back on him." [114]

Abu `Uthman narrates that,

> "I heard from Sa'd, the first man who has thrown an arrow in Allah's Cause, and from Abu Bakra who jumped over the wall of the Ta'if Fort along with a few persons and came to the Prophet. They both said, "We heard the Prophet (ﷺ) saying, "If somebody claims to be the son of somebody other than his father knowingly, he will be denied Paradise (i.e. he will not enter Paradise).' "Narrated Ma'mar from `Asim from Abu Al-`Aliya or Abu `Uthman An-Nahdi who said. "I heard Sa'd and Abu Bakra narrating from the Prophet." `Asim said, "I said (to him), 'Very trustworthy persons have narrated to you.' He said, 'Yes, one of them was the first to throw an arrow in Allah's Cause, and the other came to the Prophet (ﷺ) in a group of thirty-three persons from Ta'if.'" [115]

[114] Al-Bukhari, Muhammad. Al-Adab Al-Mufrad 433; Book 24. Defamation: hadith. 15: https://sunnah.com/adab/24/15

[115] Al-Bukhari, Muhammad. Al-Adab Al-Mufrad 433; Book 24. Defamation: hadith. 15: https://sunnah.com/adab/24/15; Sahih al-Bukhari: Military Expeditions led by the Prophet (PBUH) (Al-Maghaazi): (56) Chapter: The Ghazwa of At-Taif; Book 64, Hadith 356: https://sunnah.com/bukhari/64/356

The analysis of primary sources requires substantial discussion regarding the broader literature on adoption. Furthermore, these studies have emphasised the need for greater debate about adoption within theological literature. Thus, this thesis aims to explore the reasons behind the limited discussion on adoption in theological literature and Islamic jurisprudence, despite its significance in protecting vulnerable children. It is crucial to understand why Islam may prohibit adoption, as it currently provides vulnerable children with a secure future. For Muslim children, a Muslim family will offer a religious identity. A modern hermeneutical approach will provide a comprehensive understanding of adoption from theological, historical, and social perspectives. Essentially, other methods are limited in their scope or data, highlighting the necessity for a holistic and thorough approach.

1.3 Methodology and limitations

The existing literature on adoption and its prohibition in Islam reveals several limitations and knowledge gaps. Previous studies rely heavily on assumptions rather than thorough investigations. Additionally, the superficial approach to theological sources is evident in the various justifications for prohibiting adoption. There is a need for more genuine engagement with critical sources and a failure to recognise the interconnected nature of understanding, necessitating a move beyond literal interpretations. In light of these limitations, this thesis aims to adopt a modern hermeneutic approach to address the identified questions regarding adoption in Islam.

Hermeneutics explores the process of interpreting texts and offers valuable perspectives for understanding and analysing various phenomena across different academic disciplines.[116] The fundamental definition of hermeneutics is the interpretation of texts, essentially uncovering meaning in written words.

[116] Aco, Jovicic. (2023). Hermeneutics. doi: 10.1093/obo/9780190221911-0125; Paul, Regan. (2012). Hans-Georg Gadamer's philosophical hermeneutics: Concepts of reading, understanding and interpretation. 4(2), 286-303., p286; Mantzavinos, C., "Hermeneutics", *Stanford Encyclopedia of Philosophy* (Fall 2020 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/fall2020/entries/hermeneutics/>. [This was the previous entry on this topic in the *Stanford Encyclopedia of Philosophy* — see the version history.]

Hermeneutics rests on two implicit assumptions: that humans perceive the world through language and that this language provides both understanding and knowledge.[117] In simple terms, this methodology interprets texts with interdisciplinary awareness. Given that this thesis encompasses historical, philosophical, social, legal, and theological dimensions, hermeneutics allows engagement with such multidisciplinary sources. The hermeneutic methodology examines complex social phenomena, emphasising the critical role of subjective experiences, beliefs, and cultural backgrounds.[118] It constitutes a thorough analysis of sources and involves engaging with them through meaningful dialogue.[119] According to Byrne, we inherit traditions through language and socialisation, which shape our understandings. Philosophical and literary texts pose questions that help make sense of life's situations. Literature offers chances for dialogue and scholarly thought across time, cultures, and contexts.[120]

Indeed, philosophical hermeneutics emphasises the impact of historical and cultural contexts on our interpretations. This underscores the subjectivity of understanding and the necessity of self-reflection in the interpretive process.[121] As hermeneutics demonstrates, historical and cultural contexts influence our experience, which appears to be the case with adoption. Hermeneutics serves as a robust methodology for conducting in-depth analyses and interpretations, revealing the hidden or implicit meanings within texts and theories related to adoption. It is an insightful and constructive philosophical method of textual interpretation. The primary aim of hermeneutics is to unravel context and stimulate critical thinking

[117] BYRNE, MICHELLE. "Hermeneutics as a methodology for textual analysis." *AORN Journal* 73, no. 5 (2001): 968. *Gale Academic OneFile* (accessed August 7, 2024). https://link.gale.com/apps/doc/A74571586/AONE?u=anon~b9578cb7&sid=googleScholar&xid=f2b051e3.

[118] Lauren Stewart, Hermeneutic Analysis in Qualitative Research, https://atlasti.com/research-hub/hermeneutic-research#what-is-hermeneutics-research, accessed 07/08/2022

[119] Lauren Stewart, Hermeneutic Analysis in Qualitative Research, https://atlasti.com/research-hub/hermeneutic-research#what-is-hermeneutics-research, accessed 07/08/2022

[120] BYRNE, MICHELLE. "Hermeneutics as a methodology for textual analysis." *AORN Journal* 73, no. 5 (2001): 968. *Gale Academic OneFile* (accessed August 7, 2024). https://link.gale.com/apps/doc/A74571586/AONE?u=anon~b9578cb7&sid=googleScholar&xid=f2b051e3.

[121] Lauren Stewart, Hermeneutic Analysis in Qualitative Research, https://atlasti.com/research-hub/hermeneutic-research#what-is-hermeneutics-research, accessed 07/08/2022

through meticulously crafted, thought-provoking inquiries. Hermeneutics represents a vital and evolving field that bridges philosophy, textual interpretation, and various academic disciplines, emphasising its significance in understanding meaning.[122] This multidisciplinary methodology is crucial for attaining a more meaningful understanding of adoption from historical, cultural, and theological perspectives.

To address the questions identified above through the hermeneutic method, this thesis will rely on the primary sources of Islam: the Qurʾan and ahadith. The Qur'an is Islam's primary source, followed by the ahadith. The revelation in the Qurʾan began in the early 7th century AD, commencing with the Prophet Muhammad in Makkah and Medina, specifically from 610 to 632 AD in the Arabian Peninsula.[123] Even though the Qurʾan is the primary source, it does have certain limitations for analytical assessment.[124] Therefore, ahadith supplement the Qur'an's text to enhance the rationale for the revelations contained within it. There are six collections of ahadith by Sunni scholars that are often referenced in exegesis. These collections are Sahih of al-Bukhari,[125] Sahih Muslim,[126] *Sunan* of Ibn Majah,[127] *Sunan*

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[122] Mantzavinos, C., "Hermeneutics", *Stanford Encyclopedia of Philosophy* (Fall 2020 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/fall2020/entries/hermeneutics/>. [This was the previous entry on this topic in the *Stanford Encyclopedia of Philosophy* — see the version history.]; Gillo, Mariano D. 2021. "Fundamentals of Hermeneutics As A Qualitative Research Theoretical Framework". *European Journal of Education and Pedagogy* 2 (3):42-45. https://doi.org/10.24018/ejedu.2021.2.3.43., p.45; Smythe, E., & Spence, D. (2012). Re-Viewing Literature in Hermeneutic Research. *International Journal of Qualitative Methods*, *11*(1), 12-25. https://doi.org/10.1177/160940691201100102

[123] Q. 14:1 Sahih International, "This is a Book which We have revealed to you, [O Muhammad], that you might bring mankind out of darknesses into the light by permission of their Lord – to the path of the Exalted in Might, the Praiseworthy."; See, Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 16-18

[124] The Qurʾan has the often-literal translation of the text; each word of the Qurʾan can have multiple meanings. Qurʾanic exegeses do detail the subject, but on adoption: the exegeses are not very coherent and logical.

[125] Deceased in 870 C.E. (Islamic date 256 After Hijrah (A.H.), cited in Doi. *Sharīʻah: The Islamic Law*. Op. Cit. p. 54; Martin, Lings. *Muhammad: His Life Based on the Earliest Sources.* Edited by Islamic Texts Society. London: Allen & Unwin: Islamic Texts Society, 1983. p. 349; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 26-29

[126] Died in 875 C.E (261 A.H) (C. E=Common Era and A.H= After *Hijrah*)

[127] Died in 887 C.E (273 A.H)

of Abu Da'ud,[128] *Jami* of al-Tirmidhi,[129] and *Sunan* of al-Nasa'i.[130] Within Islamic jurisprudence, ahadith are scrutinised based on degrees of reliability and authenticity and are given specific statuses. These statuses are categorised into three classes: *sahih* (authentic), *Hasan* (good), and *da'if* (weak).[131] The status of a *hadith* is essential in practice. One must consider the strength of an opinion and the judgment rendered on any subject when evaluating the authenticity of the ahadith. In practice, this determines whether a specific mandate is obligatory or optional.[132]

In addition, the *tafsir* (exegesis) of the Qurʾan, initiated by the *Sahabah* (the companions), explained the *asbab-al-nazul* (the causes and context of revelation).[133] The study benefits from the secondary source of Islamic jurisprudence, supplemented by diverse religious schools in Islam, often referred to as *madhahib* (jurisprudence doctrines).[134] Following a hermeneutic methodology, the thesis adopts an inclusive approach to Islamic jurisprudence, addressing questions that transcend sects and opinions within Islamic scholarship, including those of the *Sunni* and *Shi'i*. The *madhahib* (schools of jurisprudence) offer insight into the historical and social influences that shaped the development of jurisprudence. The study of *ahadith* and jurisprudence as presented by the main *madhahib* requires careful consideration, as concerns persist regarding the authenticity, accuracy, and fairness of these sources. The analysis requires due diligence to discern the correct historical facts from relevant jurisprudence and to

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128 Died in 888 C.E (275 A.H)

129 Died in 892 C.E (279 A.H)

130 Died in 915 C.E (303 A.H)

131 Doi. *Sharī'ah: The Islamic Law*. Op. Cit. p. 57; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 322-326

132 Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. pp. 33-36

133 Doi. *Shari'ah: The Islamic Law*. Op. Cit. p. 24

134 Schacht. *The Origins of Muhammadan Jurisprudence.* Op. Cit. pp. 6, 21-23; Abū Zahrah. *The Four Imams*. Op. cit. pp. 363-367; Abdul, Rahim. *The Principles of Muhammadan Jurisprudence; According to the Hanafi, Maliki, Shafi'i and Hanbali Schools.* Lahore: Indus Publishers, 1911. pp. 17 -47; Hallaq, Wael B. "From Fatwās to Furūʿ: Growth and Change in Islamic Substantive Law." *Islamic L§ and Society* 1, no. 1 (1994): doi:10.2307/3399430. pp. 29-65; Hodgson. Marshall, G. S. *The Venture of Islam: Conscience and History in a World Civilization.* Vol. 1 The Classical Age of Islam. Chicago; London: The University of Chicago Press. 1974. Pp. 318-322, 333, 335; Esposito, John L. *Women in Muslim Family Law.* Syracuse, N.Y.: Syracuse University Press, 1982. https://hdl.handle.net/2027/heb.04699. EPUB. p. 105

verify the accuracy of such sources. The thesis will analyse *ahadith* based on their accepted status within the canon of Islamic law to alleviate the identified concerns.

One of the study's limitations is that it only draws upon sources available in English. However, this does not adversely affect the study, as the primary sources, the Quran and the *ahadith,* are readily translated into English by various *madhahib*. The Qur'an and *ahadith* serve as primary sources for most questions in this study, except for those requiring data on Muslim countries. To obtain information on the adoption practices of Muslim countries, I will consult each country's laws and policies, as well as empirical studies regarding their care provisions for children. The challenge lies in the fact that resources from some countries will only be available in English. Therefore, I will depend on academic articles and English secondary source material pertaining to adoption and childcare provisions in other jurisdictions.

The hermeneutic approach requires contextualisation of the textual material, that is, understanding the context in which the sources are produced. Therefore, the thesis will reference established historians for the data on adoption from a historical perspective concerning the Arabian Peninsula. Abu Jafar Muhammad ibn Jarir Al-Tabari (839-923) is one such historian.[135] He is among the early Muslim historians, jurists, exegetical scholars of the Qur'an, and *ahadith*.[136] His history scholarship in '*The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk)'* is monumental. Although Al-Tabari's collection on Islamic history comprises 39 volumes, I will only refer to a few that are directly relevant to adoption and related important events highlighted earlier in the literature review, including the case of Zayd Ibn Harithah and Zaynab bint Jash. The volumes cited in this study are '*The Victory of Islam', 'The Conquest of Arabia'* and *'Biographies of the Prophet's Companions and Their Successors*. Another source is the biography of Prophet Muhammad translated by Guillaume,

[135] Faizer, Rizwi. "Ṭabarī, Abū Jaʿfar Muḥammad ibn Jarīr al-." In *The Oxford Encyclopedia of the Islamic World*. *Oxford Islamic Studies Online*, http://www.oxfordislamicstudies.com/article/opr/t236/e1083, accessed 24/01/2021.

[136] Al-Tabari, Abu Jafar Muhammad ibn Jarir. In '*The Oxford Dictionary of Islam*.', edited by John L. Esposito. *Oxford Islamic Studies Online*, http://www.oxfordislamicstudies.com/article/opr/t125/e2292, accessed 24/01/2021.

'*The Life of Muhammad:* A *Translation of Ishaq's Sirat Rasul Allah',* published in 1955.[137]

Al-Tabari provides insight into the early Muslim community, its individuals, and institutions, documenting their conduct in chronological order in a version available in English.[138] This source provides extensive details about historical events surrounding and following the advent of Islam. It gives evidence regarding wars, the socio-political environment, legal and theological developments, and social practices related to families and childcare. This examination will help clarify the role of adoption in these early communities. It presents various scholars' interpretations or perspectives on the same events. The differing interpretations of these events enable the evaluation of evidence through a comparative lens, enhancing our understanding of why scholars have formed different interpretations and conclusions regarding the same occurrences.

The secondary data also comes from contemporary texts and articles about the customs and cultures of people in this Arab region, which includes Hodgson's '*The Ventures of Islam*', published in 1974.[139] Hodgson comprehensively covers the lifestyles of inhabitants of the Arabian Peninsula, including their religious, political, cultural, legal, cultic, and customary practices. This source provides extensive details about the social and economic environment during various periods, particularly the early period of Islam when reforms occurred and most matters were

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[137] Guillaume, A. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah, with introduction and Notes. London, New York, Toronto: Oxford University Press. 1955

[138] Al-Tabari, Muhammad. Ibn Jarir. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* The Victory of Islam, Vol. VIII. Translated and annotated by Michael Fishbein. Albany, State University of New York Press. 1997; Al-Tabari, Muhammad. Ibn Jarir. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* The Conquest of Arabia, Vol. X. Albany: State University of New York Press. 1993; Al-Tabari. Muhammad. Ibn Jarir. *The history of al-Tabarī = Ta'rīkh al-rusul wa'l-mulūk.* Vol.6 Muhammad at Mecca / translated and annotated by W. Montgomery Watt and M.V. McDonald. New York: State University of New York. 1988; Al-Tabari. Muhammad. Ibn Jarir. *The history of al-Tabarī = Ta'rīkh al-rusul wa'l-mulūk.* Vol. XXXIX, Biographies of the Prophet's Companions, and Their Successors. Translated and annotated by Ella Landau-Tasseron and Ehsan, Yar-Shater (editor). New York: State University of New York. 1998; Shaykh. Safiu-Rahman Al-Mubarakpuri et al. *Tafsir Ibn Kathīr (10 Volumes; Abridged)*. 2000. Vol. 7. p. 635; Faghih Imani et al., *An Enlightening Commentary into the Light of the Holy Qurʾan*, 1998. Vol 14. p. 396

[139] Hodgson. Marshall, G. S. *The Venture of Islam: Conscience and History in a World Civilization.* Vol. 1 The Classical Age of Islam. Chicago; London: The University of Chicago Press. 1974

regularised. Most importantly, this source provides significant data that illustrates timelines for various events in the history and evolution of the Arabian Peninsula, which can aid in our understanding of adoption.

Similarly, 'Kinship & Marriage in Early Arabia' by W. Robertson Smith, published in 1973, is another relevant source.[140] It is considerably shorter but contains empirical data on families that illustrate whether individuals are adopted into families or if they move around within them. This source provides statistical data on names and kinship, which would aid in establishing why people changed their names or their relevance to adoption. It provides information on communities, living arrangements, marriage practices, customs, and family and tribal relationships. This data would help ascertain whether people lived as distinct family units or in larger communal groups. Was there any hierarchical system within tribes? Additionally, it seeks to understand the role of adoption within families.

1.4 Statement on ethical compliance

The thesis fully complies with the ethical guidelines for academic research. It not only addresses the sensitive issue of adoption but also explores the theological perspectives surrounding this topic, which have implications for vulnerable children. Additionally, it encompasses cultural, social, and legal considerations. As a British Muslim Pakistani from a South Asian background and a professional working with children and families, I recognise the cultural and religious sensitivities relevant to this study. The data collection adheres to academic standards, including adherence to plagiarism and copyright regulations, as well as obtaining necessary permissions. The study also adheres to legal requirements regarding confidentiality and data protection. While it does not directly collect or consider personal data, I ensure compliance with the University's Ethics Committee requirements on informed consent, access, and confidentiality. Furthermore, when an individual participates, they do so with full awareness of the study, its aims, and objectives.

[140] Smith, W. Robertson. *Kinship & Marriage in Early Arabia / by W. Robertson Smith*. Beirut: United Publishers. 1973

1.5 Thesis structure

To address the questions outlined in the initial analysis of the literature, the thesis progresses thematically. Chapter two examines the provisions in the Qur'an and *ahadith* concerning the care, protection, and rights of vulnerable children in Islam. This should help determine whether adoption is prohibited in Islam and what alternatives have replaced it. The second half of this chapter analyses *kafala*, a mechanism used to support vulnerable children in Islam. This thorough analysis of *kafala* aims to uncover its historical origins and sources from the Qur'an and *ahadith*. The crucial question is whether *kafala* serves as a substitute for adoption in Islam and whether it is the mechanism endorsed in the Qur'an and *ahadith* rather than evolving as an independent entity. Finally, can *kafala be* compared to contemporary legal frameworks such as fostering, adoption, and guardianship?

Chapter three analyses the care mechanisms for vulnerable children in Muslim countries. It examines how these mechanisms support parentless, vulnerable children and the processes involved in placing them with families. Additionally, it investigates whether Muslim countries permit the adoption of children. This chapter further explores the rationale behind allowing adoption. For instance, do they provide theological or welfare-oriented justifications in their legislation for permitting adoption?

Chapter four investigates the central question of this thesis: the historical practice of adoption in the Arabian Peninsula. What was adoption before Islam? Is there evidence of a widespread, unified practice of adoption in the Arabian Peninsula, as indicated by Sonbol, and did it involve a parent-child relationship? Did adoption encompass vulnerable children, or was it limited to adults only? Similarly, why are there so many variations in adoption practices, such as those between tribes and clans, as highlighted by the recent studies discussed earlier? Analyses of historical practices should determine whether the analogy to a historical custom accurately reflects the manifestation of adoption as it is understood today, and whether this historical practice was relevant to children or their care. Likewise, why did adoption historically serve such diverse purposes or motivations, as identified by recent

studies? Additionally, why were these practices regarded as harmful or contrary to Islamic principles, which led to their prohibition in Islam? Or is this a misunderstanding, with an alternative explanation?

Chapter five briefly summarises the methodology of theological jurisprudence to illustrate how scholars and jurists develop jurisprudence by interpreting or deriving the meanings of verses from the Qur'an and ahadith, while also considering local customs. It then proceeds to analyse the verses from the Qur'an regarding adoption, namely Q. 33:4 and Q. 33:5. The analysis aims to demonstrate the context in which the statement in Q. 33:4, *Surah Al-Ahzab,* about so-called adoptive sons relates to the adoption of children, and why this same passage is associated with other comparable practices or traditions such as pagan divorce and hypocrisy. The significant questions in this chapter are: Who are the people subject to the revelations in Q. 33:4 and Q. 33:5, and what are the causes for these revelations? Secondly, what evidence supports the notion that the statement regarding adopted sons in Q. 33:4 prohibits adoption or its equivalent historical traditions? Thirdly, what was the relationship dynamic between Zayd ibn Harithah, who was adopted by the Prophet Muhammad, in the context of parent and child? Fourthly, did the revelation address Zayd ibn Harithah directly or the issue surrounding his biological identity? Lastly, why do classical theological sources or Islamic jurisprudence fail to discuss adoption?

Chapter six examines ahadith associated with the manipulation of adoptees' biological identity. As analysed earlier in the literature review, recent studies reference *ahadith* on biological identity for the prohibition of adoption. Hence, this chapter explores why individuals were manipulating paternity through adoption and what the purpose or the gain was for those engaged in this manipulation. Another reason linked to the prohibition of adoption is the equal inheritance share received by adoptees before Islam. Naqvi demonstrated that adoption was prohibited in Islam because it allowed adoptees an equal share in inheritance before the advent of Islam. The second argument regarding adoption and inheritance is that the revelations on inheritance do not mention adoptees as

beneficiaries, as adoption was prohibited in Islam. Therefore, this chapter first examines whether adoptees had an equal share in inheritance before Islam and whether this fact contributed to the prohibition of adoption in Islam, as indicated by earlier studies. Second, it investigates why adoptees are not mentioned in the context of inheritance in Islam.

Chapter seven examines additional issues frequently associated with the prohibition of adoption, including suckling, *mahram*, veiling, and gender interaction. It first explores *mahram* (people in the prohibited degree of marriage), including the mitigation of *mahram* through suckling. Secondly, it addresses veiling and gender interaction from the perspective of adoption, specifically considering the situation of living in a household with adopted children who are *non-mahram,* as stated in the revelations of the Qur'an. First, why do the revelations not mention adoptees in the prohibited degree of marriage (*mahram*) kinship in the Qur'an? Second, what are the implications for adoptive parents and adoptees who share no blood ties? For example, it has been argued that adoption is not functional because when children reach puberty, it becomes impractical for gender interaction within the household due to *mahram* considerations. In other words, the concern is that it is impractical for a family to mix when adopted children reach puberty, as there is no barrier to marriage. Males and females would need to cover consistently due to *the mahram* issue. Therefore, adoption is prohibited because of the undue restrictions it would place on a household or the risks of violating other conditions of Islam (concerning modesty, privacy, marriage, and so on). Third, what is the rationale for the revelations on suckling, veiling, and gender interaction, and do these issues have any implications for the practice of adoption?

Chapter eight serves as the conclusion, summarising the findings related to the questions or grey areas identified in earlier studies on adoption in Islam. This thesis highlights the contributions made, the methodology employed to address these questions, the significance of the findings, and how they impact adoption practices that support vulnerable children. Additionally, it illustrates this thesis's contributions to the subject of children's adoption and rights in Islam, more broadly,

within the field of Islamic studies. Furthermore, it identifies areas that require further research from a theological perspective.

1.6 Conclusion

As shown, adoption plays a vital role in the development and well-being of vulnerable children who cannot be with their biological parents. However, for Muslim vulnerable children, their well-being is not adequately protected due to the significant shortage of Muslim carers and adoptive parents. The research clearly outlines the impacts on vulnerable children's identity, development, and well-being resulting from the lack of families that are religiously, culturally, racially, and linguistically appropriate. A child's identity is shaped by various factors, including language, culture, and food, which can only be nurtured by being with an adoptive or foster family from a similar background. As demonstrated, there are numerous shortcomings in children's safeguarding, and it is beyond the scope of this thesis to explore everything from a legal perspective. This study focuses solely on the theological perspective of adoption. This chapter suggests that one possible reason for the shortage of Muslim carers is the understanding of adoption in Islam, where it is shown to be prohibited.

The analysis of recent studies on adoption in Islam indicates that a deeper understanding of this topic is necessary. These analyses have uncovered several reasons for the prohibition of adoption in Islam. However, the studies lack an in-depth examination of adoption from theological, social, cultural, and historical perspectives. A thorough analysis of the primary sources of Islam should demonstrate the rationale, if any, for the prohibition of adoption. Furthermore, the recent studies fail to adequately explain adoption or its practice in the Arabian Peninsula, particularly the significance of biological identity, inheritance, *mahram,* veiling, and gender interaction from a theological standpoint. Numerous questions identified in these earlier studies could aid in addressing these gaps through a hermeneutical contextualisation of the primary sources of Islam, including the Qur'an and *ahadith*. This approach would facilitate a better understanding of the

rationale behind the revelations regarding these issues and their implications for adoption.

Chapter. 2

Principles from the Qur'an and *Ahadith* on Vulnerable Children's Care and *Kafala*

2. Introduction

The previous chapter identified the social and legal impediments faced by vulnerable children in care in the UK, including a significant shortage of Muslim carers to support them during their time in care. One possible reason for the lack of Muslim families willing to adopt vulnerable children is the prohibition of adoption in Islam. Analysing existing studies on adoption from a theological perspective reaffirms this prohibition. The analysis also raised several questions that require a hermeneutical approach to understand adoption from historical and theological viewpoints fully. One of the questions identified was the provisions for the care and protection of vulnerable children in the Qur'an and *ahadith.* First, if and when adoption was prohibited in Islam, what replaced it? Second, what is the rationale behind the revelations in the Qur'an and *ahadith* regarding principles on children's care and their rights? Third, this chapter examines *kafala* and assesses the extent to which it serves as a substitute for adoption. Fourth, how and when was *kafala* introduced in Islam? What references to *kafala* in the Qur'an and *ahadith* endorse this concept as a means to assist vulnerable children? Fifth, what are the main principles regarding children's rights outlined in the Qur'an and *ahadith* when a child is placed with a family, and what responsibilities do carers have within a *kafala* framework? Sixth, is *kafala* equivalent to modern concepts like adoption, fostering, or guardianship?

The Qur'an is a primary theological source in Islam, but it is not the sole source for jurisprudence on many social issues. Scholars have contributed extensive insights dating back to the 9th and 10th centuries regarding Islamic jurisprudence, when the understanding of adoption may have differed. Before analysing the Qur'an and ahadith, it is crucial to understand the methodology of Islamic jurisprudence. The role of various methodological principles in shaping policies on different social issues derived from the Qur'an and ahadith is significant. One of the principles of Islamic methodology is the principle of individual deduction. Under this principle, a scholar might observe local customs and cultures to interpret primary sources and clarify potential issues addressed in the Qur'an. Historical conclusions may not apply

to evolving institutions, such as adoption. Today, adoption typically concerns children, whereas historically, it also encompassed adults.[141] Likewise, in discussing *kafala,* it should demonstrate how the principles from the Qur'an and ahadith are implemented within the existing regulatory framework to serve vulnerable children.

2.1 Methodology of Islamic Jurisprudence (*Usul-al-fiqh)*

Islamic jurisprudence has two sources, *shari'ah* and *fiqh. Shari'ah* in Arabic means a path to follow and *refer*s to divine revelations (*wahy*), specifically the Qurʾan. The Qur'an is the primary source and was revealed in the early 7th century. In contrast, fiqh (jurisprudence) is developed by jurists and scholars of Islam through the interpretation of the Qur'an and *ahadith* (Prophetic traditions). The interpretation of primary sources adheres to certain principles, including human reasoning (*ijtihad*).[142] The process of human rationalisation is highly encouraged in the Qurʾan, which informs its believers to seek the opinion of others on Islamic issues.[143] In the Qurʾan, Allah says, *"*O believers, obey Allah and obey the Messenger and those in authority among you. If you should quarrel on anything, refer it to Allah and the Messenger."[144] The Qur'an permits a hermeneutical methodology as outlined in the introduction, wherein the interpretations of texts involve reasoning from cultural, historical, philosophical, and theological perspectives, including human lived experiences. The methodology of Islamic jurisprudence is also similar.

The methodology of Islamic jurisprudence, known as *usul al-fiqh* (principles of jurisprudence or the science of jurisprudence), has several principles for deriving

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[141] Adoption was legislated in the UK through the Adoption of Children Act 1926. Before 1926, there was no law on adoption in the UK. See Adoption and Children Act 2002; Huard, Leo Albert. "The Law of Adoption: Ancient and Modern," *Vanderbilt Law Review* 9, no. 4. pp. 743-764 (June 1956), accessed 15/01/2018. p. 743

[142] See, Abdur Rahman, I. Doi. *Sharī'ah: The Islamic Law*, (1989). p. 2 and R, Gleave and E, Kermeli. eds. *Islamic Law: Theory and Practice*. London; New York: I.B. Tauris, 1997. pp. 24-43 and 119-129

[143] Doi. *Sharī'ah: The Islamic Law*. Op. Cit. p. 64; Al-Shafi'i, al- Imam Muhammad ibn Idris. *Al-Risala: Fi Usūl -Al-Fīqh;* Treaties on the Foundation of Islamic Jurisprudence. Translated and Annotated by Majid Khadduri, 2nd edition. Cambridge: The Islamic Texts Society. 1987. Pp. 285-287

[144] Q. 4:115 and 4:59, Abdullah, Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary / by Abdullah Yusuf Ali.* Beirut, Lebanon: Dar Al Arabia. 1968. p. 1103; Doi. *Sharī'ah: The Islamic Law*. Op. Cit. p. 66

jurisprudence that earlier theologians employed.[145] The early theologians often fulfilled the role of *qa'adies* (judges) and shaped *madhahib* (jurisprudential doctrines) in *shari'ah.*[146] The well-established and recognised principles of *usul-al-fiqh* include *al-ijma* (consensus of juristic opinion), *al-qiyas* (analogical deduction) and *al-ijtihad* (logical reasoning by one's judgement).[147] *Al-ijtihad* is a standard method scholars and jurists use in their theological deductions (*fatawa*). *Al-ijtihad* is defined as "*Ijtihad* (from the root *jahd*, which means struggle) and plays a critical role in deriving rules for resolving issues arising from time-dependent challenges."[148] *Ijtihad* is based on the earlier consensus of jurists (*al-ijma'*), analogy (*al-qiyas*), judicial preference (*isthsan),*[149] in the public interests (*maslahah*)[150] and the customs (*urf*)." Individual scholars or jurists employ *al-ijtihad* to address time-dependent problems that arise during the evolution of human societies.[151]

Islamic scholarly traditions actively encourage people to expand their knowledge through ongoing debate and the interpretation of Islamic principles. According to Al-Shafi'i, the Qur'an allows for *al-ijtihad*.[152] Under the guidance of the Prophet Muhammad, his companions also started using *al-ijtihad.*[153] *Al-ijtihad* has greater flexibility and acceptability than other principles of Islamic jurisprudence.[154] *Al-ijtihad* does not replace primary sources nor introduce any new rules when there is a conflict with the mandatory provisions of Islam.[155] Likewise, the methodology of

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[145] Joseph, Schacht. *The Origins of Muhammadan Jurisprudence.* Oxford: Clarendon Press, 1967. p. 4, available at: https://hdl.handle.net/2027/heb.0093; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 48-53

[146] Rahim. *The Principles of Muhammadan Jurisprudence,* Op. Cit. pp. 17 -47

[147] Doi. *Sharī'ah: The Islamic Law*. Op. Cit. p. 64

[148] Iqbal, Zamir and Abbas, Mirakhor. *Introduction to Islamic Finance*: Theory and Practice, NJ, USA: John Wiley & Sons, 2nd, edition, 2011. p. 8

[149] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 163-166

[150] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 166

[151] Iqbal and Mirakhor. *Introduction to Islamic Finance*. Op. Cit. p. 8; Esposito. *Women In Muslim Family Law.* Op. Cit. pp. 126-129; For *Istihsan,* See, Al-Shafi'i. *Al-Risala: Fi Usūl -Al-Fīqh*. Op. Cit. pp. 304-332; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 137-163

[152] Esposito. *Women in Muslim Family Law.* Op. Cit. pp. 116-117; Al-Shafi'i. *Al-Risala: Fi Usūl -Al-Fīqh*. Op. Cit. p. 295; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 168-186

[153] Abū Zahrah. *The Four Imams*. Op. Cit. pp. 380-381

[154] Gleave and Kermeli. (Edits). *Islamic Law: Theory and Practice*. Op. Cit. pp. 24-43 and 119-129; Al-Shafi'i. *Al-Risala: Fi Usūl -Al-Fīqh*. Op. Cit. pp. 295-303

[155] Under *al-ijtihad*, '*fīqh* for Minority' is another avenue to explore and resolve the query. It is currently in debate due to the global mobilisation of Muslim communities who live worldwide

Islamic jurisprudence demonstrates that decisions driven by public interests, such as conclusions, can be revised if necessary. Under *al-ijma*, qualified *muftis*/*ulmahs* (scholars) or jurist*s* made decisions on matters after the death of Prophet Muhammad.[156] The process was in practice at the time of the companions of Prophet Muhammad.[157] The consensus cannot repeal decisions based on primary sources. If it were based on public interests (*masala)*, it could do so if required.[158] *Al-qiyas* is a deduction from primary sources, and Imam Abu Hanifah, the founder of the Hanafi School of *fīqh*, introduced this method.[159] Four Sunni schools of thought accepted this method of public interest for ruling.[160] The scholars made personal judgements based on facts and possibly through analogy.[161] The decision had to be in the best interest of the Muslim community. Deriving principles through analogy is only valid if the message is not apparent from the Qur'an and *ahadith*.

These principles include consideration of customs, which is significant because it can help in understanding the ruling on adoption. It is vital to know whether the custom of adoption before Islam in the Arabian Peninsula was as understood at present, which is for children and has a parent-child concept. Imam Abu Hanifah, a formidable scholar of the *Hanafi Sunni* legal school of thought, commonly observed

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as a minority, as in the case of the Muslim community in the UK and other Western countries. It is a new term for an old system of *fīqh* used in 'crises or in an 'emergency'. It should resolve minor issues a minority Muslim community faces in a non-Muslim country. Its use is only for minor issues to resolve through a *fatwa*, using *al-ijtihad*. This principle is only employed when the Muslim community is a minority and do not have the autonomy to change a legal system. The demand for '*fīqh* for Minority' was rare historically because Muslims did not domicile in non-Muslim countries. The Muslim community lives around the world and in many non-Muslim countries. The *fīqh* of a minority is a valuable tool, but again, it does not provide privileges or concessions to minority Muslims to avoid extreme suffering. In the case of Muslim children in care, the Muslim community accounts for five per cent of the UK's population. Although it is the second-largest religion in the country, it is still a minority in the UK. See, Office of National Statistics, published on 11/12/2012, available at: http://www.ons.gov.uk/ons/dcp171776_290510.pdf, Accessed on 26/01/2015; T. J. Al-Alwani. *Towards a Fīqh for Minorities, Some Basic Reflections.* London: The International Institute of Islamic Thought. 2003. pp. xii-3; The Guardian. 2015

[156] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 34, 53

[157] Doi. *Sharī'ah: The Islamic Law*. Op. Cit. p. 64

[158] Doi. *Sharī'ah: The Islamic Law*. Op. Cit. p. 68; Esposito. *Women in Muslim Family Law.* Op. Cit. p. 120-125; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 28

[159] Doi. *Sharī'ah: The Islamic Law*. Op. Cit. p. 70; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 338; Al-Shafi'i. *Al-Risala: Fi Usūl -Al-Fīqh*. Op. Cit. pp. 288-294

[160] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 137-138

[161] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 139-140

the behaviour and customs of locals to interpret primary sources.[162] Likewise, "The Hanafi writers on jurisprudence included custom as a source of law, under the principle of *istihsan* or juristic preference."[163] As shown, Islamic jurisprudence incorporates elements of local customs and practices that were prevalent during the early ninth and tenth centuries. Although these scholars are experts in Arabic, they might have yielded ancient meanings of the verse to elucidate the message from the Qur'an.[164] However, their reasoning would be specific to the region, culture, and practices. As mentioned earlier, Allah in the Qur'an encourages people to continue reasoning.

Similarly, the Shafi'i school of Sunni jurisprudence follows a five-stage method to discover rulings from theological sources.[165] These stages are "… (1) Qur'an alone; (2) Qur'an and *Sunna*[166] together, each expressing the same rule; (3) Qur'an and *Sunna* together, whereby the *Sunna* explains what is in the Qur'an; (4) *Sunna* alone; and (5) neither, in which case one engages in legal interpretation, *ijtihad*".[167] The methodology is significant in resolving theological matters based on primary sources (the Qur'an and *ahadith).*[168] However, if the message in the Qur'an and *ahadith* was not apparent, then, like Ibn Abu Hanifah, scholars looked into social and cultural norms of the time to draw inferences for their conclusions on a

[162] Abū Zahrah. *The Four Imams*. Op. Cit. p. 253

[163] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 136

[164] See, Versteegh. C.H. M. *Arabic Grammar and Qurn'anic Exegeses in Early Islam,* Leiden, New York, Koln: E. J. Brill. 1993. pp. 160-190; I would like to emphasise that I do not seek to provide new translations for these verses as I am not an expert exegetic. Instead, I will only analyse the existing scholarly exegeses well recognised and produced by authoritative scholars as follows, *Hilālī* and Khan. *Interpretation of the Meanings of the Nobel Qur'an.* Part 6. 1992. p. 201-208; Ibn Kathīr. 2000. p. 633; Ayatullah Sayyid, Kamal Faghih Imani et al, (Compiled). *An Enlightening Commentary into the Light of the Holy Qur'an:* Nūr Al-Qur'ān Fī Tafsīr Al-Qur'ān*: Part 21*. Vol. 14. Transl. by Saiyed Abbas Sadr-ʿĀmelī. Ed. by Celeste Smith; 14. Isfahan: Amir-ul-Muʾmineen Ali Library. 2008. p. 395; Yousaf Ali. *The Holy Quran, Text, Translation and Commentary*. Op. Cit. p. 1102-1103

[165] Berkey. *Early Islamic Legal Theory,* Op. Cit. p. 121; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 326-332; Other scholars readily utiliseed *Al-Shafi'i's* approach to enquiry in Islam for rulings on marriage and divorce, including Hanafi and Hanabli schools

[166] *Sunna* or spelled as *Sunnah* Plural *Sunan* (Prophet's sayings or practices or customs or usage)*;* According to *Sunnah* is *See* Doi. *Sharī'ah: The Islamic Law*. Op. Cit. p. 48

[167] Berkey. *Early Islamic Legal Theory,* Op. Cit. p. 121; Muhammad, Abū Zahrah. *The Four Imams*. London: Dar Al-Taqwa. 2001. p. 362

[168] Schacht. *The Origins of Muhammadan Jurisprudence.* Op. Cit. p. 4; Esposito, John L. *Women In Muslim Family Law.* Syracuse, N.Y., Syracuse University Press, 1982. https://hdl.handle.net/2027/heb.04699. EPUB. pp. 102-134

particular matter.[169] Hence, such rulings are not infallible and are subject to defects, and this might be true for adoption in Islam.

Furthermore, the interpretation of *Shari'ah* through customs is geographically based. According to Rahim, "The custom of one country cannot affect the general law of other countries … it has authority only so long as it prevails so that the custom of one has no force in another age."[170] As Rahim shows, the use of customs in explaining a theological message could be localised. In other words, scholars could reach different conclusions on the same subject purely because their region's customs or practices might differ. The crux of the methodology of Islamic jurisprudence is that if revelations in the Qur'an are not self-explanatory and *ahadith* do not clarify verses, then the rulings are interpretations by humans involving one of the above-shown principles. The decrees or interpretations of revelation could be an analogy based on local customs. Historical judgments are then likely to have defects when considered outside of their originating context, as different people offer various interpretations of the same matters to varying periods due to the changing nature of human society. This could also be the case for adoption. So, the issue in this thesis is understanding adoption in the early 7th and present 21st century. The critical question in this chapter is to clarify whether the Qur'an recommended an instrument to serve vulnerable children because, as demonstrated in the previous chapter, almost all studies showed that adoption is prohibited in Islam.

2.2 The Qur'an and *ahadith* on vulnerable children's rights

The Qur'an and *ahadith* outline numerous principles for protecting and safeguarding vulnerable children and their fundamental rights. Children's rights are well-documented in literature, encompassing a good upbringing, property administration, education, physical and emotional development, social skills, inheritance, maintenance, and custody rights in the event of a dispute between

[169] Abū Zahrah. *The Four Imams*. Op. Cit. pp. 363-367

[170] Raddu'l-Muhtar', vol. iii. pp. 408-489; cited in Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 137

parents and a foundling (an abandoned child).[171] Many of these children's rights in Islam are similar to those recognised in international law.[172] The Qur'an frequently discusses children and their rights in various contexts, as illustrated by the examples in the footnote below.[173] Besides many verses in the Qur'an, the *ahadith* also show obligatory children's care and protection.[174] However, a fundamental question is whether the Qur'an has guidance or directions for caring for vulnerable children whose biological parents cannot care for them (as opposed to orphans, which is not disputed). For example, what replaces adoption in the Qur'an and *ahadith* when vulnerable children are cared for by strangers?

Finding a replacement for adoption or an instrument for vulnerable children's care in Islam is not straightforward. Islam has a multi-layered approach to cater for vulnerable children. Islam obligates individuals, communities, and states to protect and care for their weak and needy children.[175] These guiding principles on

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[171] Rahman, Shamsur. *Islamic Law*, Dacca: Bangladesh, Islamic Foundation Bangladesh,1981. pp. 341-348, 351, 387- 406, 551; Esposito. *Women in Muslim Family Law.* Op. Cit. pp. 27-28, 37-38; Schleifer. Aliah. *Motherhood in Islam.* Cambridge: The Islamic Academy. 1986, inheritance pp. 31-37, maintenance, pp. 75-81; Giladi, Avner. "Concepts of Childhood and Attitudes towards Children in Medieval Islam: A Preliminary Study with Special Reference to Reaction to Infant and Child Mortality." *Journal of the Economic and Social History of the Orient* 32, no. 2 (1989): 121–52. Accessed June 7, 2019. doi:10.2307/3631974. pp. 129–146; Roberts. *The Social Laws of the Qorân*. Op. Cit. pp. 40-41; Musyahidah, Sitti, Muhammad Rafiiy Rahim, Mohamad Syafri, Muhammad Arman, and Muhammad Patri Arifin. "The Concept of Child Rearing in the Qur'an." *Jurnal Adabiyah* 22, no. 2 (2022): 295-314. pp.303-307

[172] UNCHR, May 2008, *UNHCR Guidelines on Determining the Child's Best Interests,* available at http://www.unhcr.org/4566b16b2.html, page 15 of 100, accessed on 14/09/2017.

[173] Q. 17: 31 (do not kill your children due to poverty); Q. 64:15; Q. 42:29 (male or female child); Q. 4:9 (would fear for the future of their helpless *children*, if they were to die, show the same concern [for] Abdul Haleem; Q. 16:72 (granted you goodness through children); Q. 6: 140. (Lost indeed are those who have murdered their biological *children* foolishly out of ignorance and have forbidden) Mustafa Khattab; Q. 2:233, "Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father are the mothers' provision and their clothing according to what is acceptable. …". See, Appendix. 3 for complete translations of the verses quoted in this thesis.

[174] There are many *ahadith* (Prophet Muhammad's sayings and practices as narrated by companions and companions of the companions) compiled scientifically by scholars, including Imam Bukhari and Imam Muslim. In chapter five, see a section on 'the methodology of Islamic Jurisprudence'.

[175] Q. 93:6-9 "Did He not find you an orphan, then sheltered (you);(6) and He found you misled, then guided (you); (7) and He found you needy, then sufficed (you); (8), Hence, oppress not the orphan, (9)" See, Khatib, M. M., *The Bounteous Koran: Printed alongside the Arab. Text of the Royal Cairo Ed*. 1986. p. 812; Muhammad, Al- Ghazālī, *A Journey through the Qurʾan: Themes and Messages of the Holy Qurʾan / Muhammad Al-Ghazali; Abridged by Abdalhaqq Bewley*. London: London: Dar Al Taqwa. 1998. p. 524: See, Appendix. 3, the section on Orphan/

vulnerable children are revealed in various verses of the Qur'an and *ahadith.* The principles in the Qur'an and *ahadith* arise from concerns in the early seventh century, yet are similar legal provisions for children today. The law prioritises two children's rights. One is a child's right to a good upbringing, and the second is their property or income. The law states that "When a court determines any question with respect to— (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration."[176]

As illustrated, in the UK, the welfare of children is paramount in two key areas when a court adjudicates a child's future: their upbringing and property. Islam had similar rights protected in the early seventh century, namely children's right to care, property, and income. The Qur'an contains numerous verses on the rights of orphans from the early period of Islam, addressing specific concerns. These concerns arising from the region do not appear to address broader safeguarding for vulnerable children, as suggested by their apparent interpretation. However, the definition of orphans within linguistic, legal, and theological contexts demonstrates that these principles can be applied to all vulnerable children, not just those whose parents are deceased.

2.2.1 *Yatīm* (orphan) in the Qur'an and the definition of a child in Islamic jurisprudence

According to Islamic jurisprudence, the loss or death of a father makes a child an orphan, and in Arabic, this term denotes *yatīm* (vulnerable or weak).[177] A child who

Children; Yazbak. "Muslim Orphans and the Sharīʿa in Ottoman Palestine". Op. Cit. pp. 123-40. Accessed March 7, 2019. www.jstor.org/stable/3632324. pp. 124-132

[176] S. 1(1)a, (3) band (3)d of the Children Act 1989

[177] This word has several variations in the Arabic language, depending on its context. The root of this term is to become detached. **يَتِيم** (yatīm)، appears 23 times in the Qur'ān; (*feminine* يَتِيمَة (yatīma)، *common plural* يَتَامَى (yatāmā) appears 14 times, *masculine plural* أَيْتَام (ʾaytām) *or* يَتِيمُونَ (yatīmūna)، *feminine plural* يَتِيمَات (yatīmāt) *or* يَتَائِم (yatāʾim))"، See, https://en.wiktionary.org/wiki/يتيم, accessed 12/12/2019; Badawi and Haleem. *Arabic-English Dictionary of Qur'ānic Usage.* Op. Cit. p. 1054*;* Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ي/ت/م y–t–m", in *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001921

has lost their mother is called *munkātī* (cut-off), and those who have lost both parents are called *latīm* (orphan).[178] This shows that losing one's mother is more impactful for a child, as the term denotes 'cut-off'. In the animal world, *a yatīm* is an animal that has lost its mother, and generally, this term refers to young animals that depend on their mothers for nurturing.[179] In Islam, the onus is on fathers to maintain their biological children, and their death would warrant others to take on the financial responsibility of their children. Vulnerable parentless children are often described as 'isolated and alone', this is because linguistically, in Arabic, *yatīm* can be interpreted as something "isolated and alone" as well as vulnerable or weak.[180] The definition of orphans in law and English is not hugely different. In English, children who lost both parents are called orphans and considered vulnerable and needy.[181] Likewise, according to international law, children are naturally vulnerable because of their young age and those without parents are regarded as even more vulnerable.[182] International law obligates states and authorities in power to help children under 18 access their rights.[183] The understanding is that young children do not have a position in society that allows

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[178] Q. 2:233; Rahim, Abdul.*The Principles of Muhammadan Jurisprudence:* According to the Hanafi, Maliki, Shafi'i and Hanbali Schools*.* Lahore: Indus Publishers, 1911. pp. 17 -47. p. 343; Rahman. *Islamic Law. Op*. Cit. pp. 387-388; Chaumont. and Shaham, "Yatīm*",* Op. Cit.; Suleiman, Omar. *Reviving a Lost Sunnah: Adoption and Foster Care in Islam*. Published 2017, available at: https://yaqeeninstitute.org/omar-suleiman/reviving-a-lost-sunnah-adoption-and-foster-care-in-islam/#.XTxXNExFyUk. Accessed 29/05/2018; Yazbak. "Muslim Orphans and the Sharīʿa in Ottoman Palestine" Op. Cit. p. 124; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ق/ط/ع q–ṭ–ʿ", in: *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 21 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001383>

[179] Chaumont, E., and R. Shaham, "Yatīm*", in Encyclopaedia of Islam*, 2nd edition, edited by: P. Bearman, Th. Bianquis, C.E. Bosworth. E. Van, Donzel. W.P., Heinrichs. Available at: http://dx.doi.org/10.1163/1573-3912_islam_COM_1362, accessed 29/04/2017; Giladi. "Orphans". Op. Cit.

[180] Suleiman. *Reviving a Lost Sunnah.* Op. Cit.

[181] In the English language, the definition of orphan shows that this term is drawn from Latin, "The Late Lat. *orphanus*, from which the word, chiefly owing to its use in the Vulgate, was adopted into English, is a transliteration of ὀρφανός, in the same sense, the original meaning being "bereft of," "destitute," classical Lat. *orbus*. The Old English word for an orphan was *steópcild*, stepchild. By the custom of the city of London, the lord mayor and aldermen, in the Court of Orphans, have the guardianship of the children still underage of deceased freemen." See 1911 Encyclopedia Britannica/Orphan, https://en.wikisource.org/wiki/1911_Encyclopædia_Britannica/Orphan, accessed 12/12/2019.

[182] See, Appendix. B. The United Nations Convention on Rights of the Child 1989

[183] Art. 1 of the Convention on the Rights of the Child 1989, available at Convention on the Rights of the Child |OHCHR, accessed 20/12/2022

them to access their rights due to their young age or physical limitations.[184] As shown, this broader definition of *yatīm* covers all vulnerable children. *Yatīm* is a child who is vulnerable due to their young age and cannot protect themselves. The term used in the Qur'an for vulnerable children is *yatīm,* pl. *yatāma,* often used synonymously with orphans.[185] Thus, any reference to yatīm (orphan) in the Qur'an, *ahadith* and Islamic literature applies to all vulnerable children, not just orphans or those who lost their fathers.

Beyond specific linguistics, before Islam, the term *yatīm* had a symbolic use in the Arabian Peninsula and could be applied broadly to any vulnerable person, not just orphaned children. *Yatīm* was also used symbolically for vulnerable adults, such as men without tribal protection or women.[186] In the early 7th century, Women had significantly curtailed their fundamental rights and were disadvantaged due to their status in tribal society.[187] Women and children were often kidnapped in raids as bounties and sold in slave markets.[188] The symbolic use of *yatīm* in adulthood is evident in the case of the Prophet Muhammad. Prophet Muhammad's nickname was *yatīm.* In his marriage contract, he was referenced as the *yatīm* of his uncle Abu Talib. His uncle Abu Talib cared for him when he was a young orphan.[189] Prophet Muhammad's first marriage pre-dates Islam, which shows that the title of vulnerability was symbolically carried on even in adulthood. However, *yatīm* was redefined in Islam, as evident from a *hadith* by Prophet Muhammad.[190] Prophet

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184 "… the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences." UNCHR, May 2008, *UNHCR Guidelines on Determining the Child's Best Interests,* available at http://www.unhcr.org/4566b16b2.html, page 15 of 100, accessed on 14/09/2017.

185 In the Qur'an *yatīm* referenced eight times and *yatāmai* fourteen times. See adawi, Elsaid M. and Abdel Haleem, Muhammad, "ي/ت/م y–t–m", in: *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 21 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001921>

186 Suleiman. *Reviving a Lost Sunnah*. Op. cit.; see chapter three for tribal affiliation.

187 See chapter six of this thesis, a section on women's rights. Before Islam in the early 7th century, women did not have the right to inheritance or consent for marriage. Women were often kidnapped and may never return to their relatives.

188 Guillaume. *The Life of Muhammad*. Op. cit. p. 780

189 Suleiman. *Reviving a Lost Sunnah*. Op. Cit.

190 Imam. Nawawī, Riyad-ul- Salihin. Chapter. 18. The Book of the Prohibited actions. Book. 18. Hādith. 1800: https://sunnah.com/riyadussaliheen/18/290, See Appendix. 3. Ahādīth on orphans and vulnerable children

Muhammad stated that "there is no orphan beyond puberty".[191] This helps further shift the focus onto vulnerabilities – there are no orphans beyond puberty because the conditions of their vulnerability are resolved. As adults, they are expected to look after their estate and well-being. Thus, *Yatīm* is a child until they reach puberty.

In UK law, anyone under the age of eighteen is considered a child. In Islam, a child becomes an adult between the ages of fifteen and eighteen, due to differences of opinion among the jurisprudential schools of thought. All the schools agree that a child in Islam is until *buluug* (puberty).[192] For some sections of Islamic thought, in addition to attaining puberty, a test of intellectual maturity may be required for a child to transition into adulthood. Thus, Islamic jurisprudence recommends a two-stage test for the age of majority. One is when a male or female child attains puberty (*sinn-i-buluug),* and the second is gaining intellectual maturity to manage their property (*sinn-i-rushd)*.[193] The opinions differ on the age of puberty and intellectual maturity of the child. For *Hanafis* and *Shi'i,* puberty is achieved at fifteen unless evidence shows attaining it earlier.[194] Both schools have flexible rules on maturity. For example, if a person cannot manage their estate at fifteen (a period recommended for attaining puberty), the age for reaching maturity can be extended. In the meantime, the guardian can continue maintaining the estate of this child.[195] Indeed, because this might not be 'maturity' in the sense of their intellectual or physical capabilities, legally, they cannot be granted this recognition. *Shafī'i* and *Hanbali* have specific conditions for puberty, but have a consensus that both sexes attain puberty at fifteen.[196] *Malaki's* age of puberty is eighteen, and they do not stipulate strict rules for maturity.[197] International law also recognises that in some countries, a child might socially transition into adulthood earlier than

[191] Ibid ….; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. Vol 2. p. 379; Riyad-ul- Salihin and Abu Dawud See Appendix. 3. Ahādīth on orphans and vulnerable children

[192] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 374; Ahmed. KN. *The Muslim Law of Divorce,* New Delhi India: Kitab Bhavan. 1978. pp. 912-915

[193] Rahman. Ghazi. Shamsur, *Islamic Law: As Administered in Bangladesh.* Dacca: Islamic Foundation Press. 1981. p. 341; Ahmed. *The Muslim Law of Divorce.* Op. Cit. pp. 914-915.

[194] Rahman. *Islamic Law. Op*. Cit. p. 341; Ahmed. *The Muslim Law of Divorce.* Op. Cit. P. 915

[195] Rahman. *Islamic Law: Op*. Cit. p. 341

[196] Ahmed. *The Muslim Law of Divorce.* Op. Cit. p. 913

[197] Rahman. *Islamic Law. Op*. Cit. p. 341; Ahmed. *The Muslim Law of Divorce.* Op. Cit. P. 913

eighteen.[198] As shown, the Qur'an and *ahadith* use the term *yatīm* for vulnerable children when discussing their rights, which will apply to all vulnerable children who, as Islamic jurisprudence shows, are under eighteen.

2.3 Principles in the Qur'an on children's physical care and financial support

The Qur'an has several verses with the term *yatīm*, revealed in the early period of Islam, whereby Allah guides people to care for vulnerable children. The rationale for revelation shows that the care of orphans is not due to the prohibition of adoption. Instead, it is due to regional social issues arising from wars. First, the revelations were to encourage and guide the early Muslim *ummah* (community) to support and care for orphan children. Second, to warn those who curbed children's rights to property and income in the guise of care. These principles are significant from the perspective of establishing requirements for the physical care of vulnerable children, whether fostering or adoption. These revelations in the Qur'an show that people cared for the children of others, regardless of the mechanism. The Qur'an and *ahadith* do not provide a defined framework*,* as found in law, nor do they indicate that these principles stem from the adoption of prohibition.

During the Battles of Uhud and Bader, many men died, and the Muslim community was left with many orphans, widows, and prisoners of war.[199] Prophet Muhammad's camp had many orphans, and he was reminded of his childhood as an orphan.[200] In the Qur'an, Allah says, "Did He not find you an orphan, then sheltered (you);[201] and

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[198] Art. 1 of the Convention on the Rights of the Child 1989, available online, Convention on the Rights of the Child |OHCHR, accessed 20/12/2022

[199] Mashood A. Baderin, *Internationa Law and Islamic Law,* London: Routledge. 2017. p. 870; See section. I.III; Hassan. *History of Islam* (Classical Period 571-1258 C.E.). Volume. 1. Op. Cit. pp. 668-70; Yazbak. "Muslim Orphans and the Sharīʿa in Ottoman Palestine" Op. Cit. pp. 124-125; Giladi, Avner. "Orphans". *Encyclopaedia of the Qurʾan*, General Editor: Jane Dammen McAuliffe, Georgetown University, Washington DC. 2003. Vol 3 J-O. pp. 603 -604; Consulted online on 01 April 2017, available at http://dx.doi.org/10.1163/1875-3922_q3_EQSIM_00311.; Muir. The life of Mohammad from original sources. Op. Cit. pp. 306-307

[200] Hassan. *History of Islam* (Classical Period 571-1258 CE). Volume. 1. Op. Cit. pp. 668–70; Yazbak. "Muslim Orphans and the Sharīʿa in Ottoman Palestine" Op. Cit. pp. 124-125; Giladi, Avner. "Orphans". *Encyclopaedia of the Qurʾan*, General Editor: Jane Dammen McAuliffe, Georgetown University, Washington DC. 2003. Vol 3 J-O. pp. 603–604; Consulted online on 01 April 2017, available at http://dx.doi.org/10.1163/1875-3922_q3_EQSIM_00311.; Muir. The life of Mohammad from original sources. Op. Cit. pp. 306-307

[201] Q. 93:6

He found you misled, then guided (you);[202] and He found you needy, then sufficed (you);[203] Hence, oppress not the orphan."[204] According to exegetical sources, these verses were revealed when revelation paused for some time, and the polytheists mocked Prophet Muhammad that his God had abandoned him.[205] Prophet Muhammad was then reminded about his journey as an orphan and how he was protected during the most vulnerable time of his life. He was then instructed to guide his *umma* (nation) in caring for their orphans.[206] The timing of these revelations in the Qur'an shows a clear causational link with the Battle of Uhud, when many vulnerable children needed support. Allah highlights the primary example of the Prophet Muhammad to stress upon the nascent Muslim community not only to shelter their vulnerable children but also to guide and financially support them.

As established earlier in the chapter, the message in the Qur'an is supreme over all other sources.[207] Where the message in the Qur'an is self-explanatory about the care of vulnerable children, then in that case, no other source has superiority over it - i.e., secondary sources, customs or human reasoning. Most of the verses shown above unequivocally advocate the care and protection of vulnerable children. Additionally, the revelations guide people to treat orphans with kindness, fairness, and justice. The revelation has a stern warning for those who are harsh with vulnerable children or mistreat them. In the Qur'an, Allah says, "Then such is the (man) Who repulses the orphan (with harshness)."[208] According to Ibn Kathir's

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[202] Q. 93:7

[203] Q. 93:8

[204] Q. 93:9; Khatib, M. M., ed. 1986. p. 812; Al- Ghazali M. 1998. p. 524

[205] Al-Ghazālī. *A Thematic Commentary on the Qur'an.* Op. Cit. pp. 729-731; Daryabadi, Maulana Abdul Majid. *Tafsir-ul-Qur'ān:* Translation and Commentary of the Holy Qur'ān. Vol. IV. Lucknow: Islamic Research and Publications. 1985. Pp. 511-512; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. Vol 10. pp. 517–523; Qutb. *In the Shades of The Qur'ān: Fī Zilāl al-Qur'ān.* Vol. XVIII. Op. Cit. pp. 243-248

[206] Qutb. *In the Shades of The Qur'ān: Fī Zilāl al-Qur'ān.* Vol. XVIII. Op. Cit. pp. 247-248

[207] Abdur Rahman I. Doi. *Sharī'ah: The Islamic Law*. A.S NOORDEEN: London, 1984. pp. 23–24, 36–37; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 33

[208] Q. 107: 2 "Then such is the (man) Who repulses the orphan (with harshness)." See Khatib, *The Bounteous Koran.* Op. Cit. p. 823; Al-Ghazālī. *A Journey through the Qurʾan.* 1998. Op. Cit. p. 545; Ali. *The Holy Quran, Text, Translation and Commentary*. 1968. Op. Cit. p. 1796; Al-Ghazālī, Muhammad. *A Thematic Commentary on the Qur'an.* Translated by Ashur. A. Shamis Herndon: International Institute of Islamic Thought. 1997. p. 453

exegetical source in the Qur'an, Allah instructs people to treat orphans as they would like to be treated in this verse. According to Ibn Kathir, Qatadah stated, "Be like a merciful father to the orphan."[209] Similarly, in the Qur'an, people who did not provide for their orphans and discouraged others are also heavily criticised and rebuked.[210] In several verses in the Qur'an, those who cannot physically care for vulnerable children are encouraged to provide financial support instead.[211]

Men who died in wars in the early period of Islam left not only orphans but also widows. Such orphans only needed financial support because they had their mothers or extended family to care for them. Prophet Muhammad himself is an example of such care provided by the extended family to an orphan. After his father's death, Prophet Muhammad was cared for by his mother and grandfather.[212] Later, after the death of his mother and grandfather, he was cared for by his uncle Abu Talib, which also shows that other children could have been cared for by extended family and relatives. In the Qur'an, Allah says, "And they feed, for the love of God, the indigent, the orphans, and the captive."[213] Yet another verse, Allah says to keep the share for orphans in earning or your income. Allah says, "And know that anything you obtain of war booty - then indeed, for Allah is one-fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveller… ."[214] A *hadith* in Al-Bukhari emphasises the message of financial support.[215] A narration by Abdullah bin Amr states that feeding

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[209] Al-Qurtubi 20:100, cited in Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. Vol 10. p. 522

[210] Q. 4: 36: and to relatives, orphans, the needy, the near neighbour, the neighbour farther" (Sahih International); Also see, Ali. The Holy Quran, Text, Translation and Commentary. 1968. Op. cit. p. 1733; Q. 76:8: "food in spite of love for it to the needy, the *orphan*, and the captive," (Sahih International); Q. 89:17: No! But you do not honour the *orphan* (Sahih International); Q. 90:15: "An *orphan* of near relationship" (Sahih International)

[211] Q. 89:17; Q. 89: 18; Q. 4:36; Q. 2: 83; Q. 2: 215; Q. 2: 117. For detail, see Appendix. 3

[212] Muir. The life of Mohammad from original sources. Op. Cit. p. 172

[213] Q. 76:8; Ali. *The Holy Quran, Text, Translation and Commentary*. 1968, Op. Cit. p. 1656

[214] Q. 8:41: (Sahih International)

[215] Sahih Al- Bukhari Vol. 8, Hadīth. 34 and Vol. 4. Hadīth. 28, Vol. 3. Hadīth. 414; Hilālī, and Khan. *Interpretation of the Meanings of the Noble Qur'ān.* Part. 9. 1992. pp. 388-402; Ibn Kāthīr. Vol 10. p. 602; Al-Ghazālī. *A Journey through the Qurʾan.* 1998. Op. Cit. p. 47: Ibn Kāthīr, 2000, Vol 2, pp. 448, 456; Yusuf. *The Holy Qurʾan: Text, Translation & Commentary.* 1968. Op. Cit. 1968, p. 191

the poor is one of the greatest deeds in Islam.[216] Prophet Muhammad always allocated a share of the booty to people in need and orphans.[217] During the siege of Khyber, Prophet Muhammad set aside a fifth for the people with low incomes and his family.[218] The *ahadith* reinforce the guidance in the Qur'an. Several *ahadith* emphasise the vital support for vulnerable children, including physical and financial care.

A *hadith* in the narration of Sahl bin Sa'd states that Prophet Muhammad put his middle and index fingers together and said, "I and the person who looks after an orphan and provides for him, will be in Paradise like this."[219] This *hadith* is narrated in several sources and has an authentic status, as recorded in Al-Bukhari and Muslim. Another *hadith* shows that Prophet Muhammad stated, "Whoever takes in an orphan among the Muslims to raise, to feed him and give him drink, Allah admits him into Paradise without a doubt unless he has done a sin for which he is not forgiven."[220] Similarly, a further *hadith* in the narration of 'Abdull bin' Abbas shows that Prophet Muhammad stated:

> "Whoever raises three orphans is like one who spends his nights in prayer and fasts during the day and goes out morning and evening drawing his sword in the cause of Allah. In Paradise, he and I will be brothers like these two sisters.' he held up his forefinger and middle finger together."[221]

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[216] Sahih Al- Bukhari Vol. 1, Hadīth. 11 and 27; cited in, Hilālī, and Khan. *Interpretation of the Meanings of the Noble Qur'ān.* Part 9. 1992. p. 147; Q. 4: 9: And let those fear (in their behaviour toward *orphans*) who if they left behind them weak offspring would" (Pickthall)

[217] Q. 59:7: "What Allah gave as booty (Fai') to His Messenger (Muhammad SAW) from the people of the townships, - it is for Allah, His Messenger (Muhammad SAW), the kindred (of Messenger Muhammad SAW), the orphans, Al-Masakin (the poor), and the wayfarer, in order that it may not become a fortune used by the rich among you. And whatsoever the Messenger (Muhammad SAW) gives you, take it, and whatsoever he forbids you, abstain (from it), and fear Allah. Verily, Allah is Severe in punishment." (Mushin Khan); Guillaume. *The Life of Muhammad*. Op. Cit. pp.592-595

[218] Muir. The life of Mohammad from original sources. Op. Cit. p. 380

[219] Sahih Al- Bukhari Vol. 8. Hadīth. 34; cited in Hilālī and Khan. *Interpretation of the Meanings of the Noble Qur'ān.* Part 9. 1992. pp. 287, 323; See, Appendix. 3, section. J Orphans and vulnerable children

[220] Jami` at-Tirmidhi. Chapter. 14: What Has Been Related About Being Merciful with The Orphan and Raising Him. Book no. 27 *Hadīth*. 23: https://sunnah.com/tirmidhi/27/23; For full details, see Appendix 3, Section on Orphan/Children, No.

[221] Hadīth No 3680. Chapter. 6, The Orphan's Rights, pp. 21-22

According to a *hadith,* Prophet Muhammad was very concerned about the rights of vulnerable children, and he announced this in his last pilgrimage sermon. Abu Hurairah narrates that the Prophet Muhammad said: "O All, bear witness that I have issued a warning concerning (failure to fulfil) the rights of the two weak ones: orphans and women."[222] This *hadith* is also consistent with revelations in the Qur'an about the concerns in the region for vulnerable children. Chapter Seven will explore the vulnerabilities of women and concerns for their rights. Vulnerable children in many Muslim countries are often cared for in orphanages, but Islam encourages children's care within families.[223]

A narration by Abu Harirah states that the Prophet Muhammad said the best place among Muslims is where an orphan is treated well. The worst house among Muslims is that of those who mistreat an orphan.[224] Likewise, a *hadith* shows that a child in your care should be treated like a biological child. A *hadith* in Al-Bukhari on narration of Asma' bint 'Ubayd states, "I said to Ibn Sirin, 'I have an orphan in my care.' He said, 'Treat him as you would treat your child. Beat him as you would beat your child.'"[225] The principle that this *hadith* emphasises is that the treatment of vulnerable children in your care should be like your biological ones, that one cannot discipline a child in their care in a way that they would not consider appropriate for their biological child. As shown, the Qur'an and *ahadith contain* several references

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[222] Imam Muhammad Bin Yazeed Ibn Majah Al-Qazwini, Hafiz Abu Tahir Zubair 'Ali Za'i (edit), *The English translation of Sunan Ibn Majah*, Volume 5. Chapter. 6. The Orphan's Rights. *Hadīth*. 3678. London; Riyah: Dar-Us-Salam. 2007. pp. 21-22

[223] Reports Submitted by Pakistan as a State Party under Art. 44 of the Convention on the Rights of Child Convention, available at: http://www.refworld.org/topic,50ffbce526e,50ffbce5274,4ae9a11c0,0,CRC,,.html. accessed 20/02/2021. p. 12; Also, see Pakistan's third and fourth periodic reports submitted to the United Nations Committee on the Rights of the Child in 2008. http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.PAK.4.pdf. Accessed 20/02/2021. p. 12. and in 2003. http://www.ohchr.org/EN/HRBodies/CRC/Documents/Statement/ds-pakistan-2.pdf. Accessed 20/02/2021. See Sabreen and Niazi, "Adoption of a Child in Islamic and Pakistani Law: Op. Cit. p. 50

[224] Sunan Ibn Majah. Chapter. 6: The Orphan's Rights. Book. 23, Etiquettes. Hādith. 33: https://sunnah.com/ibnmajah/33/23, accessed 20/12/2019; Al-Qazwini, *Sunan Ibn Majah. Hadīth* 3679. Op. Cit. pp. 21-22

[225] Al-Bukhari, Muhamad. Al-Adab Al-Mufrad. Generosity and Orphans Chapter. 77: Be like a merciful father to orphans. Book no. 7, *Hadīth*. 12: https://sunnah.com/adab/7/12, accessed 20/12/20.

that encourage the physical care of vulnerable children and financial support when physical care is not possible. The second principle in the Qur'an also arose from regional concerns, specifically regarding children's property through inheritance.

2.3.1 The Principle of Protecting Children's Property Rights

People not only had vulnerable children in their physical care in the early period of Islam, but also their assets. Some people took vulnerable children under their care to infringe on their property or other assets. Allah says in the Qur'an, at Q.4:10, "Those who unjustly eat up the property of orphans, eat up a Fire into their own bodies: They will soon be enduring a Blazing Fire!"[226] This warning in the Qur'an about orphans' property significantly concerned the carers. They started separating children's property, including their food. According to Tafsir ibn Kathir, after this stern warning, as in the revelation in Q. 4:10, people were concerned about administering the wealth of orphans in their care. They went to great trouble to separate their affairs from those of orphans, which made life difficult for them.[227] According to a *hadith,* Ibn Jarir reported, A'ishah said, "I dislike that an orphan's money be under my care unless I mix my food with his food and my drink with his drink."[228] As shown, people were concerned about this warning, which may have caused hesitation in taking orphans into their care. However, the Qur'an and *ahadith* then provide detailed instructions to people on how to deal with the children's property in their care to assure them.

Allah reassured people in the Quran and informed them that they can enhance the wealth of the children in their care, but not to embezzle it.[229] Likewise, people who suffered financial hardship while caring for orphans were guided on utilising their orphans' assets. In the Qur'an, Allah says,

> "And test the orphans [in their abilities] until they reach marriageable age. Then, if you perceive in them, sound judgement, ease to have their

[226] Yousuf Ali, Surah An-Nisa - 1-176 - Quran.com, accessed 30/07/2023.
[227] Surah Al-Baqarah - 1-286 - Quran.com
[228] Surah Al-Baqarah - 1-286 - Quran.com
[229] Q. 6:152

judgment to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then, when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant."[230]

As the above revelation shows, carers can deduct reasonable expenses from orphans' wealth when they have no other means of financial support. A *hadith* by 'Amr bin Shu'aib states that his father heard from his father that a man came to Prophet Muhammad and stated that he did not have anything, but he had an orphan in his care who had wealth. Prophet Muhammad advised him, "Eat from the wealth of your orphan, without being extravagant or using it for trade."[231] According to Ibn Kathir, "Allah has thus allowed spending from the orphan's estate by its executor, in reasonable proportions, on the condition that he intends to compensate the orphan later on when he can afford it".[232] The general rule in Islamic jurisprudence is that if a carer is destitute and has no financial means to feed or educate the orphan child, they can take reasonable expenses from the orphan's wealth.[233] If the child inherits immovable property, a *qadi* (judge) can order liquidation so the carer can meet the ward's costs.[234]

The carer is not allowed to be extravagant because they hold the orphan's wealth as a Trustee.[235] Carers cannot consume orphans' property extravagantly because of the greed that they will have to return their property when they are adults.[236] The carers

[230] Q. 4:6 by Sahih International, see Appendix. 3 (J) Orphans and Vulnerable children

[231] Sunan Ibn Majah. Chapter. 25. The Chapter on Wills. Hadith. 2718: https://ahādīth.co.uk/permalink-hādith-10090; Qadri. Hussain Mohi-ud-Din. *Business Ethics in Islam*, Oxon; New York: Routledge. 2020. pp. 153-154

[232] Surah Al-Baqarah - 1-286 - Quran.com

[233] Qadri. *Business Ethics in Islam*, Op. Cit. p. 154; Rahman. *Islamic Law. Op*. Cit. pp. 335, for rights or powers of guardian, see pp. 351-362, Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. pp. 344-345

[234] Yazbak. "Muslim Orphans and the Sharīʿa in Ottoman Palestine" Op. Cit. pp. 130-131

[235] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. Vol.10. p. 476; Sahih Al- Bukhari Vol. 8, Hadith. 34 and 28, Vol. 3. Hadith. 414; Hilālī and Khan. *Interpretation of the Meanings of the Noble Qurʾān.* Part. 9. 1992. p. 287-288; Qadri. *Business Ethics in Islam*, Op. Cit. p. 154

[236] Rahman. *Islamic Law. Op*. Cit. pp. 165

must protect and save their wards' property and other assets. According to the *ahadith,* they must transfer their wealth back to them as soon as they mature.[237] Also, the carer cannot spend their orphans' wealth while saving their own.[238] Wealthier carers are advised not to reimburse themselves for their services to vulnerable children.[239] The carer can invest their orphans' wealth for growth with utmost prudence, and in the event of a loss, the test would be for them to prove that there was no negligence.[240] The carers who cannot earn a living can earn a reasonable wage from their orphans' wealth.

The principle of a reasonable wage comes from the Qur'an and *ahadith,* particularly during the early period of Islam, when people struggled to care for orphans.[241] According to Hisham bin `Urwa, A'ishah, the principle of wage is prescribed in the Qur'an in Q. 4:6.[242] A minimum wage is permissible from orphans' wealth only if the carer cannot earn a living.[243] If an orphan has no assets and carers cannot look after them due to financial difficulties, then, according to *hadith,* the wider community and state are responsible for supporting the carers to ensure that the care of vulnerable children is not neglected because of a lack of finances. A *hadith* narrated by Abu Huraira shows that Prophet Muhammad said, "If somebody dies (among the Muslims) leaving some property, the property will go to his heirs; and if he leaves a

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[237] Q. 18:82 shows that children should acquire wealth upon maturity, see Appendix. 3 for complete verse.

[238] Ibn Majah. Sunan Ibn Majah: *The Chapters on Wills*. Book. 22. *Hadith*. 2822. *status: Hasan,* available at: Sunnah.com, accessed 13/08/2019, See. Appendix. 3, Section. J on Orphan. *hadith.*

[239] Al-Mubarakpuri et al. *Tafsir Ibn Kathir*. Op. Cit. Vol 2. pp. 380-381; Qadri. *Business Ethics in Islam*, Op. Cit. p. 154

[240] "And do not approach the property of an orphan, except in the best way, until he reaches maturity. And fulfil [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned." Q. 17: 34, Sahih International, available at: https://quran.com/17/32-42, accessed. 15/04/2019.

[241] Q. 4:6 by Sahih International, see Appendix. 3 (J) Orphans and Vulnerable children

[242] "Narrated Hisham bin `Urwa from his father: who heard Aisha saying, "The Holy Verse; 'Whoever amongst the guardians is rich, he should take no wages (from the property of the orphans) but If he is poor, let him have for himself what is just, and reasonable (according to his labours)' (4.6) was revealed concerning the guardian of the orphans who looks after them and manages their financial affairs favourably; If the guardian Is poor, he could have from It what Is just and reasonable, (according to his labours)." See, Appendix. 3, section. J, on Orphans and vulnerable children, *hadith.*

[243] Rahman. *Islamic Law. Op*. Cit. p. 335

debt or dependents, we will take care of them."[244] According to Rehman, if nobody accepts the responsibility of a needy child, then their maintenance and education become the state's duty.[245]

The principles in the Qur'an and *ahadith* regarding children's physical care reflect the challenges faced during the early period of Islam in the region, which is further supported by another principle in Islamic jurisprudence: protecting abandoned children. The theological jurisprudence on abandoned children is developed through an analogy from a *hadith* on lost property. In Islamic jurisprudence, an abandoned child is referred to as a *laqīt* (foundling). A *laqīt* is a child who has not yet attained puberty.[246] A *laqīt* would be a child, possibly with an unknown identity.[247] The principle of *laqīt* is derived from a *hadith* associated with Prophet Muhammad, which is about lost property (*luqata),* not a child. It seems that Prophet Muhammad was asked about lost property or animals. In this *hadith*, Prophet Muhammad said about the lost property, "Make a public announcement of it for one year, then remember the description of its container and the string it is tied with, utilise the money, and if its owner comes back after that, give it to him."[248] The advice was to hold on to the property for one year, remember the description in which it was found and only utilise it after one year if no one reclaimed it. Subsequently, another question was asked about a lost sheep to which Prophet Muhammad replied, "Take it, for it is for you, for your brother, or the wolf."[249] When queried about a lost camel, Prophet Muhammad replied, "You have no concern with it as it has its feet and its water container till its owner finds it."[250] In other words, a sheep is a weak animal. It would be harmed if left unattended, i.e., predators can kill it. The rationale for leaving the camel alone is that it is a large and resilient animal.

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[244] Sahih al-Bukhari 6763, Book 85, Hadith 40, available at:https://sunnah.com/bukhari:6763, accessed 24/06/20024; Al-Qazwini. *Sunan Ibn Majah*, Vol 4. Hadith. 2738. 2007. Op. Cit. p. 32

[245] Rahman. *Islamic Law. Op*. Cit. p. 336, see pp. 334-335

[246] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 374

[247] Rahman. *Islamic Law. Op*. Cit. pp. 334

[248] Sahih al-Bukhari. Book on Lost Things Picked up by Someone (Luqatah). Chapter. 9. If the owner of the lost property comes back after a year. Book no. 45 Hādith. 11; https://sunnah.com/bukhari/45, accessed 12/12/2019; Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. pp. 368-369, 374

[249] Ibid …

[250] Ibid …

This animal can survive in the desert for an extended period and does not need protection. This principle from this *hadith* is then applied to lost and abandoned children.

The general principle in Islamic jurisprudence is that if one discovers a genuinely abandoned child in a situation where circumstantial evidence suggests that failing to safeguard the child could lead to serious harm or even death, it becomes obligatory to ensure the child's safety. This emphasis on circumstantial evidence aims to protect children from malicious abduction. In the case of an abandoned child, the individual who finds the child should provide physical care if they are able. If they lack the financial means, they can receive support from the state, the community, and financially capable individuals.[251] This principle is derived from a *hadith* recorded by Malik, narrated by Yahya from Umar ibn al-Khattab, who advised a man named Sunayn Abi Jamila from the Banu Sulaym that anyone who finds an abandoned child should care for him, as the state will provide financial assistance.[252] Another *hadith* from Malik indicates that Umar ibn al-Khattab was queried about abandoned children. He affirmed, "… he is free, and his *wala*' inheritance belongs to the Muslims, and they inherit from him and pay his blood money."[253] The responsibility for the physical care of abandoned children, like that of orphans, lies with every person who can undertake this duty. According to Al-Shafi, the care of abandoned children is a *fard kafiah* (communal obligation), meaning that it is the responsibility of all Muslims collectively, not solely individuals.[254]

The Qur'an and *ahadith* reference the care of vulnerable children in various ways, indicating gradual revelation in response to circumstances, such as ongoing war affecting orphans. They offer solutions for issues jeopardising this care, without prohibiting assistance from others despite concerns over exploitation for wealth. Instead, they establish principles for obligatory care, property protection, financial

[251] Rahman. *Islamic Law. Op*. Cit. p. 335

[252] Mālik Ibn Anas. A*l-Muwatta of Imam Malik Ibn Anas.* Book. 36 on Judgement الأقضية Hadith. 1423, https://sunnah.com/urn/414690, accessed 14/06/2018.

[253] Mālik Ibn Anas. A*l-Muwatta of Imam Malik Ibn Anas.* Book. 36 on Judgement الأقضية Hadith. 1423, https://sunnah.com/urn/414690, accessed. 15/03/2017

[254] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 374

support, and minimum wages for caregivers, emphasising the need for such support. However, they do not clearly provide frameworks like adoption or fostering for placing parentless children. If individuals face financial constraints, the state or community can assist them in caring for these children. Additionally, the principle for abandoned children reflects regional traits and is unrelated to adoption prohibition. The principles lack a mechanism for caring for vulnerable children, raising the question of why *kafala* is preferred over adoption in Islam.

2.4 *Kafala's* Interpretations/Definitions and Practices.

From the perspective of Islamic jurisprudence, the foundation of *kafala, as* applied to caring for children or regulating their placement, is a complex matter.[255] According to Malingreau, *kafala* for children is based on its literal interpretation from a language perspective, meaning to feed, support, or provide.[256] A sponsor (*kafil)* either accepts a voluntary role (*makfoul)* to care for a child deprived of his family or guarantees financial support to the third party to meet their day-to-day care and needs.[257] The guardian takes responsibility for a child, similar to that of a father, for maintenance, education, and protection. Aref suggests two primary purposes of *kafala* for children's care. One is to meet vulnerable children's needs, and the second is to fulfil infertile parents' desires for parenthood.[258] Kanchana also identifies two purposes of *kafala:* preserving a child's natural identity, religion, kinship and inheritance. Second, a child benefits from the support of adoptive parents.[259] According to Alzahrani,

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[255] I searched with following terms online from Qur'an Arabic script at Quran.com, "كفالة" (*kafala*) 0 results and "الكفيل (*alkafi*l)" with two outcomes in Q. 4: 85; this verse talks about good and evil and Q. 16:91. This verse is in the context of an oath.; Badawi, Elsaid M. Muhammad Abdel Haleem. Arabic-English dictionary of Qurʾanic Usage, Leiden: Brill, 2008, p.814; Wehr, Hans. A dictionary of modern written Arabic: (Arabic- English) 1909-1981, edited by J. Milton Cowan Urbana, Ill: Spoken Languages Services, Inc., c1994, p. 833.

[256] Malingreau, "International Kafala: A Right for the Child. Op. Cit. pp. 403-404

[257] Roberto. "The Impact of Multicultural Issues, Op. cit. p. 11; Badawi, Elsaid M. Muhammad Abdel Haleem. Arabic-English Dictionary of Qurʾanic Usage, Leiden: Brill, 2008, p.833

[258] Aref, Abu-Rabia. "Paternity Suits in Tribal Society in the Middle East," US-China Law Review 9, no. 1 (February 2012): 29-44, at p. 40

[259] Kanchana, Radhika. 2018. "Is it the *Kafala* Tradition to Blame for the Exploitative Work Conditions in the Arab-Gulf countries?" In *South Asian Migration in the Gulf: Causes and*

> "The term *Kafala* is reserved just for orphaned children under Islamic law, which is derived from the teaching of the Qur'an and Sunna. It also includes *al-laqit,* i.e. foundlings who are young children or babies found abandoned, with unknown parents or guardians, commonly placed, e.g. in mosques, hospitals, or any place. The consensus on the age of children would be 18 and under, and of course, this age is also considered to be the acceptable age for orphaned children."[260]

The *kafala* lacks a fixed purpose in caring for vulnerable children, as evidenced by scholars who attribute it to various purposes. It could be to meet children's basic needs or fulfil the desires of parents of parenthood, as Aref shows. Alzahrani showed that *kafala* is for orphans and abandoned children according to the Qur'an and *ahadith*. However, as discussed earlier in this chapter, *kafala* lacks a fixed purpose in caring for vulnerable children, as evidenced by scholars who attribute it to various ends. It could be to meet children's basic needs or fulfil the desires of parents for parenthood, as Aref shows. Alzahrani demonstrated that kafala is intended for orphans and abandoned children according to the Qur'an and ahadith. However, earlier in the chapter, I showed that the principles for caring for vulnerable children in the Qur'an and *ahadith* primarily focus on orphans and the abandoned, reflecting the challenges faced in the region during the rise of Islam. The Qur'an and *ahadith* emphasise the importance of caring for and protecting vulnerable children, but do not provide a specific mechanism. Consequently, these principles do not stipulate that it must be through a *kafala* framework. Instead, we should recognise that *kafala* was implemented in children's care at a time when it was already an established instrument for regulating commercial activities.

Kafala has multiple interpretations. Identifying its primary purpose is a significant challenge because it depends on the context and the subject it regulates. The

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Consequences, edited by Mehdi Chowdhury and S. Irudaya Rajan. London: Palgrave Macmillan, p. 7; Jureidini, Ray and Said Fares Hassan, The Islamic Principle of *Kafala* as Applied to Migrant Workers: Traditional Continuity and Reform, Pp. 101-102

[260] Alzahrani. The Adoption of Children. Op. Cit. p. 7

translations of *kafala* include guardianship,[261] foster care,[262] surety,[263] guarantee, financial protection, monitoring of migrant workers,[264] and sponsorship.[265] According to Wehr, *kafala* … "has a wide semantic scope in Arabic. Its root, kāf-fa–lām (ل/ف/ك), means to feed, support, vouch for or warrant …."[266] According to Foster, *kafala's* purpose is "the addition of an obligation to an obligation in respect to a demand for a particular thing."[267] Foster states that *Hanafi* school uses the term *daman* while all other schools use *kafala,* which means guarantee in Arabic.[268] These multiple translations and definitions of *kafala* reveal a vast context and other names, such as *daman*. As shown, *kafala* can be employed in various contexts, such as sponsoring someone financially or in immigration matters.

Additionally, *kafala* can be applied to providing for anyone who could be poor and needy; it does not have to be vulnerable children. Likewise, it can be used as a

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[261] Ijaz, "Shifting Paradigms, Op. Cit. p. 246; Roberto, Garetto. "The Impact of Multicultural Issues on the Notion of "Family Member", Zbornik Znanstvenih Razprav 79 (2019): 7-22, p. 11.; Muslim Women's Shura Council, (August 2011), Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child 8, available at https://pdfs.semanticscholar.org/84f9/7560b61ea8b5510c69faf9a0a557350a2dbc.pdf, accessed 08/03/2021, at p. 6

[262] Yassari. *Adding by Choice: Adoption and Functional*, Op. Cit. p. 944; Engelcke. Establishing Filiation (nasab). Op. Cit. p. 414; Kanchana, Radhika. "Is it the *Kafala* Tradition to Blame for the Exploitative Work Conditions in the Arab-Gulf countries?" In *South Asian Migration in the Gulf: Causes and Consequences*, edited by Mehdi Chowdhury and S. Irudaya Rajan. London: Palgrave Macmillan. 2018. p. 7, Cited in, Jureidini, Ray, and Said Fares Hassan. "The Islamic Principle of Kafala as Applied to Migrant Workers: Traditional Continuity and Reform". In Migration and Islamic Ethics, (Leiden, The Netherlands: Brill, 2019) DOI: https://doi.org/10.1163/9789004417342_007, pp. 101-102

[263] Foster, Nicholas H. D. "The Islamic Law of Guarantees," Arab Law Quarterly 16, no. Part 2 (2001): 133-157. P. 139

[264] Alzahrani. The Adoption of Children. Op. Cit. p. 3; Jureidini and Hassan. *"The Islamic Principle of Kafala.* Op. Cit. p. 93

[265] "The Islam form of "adoption" is called *kafâla*, which means sponsorship, but comes from the root word meaning "to feed." It is best translated as "foster parenting." See Imad-ad-Dean Ahmad, The Islamic View of Adoption and Caring for Homeless Children, Adoption Fact Book III, Washington: National Council for Adoption, MINARET.ORG 1999, available at: http://www.minaret.org/adoption.htm, accessed 08/03/2021.

[266] Wehr 1994, p. 976 citied, Ray Jureidini and Said Fares Hassan*,* The Islamic Principle of *Kafala* as Applied to Migrant Workers: Traditional Continuity and Reform*,* P. 93; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ك/ف/ل k–f–l", in *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001453

[267] Foster, Nicholas H. D. "The Islamic Law of Guarantees," Arab Law Quarterly 16, no. Part 2 (2001): 133–157. On pp. 141, 143

[268] Foster, Nicholas. "Guarantees in the UAE: A Comparative Analysis in the Light of English Law, French Law, and the Shari'a," Yearbook of Islamic and Middle Eastern Law 5 (1998-1999): 42-87, pp. 63-64

guarantee or added as an obligation to ensure a contract is executed effectively or to compensate in the event of loss. The dictionaries expand on *kafala's* definitions in a broader context, with many branches. Lane's Arabic-English Lexicon illustrates several branches of the *kafala, e*ach with distinct meanings in various contexts, depending on the activity it facilitates. These are,

'Kafal' "Responsibility; answerableness; amenability; or suretyship; the conjoining one's one responsibility (*zimah*) to another, {i.e., the conjoining one's own responsibility to that of another' person,] with respect to the right of a suit, [so that one person becomes liable to be sued for that which another owes]."[269]

'Kafal bil-maal', as "He was, or became, responsible, answerable, accountable, amenable, surety, or guarantee, for the property owned by another person: [it may be rendered he guaranteed, the property."[270]

'Kafal bil-nafs' "He was, or became, responsible, answerable, amenable, or surety, for another person, for the latter's appearance, or presence, to answer a suit." *'Kafeel'* is translated as "One who is responsible, answerable, amenable, or a sponsor or surety."[271]

The linguist dictionary presents several branches with various meanings of *kafala*. None of these is specifically related to the context of vulnerable children. Terms associated with *kafala*, such as responsibility, sponsorship, obligations, feeding, or support, could be employed to protect children from a linguistic or philosophical standpoint. For instance, adopting a child constitutes a contract with the state to ensure the welfare of that child. Similarly, terms like 'obligation' can also be applied in different contexts; for example, parents have obligations to care for their minor children. This approach resembles drawing inferences from the diverse

[269] Edward William Lane's Arabic-English Lexicon (Dictionary), available at: http://lexicon.quranic-research.net/pdf/Page_3001.pdf, accessed on 20/05/2021.
[270] Edward William Lane's Arabic-English Lexicon (Dictionary), available at: http://lexicon.quranic-research.net/pdf/Page_3001.pdf, accessed on 20/05/2021.
[271] Edward William Lane's Arabic-English Lexicon (Dictionary), available at: http://lexicon.quranic-research.net/pdf/Page_3001.pdf, accessed on 20/05/2021.

interpretations of *kafala* to establish a framework rather than a theological recommendation in the Qur'an and *ahadith* for assisting vulnerable children. *Kafala,* in principle, was not intended to support vulnerable children. As previously noted, some of its interpretations relate to commercial activities. Islamic scholars also indicate that it originates from commercial practices.

According to Averroës, *kafala* is a type of contract whose underlying principles stem from financial and property agreements. There are several types of *kafala* in economic and property arrangements. These include *kafāla bil-nafs* (personal guarantee or undertaking)*, hamāla bil-mal (*providing surety for wealth, i.e., to return assets to their owner)*,*[272] *damāna* (compensation or damages) and *za'ama* (surety).[273] The *'fatwa'* on *kafala* (theological opinions or decrees) is also constructed commercially. The *fatwa* describes *kafala* as *kafala bil-tasleem,* which assures delivery of goods upon payment.[274] Another is *kafala bid-darak,* which guarantees payment for goods as agreed or *"*… to guarantee that a property is free from encumbrances or claims that may hinder the transfer of its ownership in a particular transaction."[275]

Averroës defines *kafala* as a contractual undertaking in which a person commits to protecting another person's moral and material interests, with the guarantee of compensation in the event of any losses.[276] In other words, in a *kafala,* a third party becomes a guarantor for the fulfilment of the contract with the assurance of compensation in the event of a breach. This sounds like contract law in the UK. Such grantors are common in the UK in rental market. A renter would need someone with a stable income and permanent employment to be their guarantor for securing a

[272] *Hamāla bi'l-nafs* (bail or surety for the person) and *Hamāla bi'l-māl* (surety for wealth or property), See, Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 355; Jureidini and Hassan. "The Islamic Principle of Kafala. Op. Cit. p. 93; Fatwa Centre, Fatwa No: 163535, published, 05/09/2001, available at Meaning of Kafaalah - Islamweb - Fatwas

[273] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. pp. 355–362, 577, 580, 584, 596

[274] Fatwa Centre, Fatwa No: 163535, Op. Cit.

[275] Fatwa Centre, Fatwa No: 163535, Op. Cit.

[276] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 355; Assim and Sloth-Nielsen. "Islamic Kafālah…" Op. Cit. p. 329

rented property from a landlord.[277] *Kafala* functions similarly on an undertaking by a third party to form a successful contract.

According to Jureidini and Hassan, the intention or purpose of the *Kafala* was to establish social solidarity "… based on trust and cooperation among people in various realms of their interactions."[278] Jureidini and Hassan further state that *kafala* aimed to protect weak and vulnerable individuals through alliances with powerful local patronage. A powerful local patron would provide financial, legal and political representation.[279] This indicates that the *kafala* was a regional infrastructure in the Arabian Peninsula's commercial realm, with a local patronage system controlling commercial, political, and legal activities. Historically, *kafala* could have supported the weak and vulnerable through solidarity and trust, as shown by Jureidini and Hassan. In the current period, in the Arabian Peninsula, *kafala* does not appear to protect the weak and vulnerable because it is also used for sponsoring migrant workers. As shown, one of its interpretations is 'to sponsor'.

Kafala, in the contemporary immigration system, is an oppressive regime that grossly exploits workers' rights.[280] A sponsor can set requirements for migrant workers and outline how they will be served. A United Nations (UN) report on human rights raised grave concerns over gross abuses of migrant workers' fundamental human rights under the *kafala* system. *Kafala* gives the sponsor autonomy over their workers or employees.[281] A sponsor, sponsoring his workers through the *kafala* regime, controls their subjects' immigration status, withholds

[277] Harrison Ingram, Rental Property Glossary of Terms, published 9th January 2024, available at: https://www.harrisoningram.co.uk/articles/rental-property-glossary, accessed 15/07/2024

[278] Jureidini, Ray and Hassan, Said Fares, The Islamic Principle of *Kafala* as Applied to Migrant Workers: Traditional Continuity and Reform, P. 93

[279] Jureidini and Hassan, The Islamic Principle of *Kafala* as Applied to Migrant Workers: Traditional Continuity and Reform, P. 93

[280] Jureidini, Ray, and Said Fares Hassan. "The Islamic Principle of Kafala as Applied to Migrant Workers: Traditional Continuity and Reform". In Migration and Islamic Ethics, (Leiden, The Netherlands: Brill, 2019) DOI: https://doi.org/10.1163/9789004417342_007; Hanan N. Malaeb, "The Kafala System and Human Rights: Time for a Decision, "Arab Law Quarterly 29, no. 4 (2015): 307-342.

[281] Mustafa. Qadri, The UAE's Kafala System: Harmless or Human Trafficking?, Published online: 7/07/2020, available at: https://carnegieendowment.org/2020/07/07/uae-s-kafala-system-harmless-or-human-trafficking-pub-82188, accessed 18/06/2021

travel documents and restricts their movement.[282] At the same time, the workers are subject to hard labour, squalid living conditions, and sexual and physical abuse.[283] As *kafala's* diverse practices and purposes show, this instrument was not designed to serve vulnerable children. *Kafala* was an existing infrastructure in the region before Islam, and references to this mechanism in the Qur'an are also in a historical context.

2.4.1 *Kafala* in the Qur'an

The dictionary of Badawi on the interpretation of Qur'anic terms shows the root or compound letters of *kafala,* as *kāf-fa–lām,* and these letters are translated as "posterior, rump, buttocks; to undertake, to guarantee, to provide for, to sponsor, guardian; share, equal amount."[284] Badawi shows six terms or words related to *kāf-fa– lām*, this root or compound letter of *kafala*, which appears ten times in the Qur'an.[285] These terms are found throughout the Qur'an in various contexts, addressing diverse subjects.

The first term, يَكْفُل *yakful,* is translated as "to foster, to take responsibility for a child."[286] يَكْفُل *yakful* appears three times in the Qur'an. The second term that is closer to *kafala* is "كَفَّلَ *kaffala:* to place someone under the guardianship of another, to entrust someone to the charge of another"[287], which appears once in the Qur'an. Third, "أَكْفَلَ *ʾakfala:* to transfer the responsibility of

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[282] United Nations, Migrant workers in the Middle East, often exploited, UN reports at human trafficking conference, published on 13/04/2013, available online at: https://news.un.org/en/story/2013/04/436622-migrant-workers-middle-east-often-exploited-un-reports-human-trafficking, accessed 18/06/2021; Qadri. The UAE's Kafala System. Op. Cit.; Kanchana, Radhika. 2018. "Is it the *Kafala* Tradition to Blame for the Exploitative Work Conditions in the Arab-Gulf countries?" In *South Asian Migration in the Gulf: Causes and Consequences*, edited by Mehdi Chowdhury and S. Irudaya Rajan. London: Palgrave Macmillan.)

[283] United Nations, Migrant workers in the Middle East, often exploited, Op. Cit.

[284] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ك/ف/ل k–f–l", in: *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001453

[285] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ك/ف/ل k–f–l", in: *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001453

[286] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.

[287] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.

something/someone to another"[288] occurs once in the Qur'an. Four, "كِفْل *kifl*: part, portion, share"[289] appears three times. Five, "كِفْلَيْن *kiflayn*: two shares, double share, large share."[290] appears once in the Qur'an, and six, "كَفِيل *kafıl*: guarantor, surety"[291] appears once in the Qur'an.[292] Except for the first term, the revelations with these terms in the Qur'an show no relevance to children's placement and care in Islam. The terms unrelated to children are listed in the order discussed earlier.

The third term, as shown above, related to *kafala* is "أَكْفَلَ ʾ*akfala:* to transfer the responsibility of something/someone to another",[293] and it appears once in the chapter at Q.38:23. The translation of the verse shows no relevance to children, stateing, "This is my brother. He has ninety-nine sheep while I have ˹only˺ one. ˹Still˺ he asked me to give it up to him, overwhelming me with ˹his˺ argument."[294] The fourth term, as shown above, relevant to *kafala* is كَفِيل *kafıl,* translated as "guarantor, surety."[295] This term appears once in Chapter 16 at Q. 16: 91 in the Qur'an and warns against breaking an oath.[296]

Allah says in the Qur'an at Q.16: 91, "Honour Allah's covenant when you make a pledge and do not break your oaths after confirming them, having made Allah your guarantor. Surely Allah knows all you do."[297] The verse only mentions the intentions of the person committing to an agreement through an oath. The revelation warns those who intend to defect from contracts formed under oath, which they did not intend to fulfil. This message informs the defectors that Allah has knowledge of their

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[288] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.
[289] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.
[290] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.
[291] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.
[292] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ك/ف/ل k–f–l", in: *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001453>
[293] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.
[294] Dr Mustafa Khattab, the Clear Quran, Quran.com, available at —1-88—Quran.com, accessed 18/01/2023. The words with little triangles seem to be additions, and these triangles are in the translations, and the quote is directly copied from the source; hence, I did not remove the triangles.
[295] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.
[296] Dr Mustafa Khattab, the Clear Quran, Quran.com, available at Surah An-Nahl - 1-128 - Quran.com, accessed 18/01/2023.
[297] Q. 16:91, See Mustafa Khattab, the Clear Quran, available at Surah An-Nahl - 16:91 | Quran.com, accessed 08/03/2021.

true intentions and that there will be consequences for their actions. The reason the revelation addresses the oath in *kafala* is that the oath was an entrenched belief among pagan communities in the Arabian Peninsula for regulating legal, commercial, political, and religious affairs.[298]

According to Foster, *kafala* originated before Islam, and the oath was its underlying principle. Rahim also demonstrates that the oath was significant for pagan societies prior to the advent of Islam.[299] According to Smith, people living in tribes did not have a formal legal infrastructure to resolve disputes and relied on religious beliefs to address those with ill intentions.[300] Tafsir Ibn Kathir explains the causes for revelations in Q. 16: 91, that it was a custom for people before Islam to use oaths and often not to fulfil them. Thus, the guidance conveyed through revelation for new Muslims was to avoid oaths.[301]

As shown, the revelation in Q. 16: 91 with the term كَفِيل*kafıl,* stemming from *the* root letters of *kafala*, does not relate to children. These revelations pertain to individuals entering into contracts and their intentions regarding defection, particularly in commercial activities prior to Islam. Given the application of *kafala* in property and commerce, forfeiting contracts could have led to significant losses and suffering, which indicates that Islam advised against false oaths. The reference to the oath in the Qur'an does not specify a mechanism, method, or context, whether concerning *kafala* or any other form of contract. The warning against oath-taking in Q.16:91 seems intended to avert harm in a commercial context rather than to

[298] See the chapter on adoption in the pre-Islamic Arabian Peninsula and the section on tribal affiliation, where an oath was part of their collaboration protocol.

[299] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 6

[300] Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 57

[301] "(There is no oath in Islam, and Islam only reinforces any oath made during the Jahiliyyah.) Muslims also reported this. The meaning is that Islam does not need oaths as the people of the Jahiliyyah used them; adherence to Islam is sufficient to do away with any need for what they used to give oaths for customarily. In the two Sahihs, it was reported that Anas said: "The Messenger of Allah () swore the treaty of allegiance between the Muhajirin (emigrants) and the Ansar (helpers) in our house. ''This means that he established brotherhood between them, and they used to inherit from one another until Allah abrogated that. And Allah knows best." See Tafsir Ibn Kathir, available at The Noble Quran | Quran.com, accessed 21/03/2021.

introduce a new principle for the care of children, where adoption might have been prohibited.

The revelation in the Qur'an with the second term, كَفَّلَ *kaffala,* also does not concern children. "كَفَّلَ *kaffala* is translated as to take someone under your guardianship or 'to entrust someone to the charge of another.'[302] One might argue that the term كَفَّلَ *kaffala,* the granting and acceptance of guardianship, shows relevance to children. However, the reference to guardianship in a generic form could be used in any context, and the revelation with كَفَّلَ *kaffala* in Q. 4:85 shows a very different cause than safeguarding or placement of children with families. This term appears once in the Qur'an, in Chapter Four, which was revealed around the Battle of Uhud, between A.H. 3 and A.H. 5. The revelations in this chapter encompass various discourses, including orphans' inheritance and the galvanising of new Muslims under the banner of Islam.[303] The background information concerning this chapter reveals that verses 73 to 100 prepare new Muslims to fight bravely in the cause of Islam, remain united, not show weakness to the enemy, and be vigilant against hypocrites.[304] Allah says in Q. 4:85, "Whoever intercedes for a good cause will have a share in the reward, and whoever intercedes for an evil cause will have a share in the burden. And Allah is Watchful over all things."[305] In this verse, Allah warns about the consequences of intended actions or intentions, good or bad, of which only He knows. Despite the translation of كَفَّلَ *kaffala* as taking or granting or accepting guardianship, the translation of this verse, as shown, correlates with the battle of interceding evil of hypocrisy. Recognising good and evil is relevant to the overall subject of this Qur'anic chapter, which concerns hypocrites.

As demonstrated, prevailing interpretations of *kafala* from linguistic and functional perspectives primarily focus on the commercial sphere, particularly regarding contracts. The revelations in Q.16:91 of the Qur'an concerning *kafala* also indicate that this instrument was viewed as unreliable prior to Islam because individuals did

[302] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.
[303] https://quran.com/surah/4/info, accessed 13/07/2024
[304] https://quran.com/surah/4/info, accessed 13/07/2024
[305] Dr Mustafa Khattab, the Clear Quran, Quran.com, available at Surah Ali 'Imran - 1-200 - Quran.com, accessed 18/01/2023.

not fulfil their obligations despite swearing oaths. In Q.4:85, the revelation warns against malicious intentions, as Allah states He knows their true intentions. While both forms of *kafala,* كَفَّلَ *kaffala* and كَفِيل *kafıl,* convey meanings associated with guardianship or sponsorship from a linguistic standpoint, the revelations in the Qur'an address very different subjects. The term يَكْفُل yakful, translated as 'to foster, to take responsibility for a child', is relevant to children but only within the context of religion, relating to yet another pre-Islamic custom rather than the prohibition of adoption.

According to Badawi, يَكْفُل *yakful* appears only once in the Qur'an.[306] This term is found in Q.3:44 in the Qur'an, and the revelation in this verse concerns Mary's guardian before Islam in Judaism. At Q.3:44, in the Qur'an, Allah says, "This is news of the unseen that We reveal to you 'O Prophet'. You were not with them when they cast lots to decide who would be Mary's guardian, nor were you there when they argued 'about it'."[307] As the translation indicates, the revelation addresses Prophet Muhammad and states that he had not witnessed this custom because it occurred before his time. This event pertains to a disagreement. Significantly, the revelation in this verse shows that this custom was practised before Islam, indicating that it has no relevance to the prohibition of adoption or its replacement. The revelation in this verse refers to drawing lots, similar to a lottery, where the winner is selected randomly from among the participants.

The rationale for the revelation in Q.3:44 is rooted in the custom of drawing lots for unresolvable decisions. Mary was an orphan of Imran, a leader of the Israelites.[308] Imran's wife longed for a child because she had been unable to conceive for a considerable time. When she became pregnant, she promised to dedicate her unborn child to the service of God. Presenting male children, or the firstborn male,

[306] Badawi, *Dictionary of Qurʾanic Usage*, Op. Cit.

[307] Dr Mustafa Khattab, the Clear Quran, Quran.com, available at Surah Ali 'Imran - 1-200 - Quran.com, accessed 18/01/2023.

[308] Chapter three (ali-'Imran) in the Qur'an covers Mary's guardianship story, available at Surah Ali 'Imran - 1-200 - Quran.com, Also seat on Alim, Prophet Isa (AS) –(Jesus), The story of Mary, Daughter of Imran, https://www.alim.org/history/prophet-stories/29/1/, accessed 27/01/2023; This story is

for the service of God was a common practice among the Israelites.[309] This custom indicates that children were offered for the services of the Church, where they then received religious training to serve the community.[310] Imran, Mary's father, passed away before her birth. Despite being a girl, Mary was entrusted to the service of God by her mother. Many sought to become Mary's guardian because she was the daughter of their beloved leader, who had longed for a child and died before her birth. In such a scenario, with so much interest, one of the customs among the Israelites was to draw lots to make a decision.[311] Consequently, her guardianship was assigned to her aunt's husband, Zechariah, who was chosen to support her until she reached adulthood.[312] In Mary's case, *kafala* is presented as a historical practice of guardianship before Islam.

Mary was not a needy child lacking carers who required protection. Mary's guardianship exists within the context of religious sponsorship, where a sponsor's role appears to be ensuring that the child receives religious education according to recommended guidelines, both financially and practically.[313] Although Mary was an

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[309] The Fitzwilliam Museum Cambridge, The Presentation in the Temple, https://fitzmuseum.cam.ac.uk/explore-our-collection/highlights/context/stories-and-histories/the-presentation-in-the-temple#:~:text=According%20to%20Jewish%20law%2C%20a,while%20the%20Jews%20were%20spared.accessed 27/01/2024

[310] Ustadah Lobna Mulla, Keeping A Promise to Allah: The Mother of Maryam**,** available at: https://yaqeeninstitute.org/watch/series/ep-2-keeping-a-promise-to-allah-the-mother-of-maryam-upheld-by-allah-women-in-the-quran, accessed 24/06/2024

[311] Cyrus. Adler and Ludwig. Blau, LOTS, The Jewish Encyclopedia, https://www.jewishencyclopedia.com/articles/10123-lots, accessed 27/01/2023.; Silverman WA†, Chalmers I (2002). Casting and drawing lots: a time-honoured way of dealing with uncertainty and for ensuring fairness. JLL Bulletin: Commentaries on the history of treatment evaluation (https://www.jameslindlibrary.org/articles/casting-and-drawing-lots-a-time-honoured-way-of-dealing-with-uncertainty-and-for-ensuring-fairness/), accessed 27/01/2024

[312] Chapter three (ali-'Imran) in the Qur'an covers Mary's guardianship story, available at Surah Ali 'Imran - 1-200 - Quran.com, Also seat on Alim, Prophet Isa (AS) –(Jesus), The story of Mary, Daughter of Imran, https://www.alim.org/history/prophet-stories/29/1/, accessed 27/01/2023; This story is

[313] Sponsorship mainly shows relevance for religious education in Judaism and Christianity. In Christianity, it is also associated with Baptism. Howard A. Glickstein, A Jewish-Sponsored Law School: Its Purposes and Challenges, 78 Marq. L. Rev. 481 (1995). Available at: http://scholarship.law.marquette.edu/mulr/vol78/iss2/17; Also see "In the classic "Priest's Guide", as quoted by Archpriest David Abramtsov, we read the following: "The sponsors in Baptism are guarantors pledging to the Church that the baby to be baptised will be brought up in the faith of that Church; therefore, they must be members of the Holy Orthodox Catholic Church." Father David also writes, "Among the other duties of sponsors is the duty of seeing

orphan, her mother was still alive, and we do not know whether this religious commitment involved complete separation from her biological mother. The purpose of revealing this is not to illustrate the principle of guardianship of young children, but to highlight another custom, namely, the drawing of lots in unresolvable decisions that existed before Islam. Again, it demonstrates that it is not replacing an existing practice being outlawed, such as adoption. Thus, if the rationale for recommending *kafala* for the care of vulnerable children in Islam concerns children's guardianship, then adoption is likewise presented in a similar context in the Qur'an.

The analysis of the Qurʾan's English translations reveals two incidents of adoption. Both occurrences of adoption are pertinent to vulnerable children, though both events took place before Islam.[314] The first reference to adoption in the Qur'an is found in the story of Prophet Yousaf (Joseph). It states that a man from Egypt bought him from the market and told his wife,[315] "…Make his stay [with us] honourable; he may well be use to us or may adopt him as a son…."[316] The second reference to adoption concerns Prophet Musa (Moses), who was rescued as a baby and brought to the Pharaoh's household.[317] Pharaoh's wife pleaded with her husband not to kill him.[318] Allah says in the Qurʾan, "… a joy to the eye [could this child be] for me and thee! Slay him not: he may well be of use to us, or we may adopt him as a son! ..."[319] In both references, the Arabic term translated 'we may

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that their godchildren receive Holy Communion frequently, that they attend Sunday School and church regularly, that they learn their prayers and fulfil all the other requirements of the Orthodox Faith." Fr. Lawrence Farley, Baptismal Sponsorship, Past and Present, published online 25th June 2014, available at: https://www.oca.org/reflections/fr.-lawrence-farley/baptismal-sponsorship-past-and-present, accessed 15/08/2024

[314] Sahih International; Pickthall; Dr. Ghali; Muhsin, Khan; Abdullah, Yusuf Ali. Mufti Taqi, Usmani; Abdul Haleem; Abul Ala Maududi (With Tafsir) And Dr. Mustafa Khattab, *The Clear Quran,* Op. Cit. Quran.com**,** in addition, I have analysed translations available on hard copies, which include most of the above scholars and referenced throughout this analysis.

[315] Muhammad, Asad. *The Message of the Qur'an / Translated and Explained by Muhammad Asad*. Gibraltar: Dar al-Andalus. 1980. p. 339; Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. pp. 570-571

[316] Q. 12:21.

[317] The Qur'an and Biblical sources discuss the story of Pharaoh. He ordered to kill the boys of Israelites and allowed girls to live.

[318] Asad. *The Message of the Qur'an*, Op. Cit. p. 590

[319] Q. 28:9

adopt' is نَتَّخِذَه (nattaa'kidu), and all the contemporary translations consistently translate this term as 'adopt'.[320]

The distinction between the two instruments mentioned in the Qur'an, namely *kafala* and adoption, lies in the fact that the latter is more directly associated with the protection of vulnerable children. It is generally acknowledged that all children are considered vulnerable due to their young age and require safeguarding as prescribed by international law, which has been discussed previously. Regarding Mary's situation, the reference to *kafala* is situated within the framework of a religious service and a practice involving a drawing of lots. Mary was not entirely separated from her biological parents, as her biological mother was present, which precludes interpretation within a safeguarding context. In contrast, both references to adoption in the Qur'an centre on vulnerable children, specifically those who are parentless and in need of protection and care, whether they were rescued or purchased from the marketplace. In both instances of adoption, the individuals who seek to adopt do so driven by their aspiration for parenthood. Beyond the case of Mary, there are no explicit references in the Qur'an and *ahadith* that link *kafala* with the notion of vulnerable children.

2.4.2 The Qur'an and *ahadith* do not show references for *kafala* in the children's safeguarding context or recommendations for their placement

The references cited in Islamic jurisprudence for *kafala*, drawn from the Qur'an and *ahadith*, regarding the care of vulnerable children, are those discussed in Section 2.2. As shown, they emerged from regional social issues in the early period of Islam rather than from the prohibition of adoption or its alternative. The verses cited from the Qur'an for *kafala* concerning children include Q. 93:6-9, Q. 107:2, Q. 89:17-18, Q. 2:220, Q. 4:2, Q. 4:6, Q. 4:10, Q. 4:127, and Q. 17:34.[321] For example, as discussed

[320] *Sahih International; Pickthall; Dr. Ghali; Muhsin Khan; Yusuf Ali, Mufti Taqi Usmani; Abdul Haleem; Abul Ala Maududi (With Tafsir) and Dr. Mustafa Khattab, The Clear Quran, Op. Cit. Quran.com*

[321] See Appendix. 3, the section on Orphans, for full detail on these verses and others.; Qutb. *In the Shades of The Qur'ān: Fī Zilāl al-Qur'ān.* Vol. I. Op. Cit. p. 266; Also See Appendix. 3. Section. L for translation of the *hādith* of Prophet Muhammad. When he stated, "The *za 'im* is liable (for

in the first section of this chapter of verses Q. 93: 6-9 in the Qur'an, where Allah says, "Did He not find you an orphan, then sheltered (you);(6) and He found you misled, then guided (you); (7) and He found you needy, then sufficed (you); (8), Hence, oppress not the orphan, (9)."[322] These principles, as stated, do not mention *kafala* or any other mechanism. Instead, these verses provide general guidance on protecting orphans and upholding their rights. The references to *kafala* in the Qur'an appear in verses (Q. 3:37, Q. 3:44, Q. 4:85, and Q. 16:91), which differ from the verses mentioned earlier regarding children. As demonstrated in section 2.3.1, the revelations regarding *kafala* address issues that are not related to the care or safeguarding of vulnerable children.

Similarly, the *ahadith* do not mention *kafala* as a method for caring for orphans. The *hadith* cited concerning *kafala* merely indicates that those who look after vulnerable children will be rewarded in the hereafter. In this *hadith*, Prophet Muhammad demonstrated this by bringing his middle and index fingers together. He stated that the person caring for and providing for an orphan would be in Paradise with him, like these two fingers together.[323] As the wording of this *hadith* indicates, it does not mention *kafala* or any other mechanism. The contents of this *hadith* can be applied to any contemporary childcare method, including adoption and fostering, just as it has historically been done under *kafala*, provided that the modern methods do not contradict the fundamental tenets of Islam. Overall, *kafala* was an adaptable instrument already established in the region, and its familiarity and flexibility appear to be reasons for its application in children's care.

The methodology of Islamic jurisprudence also demonstrates the use of existing practices in the Arabian Peninsula to interpret the Qur'anic revelations. As outlined in section 2.1, one of the principles of Islamic jurisprudence (*urf)* is to assess local

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the loss)", See, Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 355

322 See Khatib, M. M., *The Bounteous Koran: Printed alongside the Arab. Text of the Royal Cairo Ed*. 1986. p. 812; Muhammad, Al- Ghazālī, *A Journey through the Qurʾan: Themes and Messages of the Holy Qurʾan / Muhammad Al-Ghazali; Abridged by Abdalhaqq Bewley*. London: London: Dar Al Taqwa. 1998. p. 524

323 Sahih Al- Bukhari Vol. 8. Hadīth. 34; cited in Hilālī, and Khan. *Interpretation of the Meanings of the Noble Qur'ān.* Part 9. 1992. pp. 287, 323

practices and customs when the message in the Qur'an and *ahadith* is not self-explanatory. Under *al-ijtihad*, individual scholars or jurists devise solutions for time-sensitive issues that arise during the evolution of human societies.[324] Such deductions may not be applicable to another location or time.[325] For instance, jurisprudence concerning abandoned children is developed through an analogy to the *hadith* on lost property. Similarly, the Qur'an and *ahadith* do not indicate *kafala's* connection to the care of vulnerable children. *Kafala* is mentioned in the Qur'an in the context of a historical event preceding Islam, related to Mary, and adoption is similarly referenced in the cases of Prophet Yousaf (Joseph) and Prophet Musa (Moses). It is challenging to ascertain why one is preferred over the other by Islamic scholars, or why *kafala* was adopted instead of adoption. Nevertheless, *kafala*, as illustrated, appears to be a well-established framework for regulating various activities in the Arabian Peninsula. All aspects of *kafala* concerning children's care indicate that this forms part of the existing infrastructure and has developed through human reasoning rather than theological endorsement.

A *hadith* relevant to *wala,* which will also be discussed in chapter four concerning the historical practice of adoption in the Arabian Peninsula*,* demonstrates that theological developments through human reasoning are not prioritised over Islam's primary source, the Qur'an*.* According to a narration by 'Urw, Prophet Muhammad stated,

> "… What about the people who impose conditions which are not in Allah's Book (Laws)? Any condition that is not in Allah's Book (Laws) is invalid even if they were one hundred conditions, for Allah's decisions are the right

[324] *Al-ijtīhād* can be defined as: "Ijtīhād (from the root *jahd*, meaning, (struggle) plays a critical role in deriving rules for resolving issues arising from time-dependent challenges. … Ijtīhād is based on the earlier consensus of jurists (*al-ijma'*), analogy (*al-Qiyas*), judicial preference (*istīhsan),* in the public interests (*maslahah*) and the customs (*ūrf*)." See, Iqbal, Zamir and Abbas, Mirakhor. *Introduction to Islamic Finance*: Theory and Practice, NJ, USA: John Wiley & Sons, 2nd edition, 2011. p. 8

[325] See Chapter Four. Section. 4.1 for the entire methodology of Islamic jurisprudence

ones, and His conditions are the strong ones (firmer), and the *wala'* will be for the manumitter."[326]

The *hadith* is not directly related to *kafala* or child care but offers guidance on Islamic jurisprudence, showing the superiority of the Qur'an over other sources and the fallibility of its methodology. *Kafala* reflects individual interpretations of revelations from the Qur'an and *ahadith,* w*hich* provide instructions for the care and rights of vulnerable children. However, no specific implementation tool is recommended. The varying *kafala* rules suggest that these interpretations are individual rather than revealed recommendations from the Qur'an.

2.4.3 Discrepancies in Children's Rights under *Kafala* and its Compatibility with Legal Instruments

Kafala's rules are not consistent with the references in the Qur'an, while *ahadith* advocate for treating children in one's care as if they were their biological ones.[327] Across the four schools of Sunni jurisprudence, there are no uniform opinions on what is or is not permitted or prohibited and how such opinions are deduced from the Qur'an. The framework of *Kafala* for vulnerable children includes filial relationships, biological identity, inheritance, and duration.[328] The parent-child relationship is one of the most contentious areas under *kafala,* which challenges the foundational basis of any childcare instrument. According to Alzahrani, the Qur'an prohibits a permanent parent-child relationship in *kafala*.[329] Malingreau states that a child under *kafala* cannot have a filial relationship, surname, or inheritance from *kafala* parents.[330] Yet there are no defined rules on substantive matters such as the

[326] Sahih al-Bukhari 2168, Book. 34: Sales and Trade, Hadith 119, available at: https://sunnah.com/bukhari/34/119, accessed 14/12/2019.

[327] Al-Bukhari, Muhamad. Al-Adab Al-Mufrad. Generosity and Orphans Chapter. 77: Be like a merciful father to orphans. Book no. 7, *Hadīth*. 12: https://sunnah.com/adab/7/12, accessed 20/12/20.

[328] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 374; Rahman. *Islamic Law. Op*. Cit. pp. 334–336; Roberts. *The Social Laws of the Qorân*. Op. Cit. pp. 40-46; Giladi, Avner. "Guardianship", in *Encyclopaedia of the Qurʾān*, General Editor: Jane Dammen McAuliffe, Georgetown University, Washington DC. Consulted online on 07 March 2020 http://dx.doi.org/10.1163/1875-3922_q3_EQSIM_00181; Roberts. *The Social Laws of the Qorân*. Op. Cit. pp. 40–46; Rahman. *Islamic Law. Op*. Cit. pp. 342-362

[329] Alzahrani. The Adoption of Children. Op. Cit. p. 11

[330] Malingreau, "International Kafala: A Right for the Child. Op. Cit. pp. 403-404

child's identity, what it includes or excludes, or the exact nature of the filial relationship. The fluidity in opinions on filial relations does not clarify whether the prohibition applies to biological or social identities.

For example, an adopted child might call their adoptive parents mum and dad as reflecting their roles, thereby constituting a social identity.[331] However, both parties (child and parents) know the truth regarding biological identity and do not intentionally conceal the truth from others. As mentioned above, Alzahrani shows that children placed under *kafala* cannot establish a parent-child relationship with their *kafala* parents. This can be in principle. However, when considered practically, *kafala,* like adoption, inherently involves a parent-child relationship because a *kafala* parent provides a home for a child, whether permanently or temporarily, meets the child's basic needs, such as physical care, food, education, health, and looks after their property or assets. In legal terms, this is called parental responsibility.[332] According to the law, in parental responsibility,

> "your most important roles are to provide a home for the child. Protect and maintain the child. You are also responsible for disciplining the child; choosing and providing for the child's education; agreeing to the child's medical treatment; naming the child and agreeing to any change of name and looking after the child's property."[333]

Kafala parents fulfil all the responsibilities outlined in the law, except for changing a paternal surname, although they may change a child's name. *Kafala's* stance on the parent-child relationship is philosophically, legally, and theologically discordant with the provisions for vulnerable children, where the well-being of the child is

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[331] Genetic parents are biological parents, who gave birth to the child, and social parents are people who perform the daily responsibilities of nurturing a child and often do not hold Parental Responsibilities. See, Bainham, A. '*Parentage, Parenthood, and Parental Responsibility: Subtle, elusive yet important distinctions'* in A. Bainham, S. Day Sclater and M. Richards (eds) *What is a Parent?* Oxford: Hart. 1999. pp. 25-27; Herring. *Family Law.* Op. Cit. p. 354; For parental responsibilities, see Children Act 1989, Section 3

[332] Children Act 1989, Section 3 (1) "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has about the child and his property". see Children Act 1989 (legislation.gov.uk);

[333] Parental rights and responsibilities: What is parental responsibility? - GOV.UK (www.gov.uk), accessed 10/05/2021

paramount. As shown, the Qur'an and *ahadith* emphasise that one should not differentiate in treatment and care between their biological children and those under their care.

The rules of inheritance under *kafala* also have conflicting views. According to Ijaz, *kafala* does not eliminate biological identity or the right to inherit from biological parents.[334] According to Ijaz, under Sunni fiqh, "a person can bequeath a maximum of one-third of their property to anyone who is not a blood relative."[335] Despite Children not having the right to inheritance under *kafala*, parents may choose to give them one-third of their wealth if they wish, as shown by Ijaz. Again, this principle in the Qur'an is not directly relevant to *kafala* but is drawn from inheritance rules, which I will explore in chapter six. Alzahrani indicates that children's rights from biological parents do not exist because *kafala* is designed for orphaned and abandoned children.[336] Thus, the question arises: do these rights not exist because the children are orphans, or does Islam prohibit inheritance for *kafala* children? Furthermore, how accurate is it to assert that adoption was forbidden because it granted equal rights to adoptees?

Similarly, the duration of the *kafala* is also subject to debate. Malingreau says *kafala* is a revocable, temporary contractual arrangement, which can last until puberty or

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[334] Kutty, (man The latter legal instruments have a fixed minimum age until eighteen script at 30)(citing Imad-ad-Dean Ahmad, 'The Islamic View of Adoption and Caring for Homeless Children' in ADOPTION FACTBOOK III (Washington: National Council for Adoption 1999); Qur'an 5:32 ("Whoever saves a human life, it is as though he has saved humanity in its entirety."); Qur'an 4:127 ("[A]nd concerning the children who are week and oppressed: that you stand firm for justice to orphans..."); Qur'an 4:127 ("Serve God ... do good- to parents, kinfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer (ye meet), and what your right hands possess.")). See Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child, supra note 25, at 17.; "There is a caveat here. Although Islamic inheritance rights are extended to both boys and girls, in practice, girls' rights are lost in translation. See Amrita Pande, The Paper You Have in Your Hand is My Freedom: Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon, 47 INT'L MIGRATION REv. 414 (2013); Shipra Saxena, Young Migrant Women from South Asia in the UAE: Negotiating Identities Under the Kafala System (Nov. 2012) (unpublished MA thesis, Inst. Social Studies)." Cited in Ijaz, "Shifting Paradigms", Op. Cit. p. 246 and at p. 394.

[335] "Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child, supra note 25, at 17" Cited in Ijaz, "Shifting Paradigms" Op. Cit. p. 247

[336] Alzahrani. The Adoption of Children. Op. Cit. p. 11

for a fixed term.[337] According to Ijaz, *kafala* is permanent fostering, based on the fundamental belief in Islam to caring for and maintaining vulnerable orphans and foundlings.[338] The references to vulnerable children in the Qur'an and *ahadith* do not specify any durations for the placement of vulnerable children. Once again, it seems to be ad hoc opinions, possibly based on the definition of a child in Islam, which is anyone under the age of puberty, and they could be between fifteen and eighteen, according to different schools of thought.

Payment for the carer is yet another area where inconsistent policies do not align with the revelation in the Qur'an. The majority view is that *kafala* is voluntary and does not involve allowance or payment for the carer.[339] However, as shown, the Qur'an and *ahadith* permit a minimum wage for those carers who cannot care for vulnerable children due to a lack of financial means. While some studies suggest that the *kafala* breached a fundamental condition of classical Islamic law because its infrastructure is business-oriented and unsuitable for trust-based roles, where the responsibility is to safeguard and protect vulnerable children.[340]

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[337] Malingreau, "International Kafala: A Right for the Child. Op. Cit. pp. 403-404; Lynn Welchman, "First Time Family Law Codifications in Three Gulf States," International Survey of Family Law 2010 (2010): 163-178, p. 178

[338] Kutty, (man The latter legal instruments have a fixed minimum age until eighteen script at 30)(citing Imad-ad-Dean Ahmad, 'The Islamic View of Adoption and Caring for Homeless Children' in ADOPTION FACTBOOK III (Washington: National Council for Adoption 1999); Qur'an 5:32 ("Whoever saves a human life, it is as though he has saved humanity in its entirety."); Qur'an 4:127 ("[A]nd concerning the children who are week and oppressed: that you stand firm for justice to orphans..."); Qur'an 4:127 ("Serve God ... do good- to parents, kinfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer (ye meet), and what your right hands possess.")). See Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child, supra note 25, at 17.; "There is a caveat here. Although Islamic inheritance rights are extended to both boys and girls, in practice, girls' rights are lost in translation. See Amrita Pande, The Paper You Have in Your Hand is My Freedom: Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon, 47 INT'L MIGRATION REv. 414 (2013); Shipra Saxena, Young Migrant Women from South Asia in the UAE: Negotiating Identities Under the Kafala System (Nov. 2012) (unpublished MA thesis, Inst. Social Studies)." Cited in Ijaz, "Shifting Paradigms", Op. Cit. p. 246 and at p. 394.

[339] Ahmad, The Islamic View of Adoption, Op. Cit.; Kulsoom K. Ijaz, "Shifting Paradigms: Promoting an American Adoption Campaign for Afghan Children," Syracuse Journal of International Law and Commerce 42, no. 1 (Fall 2014): 233-272. p. 246; Jureidini, Ray and Said Fares Hassan, The Islamic Principle of *Kafala* as Applied to Migrant Workers: Traditional Continuity and Reform, p. 101

[340] Jureidini and Hassan. *"The Islamic Principle of Kafala*. Op. Cit. p. 95; Azhari, Asma. The Kafāla 'Sponsorship' System In Saudi Arabia: A Critical Analysis From The Perspective Of International

As shown, it is challenging to identify a consistent framework for *kafala* or its set conditions for caring for vulnerable children. *The* existing framework of kafala does not serve all vulnerable children who require care in a family setting. *Kafala's* framework only adequately addresses historical issues and fails to tackle contemporary safeguarding concerns. *Kafala* considered the circumstances during the early period of Islam when only orphans or abandoned children were classified as "vulnerable". For example, the verses in the Qur'an provide insight from Prophet Muhammad to guide people regarding the care and shelter of needy, vulnerable children. This is not to suggest that there are no orphans or abandoned children anymore. However, in the context of the UK, many Muslim children who require support and care from their wider community face safeguarding issues that differ from these historical concerns.

Despite these issues, *Kafala* is the current recognised system of care for vulnerable children in Islam, and a few Muslim countries practise it.[341] The Convention on the Rights of the Child 1989 also recognises *kafala* as one of the instruments to assist children who are deprived of the care of their biological parents.[342] However, it is well established that orphan or parentless children in many Muslim countries are generally cared for by their extended families or in orphanages without reference to formal *kafala* arrangements.[343] In the UK, relying on extended families is not an option for most vulnerable children who need care.[344] Vulnerable children often do not have extended families to support them in the UK, as they might have in South Asia or the Middle East. In the UK, families are often geographically dispersed and

Human Rights And Islamic Law, *The SOAS Journal of Postgraduate Research*, Volume 10 (2016-17), Pages 61-80, p.74 (Azhari, Asma. The Kafāla 'Sponsorship' System In Saudi Arabia, Op. cit. p. 74)

[341] Yassari. *Adding by Choice: Adoption and Functional*, Op. Cit. p. 928; Pollack et al. "Classical Religious Perspectives of Adoption Law", 2004, Op. Cit. pp. 732-753; Roberts. *The Social Laws of the Qorân*. Op. Cit. p. 41; Rotabi. Karen Smith, Bromfield. Nicole F., Lee. Justin and Sarhan. Taghreed Abu. "The Care of Orphaned and Vulnerable Children in Islam: Exploring Kafāla with Muslim Social Work Practice with Unaccompanied Refugee Minors in the United States." J. Hum. Rights Soc. Work (2017) 2:16–24; DOI 10.1007/s41134-017-0027-2. P. 16

[342] Art. 20 of the Convention on the Rights of the Child 1989, available at Convention on the Rights of the Child |OHCHR, accessed 20/12/2022

[343] Using, M. Assim. Julia, Sloth-Nielsen. "Islamic *Kafālah* as an Alternative Care Option for Children Deprived of a Family Environment." *African Human Rights Law Journal* 14(2). 2014. pp. 334-335

[344] See chapter one. This is a real dilemma for many children without extended families placed with strangers in the UK.

may be unable to care for their absent relative's child when needed. The extended family might also lack the accommodation or capacity to care for the loved one's children due to work or health issues. From anecdotes, I know children who did not have extended families in the UK South Asian backgrounds because their parents were either refugees or moved to the UK. In contrast, their extended family or relatives remained abroad. A study by Rotabi et al. shows that many vulnerable Muslim children in Europe come from Muslim countries and are often unaccompanied and separated from their parents.[345] Even if such children's parents or relatives are traced, they will unlikely be reunited. The children will be settled with other families.[346] The instruments employed in the UK to support such children are adoption,[347] fostering,[348] and Special Guardianship Orders.[349]

Given that *kafala* has diverse opinions on its rules, which is understandable from a theological perspective, aligning it with legal instruments such as adoption, fostering, or guardianship poses a significant challenge and raises a major issue of equivalency. *Kafala* serves various commercial activities without consistent rules; similarly, when applied to vulnerable children, it operates without a coherent framework or principles. In contrast, legal instruments have defined purposes and specific requirements. *Kafala,* as stated, lacks a consistent stance on the parent-child relationship and its duration. These inconsistencies render *kafala* incompatible with legal instruments. For *kafala* to be permanent, the parent-child relationship must fulfil the fundamental rights and requirements established through adoption, which

[345] "There are currently nearly 100,000 unaccompanied or separated child refugees, the majority of them from nations in which Islam is the dominant religion, including Afghanistan, Eritrea, Syria, and Somalia (McKirdy 2016). There are typically about 1300URMs in the US system at any given time (Office of Refugee Resettlement 2015) and just over 1000 in the Canadian system (Wouk et al. 2006). In Europe, more than one in five of the 870,000 refugees and migrants arriving by sea in 2015 was a URM (International Organization for Migration 2015), and the care of URMs in Europe varies by country." Rotabi et al. "The Care of Orphaned and Vulnerable Children in Islam: Exploring *Kafāla* with Muslim Social Work Practice with Unaccompanied Refugee Minors in the United States." J. Hum. Rights Soc. Work (2017) 2:16–24; DOI 10.1007/s41134-017-0027-2. p. 16

[346] Robin et al. "The Care of Orphaned and Vulnerable Children in Islam ...". Op. Cit. p. 20

[347] S. 67 (1) of the Adoption and Children Act 2002

[348] Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015, available at: https://www.thefosteringnetwork.org.uk/policy-practice/policies/fostering-legislation-in-england, accessed 20/06/2019.

[349] S. 14 A (8)(9) of the Children Act 1989

it does not. Some families in the UK utilise the Special Guardianship Order, which has a few conditions akin to *kafala,* though not all, as noted in the footnote, making it dissimilar.[350] The permanent placement of children under *kafala* is also incompatible with fostering in the UK, where legal fostering can range from a few hours to a child's eighteenth birthday and does not sever biological ties or parental rights.[351] *Kafala* lasts until a child reaches puberty, which, from an Islamic perspective, can occur at a younger age than eighteen, further failing to meet the UK legal requirements for adoption and fostering.

Kafala's framework in the sphere of child safeguarding demonstrates that some of its rules are derived from the Qur'an and *ahadith.* However, they are not sufficiently developed to effectively protect children's rights as currently enshrined in law, rendering it a less than ideal substitute for adoption. The inconsistency of *kafala* and its failure to fully implement the principles recommended for vulnerable children in the Qur'an and *ahadith* arise from its reliance on human interpretations and its regional perspective. The principles from the Qur'an and *ahadith* align with the best interests of vulnerable children today, prioritising their care above all other concerns. The core purpose of the legal instruments does not significantly differ from the principles introduced in the early seventh century from the Qur'an and a*hadith*, which emphasise children's welfare.

2.5 Conclusion

The Quran and *ahadith* outline principles for caring for vulnerable children, emphasising their physical care and rights protection. These principles emerged during early Islam in response to societal issues, highlighting the need for respect, particularly regarding inheritance rights. They do not explicitly mention k*afala* nor

[350] A child's relative usually uses a Special Guardian Order either privately or with the support of local authority. "A special guardian is someone with long-term legal responsibility for a child with whom they already have a relationship." See Birmingham Children Trust, Special Guardianship, available at: https://www.birminghamchildrenstrust.co.uk/info/9/adoption_and_fostering/105/special_guardianship, accessed 13/08/2023

[351] The Fostering Services (England) Regulations 2011, available at The Fostering Services (England) Regulations 2011 (legislation.gov.uk), accessed 12/06/2021.

address the prohibition of adoption. Legally and theologically, *kafala* is not the only way to care for vulnerable children or manage their living situations, *and* its application varies by context. Linked initially to commercial contracts, kafala has been adapted for orphans and abandoned children in response to local practices rather than being explicitly mandated by the Quran as a substitute for adoption.

The Qur'an addresses the concepts of *kafala* and adoption within a comparable context concerning historical events, without expressing positive or negative judgments about either. The principles of the Quran and the *ahadith* pertaining to *kafala* stem from concerns that arose during the early period of Islam. These principles are implemented through human reasoning rather than theological recommendations. Scholars occasionally reference pre-existing customs in their decrees when the Quran and *ahadith* do not provide explicit guidance. The present *kafala* framework has illustrated that the standards of care for vulnerable children in one region may not be applicable in others. While k*afala* has been employed for this purpose, it is neither the ideal solution nor the sole method available. The tenets derived from the Quran and *ahadith* can be harmonised with modern approaches, such as fostering and adoption, that prioritise the welfare of children, provided that they do not contradict the fundamental principles of Islam.

Chapter. 3

Kafala and Adoption in Muslim Countries

3. Introduction

The previous chapter demonstrated that the Qur'an and *ahadith* contain principles for the care of vulnerable children and the protection of their rights. These principles emerged from social concerns in the early period of Islam and were not relevant to the prohibition of adoption or its alternatives. While the Qur'an addresses *kafala* and adoption in similar contexts, these references pertain to events associated with earlier religions before the advent of Islam. Neither instrument is presented as a recommendation in the Qur'an or *ahadith* for placing children with families. Islamic jurisprudence offers *kafala* as a means of care for children. The principles from the Qur'an and *ahadith* related to *kafala* concerning vulnerable children stemmed from regional issues, but they do not establish a mechanism akin to that of *kafala*. From cultural, linguistic, and theological perspectives, *kafala* represents an existing framework for commercial activities and was utilised for the care of children in Islam. The development of *kafala* for children within Islamic jurisprudence features numerous inconsistent rules regarding children's rights, rendering it incompatible with legal instruments such as adoption, fostering, or guardianship.

This chapter examines the practice of *kafala* beyond regional boundaries, in other Muslim countries, and how it is implemented. This analysis will help us understand whether *kafala* has a universal application and has a consistent framework in Islam regarding children's rights, including inheritance, identity, and filial relationships with their *kafal*a parents. It will also clarify whether any Muslim countries implement *kafala* that could be deemed comparable to legal adoption. Furthermore, it explores whether any Muslim country permits children's adoption and, in those countries that do, what the rationale is for allowing it. For instance, do they provide theological or welfare-oriented reasoning in legislation due to recent international legal developments in children's welfare?[352] The signatory states of

[352] Article. 3 of the Convention on the Rights of the Child 1989, See Appendix. A

the CRC are obliged to incorporate international norms into domestic policies and regulations to safeguard children's rights within their territories, including kafala or adoption for children deprived of the care of their biological parents, and whether this could be the reason for permitting adoption.[353]

3.1 Methodology for exploring *kafala* and adoption in Muslim countries.

To obtain more focused data, several questions have been identified to analyse practices and policies concerning vulnerable children in Muslim countries. First, what percentage of the Muslim population resides within a specific country? Second, what is the state religion? Third, which school of thought do the people in the country follow? Fourth, what is the source of law for the judiciary: theological, secular, or dual? Given the diverse schools of thought in Islam, these initial four questions will aid in understanding the influence of religion on policies related to children's safeguarding and how these approaches vary. Fifth, does the country implement the *kafala system*, and if so, what rights are granted to children through this system? Sixth, what is the legal position on adoption in each country, and does a specific country allow or prohibit it? Seventh, does the legislation surrounding adoption have a theological basis, or is it merely legal or welfare-based? Lastly, what is the threshold for applying the welfare principle and safeguarding criteria in Muslim countries, including those with the *kafala* system? For instance, in the UK, a safeguarding regime is quite stringent; whenever there is an allegation or concern for a child's welfare, it becomes the statutory duty of the local authority to intervene and investigate the concerns. This may mean that more children require alternative care arrangements, such as fostering or adoption, compared to countries that focus less on safeguarding measures. The latter question should also help determine whether *kafala* is viable and can address the modern social issues facing vulnerable children. The study is limited to sources available in English on Muslim countries, including legislation, United Nations reports, and academic studies.

[353]Art. 20, UN Convention on the Rights of the Child 1989. Op. Cit. Please see the Appendix for full details on children's Rights in CRC.

Almost all Muslim countries discussed in this chapter are signatories to the United Nations Convention on the Rights of the Child 1989 (hereafter 'the Convention'). Article 3, 'the best interest principle', sets a list of requirements for children's welfare, including adoption/fostering or custody rights.[354] The legal obligation under international law is that children deprived of their biological family environment, whether temporarily or permanently, should be accommodated through adoption, fostering, or *kafala* under Islamic Law.[355] In the UK, the law recommends that local authorities place children with families, not institutional care.[356] The recommendation for children's placement with families predates international law on children's rights. The Curtis Committee Report on Children Act 1948 recommended that "the institutional care of the children was damaging and should be replaced by 'the free conditions of ordinary family life' provided, if necessary, by foster care."[357] Therefore, the priority is to place children with families under fostering when they are in institutional care. Then, those who cannot return to their biological kin might have to be adopted. Both fostering and adoption have set legal requirements in the UK. Analysing *kafala* within Muslim countries will help determine whether this instrument is similar to fostering and adoption.

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[354] See, chap. 1, section, 1.1.1; Preambles and Art. 3 UN Convention on the Rights of the Child 1989, available at OHCHR | Convention on the Rights of the Child, accessed 18/02/2021; Schiratzki J., last modified 22nd April 2013, Best Interests of the Child, DOI: 10.1093/OBO/9780199791231-0109, available at: http://www.oxfordbibliographies.com/view/document/obo-9780199791231/obo-9780199791231-0109.xml, accessed 30/04/2015

[355] "1. A child temporarily or permanently deprived of his/her family environment or whose own best interests cannot remain in that environment shall be entitled to special protection and assistance provided by the state.
2. States Parties shall, following their national laws, ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafala of Islamic Law, Adoption, or, if necessary, placement in suitable institutions to care for children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and the child's ethnic, religious, cultural and linguistic background." See Art. 20, UN Convention on the Rights of the Child 1989. Op. Cit.

[356] Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015; The Fostering Services (England) Regulations 2011, available at The Fostering Services (England) Regulations 2011 (legislation.gov.uk), accessed 21/02/2021.; Fostering Services: National Minimum Standards, available at Fostering Guidance - MASTER (fosterline.info), accessed 21/02/2021.

[357] Frost and Stein, 1989; 33-4; Parton, 1985; Cited in P. Scraton (Edit), 1997, p. 11.

While it would be ideal to examine the practices of adoption and *kafala*, many South Asian, Middle Eastern, and North African countries do not have statistical data on fostered children or those in alternative care arrangements.[358] In South Asia, including India, Bangladesh, Pakistan, Nepal, Bhutan and Sri Lanka, only a few countries collate data for foster children.[359] The data from UNICEF shows that South Asia has only 15 children per 100,000 in residential care, with a total of 93,000 children in residential care in this region.[360] Given the population in this region and comparing these numbers with those in other parts of the world, South Asia has less than half a per cent of children in residential care. At the same time, the Middle East and North Africa have 220,000 children in residential care.[361] Central and Eastern Europe and the Commonwealth of Independent States have 664,000 children in care. Fewer children in residential care does not mean South Asian countries have fewer vulnerable children. Instead, this indicates that the standard or threshold from welfare's perspective is lower than in the UK, which in turn reduces the number of children in care.

On the other hand, inconsistency and a lack of statistical data hamper understanding of how many children are in care and why. More data is needed to show the accurate number of vulnerable children placed with other families or cared for by their extended families. Consequently, we look to laws, policies, and other legislative

[358] "Of the 197 countries and areas included in UNICEF's global reporting, data on the number of children in alternative care were identified for 142 countries. Of these 142 countries, more than half (86) had data on residential and foster care while the remaining 56 only had data for residential or foster care but not both." See Nicole Petrowski, Claudia Cappa and Peter Gross, "Estimating the number of children in formal alternative care: Challenges and results, Child Abuse & Neglect", Volume 70, 2017, pp. 388-398, ISSN 0145-2134, https://doi.org/10.1016/j.chiabu.2016.11.026. Available at: (https://www.sciencedirect.com/science/article/pii/S0145213416302873)

[359] Qualitative research in 2010 looked at the following question and found only per cent data on foster children in the region, "Number of countries, number of countries with foster care data, population coverage of children aged 0 to 17 years and year range of data sources, by region." See Table. Three in Petrowski, Cappa and Gross, "Estimating the number of children. Op. Cit.

[360] UNICEF, Children in Alternative Care, published December 2020, available at Children in alternative care - UNICEF DATA, accessed 20/02/2021.

[361] UNICEF, Children in Alternative Care, published December 2020, available at Children in alternative care - UNICEF DATA, accessed 20/02/2021.

frameworks to analyse adoption and *kafala*. A country-by-country review of legislation and policies regarding adoption and kafala is presented below.

3.1.1 Algeria

Muslim Population	The Muslim population accounts for 98.2%.[362]
State's religion	The state's religion is Islam, Art. 2 of the constitution.[363]
Source of law	The source of law is not specified, but Art. 9 of the constitution prohibits practices contrary to Islamic principles.[364]
Islamic doctrine	People follow two schools, Malaki and Hanafi.[365]
Position on adoption	Alegria prohibits adoption under Art—46 Family Code 1984.[366]
Laws and policies	Art. 116-125 of the Family Code 1984 regulates *kafala*.[367]

Summary of the children's provisions in Algeria:

Algeria has legislated both adoption and *kafala*. Article 46 of the Family Code strictly prohibits adoption based on religion.[368] Verses Q. 33:34 and Q. 33:35 of chapter thirty-three in the Qur'an are associated with prohibiting adoption, as shown in

[362] Pew Research Centre, *Muslim Population by Country,* published on 27/10/2011, available at: https://www.pewforum.org/2011/01/27/table-muslim-population-by-country/, accessed 20/01/2021.

[363] Algeria's Constitution 1996, as amended to 2002. cited in Tad Stahnke and Robert C. Blitt, "The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries", International Journal of Civil Society Law 5, no. 1 (2007): 43-156. p. 67

[364] Stahnke and Blitt, "The Religion-State Relationship. Op. Cit. p. 67

[365] Yamina Kebir, "The Status of Children and Their Protection in Algerian Law", Yearbook of Islamic and Middle Eastern Law 5 (1998-1999): 162-170. p. 164

[366] Law No. 11 of 1984, See Yassari, "Adding by Choice: Adoption, Op. Cit. p. 944

[367] The Algerian Family Code 1984, available at: http://www.premier-ministre.gov.dz/ressources/front/files/pdf/textes-legislatifs-et-reglementaires/code_famille.pdf, accessed 21/05/2021, English translation by British Embassy in Algeria, available at: https://www.gov.uk/government/publications/algerian-family-code, accessed 21/10/2021

[368] Kebir, "The Status of Children. Op Cit. p. 170

chapter one.[369] Algeria's Family Code introduced *kafala* through a decree in 1992, and it is subject to several conditions.[370] The criteria for *kafala* include age, income, nationality, and the religion of *kafala*'s parents. A person seeking *kafala* of a child must be a Muslim and an Algerian national. If the applicant is male, they must be under 60 years old, and if female, under 55 years old. They must have a minimum income.[372] The *kafala* child is treated as the legitimate child of their sponsor for familial or educational purposes, but not for inheritance or biological identity. A child cannot inherit from their sponsor, but may receive one-third of their property through donation or legacy.[371] *Kafala* can be legally revoked. It is transmissible to heirs upon the death of the original sponsor or the *kafala* parent. Algeria's law does not permit anything contrary to Islamic principles.[372] However, Algeria has made changes to *kafala* that do not even align with its legislated position on this instrument.

Algeria's practice regarding children's identity under *kafala* is inconsistent with its law. They allowed for the change of a child's biological identity with an unknown heritage and implemented this change through a decree in family law.[373] Despite having made a law that would not allow the change in the biological identity of children. They brought change to the identity of children of unknown heritage due to domestic social issues. Kebir says, "The aim was to help these children overcome their identity problems and reinforce their psychological and social adaptation: *kafala* is thus made closer to adoption."[374] As shown in the previous chapter, *kafala* was a regional infrastructure rather than a theological recommendation, addressing only regional issues. According to Malingreau, Muslim countries consider *kafala* in line with their domestic law.[375] Here in Algeria, it appears that they have revised the

[369] See Appendix for details on these verses.
[370] Kebir, "The Status of Children. Op Cit. p. 165
[371] Kebir, "The Status of Children. Op Cit. p. 170
[372] Art. 9 of the Constitution, See Stahnke and Blitt, "The Religion-State Relationship. Op. Cit. p. 67
[373] Decree 92-24 of 19 January 1992 amending Decree 71-157 of 3 June 1971; Kebir, "The Status of Children. Op Cit. p. 170
[374] Kebir, "The Status of Children. Op Cit. p. 170
[375] Malingreau, "International Kafala: A Right for the Child. Op. Cit. pp. 403-404

rules of *kafala* to address domestic issues, which contradicts their legal position, based on theological principles.

From a theological perspective, the core issue shown for the prohibition of adoption is the biological identity of children.[376] Algeria also prohibits adoption based on biological identity, as in verses Q. 33:4 and Q. 33:5 in the Qur'an.[377] In Q.33:5, Allah says if their biological identity is unknown, call them brethren in faith or associates.[378] I will analyse them in more detail in chapter five and demonstrate that these verses do not refer to adoptees in a parent-child context. Suppose one agrees that they are referring to adoptees. Then, the translations of these verses, Q. 33:4 and Q. 33:5, clearly state that they should not change their biological identity. Suppose the core reason for prohibiting adoption in Islam is biological identity, and it is clearly stated in the Qur'an. In that case, it is difficult to understand how a social issue can overturn this prohibition. As in this case, Algeria reversed its policy to allow the change of biological identity of those children with unknown heritage due to social problems. Suppose social issues can prompt a shift in policy that is prohibited in the Qur'an. In that case, this sets a precedent for addressing similar social problems that have been suggested as justification for prohibiting adoption.

Algeria construed the change of surname based on the welfare of children. Suppose the deductions or *ijtihad* can help to reverse a fundamental theological principle for the sake of welfare. In that case, it suggests that other rights, such as inheritance and parent-child relationships, which are currently not permitted, could also be allowed under *kafala,* based on the child's best interests and welfare. As shown in the previous chapter, the methodology of jurisprudence possesses a principle that enables policies to be altered in the public's best interest. The Qur'an and *ahadith*

[376] We see later, in our analysis of the Qur'an, that this is the fundamental objection that if you do not know their biological identity, do not replace it with your own. Instead, call them brethren in faith. See Q. 33:5; See chapter one, literature review.

[377] Chapter four analyses these verses in detail to show that these are not relevant to adoption.

[378] Q. 33:5 "Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you. And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful." Available at: Surah Al-Ahzab - 1-73 | Quran.com, accessed 15/11/2021.

do not impose a rule that makes life difficult for people. These interpretations of theological principles vary from country to country, and this holds true in the case of adoption. Some scholars appear to believe that these changes in *kafala* are bringing this instrument closer to adoption.

Yassari stated that Algerian kafala "… can be characterised as a functional equivalent of adoption" in the Western context.[379] As noted earlier, Kebir also mentioned that Algeria's alteration of the biological identity of children of unknown heritage brought kafala closer to adoption. Both Kebir and Yassari seem to associate adoption with the biological identity of a child. However, this policy change regarding the biological identity of only unknown children does not equate *kafala* with adoption. While Islamic principles suggest that biological identity prohibits adoption, a change in a child's surname or biological identity is not legally required for adoption in the UK.[380] Legal adoption advocates the preservation of a child's identity and heritage, as well as ensuring that the legal rights stemming from an adoption order do not disadvantage the child in any way. The fundamental purpose of legal adoption is to serve a child's best interests, including stability and security, which acts as a safety net for connecting the child with a family rather than leaving them in an institution or merely associated with a name.

From a legal perspective, a mere change of surname in kafala does not render this instrument equivalent to adoption. The rights derived from paternity under kafala remain unchanged, including those of inheritance and the parent-child relationship.[381] The inheritance rights and the parent-child relationship under kafala were debated in an intercountry adoption case in France involving an Algerian girl

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[379] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 954

[380] See Chapter Four, which analyses the verses in detail and shows that they do not discuss adoption, and the revelation is not understood in context.

[381] See, Oh, Alzahrani. The Adoption of Children: An Exploration of Islamic Law in the Kingdom of Saudi Arabia and How It Compares to The International Standards Set by The Hague Convention on The Protection of Children and Co-Operation in Respect of Inter-Country Adoption. Doctoral Dissertation, University of Pittsburgh. 2018. (Unpublished), available at: http://d-scholarship.pitt.edu/34163/1/04%2006%2018%20Alzahrani%202018%20Dissertation.pdf, accessed 30/12/2020. pp. 82-83 at p. 25; Malingreau, "International Kafala: A Right for the Child. Op. Cit. p. 403

(Harroudj v. France).[382] The mother, who had been granted kafala in Algeria, changed the child's surname. The girl went to live with her kafala mother in France. Harroudj, the mother, applied to the French court for an adoption order because the girl had her surname; however, she could not inherit from her under the intestate rule in the event of her death. The French court refused the adoption on the grounds that *kafala* does not recognise the parent-child relationship.[383] The mother subsequently brought the case to the European Court of Human Rights under Article 8 for the right to private and family life, and Article 14 for discrimination by the domestic court, as it had denied her adoption application.[384] The European Court of Human Rights rejected Harroudj's application, stating that

[382] "Article 370-3, second paragraph of the Civil Code, inserted by the Law of 6 February 2001 on Intercountry Adoption, stipulates: 'Adoption of a foreign minor may not be ordered where his or her personal law prohibits that institution unless the minor was born and resides habitually in France'.
The choice-of-law rule, in so far as it refers to personal law, is not discriminatory and is compliant with Articles 8 and 14 of the European Convention on Human Rights and with international law; Article 4 (a) of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption provides that adoption may take place only if the competent authorities of the state of origin have established that the child is adoptable, this not being the case where adoption is prohibited." See, *Harroudj v. France*, p. 2 of European Court of Human Rights, Application no. 43631/09, decision dated 4th Jan 2013, available at: http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-113819&filename=001-113819.pdf, accessed 17/11/2021

[383] All see a paragraph. 51, p. 17, " The Court notes that the judicial grant of *kafala* is fully recognised by the respondent State and that it produces effects in that country that are comparable in the present case to those of guardianship, since the child, Hind, had no known parentage when she was placed in care. In that connection, the domestic courts emphasised that the applicant and the child had the same surname because of the relevant legal procedure and that the applicant exercised parental authority, entitling her to take any decision in the child's interest. Admittedly, as *kafala* does not create any legal parent-child relationship, it has no effects for inheritance and does not suffice to enable the child to acquire the foster parent's nationality." European Court of Human Rights, Application no. 43631/09, decision dated 4th Jan 2013, available at: http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-113819&filename=001-113819.pdf, accessed 17/11/2021

[384] Article. 8. "Right to respect for private and family life: 1. Everyone has the right to respect his private and family life, home and correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.", and Article. 14, "Prohibition of discrimination: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or another opinion, national or social origin, association with a national minority, property, birth or other status." See The European Convention on Human Rights 1950, available at: https://www.echr.coe.int/documents/convention_eng.pdf, accessed 20/11/2020

the decision of the French domestic court complied with another international treaty. Article 4(a) of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) disapproves of adopting children from countries whose laws do not permit this provision.[385] As evidenced, Yassari asserted that Algeria's *kafala* is equivalent to adoption. However, international law indicates that this is not the case.

Although kafala incorporates principles from the Qur'an and ahadith, many of its policies are regionally or domestically based on specific geographical contexts rather than strict theological rules. However, the case of Harroudj v. France presents an opportunity for adoptive parents who wish to connect with their adoptive children while adhering to their religious beliefs through a double-barrel surname. In Harroudj's case, the girl's name was Zina Hind, and her kafala mother sought permission from the indigenous court to change Zina's surname to Harroudj.[386] The application was approved, allowing her to insert her new surname after the second name (Hind). Adoptees can adopt a double-barrel name without altering a child's biological identity or the father's name. Courts in the UK have already permitted a double-barrel name for a child when there was concern about a child losing their biological identity due to parental separation or in the absence of one parent in the child's life. A double-barrel surname would enable adoptees to embrace a second surname without compromising their original biological identity.[387] In Algeria, a child can be given a father's name in cases of unknown heritage, despite the Qur'an's prohibitions against it. However, the parental relationship, which is a social aspect of a bond, is not recognised under the kafala system.

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[385] "The choice-of-law rule, in so far as it refers to the personal law, is not discriminatory and is compliant with Articles 8 and 14 of the European Convention on Human Rights and with international law; Article 4 (a) of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption provides that adoption may take place only if the competent authorities of the State of origin have established that the child is adoptable, this not being the case where adoption is prohibited." See, p. 2, paragraph. 12, Ibid.

[386] European Court of Human Rights, Application no. 43631/09, decision dated 4th Jan 2013, available at: http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-113819&filename=001-113819.pdf, accessed 17/11/2021

[387] *Re S (Change of Names: Cultural Factors)* [2001] 3 FCR 648. 9; *Re R (A Child)* [2002] 1 FCR 170

Like many other Muslim countries, Algeria's policies on safeguarding vulnerable children have been ratified and implemented in accordance with welfare norms and international obligations. Algeria has several laws to protect children, such as the Protection of Children and Youth Ordinance 1972, "… the laws on apprenticeship, the decrees relating to education, the Labour Code, the Code of Public Health, the Code of Information, the Nationality Code and various decrees relating to the organisation of social services and youth centres."[388] Human rights reports on the country indicate that Algeria protects children's human rights by providing free education and medical treatment.

Despite various measures, safeguarding remains a concern in Algeria. Legal experts in the country assert that the laws do not provide sufficient protection for children. According to an annual human rights report, hospitals treat numerous children and abuse victims, with many more going unreported, yet there is no clear evidence of prosecutions.[389] According to another report, Algeria has many orphans who "... grow up without parental protection and care or in dysfunctional family structures."[390] In contrast, a voluntary organisation states, "Being a street child in Algeria often means a life on the brink of death. Violence, starvation, and drug abuse mark the daily reality of these children."[391] Despite having many vulnerable children and welfare laws, Algeria lacks an active welfare infrastructure to place children with families for fostering, let alone adoption. The practice of kafala is an ad hoc policy, as exemplified by the case of Zina Hind. In other words, kafala parents initiate applications out of their desire for a child rather than for the welfare of children. The state then places them with families in accordance with their best interests.

3.1.2 Bangladesh

[388] Kebir, "The Status of Children. Op Cit. p. 163

[389] "Algeria", Annual Human Rights Reports Submitted to Congress by the US Department of State 23 (1998): 1621-1632. P. 1631; SOS Children's Village International, Situation of the children in Algeria, available on Algeria - SOS Children's Villages International (SOS-childrensvillages.org), accessed 10/02/2021.

[390] "Algeria" Annual Human Rights Reports Submitted to Congress by the US Department of State 27 (2002): 1853-1871. p. 1854

[391] SOS Children's Village International, Situation of the children in Algeria, Op. Cit.

Muslim Population	The Muslim population is 88.3%.
State's religion	The state's religion is Islam, Art. 2 of the constitution.[392]
Source of law	Art. 8 (1 and 2) states that governance and legislation should follow Islamic principles, but Islamic provisions are not enforceable in some issues.[393] Islamic law deals with personal matters.[394]
Islamic doctrine	Most of the Muslim population follows the Hanafi school of law.
Adoption	The prohibition of adoption is by law.
Laws and policies	S. 17 (1) Guardianship and Wards Amendments Ordinances 1982 deals with vulnerable children.

Summary of the children's provisions in Bangladesh:

Bangladesh also has laws governing adoption and fostering. Islam serves as the primary source of law for children and families, while some civil and criminal matters are interpreted through secular norms.[395] Section 17(1) of the Guardians and Wards Act 1890 addresses custody and guardianship cases.[396] Bangladeshi case law, particularly concerning custody and guardianship in parental disputes, employs a discretionary interpretation of welfare principles alongside secular norms rather than strictly adhering to Islamic principles. Academic articles by scholars from the country indicate that the court prioritises children's welfare and does not rigidly

[392] Bangladesh constitution as amended in 1996.
[393] Stahnke and Blitt. The Religion-State Relationship. Op. Cit. p. 75
[394] Nowrin Tamanna, "The Welfare of the Child in Shari'a Law: An Analysis of Child Custody Law and Practices in Bangladesh from a Feminist Perspective," Child and Family Law Quarterly 26, no. 3 (2014): 283-300 at p. 289
[395] Tamanna, "The Welfare of the Child in Shari'a Law: Op. Cit. p. 289
[396] Tamanna, "The Welfare of the Child in Shari'a Law: Op. Cit. p. 289

apply Islamic principles in cases involving children, notwithstanding the opinions of Muslim jurists or theological understanding.[397] According to Tamanna,

> "In determining the child's welfare, the Bangladeshi courts have often referred to Article 3 of the United Nations Convention on the Rights of the Child (UNCRC), which requires the 'best interests of the child' to be the primary consideration in all actions that concern children. …Under section 17(3) of the GWA, '2 9, the court 'may' consider a child's preference in appointing a guardian, but it is not mandatory to take such preferences into account."[398]

The above statement indicates that adjudication concerning children's welfare involves discretionary engagement with welfare rather than the strict application of Islamic principles. It has been suggested that the courts have developed measures enabling them to utilise discretion. In some cases, courts have adjudicated matters based on the status of rights, determining whether certain Islamic principles are qualified or absolute rights.[399] In the case of Abu Bakar Siddique v S M A Bakar,[400] the court did not apply the standard Islamic principle of age and gender when deciding the child's custody.[401] This principle of Islamic law is suggested to be known as "… 'eclecticism' *(takhayyur)* and judicial *ijtihad* or juristic interpretation and reasoning of texts."[402] Consequently, this welfare application is not a consistent policy but an ad hoc employment by individual judges under compassionate circumstances. Yasmin states that courts across the country do not consistently apply the developments on welfare through case law.[403]

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[397] Tamanna, "The Welfare of the Child in Shari'a Law: Op. Cit. p. 252

[398] Tamanna, "The Welfare of the Child in Shari'a Law: Op. Cit. p. 252

[399] Thus, the court positively argued that since the right is merely a preferential right created by Muslim law principles, having lost such a right, the person only becomes equal with all other qualified persons but does not lose the right altogether." See Yasmin, "Judicial Trends in Child Custody Cases in Bangladesh: Op. Cit. p. 247

[400] [1986] 38 DLR (AD) 106

[401] Tamanna, "The Welfare of the Child in Shari'a Law: Op. Cit. p. 295; Taslima Yasmin, "Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations," Asian Journal of Comparative Law 12, no. 2 (December 2017): 233-256 at p. 244

[402] Tamanna, "The Welfare of the Child in Shari'a Law: Op. Cit. p. 293

[403] Yasmin, "Judicial Trends in Child Custody Cases in Bangladesh: Op. Cit. p. 243

Bangladesh has several laws in place to protect children.[404] However, child safeguarding and placements are inconsistent, regardless of whether this involves kafala or its substitutes. According to Mahajan, the country fails to meet children's fundamental rights to education, health, and food, and the conditions for street children are significantly worse.[405] While the country has state-run orphanages, charities, and other voluntary organisations to care for vulnerable children, these do not meet the standards of a developed nation. More importantly, as demonstrated in the previous chapter, the Qur'an and ahadith advocate for caring for vulnerable children within families, not through institutions. There is little emphasis on placing vulnerable children with families in Bangladesh, as proposed in international law and Islam. Overall, in Bangladesh, kafala operates as a social policy and practice rather than an obligatory state-led child welfare infrastructure, aligning with international obligations or theological requirements, making it incomparable to adoption.

[404] "The development of children justice in Bangladesh started with the enactment of the Children Act 1974 and the Children Rules 1976.1 As per the Act of 1974, there are three Child Development Centres (CDCs) established in Bangladesh under the Ministry of Social Welfare are not sufficient in number. However, under the Children Act 2013, the government must establish and maintain the requisite number of child development centres for both male and female children. The government shall also ensure the minimum standards for proper care of the children staying in the institutes. 4 But this mandate is yet to be implemented." See Nahid Ferdousi, "Challenges to Effective Child Correctional Governance in Bangladesh," NJA Law Journal 10 (2016): 195-210, p. 195.

[405] "Bangladeshi children are deprived of basic rights to education, balanced diet, health and nutrition, protection, participation, recreation, safe water, sanitation, and hygiene. Children's rights are violated due to poverty, ignorance, lack of social consciousness and discrimination. The laws and policies regarding child labour, physical punishment, violence against girls, sexual exploitation, imprisonment of children with adults, trafficking, child marriage, and other aspects of child protection are routinely violated. In most cases, people are unaware of the laws and consider this violence common. Street children are more vulnerable to managing their food, clothes, and shelter. They find no treatment when they become sick. The GoB and the national and international NGOs have taken various steps, such as free primary education, cash transfers for children, nutrition, and birth registration. To save the children. Educating girls to achieve a multiplicity of benefits, including marriages at mature age, reduced fertility rates, decreased infant and maternal mortality, improved health and nutritional status, and greater participation of women in political and economic decisions. See, Mohajan, Haradhan Kumar. "Child Rights in Bangladesh." Journal of Social Welfare and Human Rights, March 2014, Vol. 2, No. 1, pp. 207-238, available at Microsoft Word - 12.docx (jswhr.com), accessed 20/02/2021. P. 236

3.1.3 Egypt

Muslim Population	93.2% of the population is Muslim. [406]
State's religion	Islam is the state's religion.
Source of law	Islam is the principal source of law under Art. 2 of the Constitution.[407]
Islamic doctrine	Most people follow the Hanafi school of law.[408]
Adoption	Egypt prohibits adoption by law, Art. 4[409]
Laws and policies	Foster Family Care Act of 1968, Foster Family Care Act of 1996 and Child Act of 1996 offer alternative provisions and adoption.

A summary of children's provisions in Egypt:

Egypt legally prohibits adoption and provides alternatives in the form of fostering, often the English translation of *kafala*. The Foster Family Care Act of 1968 and the Foster Family Care Act of 1996 regulate the fostering process.[410] Fostering is subject to several conditions, including that a couple must be married, have sufficient income to support the child and have medical evidence to show infertility.[411] Egyptian-fostered children are generally not permitted to live permanently outside Egypt, and people outside Egypt are not allowed to foster. A case in the UK for adopting an Egyptian girl shows that Egypt signed the Convention on the Rights of

[406] Pew Research Centre, *Muslim Population by Country,* Op. Cit. This is the source for the Muslim population in all the countries listed in this section.

[407] Egypt's Constitution. Pt. 1. Art. 2. Citied in Stahnke and Blitt. The Religion-State Relationship. Op. Cit. p. 63

[408] Islamic Family Law, Egypt, Islamic Republic, available at Islamic Family Law » Egypt, Arab Republic of (emory.edu), accessed 20/02/21; Lama Abu-Odeh. Modernising Muslim Family Law: The Case of Egypt, (2004) Oxford U Comparative L Forum 3 at ouclf.law.ox.ac. UK accessed 20/02/2021; Nicholas P. Kourides, "Traditionalism and Modernism in Islamic Law: A Review," Columbia Journal of Transnational Law 11, no. 3 (Fall 1972): 491-506, footnote. 16 at p. 494

[409] "Law No. 12 of 1996 (Child Act), Al-Jarida Al-Rasmiyya, 28 Mar. 1996, as amended by Law No. 126 of 2008, Al-Jarida Al-Rasmiyya, 15 June and 10 July 2008, art. 4 (Egypt)." See. Yassari, "Adding by Choice: Adoption, Op. Cit. p. 944

[410] Hamido A. Mega head, "Changes in Legislation on Foster Family Care in the Arab Republic of Egypt," Arab Law Quarterly 28, no. 3 (2014): 307-[ii]. P. 307

[411] Travel. State.gov, Travel Advisory on Egypt. Available at: Egypt Intercountry Adoption Information (State.gov), accessed 20/02/2021.

the Child in 1989 and implemented these provisions in its domestic law.[412] The UK court adjudicated the matter in line with welfare principles enshrined in the international treaty and granted the adoption of an Egyptian girl. However, this was outside Egypt's jurisdiction. The child was fostered in Egypt while the mother resided there and was married to an Egyptian national at the time of fostering.[413]

Fostering in Egypt may be motivated by religious or financial incentives, and approximately 81% of children are placed as substitutes.[414] Abandoned children in Egypt receive care in state-run residential homes managed by elected boards. In contrast, families run private orphanages.[415] The orphan centres may house between 30 and 300 children, and orphanages have been operational for periods ranging from 2 to 50 years.[416] Egypt does provide financial assistance for those who take in abandoned children.[417] It is suggested that their policy aligns with the general understanding that kafala in Islam is a voluntary act, with the costs of upbringing being the responsibility of foster parents.[418] As demonstrated in the previous chapter, the Qur'an permits the remuneration of services or a minimum wage.

Safeguarding is a concern in the country. According to a study by The Free Library,

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[412] *Z (A Child) (Egyptian fostering UK adoption)* [2016] EWHC 2963 (Fam)

[413] "Russell J began her legal analysis by outlining the provisions of the UN Convention on the Rights of the Child ("UNCRC") and the extent to which they applied in Egypt, England and Wales. The learned judge observed that Egypt was a signatory to the Convention and had implemented it into Egyptian law. The Egyptian Courts were required to apply the principle of the child's best interests in all cases concerning children." See *Z (A Child) (Egyptian fostering UK adoption)* [2016] EWHC 2963 (Fam), Family Law Week, available at: https://www.familylawweek.co.uk/site.aspx?i=ed168798, accessed 29/12/2020.

[414] Hamido A. Mega head, "Changes in Legislation on Foster Family Care in the Arab Republic of Egypt," Arab Law Quarterly 28, no. 3 (2014): 307-[ii]. P. 313; The Free Library. S.v. Orphanages in Egypt." Retrieved Feb 25, 2021, from https://www.thefreelibrary.com/Orphanages+in+Egypt.-a0135707002, accessed 25/02/2021.

[415] Hamido A. Mega head, "Changes in Legislation on Foster Family Care in the Arab Republic of Egypt," Arab Law Quarterly 28, no. 3 (2014): 307-[ii]. P. 313; The Free Library. S.v. Orphanages in Egypt." Retrieved Feb 25, 2021, from https://www.thefreelibrary.com/Orphanages+in+Egypt.-a0135707002, accessed 25/02/2021.

[416] The Free Library. S.v. Orphanages in Egypt. Op. Cit.

[417] The Free Library. S.v. Orphanages in Egypt. Op. Cit.

[418] Kulsoom K. Ijaz, "Shifting Paradigms: Promoting an American Adoption Campaign for Afghan Children", Syracuse Journal of International Law and Commerce 42, no. 1 (Fall 2014): 233-272, p. 246.

> "… an orphan in Egypt still lives in a region of the world where adoption and foster care are unrealistic options and where unwanted children may be left on the street. Despite recent modernisations, orphanages continue to play a vital role in caring for children who might otherwise die."[419]

Fostering is a social practice, as demonstrated above, and the state does not actively seek families to place vulnerable children with, nor does it possess a social welfare infrastructure that aligns with international legal or theological obligations.

3.1.4 Jordan

Muslim Population	98.8% of the population is Muslim.
State's religion	Art. 1 of the constitution shows Islam as the state's religion.[420]
Source of law	Islam is the source of personal law under Art—105 and Art. 106 of the Constitution. However, Art. 104 allows the legal system to interpret or apply minority religious provisions for communities whose religion is not Islam.[421]
Islamic doctrine	The majority follow the Hanafi school.[422]
Adoption	Jordan prohibits adoption under Article. 162 for Muslims[423] and permits for non-Muslims under their religious law.[424]

[419] The Free Library. S.v. Orphanages in Egypt. Op. Cit.

[420] Jordan Constitution 1952 as amended to 1984. Citied in Stahnke and Blitt, The Religion-State Relationship, Op. Cit. p. 70

[421] Stahnke and Blitt. The Religion-State Relationship. Op. Cit. p. 70

[422] Odeh. Modernising Muslim Family Law, Op. Cit.; Kourides, "Traditionalism and Modernism in Islamic Law. Op. Cit.

[423] Mijas Al-Dalqamouni and Mohammad Shehada, "The Impact of Community Perspectives, Religion, Financial Situation and Laws on the Families' Decision to Offer Fostering or Seeking Guardianship to Children in Jordan", International Journal of Business and Social Science Vol. 11. No. 4. April 2020 doi:10.30845/ijbss. v11n4p8, p. 73; "Law No. 36 of 2010 (Code of Personal Status), Al-Jarida Al-Rasmiyya, 17 Oct. 2010", See. Yassari, "Adding by Choice: Adoption, Op. Cit. p. 944

[424] Engelke. Establishing Filiation (nasab). Op. Cit. pp. 410-411

Laws and policies	Communities use their religious laws to regulate the placement of vulnerable children. The country has Guardianship Instructions 2013 for all children and no specific safeguarding rules for vulnerable or parentless children.

Summary of the children's provisions in Jordan:

Jordan prohibits adoption for its Muslim population and offers guardianship if families wish to care for a vulnerable child. The Kingdom's Ministry of Social Development (MSD) runs orphan centres throughout the country to support vulnerable children. The Family Directorate oversees these centres. Guardianship has specific legal requirements. For guardianship of a Muslim child, the applicant must be Muslim, married for a minimum of five years, provide medical evidence of infertility, and demonstrate financial means to support a child.[425] If the couple wishes to foster another child of the same sex, they must wait two years before being approved for a second child of the same sex.[426] In other words, they can foster simultaneously if they wish to have both a boy and a girl. However, if they prefer children of the same sex, they can do so two years apart. The state does not provide financial support, and the foster parents cover all the children's medical treatment and educational costs.[427]

Jordanian law permits non-Muslims to apply their community or religious rules, allowing for the adoption of non-Muslim children in the country. Communities may only implement their religious laws that are recognised by the state and listed in "2014 Law for Christian Councils (qānūn majālis al-ṭawā'if al-masīḥiyya)."[428] Like other Muslim countries, Jordan ratified the Convention on the Rights of the Child in 1989 but placed reservations on Articles 20-21 regarding adoption and fostering.

[425] The Guardianship Instructions 2013

[426] Mijas Al-Dalqamouni and Mohammad Shehada, "The Impact of Community Perspectives, Religion, Financial Situation and Laws on the Families' Decision to Offer Fostering or Seeking Guardianship to Children in Jordan", International Journal of Business and Social Science Vol. 11. No. 4. April 2020 doi:10.30845/ijbss.v11n4p8, p. 70

[427] Engelke. Establishing Filiation (nasab). Appendix. 1. Op. Cit. p. 4

[428] Engelke. Establishing Filiation (nasab). Appendix.1. Op. Cit. p. 4

This reservation is based on the theological view that Islam prohibits adoption.[429] Vulnerable children are supported through state-sponsored welfare infrastructure. Fostering or *kafala* are social practices that rely on families' willingness to foster a child, rather than a national policy aimed at integrating vulnerable children into family environments as per international law.

Summary of the children's provisions in Lebanon:

Lebanon's policies on adoption and fostering vary. Adoption is prohibited for the Muslim community in this country. However, Christian families have the right to adopt children under the adoption provisions of their respective family laws.[430] Christian foreigners are also eligible to adopt, and the residency requirement does not apply to them. An individual foreigner can adopt alone, but a couple can only adopt if they are married.[431] Lebanon does not have state-run orphanages or children's care homes. Instead, it provides funds to private, community-based orphanages.[432] According to Engelcke,

> "The state is not a major welfare provider but has outsourced this role to non-state actors. In 2016, according to data provided by the Ministry of Social Affairs, 24,106 children were placed in care facilities operated by various sectarian groups."[433]

Like many other countries discussed here, Lebanon does not play a role in providing the infrastructure necessary for safeguarding children's welfare. Various segments of communities manage children's placements for social reasons.

3.1.5 India

Muslim Population	14.6% of the population is Muslim

[429] Engelke. Establishing Filiation (nasab). Op. Cit. p. 426
[430] Engelke. Establishing Filiation (nasab). Appendix. 1. Op. Cit. p. 4
[431] Engelke. Establishing Filiation (nasab). Op. Cit. Appendix. 1, p. 5
[432] Engelke. Establishing Filiation (nasab). Op. Cit. p. 422
[433] Engelke. Establishing Filiation (nasab). Op. Cit. p. 422

State's religion	Secular
Source of law	The law stems from the secular norm as well as community laws. Muslims and Christians follow their religious-based directions.
Islamic doctrine	People follow Hanafi and Shi'ite schools of law.[434]
Adoption	India permits adoption for Hindus under the primary judicial system, and for Muslim people, they prohibit it according to Islamic principles.[435]
Laws and policies	Juvenile and Justice (Care and Protection of Children) Act 2002, reformed in 2015' Chapter VIII, outlines adoption and other placements provisions.436 The Guardians and Wards Act 1890 and the Hindu Adoptions and Maintenance Act 1956

A summary of the children's provisions in India:

India is a secular country, but the reason it is discussed here is that it has a significant Muslim population that administers their religious law for serving vulnerable children. India's law on adoption combines personal law and government policies. India offers a secular policy on adoption under civil law that applies to all faith communities within India.[437] Hindu law provides adoption under the Hindu Adoptions and Maintenance Act 1956, granting adoptees the same rights as biological children.[438] Adoption is irrevocable.[439] Muslims and Christians can apply for guardianship under civil law through the Guardians and Wards Act of 1890 because both communities prohibit adoption under their religious law.[440] Guardianship

[434] Kourides, "Traditionalism and Modernism in Islamic Law. Op. Cit. Footnote. 16. p. 494

[435] Q. 33:4 and Q.33:5

[436] Engelke. Establishing Filiation (nasab), Appendix. 1. p. 8

[437] Judith Lind; Shruti Johansson, "Preservation of the Child's Background in In- and Intercountry Adoption," International Journal of Children's Rights 17, no. 2 (2009): 235-260, p. 240; Syed M. Aatif, "The Law of Adoption in India: A Critical Analysis," Pravnik: Revija za Pravno Teorijo in Prakso 74, no. 1-2 (2019): 5-32, p. 11

[438] S. 12 of the Adoptions and Maintenance Act 1956; Lind and Johansson, "Preservation of the Child's Background, Op. Cit. p. 240

[439] S. 15 of the Adoptions and Maintenance Act 1956; Aatif, "The Law of Adoption in India, Op. Cit. p. 13

[440] Mijas Al-Dalqamouni and Mohammad Shehada, "The Impact of Community Perspectives, Religion, Financial Situation and Laws on the Families' Decision to Offer Fostering or Seeking

lasts until the age of majority, or eighteen, and does not confer all rights as a natural child. It has been suggested that numerous attempts have been made to reform the religious laws to unify them, but these efforts have been dropped due to pressure from religious communities.[441]

Regardless of religious affiliation, everyone in the country can adopt children.[442] Agencies follow a set procedure and time frame for child adoption.[443] Children may be abandoned, unwanted and free for adoption for other reasons. For an abandoned child, the agency must report it to the police, wait 60 days for the parents to claim the child, and then put the child up for adoption.[444] The Central Adoption Resource Authority in India (CARA) 2006 prioritises adoption placement based on nationality, religious affiliation, ethnicity, cultural background, and physical appearance.[445] Like many other countries, the welfare policies in this country are not as stringent as those in Western countries. However, India has ratified the international treaty on children's rights, and the state has an infrastructure to facilitate adoption and alternative care for vulnerable children. Children coming to agencies are either abandoned or unwanted.

Guardianship to Children in Jordan", International Journal of Business and Social Science Vol. 11. No. 4. April 2020 doi:10.30845/ijbss.v11n4p8, p. 71; Lind and Johansson, "Preservation of the Child's Background, Op. Cit. p. 240

441 "In 1972, the Adoption of Children Bill was introduced in the Indian parliament to make a uniform law of adoption applicable to all the citizens of India regardless of their religion. However, the Bill was withdrawn by the government in 1978 and could not be passed." See, Aatif, "The Law of Adoption in India, Op. Cit. p. 22; Lind and Johansson, "Preservation of the Child's Background, Op. Cit. p. 240

442 S. 56 of the Juvenile Justice (Care and Protection of Children) Act 2015 "Adoption: (1) Adoption shall be resorted to ensure the right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the Rules made thereunder, and the adoption regulations framed by the authority. (2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the authority. (3) Nothing in this Act shall apply to adopting children made under the Hindu Adoption and Maintenance Act, 1956 (78 of 1956). (4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the authority. (5) Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the court, shall be punishable as per the provisions of section 80." See, Aatif, "The Law of Adoption in India, Op. Cit. Footnote, 60. p. 18.

443 S. 41 of the Juvenile Justice (Care and Protection of Children) Act 2015

444 Lind and Johansson, "Preservation of the Child's Background, Op. Cit. pp. 240-242

445 Lind and Johansson, "Preservation of the Child's Background, Op. Cit. pp. 246-248, 255

3.1.6 Indonesia

Muslim Population	88.1% of the population is Muslim.
State's religion	It is not specified.[446]
Source of law	It is not specified.[447]
Islamic doctrine	People follow the Shafi'i school of law.[448]
Adoption	Indonesia permits adoption for non-Muslims.[449]
Laws and policies	Peraturan pemerintah Republik Indonesia no. 54/2007 tentang Pelaksanaan Pengangkatan Anak (Government Regulation on Adoption Procedures). 2. Peraturan Menteri Sosial no. 110/2009 tentang Persyaratan Pengangkatan Anak450 Art. 7, Law no. 54 of 2007

A summary of the children's provisions in Indonesia:

Adoption is permitted in Indonesia customarily and under civil law. Indonesia has local customs for adoption, but applicants can formally request that the court regularise the status. Indonesia has many different communities. Hence, there are various customs or procedures for adopting children through customary law.[451] Adoption is legal in Indonesia.[452] However, it is not legally enforceable if adoption does not occur through the recognised legal and judicial process.[453] Often, people adopt children related through blood without any legal process. Indonesian

[446] Indonesia's constitution, as amended in 2002. Citied in Stahnke and Blitt. The Religion-State Relationship. Op. Cit. p. 78
[447] Stahnke and Blitt. The Religion-State Relationship. Op. Cit. p. 78
[448] Paul H. Robinson; Adnan Zulfiqar; Margaret Kammerud; Michael Orchowski, "Codifying Shari'a: International Norms, Legality and the Freedom to Invent New Forms," Journal of Comparative Law 2, no. 1 (2007): 1-53, footnote. 7. p. 4
[449] Alzahrani. The Adoption of Children. Op. Cit. p. 24; Yassari, "Adding by Choice: Adoption, Op. Cit. p. 943
[450] Engelke. Establishing Filiation (nasab), Appendix. 1. p. 9
[451] S. H. Suyanto; M. Hum, "Comparison of Child Adoption from Perspective of Islamic Law, Western Law, and Customary Law," Journal of Law, Policy and Globalization 84 (2019): 78-84, p. 84
[452] Suyanto and Hum, "Comparison of Child Adoption. Op. Cit. p. 84
[453] Suyanto and Hum, "Comparison of Child Adoption. Op. Cit. p. 84

citizens and foreign nationals are eligible to adopt Indonesian children. Applicants can adopt children from childcare institutions; a child must be under 18 and abandoned.[454] The child is either with a foster family or an institution and needs special protection due to their young age.[455]

Indonesia has well-formed safeguarding laws, but adoption is a social practice whereby adopting parents approach authorities. The authorities follow a judicial process only to execute the adoption order. It is essential to recognise that adoption is customary in the country, and religion has no say. Muslim religious law does not recognise adoption. Muslims can choose whether to utilise legal adoption under the secular judicial system or follow their religious law.

3.1.7 Malaysia

Muslim Population	61.4% of the population is Muslim.
State's religion	Islam.[456]
Source of law	Islam is the source of law in some areas.[457] Malaysia has a dual judiciary system, Islamic Law for Muslims and civil law for non-Muslim people.[458]
Islamic doctrine	Shafi'i school of thought[459]
Adoption	Malaysia permits adoption with full rights for non-Muslims and Muslims with limited rights.[460]

[454] Article. 12

[455] Article. 13, see Suyanto and Hum, "Comparison of Child Adoption. Op. Cit. p. 82; Adopting parents must be physically and mentally fit, have a minimum age of 30 and a maximum of 55, have good character, have no convictions, be diverse in religion, and be married for five years to adopt a child. They do not have children or have one child, have financial means, and need written consent from the parent or guardian of the child. In addition, a report from a local social worker to support the application and care for the child for six months before adoption requires consent from the ministerial head of a social institute. See S. H. Suyanto; M. Hum, "Comparison of Child Adoption from Perspective of Islamic Law, Western Law, and Customary Law," Journal of Law, Policy and Globalization 84 (2019): 78-84, p. 82.

[456] Malaysia's Constitution, as amended in 1994.

[457] Stahnke and Blitt. The Religion-State Relationship, Op. Cit. p. 78

[458] Engelke. Establishing Filiation (nasab), Appendix. 1, p. 10

[459] Paul H. Robinson; Adnan Zulfiqar; Margaret Kammerud; Michael Orchowski, "Codifying Shari'a: International Norms, Legality and the Freedom to Invent New Forms," Journal of Comparative Law 2, no. 1 (2007): 1-53, footnote. 7. p. 4

[460] Alzahrani. The Adoption of Children. Op. Cit. p. 24; Yassari, "Adding by Choice: Adoption, Op. Cit. p. 943

Laws and policies	Islamic Family Law (Federal Territories) Act of 1984; sections 81–105 are for custody and guardianship. Sections 72–80 are for maintenance. [461] Registration of Adoptions Act of 1952 (Act 253)

A summary of the children's provisions in Malaysia:

Malaysia has two types of adoption: customary and statutory. According to Mohd, evidence of adoption practices can be found as early as 1951.[462] It shows that adoption was possibly practised in Malaysia long before the Convention on the Rights of the Child in 1989. Adoption was regulated in 1952 with the enactment of two ordinances, the Adoption Act of 1952 (Act 257) and the Registration of Adoptions Act of 1952 (Act 253).[463] The reason for the two separate laws was the religious diversity within the population, which had Muslims and non-Muslims.

For the Muslim people, the Registration of Adoption Act 1952 is based on Islamic principles, and the Department of Social Welfare deals with adoption in Malaysia.[464] Malaysia allows the adoption of Muslims but has curtailed certain rights for Muslim children. Those adopted under civil laws get rights equivalent to biological children within adoptive families, while religious adoption omits certain rights, including inheritance, parentage, or parent-child relationship. According to Mohd,

> "It is undeniable that the RAA has protected the rights of adopted children to a certain extent, but the absence of clear provisions on adoptive

[461] Azizah Mohd. "Malaysia. Filiation and the Protection of Parentless Children", 2019. pages 205-229. Available at: https://www.tandfonline.com/doi/citedby/10.1080/10926755.2011.628261?scroll=top&needAccess=true, accessed on 30/12/2020. p. 236

[462] *Jainah binti Semah v. Mansor bin Iman Mat & Anor*, [1951] MLJ 62. See Mohd. Malaysia. Filiation and the Protection. Op. Cit. p. 231

[463] The Adoption Ordinance of 1952 (F.M. Ord. 41 of 1952) and the Registration of Adoptions Ordinance of 1952 (F.M. Ord. 54 of 1952), See Mohd. Malaysia. Filiation and the Protection. Op. Cit. p. 231

[464] Mohd. Malaysia. Filiation and the Protection. Op. Cit. pp. 230-231

parents' duties and responsibilities to care and maintain them seems to provide an incomplete protection of their rights."[465]

The scholars in Malaysia recommend further regulations or reforms in the adoption law, based on welfare, to protect children's rights to inheritance and parent-child relations, which are currently not sustained. Mohd states, "… duties and responsibilities of the adoptive parent, as this would guarantee the protection of the rights of the adopted children and safeguard their welfare."[466] According to Mohd, the current adoption law does not adequately protect children's welfare. However, why the right to inheritance or parent-child relationship is against Islamic principles has yet to be apparent. I will discuss this further in later chapters from a theological perspective.

From a legal perspective, curtailing some of the fundamental rights undermines the entire ethos of adoption, which is financial and emotional stability for vulnerable parentless children. According to academics in Malaysia, this compromised version of adoption does not protect children's welfare.[467] In the UK, from a legal perspective, a child's welfare is the core reason for adoption.[468] The ethos of adoption is to provide a child with family stability and financial security, and such a model as adopted by Malaysia will not be workable in the UK.

Generally, Malaysia is well-equipped to safeguard children. The safeguarding legislation addresses several concerns to protect vulnerable children, including those without parents or guardians.[469] They do have children's homes, and children could be abandoned, orphaned, from low-income families, neglected, and abused.[470] From the legal perspective, the significant point is that Malaysia allows

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[465] Mohd. Malaysia. Filiation and the Protection. Op. Cit. pp. 230-231

[466] Mohd. Malaysia. Filiation and the Protection. Op. Cit. pp. 240-242

[467] See section 2.1.8 Malaysia and Mohd. Malaysia. Filiation and the Protection. Op. Cit. pp. 230-231

[468] See the Convention of the Rights of Child 1989, Article. 3

[469] S. 17(1) nurturing and protection, S. 38(1) protection and recovery, S. 41, protection for unborn to reduce abandonment, S. 48 protects runaway and trafficked children. S. 46(1), children without guardians of the Child Act 2001, See. Iman Jauhari, "Comparison of Child Protection Law between Indonesia and Malaysia," Indonesian Journal of International Law 12, no. 1 (October 2014): 84-106, pp. 92-95

[470] Mohd. Malaysia. Filiation and the Protection. Op. Cit. pp. 230-231

the adoption of Muslim children by law. According to *Mohd*, around 1021 adoptions took place in 2008.[471] His study does not show specific data on how many of these adoptions were of Muslim children.

3.1.8 Morocco

Muslim Population	99.00% of the population is Muslim.
State's religion	Art. 6 of the constitution states that Islam is the religion of the state.[472]
Source of law	Islam is not the source of law.[473]
Islamic doctrine	The leading school of thought followed by people is Malaki.[474]
Adoption	Morocco prohibits adoption under Art. 49.[475]
Laws and policies	-

A summary of the children's provisions in Morocco:

Morocco prohibits adoption in law.[476] Morocco has enacted a decree of thirty-two articles dealing exclusively with the *kafala* of vulnerable children. Once a *kafala* parent gets legal custody of a child, they get the right to educate and maintain the child. Additionally, they can permanently relocate the child to another country. The custody order is until the child reaches the age of majority, eighteen, unless the child is disabled, impoverished, or unmarried.[477]

3.1.9 Iran

[471] Mohd. Malaysia. Filiation and the Protection. Op. Cit. pp. 230-231

[472] Morocco's Constitution. (Adopted by referendum September 13, 1996, and promulgated October 7, 1996). Cited in Stahnke and Blitt, The Religion-State Relationship, Op. Cit. p. 71

[473] Stahnke and Blitt. The Religion-State Relationship, Op. Cit. p. 71

[474] Although Morocco adopted the French legal system, its family laws are based on Islamic Law. Mudawanna, or The Family Code, is codified in the Malaki school of Islamic Law. See Amna Arshad, "IJTIHAD as a Tool for Islamic Legal Reform: Advancing Women's Rights in Morocco," Kansas Journal of Law & Public Policy 16, no. 2 (Winter 2006): 129-156, p. 135.

[475] Law No. 70.03 of 2004, See Yassari, "Adding by Choice: Adoption, Op. Cit. p. 949

[476] Law No. 70.03 of 2004 (Family Code), A1-Jarida Al-Rasmiyya, 5 Feb. 2004, art. 149 (Morocco). See Yassari, "Adding by Choice: Adoption, Op. Cit. p. 948

[477] Yassari, "Adding by Choice: Adoption, Op. Cit. pp. 943-944

Muslim Population	99.7% of the population is Muslim.
State's religion	Islam is the religion of the state. Art. 12.[478]
Source of law	Islam is the source of law. Art. 4[479]
Islamic doctrine	Shi'ite school of thought.[480]
Adoption	The position on adoption is silent.[481]
Laws and policies on children	Protection of Children without a Guardian Act 1975 and Protection of Children Without a Guardian or with an Unworthy Guardian Act 2013,[482] in addition Muslims, Jews, Zoroastrians, and Christians can implement religious laws on adoption.[483]

Summary of the children's provisions in Iran:

Iranian law does not explicitly prohibit adoption. As an alternative care for vulnerable children, Iran offers *sarparasti,* translated as guardianship or supervision, instead of *kafala*.[484] Article 11 of the Children Without a Guardian Act 1975 facilitates *sarparasti.* This Article states,

> "… spouses could commonly take responsibility for a child and thereby generate a new legal bond under which the rights and duties of a natural, legitimate parent-child relationship were created as regards custody, the management of the child's assets, maintenance, and mutual respect, without any room reserved for State interference."[485]

[478] Stahnke and Blitt. The Religion-State Relationship, Op. Cit. p. 68
[479] Iran's Constitution 1979, as amended in 1989. Citied in Tad Stahnke; Robert C. Blitt, "The Religion-State Relationship, Cit. p. 68
[480] Kourides, "Traditionalism and Modernism in Islamic Law. Op. Cit. footnote. 16. p. 494
[481] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 951
[482] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 957
[483] Dörthe Engelcke, "Establishing Filiation (nasab), Appendix. 1, pp. 10-11
[484] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 958
[485] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 957

The above clause in Article 11 interestingly shows that a child under *sarparasti* gets full rights and duties of a natural child, which is precisely the position under legal adoption. It does not set any conditions that some of the other Muslim countries suggest for prohibiting adoption. Yassari also shows that Iran's *sarparasti* is equivalent to adoption. Yassari states,

> "… a permanent integration of the child into a new family and the creation of a parent-child relationship that functionally corresponded to adoption according to the established essentialia adoption according to the established essentialia adoptionis." [486]

What is significant is that *sarparasti* offers rights similar to adoption and a different name for this instrument. In contrast, most countries use the term *kafala.* In addition, Iran allows adoption for its non-Muslim population despite having a clause in public policy that the law should be compatible with *Shi'i* law. According to Engelcke, "In Iran, *farzand khāndigī* (adoption) is not seen as a violation of public policy, and Christian communities whose laws allow *tabannī* can apply their respective provisions."[487] Iran has implemented the principle of child welfare through Articles 40-47 of the Protection of the Family 2013. The underlying reason for the provision of *sarparasti* is the welfare of children.[488] Individual countries developed laws based on their domestic and international obligations, rather than adhering to a theological understanding of adoption. These different names for children's instruments, such as *kafala* and *surparasti,* demonstrate that they originate from cultural and linguistic sources, rather than religious ones. Furthermore, using *surparasti* reveals that not every country follows the *kafala* system*,* which, as shown in the previous chapter, was a regional tool.

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[486] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 957

[487] Engelke, "Establishing Filiation (nasab), Op. Cit. p. 423; The translation of فرزند خواندگی *(— khandegee)* Noun Adoption. Sulaiman Haïm, New Persian-English dictionary. Tehran, 1962. 2 vols [1246], available at: New Persian-English dictionary, complete and modern, designed to give the English meanings of over 50,000 words, terms, idioms, and proverbs in the Persian language, as well as the transliteration of the words in English characters (uchicago.edu), accessed 20/11/2021

[488] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 959

3.1.10 Iraq

Muslim Population	98.9% of the population is Muslim.
State's religion	The state's religion is Islam—art. 13 of Iraq's Constitution (1925). [489]
Source of law	The source of legislation is Islam under the constitution of 1925, certain matters, such as the personal status of Muslims and administration of the estate.[490] In 2004 It applied to everyone in all matters.[491]
Islamic doctrine	Iraqis follow Hanafi and Shi'ite schools of thought.[492]
Adoption	No clear policy on adoption.[493]
Laws and policies	Art. 37-40 Juvenile Welfare Act no. 76-1983

Summary of the children's provisions in Iraq:

Iraq also offers similar provisions as Iran for vulnerable children, with a different name. Iraq's law of guardianship is similar to adoption because it allows inheritance and integration of a child into the family. Iraq has no law to prohibit adoption. According to Yassari, the only evidence supporting the prohibition on adoption is found in the family law literature.[494] Iraq offers guardianship through various regulations.[495] Articles 37-40 deal with placing children with a family, which

[489] Iraq's Constitution 1925. Available at: http://www.geocities.com/dagtho/iraqiconst 1925032l.html, or via the constitution finder project at the T.C. Williams School of Law, University of Richmond, available at: http://confinder.richmond.edu., cited in Stahnke and Blitt, The Religion-State Relationship, Op. Cit. p. 67

[490] Iraq's Constitution (TAL) Ch. 1. Art. 7 (A). citied in Stahnke and Blitt. The Religion-State Relationship. Op. Cit. pp. 63, 67

[491] IRAQ CONST. (TAL). Available at: http://www.cpa-iraq.org/government/TAL.html. Citied in Stahnke and Blitt. The Religion-State Relationship. Op. Cit. p. 67

[492] Kourides, "Traditionalism and Modernism in Islamic Law. Op. Cit. footnote. 16. p. 494

[493] Yassari, "Adding by Choice: Adoption, Op. Cit. pp. 943-944

[494] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 955

[495] Juvenile Act 1962 and 1972; Juvenile Welfare Act 1983; articles 52-54 of the Iraqi Law on Personal Status of 1959, for more detail. See Yassari, "Adding by Choice: Adoption, Op. Cit. p. 956

permits the full integration of a child into the family and confers rights, such as education, maintenance, and financial support for the child's future security.[496] From a theological perspective, the money for a child's future is a form of inheritance because the prospective parent has to allocate an amount from their wealth. According to Yassari,

> "… child shall have a mandatory share in the estate of the adoptive parents, as each parent is obliged to bequeath to the child a share in his or her estate amounting to at least the smallest share of an intestate heir and up to a maximum of one-third of the estate."[497]

From a theological perspective, inheritance is one of the reasons for the prohibition of adoption, as evidenced by the literature review in Chapter One. I will discuss inheritance in Chapter Six. Iraq has similar reasons, as I discussed above in the case of Nigeria, for not recognising adoption, biological identity and inheritance. However, as shown, Iraq's guardianship allows all the conditions often claimed to prohibit adoption in Islam.

3.1.11 Pakistan

Muslim population	96.4% of the population is Muslim.
State's religion	Islam is the religion of the State under Art. 2 of the constitution.[498]
Source of law	Islam is the primary source of law.[499]
Islamic doctrine	Hanafi school of thought.[500]

[496] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 955

[497] Ibid …

[498] Pakistan's constitution (as amended in 2002)

[499] Art. 31; Stahnke and Blitt. The Religion-State Relationship, Op. Cit. p. 76; Choudhry Wasim Iqbal, Adoption of Child in Islam: An Overview of Adoption Laws in Pakistan, CW Iqbal - Al Tafseer-Biannual Journal, 2018, pp. 40-47, p. 43

[500] Russell Powell, "Catherine MacKinnon May Not Be Enough: Legal Change and Religion in Catholic and Sunni Jurisprudence," Georgetown Journal of Gender and the Law 8, no. 1 (2007): 1-42, pp. 5, 10, 11; Kourides, "Traditionalism and Modernism in Islamic Law. Op. Cit. footnote. 16. p. 494

Adoption	Law is silent on adoption.[501] However, case law shows that adoption is prohibited.[502]
Laws and policies	Section. 8 of the Guardians and Wards Act 1890[503]

Summary of the children's provisions in Pakistan:

Pakistan has no statutory provisions to prohibit adoption, but its position in its periodic report to the UN on children's rights shows it is forbidden. They claimed adoption contradicts Islamic principles, but did not implement this in domestic law.[504] Nevertheless, people in Pakistan readily practise informal adoption. According to Sabreen and Niazi,

> "Adoption is still practised in Pakistan, but no procedure or rules are there to regulate it. Kafālah is an Islamic alternative to adoption, but unfortunately, Pakistan does not provide any such system to facilitate issueless couples."[505]

The evidence shows that "some domestic adoptions in Pakistan are still informal (by verbal consent or adoption deed), or based on *kafala,* and are not endorsed by courts."[506] On the other hand, Iqbal states that despite the lack of legislation on adoption in line with secular norms, Pakistani courts accept adoption with permissible rights afforded to children and enforce it.[507] Pakistan's source of legislation is Islam. Pakistan theoretically prohibits adoption, but people readily practise it through different avenues.

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[501] Yassari, "Adding by Choice: Adoption, Op. Cit. pp. 943-944

[502] Sabreen and Niazi, "Adoption of a Child in Islamic and Pakistani Law: Op. Cit. p. 52

[503] Pakistan lawyers, Guardians and Wards Act 1890, available at Guardian and Wards Act, 1890 | PAKISTAN LAWYER, accessed 20/02/2021.

[504] Mudasra Sabreen and Samia Maqbool Niazi, "Adoption of a Child in Islamic and Pakistani Law: Problems of Implementation", available at: Vol 18, Issue 2_eng 05 Mudasra & Samia Maqbool.pdf_39.pdf (bzu.edu.pk), accessed 10/02/2021, p. 52

[505] Sabreen and Niazi, "Adoption of a Child in Islamic and Pakistani Law: Op. Cit. p. 52

[506] Malik, Adoption in Pakistan, Op. Cit.

[507] Choudhry Wasim Iqbal, Adoption of Child in Islam: An Overview of Adoption Laws in Pakistan, CW Iqbal - Al Tafseer-Biannual Journal, 2018, pp. 40-47, p. 43

According to Ali, adoption in Pakistan is an acceptable norm and is often practised by childless couples and relatives who might adopt deceased siblings' children. [508] People deploy various adoption methods and do not mention anything about Islamic law.[509] There is substantial evidence of such adoption practices in Pakistan. A celebrity from the UK, Saira Khan, adopted her daughter Amara in 2011 from the Edhi Foundation through PACT. BBC2 featured her adoption journey in the documentary "Adopting Abroad – Saira's Story."[510]

Similarly, law firms in the country provide a procedure for foreigners to adopt.[511] Foreign adopters would need paperwork for immigration purposes and official endorsement. Articles 7-8 of the Guardians and Wards Act 1890 outline the legal procedure for obtaining a guardianship order for vulnerable children in domestic settings. A district court can make a guardianship order if it is in the minor's best interests.[512] Foreign adopters must apply for a Declaration and Termination of Parental Rights before adoption.[513] The applicant must apply to the court for custody of an abandoned child to be endorsed.[514] Despite the widespread adoption in the country, Pakistan lacks effective legislation on safeguarding children.

Pakistan is a signatory to the Convention on the Rights of the Child 1989, and the Pakistani court does employ the welfare principle when children's matters are brought before it. The safeguarding provisions for vulnerable children are not

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[508] According to Ali, adoptive parents arrange with doctors to replace the child's biological mother's name at birth with the adoptive mother. While others would file an affidavit to court claiming that they have given the child volumetry without any pressure. They will take custody as their own and bear the cost of upbringing. See. Shaheen Sardar Ali, "Rights of the Child under Islamic Law and Laws of Pakistan: A Thematic Overview," Journal of Islamic State Practices in International Law 2, no. 1 (2006): 1-16, p. 9

[509] Ali, "Rights of the Child under Islamic Law and Laws of Pakistan, Op. cit. p. 9

[510] BBC2

[511] "There is no specific law regarding the adoption of a child in Pakistan, ... However, to facilitate foreign nationals or those residing outside of Pakistan, the practice mentioned below is prevailing in Pakistan." See Rafique Ahmed Mangrio, Child Adoption Procedure and Law In Pakistan, published 5th August 2015, Courting The Law, available at Child Adoption Procedure And Law In Pakistan (courtingthelaw.com), accessed 12/02/2021

[512] Ahmad Malik, Adoption in Pakistan, published 29th July 2017, Courting The Law, available at Adoption in Pakistan - Courting the Law, accessed 12/02/2021.

[513] Mario, Child Adoption Procedure and Law in Pakistan. Op. Cit.

[514] S. 10 of the Guardians and Wards Act 1890; Mario, Child Adoption Procedure and Law in Pakistan. Op. Cit.

adequate. According to the Committee on the Rights of the Child, Pakistan did develop residential care in the earthquake zone for orphans and vulnerable children, but this has not spread the practice to other parts of the country. According to the Committee, Pakistan prefers family-led alternatives for vulnerable children, and the lack of an informal welfare system concerns them. [515] According to Aref,

> "In traditional Islamic societies, a childless couple often chooses to foster children who are close blood, particularly their siblings' offspring. Muslims can fully raise these children, look after them, and support them, but children must continue to bear the name of their biological fathers."[516]

Further, the Committee on Children's Rights stated there was a lack of supervision of vulnerable children's placement, and the quality of care in institutions was poor.[517]

Pakistan has no central data on fostered and adopted children. However, the largest charitable organisation in Pakistan, the Edhi Foundation, claims to provide for the adoption of 250 babies annually since its establishment in 1951. They

[515] Reports Submitted by Pakistan as a State Party under Art. 44 of the Convention on the Rights of Child Convention, available at: http://www.refworld.org/topic,50ffbce526e,50ffbce5274,4ae9a11c0,0,CRC,,.html. accessed 20/02/2021. p. 12; Also, see Pakistan's third and fourth periodic reports submitted to the United Nations Committee on the Rights of the Child in 2008. http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.PAK.4.pdf. Accessed 20/02/2021. p. 12. and in 2003. http://www.ohchr.org/EN/HRBodies/CRC/Documents/Statement/ds-pakistan-2.pdf. Accessed 20/02/2021. See Sabreen and Niazi, "Adoption of a Child in Islamic and Pakistani Law: Op. Cit. p. 50

[516] Aref, Abu-Rabia. "Paternity Suits in Tribal Society in the Middle East," US-China Law Review 9, no. 1 (February 2012): 29-44, at p. 40

[517] Reports Submitted by Pakistan as a State Party under Art. 44 of the Convention on the Rights of Child Convention, available at: http://www.refworld.org/topic,50ffbce526e,50ffbce5274,4ae9a11c0,0,CRC,,.html. accessed 20/02/2021. p. 12; Also, see Pakistan's third and fourth periodic reports submitted to the United Nations Committee on the Rights of the Child in 2008. http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.PAK.4.pdf. Accessed 20/02/2021. p. 12. and in 2003. http://www.ohchr.org/EN/HRBodies/CRC/Documents/Statement/ds-pakistan-2.pdf. Accessed 20/02/2021. See, Sabreen and Niazi, "Adoption of a Child in Islamic and Pakistani Law: Op. Cit. p. 50

facilitated the adoption of 23,320 children.[518] Belkis Edhi from the organisation assesses the applicants who want to adopt before providing them with a child. Pakistan's adoption policies demonstrate that, despite the absence of legislation and reservations on adoption clauses due to theological reasons, people readily utilise this institution without oversight. The legal system seems to endorse adoption without regard for the country's position on Islamic principles. From a theological perspective, it appears that people in Pakistan, the majority of whom are Muslim, are not convinced that Islam prohibits adoption. Nor does Pakistan show a consistent framework for *kafala.*

3.1.12 Saudi Arabia

Muslim Population	97.1% of the population is Muslim.
States' religion	Islam under Art. 1 of the Consultative Council (Decree A/90), 1992.[519]
Source of law	Islam is the only source of law based on the Qur'an and the Prophet's *sunna*.[520] (Saudi Arabia, Basic Law of Governance: Royal Order No. (A/91) 27 Sha'ban, 1412, Article. 1 (1992). [521]
Islamic doctrine	It follows *Sunni* principles of Islamic Law[522] and Hanbali doctrine.[523]
Adoption	Adoption is not permitted, and only fosterage is permitted because it does not allow change of lineage.[524]

[518] Edhi Foundation, Children Services, available at: Children Services – Edhi Welfare Organization, accessed 25/02/2020.

[519] The Basic System of the Consultative Council (Decree A/90), 1992. "Saudi Arabia has no written constitution. After releasing the decree cited here, King Fahd Ibn Abdulaziz affirmed that the announcement of the basic system of government was only an authentication of regulations already emanating from sharia." Cited in Stahnke and Blitt. The Religion-State Relationship. Op. Cit. p. 71

[520] Stahnke and Blitt. The Religion-State Relationship. Op. Cit. p. 72; Alzahrani. The Adoption of Children. Op. Cit. p. 31

[521] Alzahrani. The Adoption of Children. Op. Cit. p. 31, footnote 83

[522] Alzahrani. The Adoption of Children. Op. Cit. p. 31

[523] Abd El-Mahdi Massadeh, "An Analysis of the Civil Service Disciplinary System of Saudi Arabia and Kuwait: An Islamic Perspective and a Comparative Overview," Dickinson Journal of International Law 10, no. 3 (Spring 1992): 461-484. P. 463; Kourides, "Traditionalism and Modernism in Islamic Law. Op. Cit. footnote. 16. p. 494

[524] Alzahrani. The Adoption of Children. Op. Cit. p. 11

Laws and policies	Executive Plan for Child Protection Code in Kingdom of Saudi Arabia, The Regulation for Children's Protection System (Protection Rights Law). [525]

Summary of the children's provisions in Saudi Arabia:

Saudi Arabia also does not allow adoption.[526] However, when a child lives with their sponsor, they employ another term, *ehtidan* and not *kafala.*[527] This is yet another Muslim country that shows a different term for children's provisions and not *kafala*.

In Saudi Arabia, a child's placement with the family has several requirements, including matching complexion. The child and the fostering family should not have a considerable difference in complexion.[528] The previous chapter clearly showed that the Qur'an and *ahadith* do not show the rules on skin colour match and these other conditions, except what was needed to resolve orphans' or vulnerable children's issues. However, as shown in chapter one, research shows that racially matched placement does help children with their identity. From a theological perspective, these developments are human thoughts rather than Divine principles. Algeria discussed earlier allowed a change of biological identity of children of unknown heritage, and Saudi Arabia allows even skin colour to be matched in the placement of children, which could be an attempt to resolve an identity issue. However, this shows that *Kafala'*s policy on the parent-child relationship could be developed similarly rather than on a theological basis.

Nevertheless, Saudi Arabia pays foster parents a generous amount for placing a child with them. The financial support is available to the child until they are

[525] Alzahrani. The Adoption of Children. Op. Cit. Footnote 271. p. 82

[526] "Abd al-Wahhâb al-Turayrî, the Fatwa Department Research Committee, Who Says Islam Prohibits Adoption, available at http://en.islamway.net/fatwa/53839/who-says-islam-prohibits-adoption (last accessed Dec18, 2015). (Trans. interpretatively from Arabic to English by the author of the dissertation). See also, Adoption in Islam, ISLAMWEB.NET (Nov. 9, 2013) http://www.islamweb.net/ehajj/article/135420/adoption-in-islam (last accessed Nov. 9, 2015)." See Alzahrani. The Adoption of Children. Op. Cit. Footnote 41. p. 8

[527] Alzahrani. The Adoption of Children. Op. Cit. pp. 82-83

[528] Alzahrani. The Adoption of Children. Op. Cit. p. 85

eighteen, or until they are in education, and lifelong if the child has special needs and requires long-term care.[529] Saudi Arabia has state-run and charitable organisations to provide care for orphans. According to Alzahrani, 40,000 orphans are supported by the Kingdom's twelve operational branches, while 88 charitable organisations support vulnerable children. These different terms and policies of Muslim countries demonstrate that they are influenced by culture rather than adhering to a consistent framework from a theological perspective.

3.1.13 Turkey

Muslim Population	98.6% of the population is Muslim.
State's religion	Islam is not the religion of the state. Art. 2.[530]
Source of law	Islam is not the source of law. [531]
Islamic doctrine	Hanafi[532]
Adoption	Turkey allows adoption in law.[533]
Laws and policies	Articles 305 to 320 of the Turkish Civil Code 2002

Summary of the children's provisions in Turkey:

Turkish law allows the legal adoption of children through civil law. The law dealing with adoption is the Civil Code of 2002. Before adoption, an applicant or prospective adopters must have cared for a child for at least a year, and adoption in the UK has a similar requirement.[534] The adopting parents must be married for at least five years, with a minimum age of 30 for both, and an 18-year age difference between the adopting parents and the child. A same-sex couple cannot adopt. In Turkish law, adoption affords adopted children all legal rights and privileges as those of

[529] Engelke. Establishing Filiation (nasab). Op. Cit. p. 421
[530] Turkey's constitution was amended in 2002.
[531] Stahnke and Blitt. The Religion-State Relationship, Op. Cit. p. 86
[532] Kourides, "Traditionalism and Modernism in Islamic Law. Op. Cit. footnote. 16. p. 494
[533] Alzahrani. The Adoption of Children. Op. Cit. p. 24
[534] Adoption and Children Act 2002 requires that a child should be living with a prospective adoptive family for a year before the execution of an adoption order.

biological children, including inheritance and identity.[535] From the theological perspective, Turkey's position on adoption has no religious input. This is significant for the Muslim people in the UK because yet another Muslim country allows legal adoption.

3.1.14 Tunisia

Muslim Population	99.8%
State's religion	The state religion is Islam. Art. 1. [536]
Source of law	It is not specified.
Islamic doctrine	Malaki's school of thought.[537]
Adoption	Tunisia legally permits adoption [538] and fosterage (*kafala)*
Laws and policies on adoption	-The Law of Guardianship and Adoption 1958 -Loi du 4 mars 1958 relative à la tutelle publique, la tutelle officieuse et l'adoption

Summary of the children's provisions in Tunisia:

Tunisia is another Muslim country that has legislated adoption and *kafala*. Tunisia legalised adoption in 1958. It also provides *kafala* to help orphans and vulnerable children. According to Yassari, Tunisia legalised adoption because people had been practising it secretly without state involvement.[539] Tunisian law on adoption allows for parent-child relationships and the severance of biological ties, and its people welcome this policy.[540] As evident in the previous chapter, the inheritance rights and

[535] Basak Basoglu; Yasan, Candan, "Turkey," American University Journal of Gender, Social Policy & the Law 19, no. 1 (2011): 319-328 at p. 326; Kurt, Ekrem Adoption in the Turkish Civil Law [Article]*Revue Hellenique de Droit International*, Vol. 64, Issue 1 (2011), pp. 89-94

[536] Tunisia's Constitution. (Amended 1993). Citied in Stahnke and Blitt, The Religion-State Relationship, Op. Cit. p. 70

[537] Odeh. Modernising Muslim Family Law, Op. Cit.; Kourides, "Traditionalism and Modernism in Islamic Law. Op. Cit. footnote. 16. p. 494

[538] Alzahrani. The Adoption of Children. Op. Cit. p. 24

[539] Yassari, "Adding by Choice: Adoption, Op. Cit. pp. 945-947

[540] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 945

change of surname or biological identity of adopted children are two main reasons for prohibiting adoption in Islam.[541] However, Tunisia permits adoption, along with *kafala.* Tunisia does not restrict adoptive parents' nationality, but Muslim parents can only adopt Muslim children.[542] Tunisia provides regular financial support for adopted and fostered children.[543] Much like in the UK, adoption is irrevocable unless the child's welfare is compromised.[544] Tunisia's legalisation of adoption shows they were addressing domestic social issues for children when legalising it, not on a theological basis. However, by offering *kafala,* they have left it to people to choose whether to employ legal adoption or alternatives.

3.1.15 United Arab Emirates (UAE)

Muslim Population	76% of the population is Muslim.
State's religion	Islam is the state's religion under Art. 7.[545]
Source of law	Islam is the principal source of law. [546]
Adoption	UAE's official position on adoption is silent. [547]
Laws and policies	The Muslim Personal Status Code of 2005 applies to all Emirati citizens except non-Muslims whose religious communities have their laws governing such matters. According to the Foster Care Act of 2012, eligible caretakers must be Muslim and Emirati citizens. Thus, non-Muslim Emirati citizens cannot become caretakers.

[541] See the literature review section in chapter one.
[542] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 946
[543] Engelke. Establishing Filiation (nasab). Op. Cit. p. 4
[544] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 945
[545] The 1971 Provisional Constitution of the United Arab Emirates was made permanent under Constitutional Amendment No. (1) of 1996. Citied in Stahnke and Blitt. The Religion-State Relationship. Op. Cit. p. 74
[546] Stahnke and Blitt. The Religion-State Relationship, Op. Cit. p. 74
[547] Yassari, "Adding by Choice: Adoption, Op. Cit. p. 943

Summary of the children's provisions in the UAE:

The United Arab Emirates' position on adoption remains ambiguous. The country has not enacted a prohibition on adoption, but it provides alternative care and placements for vulnerable children under specific conditions. Article 15 of the Foster Care Act places the responsibility for maintenance on the foster family, and the state offers no financial support to foster families, as stated in Article 16 of the Child Rights Law of 2016.

> "The community shall care for children and mothers and protect minors and others who cannot look after themselves for any reason, such as illness or incapacity or old age or forced unemployment, assist, and rehabilitate them for their interest and the community's interest. Welfare and social security laws regulate these matters."[548]

Articles 33-38 of the Child Rights Law provide protection against physical violence and "… intellectual, psychological, moral and mental wellbeing."[549] Children may be removed from their parents or guardians if they are subjected to violence or physical abuse.[550] Special child protection courts address offences against children.[551] The United Arab Emirates, like many other countries, lacks central data on the number of children in care centres or those in foster care. Furthermore, the United Arab Emirates also lacks a consistent framework, such as *kafala,* for children.

3.2 Summary of Muslim countries' practices on *kafala* and adoption

Not all Muslim countries utilise *kafala*; some have different methods for placing children with families. Iran employs *sarprasti* and *farzand khandegee* instead of *kafala.* Saudi Arabia implements *ehtidan,* while Egypt follows the guardianship system. This demonstrates that *kafala* is not the sole option in Islam. It also supports

[548] Jadalhaq, Iyad Mohammad, and Ibrahim Sulaiman al-Qatawnah. " The Protection of Minors in UAE Law as Persons in Need: An Analytical Study", Arab Law Quarterly 33, 3 (2019): 247-276, DOI: https://doi.org/10.1163/15730255-12334028. P. 249

[549] Jadalhaq, and al-Qatawnah. "The Protection of Minors in UAE. Op. Cit. p. 257

[550] Jadalhaq, and al-Qatawnah. "The Protection of Minors in UAE. Op. Cit. p. 257

[551] Jadalhaq, and al-Qatawnah. "The Protection of Minors in UAE. Op. Cit. p. 274

the argument in the previous chapter that *kafala* is not recommended in the Qur'an and *ahadith* and does not serve as a replacement for adoption. Instead, it was an existing system in the Arabian Peninsula, designed to care for children based on regional needs. Consequently, similar issues are observed with *kafala* in Muslim countries outside the Arabian Peninsula. The *kafala* policies in Muslim countries vary, suggesting that they are derived from individual interpretations rather than being firmly grounded in the Qur'an and *ahadith*.

Although some countries share the same school of thought, their policies regarding vulnerable children under *kafala* differ. These variations in policy reflect domestic social issues rather than strictly adhering to Islamic principles. Iran's *sarparatsi* (guardianship) is founded on the welfare principle and grants rights akin to legal adoption, including inheritance and a permanent parent-child relationship, except for its name. In Iraq, financial support for children or shares in the heritage are mandatory conditions for placing a child. These conditions are linked to the prohibition on adoption, as demonstrated in Chapter One.

It is important to note that many countries impose specific requirements for *kafala,* such as age, income, and marital status, which are not explicitly outlined in the Qur'an and *ahadith*. Some countries even consider the skin colour of the prospective parents and child, the age of the caregiver, income, health status, and infertility. It is worth noting that these *kafala* requirements appear to be driven by social norms rather than religious principles, particularly given that fostering and adoption in law have similar regulations.

One of the reasons adoption is not permitted is due to the children's biological identity. Initially, Algeria had a law stating that *kafala* parents could not alter a child's biological identity. However, Algeria later amended this law to permit the alteration of the biological identity of children with unknown heritage. This change occurred due to the social challenges that vulnerable children with unknown identities face. This alteration in the law suggests that the practice of *kafala* in Muslim countries does not consistently align with the teachings of the Qur'an. It also implies that other aspects of *kafala*, such as inheritance, financial support, and the parent-child

relationship, could be subject to change if the principle of welfare can modify biological identity. Some argue that these changes render *kafala* akin to adoption, but international law does not accept this, citing limitations on parent-child relationships under *kafala*.

The changes to *kafala* in Muslim countries are driven by domestic concerns rather than international legal norms or treaties. *Kafala*, a common alternative to adoption in some Muslim countries, does not fully address modern social issues and has necessitated adjustments to regulations to support vulnerable children better. This is because the Qur'an and ahadith do not provide a specific mechanism for placing children with families. The interpretation of Islamic jurisprudence is influenced by historical context, meaning that *kafala* does not reflect current social issues. Consequently, countries that implement *kafala* have had to adapt their rules and regulations to address the contemporary challenges facing vulnerable children. Thus, the mechanism for placing children with families varies.

Muslim countries vary in their approach to adoption. While some have legal adoption with full rights for children, others offer limited rights through various means, such as *kafala* in Iran and Iraq. Certain countries, including Algeria, Bangladesh, Egypt, Jordan, Indonesia, Morocco, and Saudi Arabia, have laws that prohibit the adoption of children. Meanwhile, Pakistan, Iran, Iraq, and the United Arab Emirates do not explicitly legislate against adoption, but their policies suggest that it is not permitted. Indonesia has inconsistent policies and relies on customary practices that the court can formalise through a petition. However, *kafala* in these countries falls short of fulfilling many fundamental rights of children, as it does not adequately uphold the "best interest principle" outlined in international law.

Although some Muslim countries occasionally consider children's welfare under international law in specific cases, they lack consistent policies for safeguarding vulnerable children. While a few nations have made exceptions to the prohibition of adoption, others strictly adhere to Islamic principles. For example, Algeria and Bangladesh have permitted adoption in certain instances under civil law, applying

the welfare principle when necessary. However, these decisions have not established precedents for widespread policy change.

Several Muslim countries have inconsistent regulations for protecting vulnerable and parentless children. They lack a comprehensive welfare infrastructure, unlike the UK, which has specific laws for safeguarding vulnerable children. The disparities in children's welfare standards across countries stem from practical resources and challenges rather than theological reasoning, as evidenced by their provisions. Similarly, the practices of adoption and *kafala* in Muslim countries are driven more by social considerations rather than by state intervention, focusing on serving the best interests of vulnerable children, in contrast to the approach taken in the UK.

3.3 Conclusion

Muslim countries do not consistently implement *kafala* worldwide, despite some adhering to the same school of thought in Islam. Furthermore, *kafala* lacks a uniform framework among those Muslim nations that apply it. The modifications to *kafala* by countries in other regions of the world reflect those in the Arabian Peninsula. These changes arise from domestic social issues rather than theological ones. Nevertheless, international law does not recognise *kafala* as equivalent to adoption. A few Muslim countries allow full adoption. While several countries lack legislation prohibiting adoption, individuals in those nations readily practise it without state interference. If one accepts that adoption is prohibited in the Qur'an, it implies that those states permitting it are not adhering to the revelations in the Qur'an. It is more plausible that these inconsistent policies on *kafala* and adoption by Muslim countries arise from the fact that the Qur'an and *ahadit*h only emphasise the welfare of vulnerable children rather than a specific mechanism. These historical principles for vulnerable children in the Qur'an and *ahadith* remain relevant even today, and modern adoption practices can better enshrine these principles by prioritising children's welfare alongside the contemporary social challenges facing vulnerable children.

Chapter. 4

Historical Adoption in the Arabian Peninsula before Islam:

a misplaced analogy

4. Introduction

Chapter three reveals that Muslim countries do not consistently implement policies regarding adoption and *kafala.* Given the diversity in Islamic jurisprudence, certain differences were anticipated. Nonetheless, it is the social issues, rather than theological ones, that have driven the changes to *kafala,* and similar discrepancies are observed in policies concerning adoption. There is no unified rationale among Muslim countries regarding the prohibition of adoption in Islam. Consequently, this chapter seeks to understand adoption from a historical perspective. First, what was the core purpose and procedure of adoption in the Arabian Peninsula before Islam? Second, what were the reasons for its prohibition in Islam, if any? To address these questions, this chapter thoroughly explores the cultures, practices, and customs at the rise of Islam, evaluating whether earlier studies found an accurate analogy to adoption or if an alternative explanation exists. This chapter utilises resources from contemporary historians, the Qur'an, and *ahadith* to address these inquiries. The historical sources include " *The Life of Muhammad:* A Translation of *Ishaq's Sirat Rasul Allah* " by Guillaume and " The History " by al-Tabarī (*Ta'rīkh al-rusulwa'l-mulūk),* which has been translated into English. First, it is essential to define adoption to determine whether the historical custom presented as its analogy accurately represents this institution.

4.1 Adoption in Legal, Historical and Theological Contexts

As demonstrated in chapter one, earlier studies on adoption in Islam not only indicated its prohibition but also highlighted various motivations from a historical viewpoint, such as the preservation of religion, infertility, legitimisation of children born out of wedlock, and social, political, and economic activities.[552] However, these studies did not explain how motivations, such as defence, social, and political aspects, were significant to children's care or how they served the desire for parenthood within the context of the parent-child relationship, particularly concerning adoption. Only one study by Naqvi defined adoption, referring to it as a

[552] See chapter one, Studies on adoption in Islam, section. 1. 3.5

practice of tribes and clans. This definition lacked citations, complicating the assessment of whether it arose from a theological, legal, historical, or regional (Arabian Peninsula) perspective. Therefore, it is essential to define adoption from these angles to understand its purpose and fundamental principles.

A legal adoption in the UK is for children under 19 who have never been married or entered into a civil partnership. An adoption application must be made before a child's 18th birthday.[553] Adoption is "a legal method of creating a relationship between a child and one who is not the child's natural parent in an artificial family relationship analogous to that of parent and child."[554] The law treats an adopted child like a biological child.[555] In other words, an adopted child will receive the same rights as a child born to parents. The welfare of children is paramount in all decision-making, and they are encouraged to participate in any decisions about their upbringing.[556] A child does not need to consent to adoption, but if they understand the legal process, there should be age-appropriate involvement, and their wishes and feelings will be considered.[557] Anyone aged twenty-one and above can apply to adopt. There are restrictions due to age-related health issues, parenting capacity, residence, finances and marital status, but the law does not state a maximum age limit for adopting parents.[558] There are no statutory requirements regarding adopters' health, but adoption agencies acquire a health report and a history of drug misuse under the regulations.[559] Health is a consideration in determining an adult's physical ability to fulfil their caring duties.

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[553] The application for adoption needs to be before the 18th birthday of a child, but it might run over 18 to complete the process.; Section 49 (4) of the 2002 Act; Article. 1 of CRC; See, Adoption and Children Act 2002, available at Adoption and Children Act 2002 (legislation.gov.uk), accessed 14/06/2020.

[554] Tomlin Committee, 1925 Cmnd 2401, p.3; Cited in Bevan. H.K. *Child Law,* London, Edinburgh: Butterworth &Co (Publishers) Ltd. 1989. p. 203

[555] S. 67 (1) of the 2002 Act

[556] S. 1 of the 1989 Act; The authority for age-related maturity assessment comes from *Gillick v West Norfolk and Wisbech.* See *Gillick v West Norfolk and Wisbech* AHA AC 112 (HL) 1986; Cretney, Masson and Bailey-Harris. *Principles of Family law,* Op. Cit. pp. 499-506

[557] *Gillick v West Norfolk and Wisbech* AHA AC 112 (HL) 1986

[558] Schedule. 4. Part. 2 9, Part. 3 (8), Part. 3 (14, 15, 16, 17, 18, 19), of Adoption and Children Act 2002; Harris-Short, Miles and George. *Family Law*. Op. Cit. p. 944

[559] Schedule. 4. Part. 2 of Adoption and Children Act 2002; Reg. 25.3 or 25.4 of AAR; (4)2 of Suitability of Adopters Regulations 2005

A couple or an individual may adopt. An individual can apply even if they are in a long-term, stable relationship. A married person or someone in a civil partnership applying on a sole basis must justify their partner's absence.[560] This absence may arise from permanent separation, ill health, death, or an inability to trace the individual for any reason.[561] Since an adopted child has legal rights from their adoptive parents, the identification and views of the absent partner are crucial in eliminating any contentious issues post-adoption.[562] Adopters must be domiciled and habitually resident in the UK for at least one year before applying for adoption.[563] A person over eighteen seeking adoption should not have been convicted of a specified offence (child abuse). Modern adoption practices for regulating children have their roots in Roman law.[564]

The literature on adoption in Islam also shows that people in the Arabian Peninsula practised adoption in ways similar to those of the Romans.[565] Hence, I will briefly explain Roman adoption. Roman adoption is well documented in the literature.[566] The history of adoption identifies two types of adoption by the Romans. In Roman times, adoption was governed by specific rules that mirrored a parent-child relationship. The first is adrogation or *adrogatio*, primarily associated with the possibility of family extinction for a childless man due to infertility. The second type of adoption was *paterfamilias* (kinship led by a father).[567] The first type of adoption in ancient Rome mirrored nature (replicating the biological parent-child

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560 Harris-Short, Miles and George. *Family Law*. Op. Cit. p. 944

561 Lowe and Douglas. *Bromley's Family Law*. Op. Cit. p. 706

562 Adoption Agencies Regulations 2005 amended by the Adoption Agencies (Miscellaneous Amendments) Regulations 2013 (AAR). 26(b). The full medical report requirements are set out in AAR 30(2)(b) and Schedule 4, Part 2. of the Adoption and Children Act 2002

563 Lowe and Douglas. *Bromley's Family Law*. Op. Cit. p. 705

564 For details on Roman influence in modern-day adoption, see Sherman. Charles, Phineas. 1924, *Roman Law in the Modern World*, *Adoption,* section. 496, Vol II, New York: Baker, Voorhis & Co, p. 83; Huard, "The Law of Adoption: Ancient and Modern. Op. Cit. p. 743

565 See chapter one, section 1.21., p.17

566 Sherman. Charles, Phineas. 1924. Vol II. p.86; Huard, "The Law of Adoption: Ancient and Modern," Op. Cit. p. 745; Gardner. *Family and Familia in Roman Law and Life.* Op. Cit. pp. 126-132; Gwatkin and Whitney (ed.) *Cambridge Medieval History*. Vol. 2. Op. Cit. p. 68

567 Sherman. Charles, Phineas. 1924. Vol II. p.86; Huard, "The Law of Adoption: Ancient and Modern," Op. Cit. p. 745; Gardner. *Family and Familia in Roman Law and Life.* Op. Cit. pp. 126-132; Gwatkin and Whitney (ed.) *Cambridge Medieval History*. Vol. 2. Op. Cit. p. 68

relationship) and had three primary conditions.[568] The adopter, male, must be older than the adoptee to reflect the father-son dynamic;[569] Lastly, eunuchs and unmarried men were not permitted to adopt. Unmarried men were excluded because it was assumed they could procreate.[570] Thirdly, the primary motive for adoption was religious worship (sacra privata), stemming from the absence of someone to perform the religious rites of a childless person and the fear of familial extinction. Roman adopters who lacked family members to fulfil this religious obligation for funeral rituals commonly adopted adult men.[571] Thus, a childless individual would adopt a person of any age, typically an adult man.

The Romans' second practice of adoption was known as '*patria potestas*', a male-led dynasty (*paterfamilias)* in which a male head held absolute power over his family members, whether sons or daughters.[572] This later practice was more of a family-run affair rather than a strict adoption. Under this practice, children were not allowed to own property, and their freedom was at the mercy of their fathers.[573] All other members had an equal share in wealth and duties.[574] Under this custom or

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[568] Infausto. "Perspective on Adoption." Op. Cit. p. 3; Brosnan. "The Law of Adoption", Op. Cit. p.333

[569] Brosnan, John Francis, "The Law of Adoption". *Columbia Law Review,* Vol. 22, No. 4 (Apr. 1922), pp. 332-342. https://www.jstor.org/stable/1111303 p. 333; Huard, "The Law of Adoption: Ancient and Modern," Op. Cit. p. 745

[570] The one who cannot have children or were like to have their offspring in future., See Brosnan. "The Law of Adoion", Op. Cit. p. 333; Infausto, Felix. "Perspective on Adoption." Op. Cit. p. 3

[571] Sherman. Charles, Phineas. 1924, *Roman Law in the Modern World*, *Adoption,* section. 496, Vol II, New York: Baker, Voorhis & Co, pp. 83-84; Huard, "The Law of Adoption: Ancient and Modern. Op. Cit. p. 743; Gareth. "Adoption in the Conflict of Laws." Op. Cit. p. 207; Huard, Leo Albert. "The Law of Adoption: Ancient and Modern," *Vanderbilt Law Review* 9, no. 4. pp. 743-764 (June 1956), accessed 15/01/2018. p. 743; Until 291 A.D., only men could adopt in line with the male-led family structure (*paterfamilias)*. Women could adopt from 291 A.D. onward, but adoption by women was not as common as among men. Women were not adopted, again, because males ran all the family's legal and financial affairs. See procedural aspects of Roman adoption, Lindsay, H. (2009). Procedural aspects of Roman adoption. In *Adoption in the Roman World* (pp. 62-78). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511657399.006, accessed 20/10/2017; Brosnan. "The Law of Adoption", Op. Cit. p. 333. This had to do with finances, which seemed ineffective, and Justinian decided to change it. See Gardner Jane F. *Family and Familia in Roman Law and Life*, Oxford: Oxford University Press. 1998. pp. 123-126; Infausto. "Perspective on Adoption." Op. Cit. p. 3

[572] For detail on *Pateria Potestas,* See Gwatkin and Whitney (ed.) *Cambridge Medieval History*. Vol. 2. Op. Cit. pp. 66-70

[573] Gwatkin and Whitney (ed.) *Cambridge Medieval History*. Vol. 2. Op. Cit. p. 67

[574] For detailed dynastical structure and its power and effects, See Sherman. Charles, Phineas. 1924. *The Paternal Power (Pateria Potestas).* Section 505, Vol II. p. 91-100

practice, adoptees were biologically related. For example, uncles or a related dynasty might take an unruly son thrown out by the *patria* (father).[575] The wealth of a new member merged into the dynasty's communal wealth upon joining, and the head of the dynasty had sole responsibility for the legal affairs of his family, including accountability for offences or claiming compensation on behalf of his family members.[576]

From the perspective of the Arabian Peninsula, adoption in Arabic is termed التبني 'al-tabinni' (adoption), and Lane illustrates that "تبنّاهُ He adopted him as a son."[577] The root letters of tabanni are "ب/ن/و-ي b–n–w/y",[578] and one of the words derived from this term is 'Ibn', which means son.[579] The term 'son' has multiple references in the Qur'an, whereas al-tabanni does not.[580] Hypothetically, al-tabanni denotes adoption within the context of the Arabian Peninsula and linguistically translates to a father-son relationship. Additionally, adoption from a theological perspective in the Arabian Peninsula is also depicted in a parent-child context.[581] According to Al-Qardawi,

> "Adoption is forbidden in Islam without a doubt. Islam forbids adoption, which is for a person to attribute to himself someone who is not his child, not his own, and whose wife did not give birth to him in his bed, so he attributes him to

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[575] Gardner. *Family and Familia in Roman Law and Life.* Op. Cit. p. 8should

[576] Sherman. Charles, Phineas. 1924. *The Paternal Power (Pateria Potestas).* Vol II. p. 91

[577] "تبنّاهُ *He adopted him as a son:* (Ṣ, Ḳ:) or *he asserted him to be,* or *claimed him as, a son:* (M:) and تبنّى بِهِ signifies the same. (Zj, TA.)" See Edward William Lane's Arabic-English Lexicon (Dictionary), available at: http://lexicon.quranic-research.net/data/02_b/198_bne.html, or http://lexicon.quranic-research.net/pdf/Page_0261.pdf, accessed 24/05/2024, p. 261

[578] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ب/ن/و-ي b–n–w/y", in *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 February 2023 <http://dx.doi.org.bham-ezproxy.idm.oclc.org/10.1163/1875-3922_dqu_SIM_000242>

[579] Alzahrani. *The Adoption of Children. Op. Cit. pp. 55-56;*

[580] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ب/ن/و-ي b–n–w/y", in: *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 07 February 2024 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000242>

[581] Malyan, Zulfia, Jaka Ghianovan, and Abil Ash. "Tabanni Concept of Al-Qur'an Perspective: In The Study of Ijtima'i Interpretation." *Riwayat: Educational Journal of History and Humanities* 7, no. 3 (2024): 1187-1198. P. 1190

himself, gives him his name and surname, and he becomes one of the family members."[582]

As previously demonstrated, the studies discussed in Chapter One indicate that Islam prohibits adoption. As illustrated by Al-Qardawi, Islam forbids the practice of adopting a child in such a manner that a man assigns his name to the child and integrates him into the family as a familial member. In Chapter Two, I have previously elucidated that such assertions from scholars fail to comprehend the ethos of children's welfare, implying that they do not recognise a child as integral to a family, which stands in contradiction to the teachings of the Qur'an and *hadith.* The importance of belonging and security for vulnerable children is safeguarded not only by law but also within the Qur'an and *hadith.* Nevertheless, for the purpose of this discussion, Al-Qardawi's statement offers a theological interpretation of adoption, wherein a child is regarded as a family member. Consequently, any practice or custom described as adoption from a historical standpoint in the Arabian Peninsula should, at the very least, denote a parent-child relationship or be contextualised within a parent-child framework, where a family acknowledges a child or adult as a member of the family.

4.2 Adoption in the Arabian Peninsula before Islam is a Misplaced Analogy

The practice or custom from the Arabian Peninsula, described as 'adoption' by earlier studies, lacks any of the principles mentioned earlier. The custom equated with adoption was *wala,* and the references to this term can be found in the Qur'an. *Wala's* root letters are "و/ل/ي w–l–y", and it comes in "مَوْلَى *mawlā* [quasi-act. part. /n., pl. مَوَالِي *mawāli*]."[583] This term appears in five different chapters of the Qur'an, and the revelations are in various contexts. The first is translated as master, protector and patron in Q.22:78. The second is friend or ally in Q.44:41, the third in Q.19:5, kinfolk and dependents, and the fourth in Q.33:5, freed slaves. The fifth in

[582] Al-Qaradawi.net, حكم التبنِّي في الإسلام, available at: https://www.al-qaradawi.net/content/-حكم-التبنى-في-الإسلام%D9%90, accessed 07/02/2024.

[583] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "و/ل/ي w–l–y", in: *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 01 March 2024 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001905 First published online: 2013

Q.4:33, inheritor and heir.[584] The same root letters also have another term, "وَالِي wālı", which is translated as protector, supporter, guardian, and ally in Q. 13:11.[585] The revelation in this verse Q. 13:11 states, "…. And if it is Allah's Will to torment a people, it can never be averted, nor can they find a protector other than Him."[586] As the revelation shows, Allah is the Guardian of His people, and a similar message is given in Q. 22:78. Allah says in Q. 22:78, "… So establish prayer, pay alms tax, and hold fast to Allah. He alone is your Guardian. What an excellent Guardian, and what an excellent Helper!"[587] These revelations, which use the term *mawla*, or Guardian, refer to Allah in the Qur'an. The revelations in the Qur'an concerning *wala* show Allah as the protector. I will explore later that in the Arabian Peninsula, tribes also played a role as protectors for vulnerable people in the region.

The second verse, related to *wala*, as shown above in Q. 19:5, is translated as 'kinfolk and dependents,' and its context reveals my concern for the faith of relatives.[588] The term in Q. 33:5, which connects the revelations to the prohibition of adoption, is translated by Badawi as "freed slaves." I will examine the rationale for the revelations in Q. 33:4-Q. 33:5 in the following chapter, as these two verses are linked to the prohibition of adoption. The only verse that shows a sign of the practice of *wala* is Q. 44:41. While the revelation in this verse does not address *wala* directly, it does mention its main characteristic. In Q. 44:41, Allah states that no kinship, protector, or patron will be helpful on the Day of Judgement.[589] These are the only revelations associated with the *wala* term, and the latter verse, Q. 44:41, confirms its existence.

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[584] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "و/ل/ي w–l–y", in: *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 01 March 2024 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001905 First published online: 2013

[585] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "و/ل/ي w–l–y", in: *Dictionary of Qurʾanic Usage*, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 01 March 2024 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001905 First published online: 2013

[586] Dr. Mustafa Khattab, The Clear Quran, available at: https://quran.com/13?startingVerse=11

[587] Dr. Mustafa Khattab, The Clear Quran, available at: https://quran.com/22?startingVerse=78

[588] Dr. Mustafa Khattab, The Clear Quran, available at: https://quran.com/19?startingVerse=5, accessed 20/05/2024

[589] Saheeh International, The Clear Quran, available at: https://quran.com/44?startingVerse=41, accessed 20/05/2024

From the perspective of the Arabian Peninsula, *wala* had a specific security-related role in the region, and its analogy to adoption is entirely misplaced. *Wala* did not involve children and had nothing to do with their adoption. *Wala* does not replicate a father-son or parent-child relationship, nor does it address the needs of vulnerable children. It did not create a father-son relationship in isolation to fulfil the desires of parenthood, nor was it, as earlier studies suggested, practised by Romans for religious purposes.[590] As demonstrated in Chapter One, earlier studies have indicated that historical adoption was driven by social, security, and economic motives.[591] These were not the motives for adoption. These were *wala*'s functions to serve its members' social, economic, political, and security needs. *Wala* was a widespread household custom among the people of the Arabian Peninsula, primarily for the security and protection of its members, alongside social and economic aspects similar to those found in other communities worldwide.[592]

Wala was customary, more akin to a security pact between tribes for the protection of their members, rather than adoption. In academic literature, scholars offer several interpretations of *wala*, including allegiances, adoption species, affiliations, agreements, contracts, and covenants. Mernissi translated *wala* as allegiances.[593] Lecker translated *wala* as a connection or association wherein the tribes connect or associate with others.[594] According to Lecker, under *wala*, an individual tribe had "… links with other tribes within families of tribes or tribe federations, each comprising several or many tribes."[595] Hodgson described *wala* as, "At every level, these groups defined themselves in terms of a real or fictive common descent, though newcomers might be adopted into them."[596] The use of the term adopted by Hodgson in this statement is not in the context of adoption but as a verb.

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[590] See Naqvi in chapter one, section 1.2.1.

[591] See chapter one, section 1.2

[592] Lecker, Michael. *Pre-Islamic Arabia,* in *The New Cambridge History of Islam.* Vol. 1, *The formation of the Islamic world, sixth to eleventh centuries*. Robinson, Chase F. (editor). Cambridge: Cambridge University Press, 2010. pp. 153-170; Hodgson. Marshall, G. S. *The Venture of Islam: Conscience and History in a World Civilization.* Vol. 1 The Classical Age of Islam. Chicago; London: The University of Chicago Press. 1974, p. 9

[593] Mernissi. *The Veil and The Male Elite.* Op. Cit. p. 30

[594] Lecker, *Pre-Islamic Arabia,* Op. Cit. p. 153.

[595] Lecker, *Pre-Islamic Arabia,* Op. Cit. p. 153.

[596] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 149

Adopted newcomers do not mean vulnerable children, as understood in modern-day adoption, nor do they represent a father-son relationship. Here, they are vulnerable individuals or small tribes, and I will return to show why they were vulnerable.

Smith used the terms "adoption" and "fellowship" to describe *wala*. Smith states that in some cases, a man became a tribesman through adoption, while in other cases, "…allies directly entered into the fellowship of the blood of the tribe as a whole."[597] Smith utilised terms like "adoption" and "fellowship" to describe *wala* because not all *wala* were the same regarding the rights granted to their new members. I will return to members' rights later and discuss how they differed under *wala* for different affiliates with tribes, due to their varying social statuses. However, Coulson's interpretation of this historical instrument indicates it is *wala* and not adoption per se. [598] Coulson states,

> "Prior to the advent of Islam, the unit of society was the tribe, the group of blood relatives who claimed descent from a common ancestor. It was to the tribe, not merely to its nominal leader, that the individual owed allegiance, and it was from the tribe's trust bases that he obtained the protection of interests. The exile, or any person hapless enough to find himself outside the sphere of this collective responsibility and security, was an outlaw in the fullest sense of the term, his prospects of survival remote unless he succeeded in gaining admittance into a tribal group by a species of adoption or affiliation known as *wala."*[599]

Coulson referred to this instrument as a form of adoption whereby an individual's allegiance was to the entire tribe rather than its nominal leader. The primary

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[597] Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 62

[598] Coulson's reference to *wala* for the practice that the other referenced as adoption from the Arabian Peninsula changed the direction of this study and focused on more information on this institution, which shows that scholars have studied this institution in two contexts. One set of scholars associate *wala* with slavery, while the others associate it with adoption. Wala is a vast subject and has been extensively studied by Coulson, Crone, and many other contemporary scholars.

[599] Coulson. *A history of Islamic law,* Op. Cit. p. 9

purpose of loyalty to the tribe was to seek protection, as individuals' survival in the area was precarious. This is supported by Willis, who states that a man's life was not valued in this violent tribal society.[600] Similarly, Belyaev also noted that a man "… lived as an outlaw who could be killed, and his property plundered without retribution."[601] As these scholars illustrate, it served as a mechanism for security rather than for the welfare of children. What is significant in Coulson's above statement is that he indicates this type of adoption, or affiliation, is known as *wala*. Coulson notes that *wala*'s principal aim is security, and this demonstrates it has no relevance to adoption because it does not foster a parent-child relationship or satisfy someone's desire for parenthood, nor, as in modern adoption, to protect the welfare of children. The purpose and practical procedure differ from adoption as previously defined in the apparent child context.

Likewise, recent studies on adoption in Islam have shown that individuals in the Arabian Peninsula adopted strong adult men for the sake of security.[602] These strong men were not adoptees but fulfilled a role similar to that of modern-day armed forces. Bonded by *wala,* which can be better understood as a form of security pact in the Arabian Peninsula, with its core purpose being the protection of people.[603] The Arabian Peninsula has been engaged in trade since the 10th century B.C.[604] Map Four, attached at the end of this chapter, illustrates the region's trade routes, which included overland routes connecting the Indian Ocean and the Mediterranean Basin. Makkah, situated in present-day Saudi Arabia, served as an economic hub and a crucial stop on the caravan routes; however, it was not a formally governed area.[605] Despite being ruled by various powers in parts and heavily contested due to its strategic trade position, the central territory of the

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[600] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 201

[601] Belyaev. E. A. *Arabs, Islam, and the Arabs Caliphate in the Early Middle Ages.* New York; London: Praeger: Pall Mall P. 1969. P. 62

[602] See chapter one, studies on adoption in Islam.

[603] Montgomery, W. Watt. *Muhammad at Medina.* Oxford: Oxford University Press, 1956, p. 78; Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 4; Lapidus, *A History of Islamic Societies,* 3rd edition, Op. Cit. p. 28; Sonbol, *Rise of Islam: 6th to 9th Century,* Op. Cit. p. 3

[604] Lewis. *The Arabs in History.* Op. Cit. pp. 22-35; Mark. "Kingdom of Nabatea." Op. Cit.

[605] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 147, 171; Hassan. *History of Islam* (Classical Period 571-1258 CE). Volume. 1. Op. Cit. p. 50; Hassan. *History of Islam* (Classical Period 571-1258 CE). Volume. 1. Op. Cit. p. 44

Arabian Peninsula (Makkah) remained beyond everyone's control. The function in this ungoverned territory was to safeguard its people against the common threat of raids and peril to life, necessitating strong men to protect these routes. The strong men, referred to as adoptees by earlier studies, were the Bedouin soldiers who played a crucial role in ensuring safe passage for trade, as evidenced by their treaties with the Romans and Sasanians.[606] For instance, when the Kinda tribe migrated to central Arabia following Yemen's invasion in the early 6th century, they entered into a covenant, or *wala*, with a prominent tribe for protection.[607] The pre-Islamic Arabian Peninsula exhibited significant demographic diversity, and the surrounding kingdoms influenced their cultures, as well as their social, economic, political, and religious practices.[608] The *wala* system appears to be shaped more by the administrative functions of those ruled kingdoms rather than adoption, as observed in other communities.

4.2.1 Influences of the ruled Kingdoms on *wala* in the Arabian Peninsula

In the 6th century, before the advent of Islam, Roman and Persian kings ruled the outskirts of the Arabian Peninsula, as shown in Map One.[609] As Maps Two and Four illustrate, the Romans annexed Palaestina Tertia and southern Syria.[610] Roman culture, politics, and economic practices had a profound influence on the region.[611]

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606 Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 153; Lewis. *The Arabs in History.* Op. Cit. p. 22; Hassan. *History of Islam* (Classical Period 571-1258 CE). Volume. 1. Op. Cit. pp. 70-72

607 Lewis. *The Arabs in History.* Op. Cit. p. 28

608 See chapter one, section 1.2.1, p. 17

609 See Map. 1, also in the appendix. 2, click on the side navigation bar for an easier transition between text and maps

610 Romans' annexation was around the first century A.D. Nabateans shared a good relationship with Romans and provided them with a base to attack Yemen to control this trade route. Romans failed, and their relationship with Arabs deteriorated, leading to the annexation of Arab territory by the Romans. The Roman Kingdom was known as Palmyra, established in the Syro-Arabian Desert near the western trade route. The period between the 3rd and 4th century A.D. was marked by conflict between Roman rulers, and meanwhile, the trade routes moved from western Arabia towards Egypt (Map. 2) and the Red Sea (Map. 4) between the 4th and 6th centuries A.D. The Nabataean cities declined under Roman rule and were destroyed by an earthquake around 363 A.D. The Byzantine infrastructure was also destroyed around 551 A.D. See Maps 2, 4, and Lewis. *The Arabs in History.* Op. Cit. pp. 27-28; Mark. "Kingdom of Nabatea." Op. Cit.; Lewis. *The Arabs in History.* Op. Cit. p. 26.

611 The Roman interests in the region were due to the trade route to the Indian subcontinent that they wanted to control. See Maps. 1 and 2; also see Mark. "Kingdom of Nabatea." Op. Cit. Augustus' reigned (63 B.C.-14 CE) in the year 25-24 B. C. when they attacked Yemen. See Map 1; for his biography, see Mark. "Augustus". *Ancient History Encyclopaedia*. Op. Cit.

Similarly, the Abyssinians and Nabateans also governed the outskirts of this region.[612] As depicted in Maps Two and Four, the Nabateans were the first kingdom identified in this region,[613] ruling a vast territory from the Gulf of Aqaba northwards to the Dead Sea,[614] including a considerable part of the Hijaz in present-day Saudi Arabia. The Nabateans were Arab nomads, their religion heavily influenced by Hellenised Aramaic culture (related to Greek).[615] As shown in Map Three, people were migrating from one end to the other throughout the Arabian Peninsula. Mass immigration occurred during Abyssinian rule, which also had a significant cultural impact on the central territory. When the Abyssinians captured Yemen in 525 AD, southern tribes migrated to northern Arabia, leading to the development of a nomadic culture and the assimilation of various cultures and customs.[616] People were familiar with each other's cultures and practices, including adoption. It cannot be suggested that pagan people were unfamiliar with the adoption practised by the Romans or other communities, as they were likely living among them. Therefore, *wala* cannot be equated with adoption because it did not establish a parent-child relationship for any reason. To some extent, *wala's* functions resemble those of the administrative infrastructure in the ruled kingdoms, which dealt with security, finances, and the political and social aspects of society, facing challenges from mass migrations and violence over resources.

The reason for the *wala* system in the Arabian Peninsula was that tribes lacked formal rules or a democratic infrastructure, except for those that governed their outskirts, as shown above. Consequently, these tribes established an independent political and arbitration infrastructure through wala, a form of tribal affiliation for

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612 See section 3.1. below, also Mark, Joshua J. "Kingdom of Nabatea". *Ancient History Encyclopaedia*. Published March 05, 2018. Available on: https://www.ancient.eu/Kingdom_of_Nabatea/#citation_info. Accessed 30/12/2019.

613 Nabateans ruled around 169 B. C. See Map 2

614 See Map 4

615 Mark, Joshua J. "Kingdom of Nabatea". *Ancient History Encyclopaedia*. Published March 05, 2018. Available on: https://www.ancient.eu/Kingdom_of_Nabatea/#citation_info. Accessed 30/12/2019.

616 Around the 6th century A.D., the kingdom of the Kinda tribe, who fled Yemen after the invasion, flourished in northern Arabia (present-day Saudi Arabia). However, their expansion collapsed and completely scattered with the rise of Islam. See Lewis. *The Arabs in History.* Op. Cit. pp. 30-31; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 127; Also spelt as Kindah, See Map. 3; Hassan. *History of Islam* (Classical Period 571-1258 CE). Volume. 1. Op. Cit. p. 41

potentially hundreds of individuals, rather than following a parent-child relationship within a family. According to Hodgson, the organisational social infrastructure of the Bedouin people resembled that of those settled territories ruled by kings, such as those in Syria and Yemen.[617] As Hodgson illustrates, *wala* was not analogous to adoption as defined earlier in a parent-child context. It constituted an administrative framework in an ungoverned territory inhabited by various independently managed tribes. The members of Prophet Muhammad's tribe (Quraysh) were formed on Bedouin principles, without any king or municipal administration. They consulted with other prominent clans for non-binding agreements, which helped them effectively manage their resources.[618] The people of the Arabian Peninsula were descendants of 'Adnan and Qahtan.[619] Table 1 shows that the Adnani originated from Northern Arabia and were regarded as the descendants of Ishma'il.[620] Table 2 below indicates that the Qahtani emerged from Southern Arabian Yemen, divided between the Himyarites and Kahlanis.[621] Despite the presence of different religious groups in the central territory of the region (present-day Saudi Arabia), the majority of the population practised paganism.[622] At the rise of Islam in 610 A.D., most Arab people were polytheistic, but there were also monotheistic religious communities, such as Jews and Christians.[623] Arabian society was tribal, comprising nomadic, semi-nomadic, and settled people.[624] This

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[617] Bedouin is another for nomads, sometimes referred to as desert dwellers see Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 148

[618] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 155

[619] Parolin, Gianluca P. "Membership in the Kin Group." In *Citizenship in the Arab World: Kin, Religion and Nation-State*, 29-40. Amsterdam: Amsterdam University Press, 2009. Accessed January 26, 2019. www.jstor.org/stable/j.ctt46ms9. p. 30; Hassan. *History of Islam* (Classical Period 571-1258 CE). Volume. 1. Op. Cit. pp. 36-41; For a detailed analysis of tribal and Bedouin genealogies, See. Szombathy, Zoltán. "Genealogy in Medieval Muslim Societies." *Studia Islamica*, no. 95 (2002): doi:10.2307/1596139. Accessed January 11, 2020. pp. 5-35

[620] See Table. 1

[621] Gibb. et al. *The Encyclopaedia of Islam,* New edition, Vol. 1, Op. Cit. p. 210; See Table. 2

[622] Ira. M. Lapidus, *A History of Islamic Societies,* 3rd edition, Cambridge: Cambridge University Press. 2014. p. 26; Lewis. *The Arabs in History.* Op. Cit. p. 21; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 144-145

[623] Hassan. *History of Islam* (Classical Period 571-1258 CE). Volume. 1. Op. Cit. 44; Sonbol, *Rise of Islam: 6th to 9th Century,* Op. Cit. p. 3; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 127; Lewis. *The Arabs in History.* Op. Cit. p. 29

[624] Lecker, Michael. *Pre-Islamic Arabia,* in *The New Cambridge History of Islam.* Vol. 1, *The formation of the Islamic world, sixth to eleventh centuries*. Robinson, Chase F. (editor). Cambridge: Cambridge University Press, 2010. pp. 153-170: Amira, Sonbol, *Rise of Islam: 6th to*

suggests that different tribes operated independently in close proximity, as illustrated on the map, frequently splitting due to resource shortages and forming new tribes.[625]

The fundamental difference between adoption and *wala* is that the latter served a critical function in protecting its people from frequent societal violence. The endemic violence arose from scarce resources, such as forage and water for their livestock. Most people, being nomadic (in Arabic, arab), settled anywhere.[626] The central region of Arabia was predominantly desert, dotted with oases.[627] The general lifestyle within the tribal system dictated that land was held communally, and everyone had a collective right over the tribe's pastures and water resources.[628] The Ka'ba was the hub for social and spiritual activities, serving for "... pilgrimage, sacrifice, meeting, and arbitration," and ensuring the tribes' security.[629] The tribes' livelihoods depended on livestock pasturing and agriculture, both of which relied on "an extended system of trading and raiding."[630] Tribal people reared camels for

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9th century, in Joseph, Suad. (editor). *Encyclopaedia of Women & Islamic Cultures.* Methodologies, Paradigms and Sources. Vol. 1, pp.3-15. Leiden-Boston: Brill. 2003. p. 3; Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. p. 23

[625] See at the end of the chapter four

[626] Hoyland, Robert G. *In God's Path: The Arab Conquests and the Creation of an Islamic Empire*. Oxford: Oxford University Press. 2014. Accessed December 31, 2019. ProQuest Ebook Central. pp. 59-60; Paul, Jurgen. "The State and the Military: a Nomad Perspective," Annales, September 2004, Vol. 59 (5-6), pp. 1069-1093, Hefte 12 (2003), n. 91 ("agriculture begins to suffer as more than a rather limited percentage of men is drafted— this percentage differs but does not exceed one in ten— whereas in nomadic societies, the ratio can rise up to one in four or even more"); Bashear, Arabs and Others, ch. 1 (a'rab); Sourdel, Dominique. *Medieval Islam,* France: Press Universitaires De France. 1979, (translated by) Watt. J. Montgomery London: Routledge & Kegan Paul. 1983. P. 37; Lapidus, *A History of Islamic Societies,* 3rd edition, Op. Cit. pp. 28-30; Peter A. Webb. *Creating Arab Origins: Muslim Constructions of al-Jāhiliyya and Arab History,* PhD thesis, 2014 at University of London, chap. 5.2. at p. 260, available at: https://eprints.soas.ac.uk/18551/1/Webb_3618.pdf, accessed 3/5/2019; Hourani. *A History of the Arab people.* Op. Cit. p. 10; Crone, Patricia. *The Rise of Islam in the World. Cambridge illustrated the history of the Islamic world*. Francis Robinson. (editor). Cambridge: Cambridge University Press, 1996. pp. 2-5; Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 42

[627] Lapidus, *A History of Islamic Societies,* 3rd edition, Op. Cit. p. 28; Hourani, Albert. *A History of the Arab people.* London: Faber and Faber Limited. 1991. p. 10; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 147; Bernard, Lewis. *The Arabs in History,* London: Hutchinson's University Library. 1950. P. 21

[628] Lewis. *The Arabs in History.* Op. Cit. p. 29

[629] The Quraysh were the custodians of the Ka'ba. See Hourani. *A History of the Arab people.* Op. Cit. p. 11

[630] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 150; Lewis. *The Arabs in History.* Op. Cit. p. 21

commercial activities, which were essential for transporting goods and people.[631] Individuals lived in close-knit kinship groups in these areas, typically consisting of "a father, his sons and their families," grouped into clans that inhabited hundreds of tents.[632] This not only indicates the function of *wala* but also the purpose. Those forming these bonds had their own large families within these protected connections or *walas*.

Furthermore, *wala* did not foster a parent-child connection at all, as the clans were headed by a chief (*sheikh)*, who was chosen partly due to his family descent and partly for his wisdom.[633] The clan leaders followed their ancestral traditions (customary law) to govern the tribe.[634] Since the central territory lacked any form of arbitrary formal institutions, the chief or head of the tribe also arbitrated in disputes.[635] The tribe leader had the duty to defend, help debtors pay their debts, support orphans and widows within the tribe, and provide for the poor.[636] Families within tribes had personal possessions and ownership of flocks and other livestock.[637] People within the clan had rights and responsibilities as group members.[638] As stated earlier, these tribes would frequently split. After the split, the tribes would have blood feuds with those who once had bonded through *wala.*[639] The breakaway section would develop another similar independent setup with separate grazing grounds.[640] As shown, these were not bonds akin to adoption

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631 Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 147-148; Hourani. *A History of the Arab people.* Op. Cit. p. 10

632 Lapidus, *A History of Islamic Societies,* 3rd edition, Op. Cit. p. 28

633 Chief was one of the family members of a prominent clan family. See. Lapidus, *A History of Islamic Societies,* 3rd edition, Op. Cit. pp. 28-30; Hourani. *A History of the Arab people.* Op. Cit. p. 10; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 149

634 Lewis. *The Arabs in History.* Op. Cit. p. 29

635 Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 149; Lewis. *The Arabs in History.* Op. Cit. p. 29

636 Roberts. *The Social Laws of the Qorân*. Op. Cit. p. 5

637 Lewis. *The Arabs in History.* Op. Cit. p. 29

638 Lewis. *The Arabs in History.* Op. Cit. p. 29

639 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 42-43; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 149; One of the reasons for the prohibition of adoption, as highlighted in chapter one, was that adoption had a role in building tribes, and it was discouraged in Islam by the Prophet to promote a nuclear family system. See chapter one, Sonbol's study, in section 1.3.2.; Sonbol. *Adoption in Islamic society.* Op. Cit. p. 47

640 Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 149; Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 51

because *wala* frequently dissolved and reformed with different sets of people. Numerous accounts confirm that these *walas* were intended for protection.

According to Hodgson, to defend their 'grazing rights', men in the groups often faced the risk of death.[641] These men were heavily praised as heroic in Arab poetry. Lapidus showed that "pre-Islamic poetry cultivated an Arab identity manifest in the virtues of *muruwwa (*bravery, loyalty to kin, and generosity).[642] This loyalty to kin was not to biological families but to tribes that protected them from attacks by rival tribes.[643] *Wala* held tribes in a close-knit community, which was significant for even simple journeys in the region that required prior negotiations.

According to Smith, desert conditions were challenging because they were constantly at war. To keep themselves safe, they formed a close-knit community within their tribes.[644] Lecker called *wala* an unwritten legal code. According to Lecker, "Pre-Islamic Arabia was not lawless or wild since an unwritten legal code controlled the life of its people."[645] People had defined territories they were familiar with and knew when they left their boundaries.[646] Mernissi states, "A person could not travel around Arabia without first undertaking careful negotiations to ensure protection according to the strict code of the tribal allegiances."[647] As Lecker shows, pre-Islamic Arabia was not lawless, as it was governed by an unwritten legal code. Individuals needed prior agreements, stipulated under *wala,* to enter the boundaries of other tribes to avoid punishment for trespass. In other words, they

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641 Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 149

642 Lapidus, *A History of Islamic Societies,* 3rd edition, Op. Cit. p. 31; *muruwwa* is explained in more detail as, "Both pre- and post-Islamic Arabic cultures contain well-developed concepts of *muruwwa,* or manliness, combining moral notions of integrity, fidelity, valour, chastity, and honour. In medieval Muslim societies and Sufi spheres, the ethical code of *futuwwa* (Arabic) or *jawanmardi* (Persian) was enacted by societies or guild-like alliances of young men bonded around ethics of honour and companionship. A sort of Persian cult of male strength and chivalry is still performed in the *zurkhana,* or "house of strength," where gymnastic exercises are carried out to the background of the chanted national epic, the *Shahnameh."* see, Marcia, Hermansen. "Masculinities." Encyclopaedia of Islam and the Muslim World. *Encyclopedia.com.*, available at:https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/masculinities

643 Sonbol, *Rise of Islam: 6th to 9th Century,* Op. Cit. p. 3

644 See, Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 40-72

645 Lecker, *Pre-Islamic Arabia,* Op. Cit. p. 157

646 Lecker, *Pre-Islamic Arabia,* Op. Cit. p. 153

647 Mernissi. *The Veil and The Male Elite.* Op. Cit. p.30

could not travel around the territory without a *wala or* these unwritten legal codes. *Wala* was important regarding security in the Arabian Peninsula and essential for tribes to organise social, political, and economic prosperity for their people.

The tribes were the primary political, social, and economic forum for the people.[648] According to Willis, people cherished *wala* significantly because this was "…the single most important personal possession in *Jahili* society.[649] They offered their people a unique path to well-being…"[650] Individuals did not have status or power without *wala,* the most critical way of life before Islam.[651]

As shown, *wala* was a sound defence for tribe members and a tool to create social, security, political and economic policies for its people rather than adoption. To summarise, adoption in Arabic is *al-tabanni*, which represents the parent-child relationship. *Wala* did not represent a parent-child relationship, nor were the adoptees taken as family members. Under *wala*, a family did not accept a child or even an adult for a reason, like the lack of ability to procreate or a vulnerable orphan child requiring care and protection. *Wala* had not only individuals or their families but also the whole *hayy* (kindred group), which means several large extended families. The unit of society consisted of a group of relatives, not only men taking oaths.[652] *Wala* involved entire tribes, comprising many grown men who could have

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[648] John Ralph, Willis. (ed.). *Slaves and Slavery in Muslim Africa*: Islam and the Ideology of Enslavement. Volume I. London: Frank Cass. 1985. p. 201; Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 27

[649] *Jahili (*also spelt *jahiliyyah)* (the Age of Ignorance) refers to the pre-Islamic period. The term jahili is frequently coined in the Qurʾan to refer to people living in the Arabian Peninsula before Islam, who practised customs that are now considered unacceptable such as infanticide, idol worship and slavery; *jahili'ayh* is another spelling for this in Qur'an, See, Q. 3:154; Q. 33:33: 48:26 and Q. 5:50; Sonbol, *Rise of Islam: 6th to 9th Century,* Op. Cit. p. 3; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 103-145; Hassan. *History of Islam* (Classical Period 571-1258 CE). Volume. 1. Op. Cit. 42

[650] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 201; *Jahili (*also spelt *jahiliyyah)* (the Age of Ignorance) refers to the pre-Islamic period, and this term is frequently coined in the Qurʾan to mean the people living before Islam practised customs that are now considered unacceptable such as infanticide, idol worship and slavery; *jahili'ayh* is another spelling for this, in Qur'an it refers to time and the people before Islam, See, Q. 3:154; Q. 33:33: 48:26 and Q. 5:50; Sonbol, *Rise of Islam: 6th to 9th Century,* Op. Cit. p. 3; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 103-145; Hassan. *History of Islam* (Classical Period 571-1258 CE). Volume. 1. Op. Cit. 42

[651] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 201

[652] Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 68

had large families, including children, wives, siblings, and parents, when they formed *wala* with other tribes. Unlike adoption, *wala* was widespread throughout the Arabian Peninsula, attaching lone individuals and weak tribes to powerful tribes. Some tribes had the power and stability to protect themselves and did not need *wala* for their protection.[653] However, the majority needing *wala* not as patrons but as beneficiaries were individuals, exiled men who found themselves without the backing of their original tribe and were vulnerable to attacks.

As shown in chapter one, previous studies showed that one of the reasons for the prohibition of adoption in Islam was that it allowed a change of biological identity.[654] This was not adoption. Instead, it was *wala.* In pre-Islamic Arabia, men repudiated by their tribes for committing heinous crimes sought sanctuary with stranger tribes.[655] They were known in new tribes as *jirān* (protected strangers).[656] In the early period of Islam, during the lifetime of Muhammad, fugitives ousted by their tribes joined other tribes and changed their lineage. For example, Micdād ibn Al-Aswad, who belonged to the tribe of Bahrā, murdered someone in his biological tribal kinship and fled to the Kinda tribe.[657] Micdād changed his tribal name, including *nisba (*attribution), from Bahranite to Kindite.[658] Micdād murdered someone again in his adopted tribe and sought sanctuary in another tribe known as Al-Aswad, the Zohrite. He exchanged his adopted identity once more with Micdād ibn Al-Aswad, the Zohrite.[659] His biological identity was Micdād ibn Amr. The relinquishing of biological identity was a common practice for fugitives. Adopting a new tribal identity for individuals was significant because it identified their connection with their protecting tribe.

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653 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 53-54; Crone, Patricia. *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate*. Cambridge Studies in Islamic Civilization. Cambridge: Cambridge University Press, 1987. doi:10.1017/CBO9780511522246. pp. 51-63; Mernissi. *The Veil and The Male Elite.* Op. Cit. pp. 30-31.; Belyaev. *Arabs, Islam, and the Arabs Caliphate*. Op. Cit. p. 61

654 See chapter one, section 1.2, pp 17, 26 and 28

655 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 49

656 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 49

657 Goldziher (*Lit, Blatt,* p. 26) cited in Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 54

658 See a glossary for a detailed explanation of *nisba*.

659 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 54

Depending on the conditions of *wala*, a newcomer in a tribe might have to relinquish their biological identity and adopt a tribal identity permanently during the oath ceremony. Freedmen and weaker tribes, such as the Jews at Madinah, did not have the power to defend themselves and adopted new identities.[660] Zayd Ibn Harithah, a case often referenced by recent studies as a precedent in adoption, was a freedman who relinquished his identity because he chose to remain with the Prophet Muhammad.[661] Zayd knew his identity before relinquishing it. I will discuss his *wala* with Prophet Muhammad in the next chapter, as part of the analysis of the revelation associated with the prohibition of adoption. Nevertheless, *wala* was a common practice.

Prophet Muhammad also attempted to seek *wala* with other tribes for his protection when he left Makkah. Prophet Muhammad lost his tribal protection due to his new faith after the death of his uncle Abu Talib in 619 A.D., who was the chief of the Quraysh tribe (Banu Hashim clan).[662] Prophet Muhammad approached many tribes and "hoped that one of them would believe in him, take him into their tribe, and thus rescue him from the people of Mecca."[663] A tribe from *Medina* accepted Prophet Muhammad, whom he later led "… as the political and military chief, the arbiter (*hakam*), and the legislator inspired by God himself."[664] As shown, *wala* was

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[660] "Thus, it is well known that the Jews of Arabia formed tribal groups of their own. In fact, Jewish tribes were sometimes strong enough to escape Arab protection altogether (and thus also the status of *mawālī*). But this was hardly the common pattern. The Jews of Fadak, for example, paid protection money to Kalb M. J. Kister, *On the wife of the goldsmith from Fadak and her progeny*, in *Muséon* , xcii [1979], 321); the Jews of Wādī 'l-Ḳurā similarly paid what would nowadays be known as *khuwwa* to Arab overlords (al-Bakrī, *Muʿdjam mā istaʿdjam* , ed. F. Wüstenfeld, Göttingen 1876-7, i, 30); and those of Yathrib were reduced to client status by the Aws and Khazradj [*q.vv*.] some time before the rise of Islam J. Wellhausen, *Skizzen und Vorarbeiten* , iv, Berlin 1889, 7ff.). Naturally, client status weakened the tribal organisation of the Jews; the same is true of modern pariah groups. Nevertheless, the Jewish tribes were not dissolved, nor were the Jews assigned to individual patrons: clientage was a relationship between groups. Similarly, the Arabised descendants of the Persian workmen and prostitutes of Hadjar clearly formed a quasi-tribal group of their own under ʿAbdī protection, for all that they adopted the *nisba* of their protectors (al-Ṭabarī, i, 986)." See Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 57

[661] See chapter four for a complete analysis of this case.

[662] Mernissi. *The Veil and The Male Elite.* Op. Cit. p.30; Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 118-120

[663] Mernissi. *The Veil and The Male Elite.* Op. Cit. p.30

[664] Al-Suyuti, Lubab al-tluqu/.fi asbab al-l1Hz,1 (Beirut: I)ar Ihya' al- 1984), p.69. citid in Mernissi. *The Veil and The Male Elite.* Op. Cit. p.31

a standard convention in Arabian society for security, social, and economic reasons, and people only changed their biological identity to identify with their tribes. Almost all studies analysed in Chapter One showed that Islam prohibited adoption because it allowed a change of the father's name. However, this was not mandatory for *wala*, as not everyone who joined through *wala* changed their original name to another tribe.[665] Before Islam, people did not change their father's name after entering into *wala* and only adopted a *nisba* (lineage) to identify with their tribes. According to Smith, "the tribal name was the name or nickname of the common ancestor."[666] The identity change was necessary for some individuals to demonstrate their affiliation with a powerful tribe. The reason earlier studies conflated *wala* with adoption is that it follows a procedure for implementing it.

4.2.2 The Conflation of *Wala* with Adoption

The tribes used *wala* for admitting individuals and tribes seeking protection, and the terms of this instrument depended on the status of the joining parties. The *wala,* or as I would call them, security pacts, were "… publicly constituted and renounced at the Ka'ba."[667] Executing *wala* in Ka'ba was necessary because this was "… to attach religious significance to this contractual relationship."[668] The oath was significant in tribal pagan societies before the advent of Islam. As shown in chapter two in the discussion on *kafala*, this was another historical instrument in the region, formed on oath.[669] The pagan people believed that their deities would destroy the man who took a false oath.[670] Without an arbitration system, the threat of deities was a tribal method for compelling people to adhere to agreements. The terms of *wala* were marked and sealed with blood to add significance to the agreements.[671] The risk of not publicly executing an oath was that the protection provider could

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665 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp.10-39

666 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 3-4

667 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 53-54; Crone, Patricia. *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate*. Cambridge Studies in Islamic Civilization. Cambridge: Cambridge University Press, 1987. doi:10.1017/CBO9780511522246. pp. 51-63

668 Willis. *Enslaved people and Slavery in Muslim Africa*. Op. Cit. p. 203

669 See chapter two, *kafala*, a current regime for children's care in Islam has roots in pre-Islamic Arabia.

670 Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 6

671 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 57

annul *wala* at their own will. Publicly executed oaths required public denunciation.[672] A large and powerful tribe was collectively responsible, like a governing body, for providing security and financial stability, but, most importantly, paying compensation or *diyah*[673] (blood money) for the murders committed by their tribe members.[674] The payment of compensation is unlike adoption. The principle of *diyah* is a form of compensation for causing death or loss of another tribe's property. The bond of *wala* was a norm throughout the Arabian Peninsula.[675]

Furthermore, once the *wala* was in place, individual members did not bear sole responsibility or accountability for their wrongdoings.[676] The patron tribe's primary responsibility under *wala* was to protect its members.[677] People did not have formal institutions to dispense justice and used the tribal arbitration system. In terms of members' rights, according to Smith, "The exact nature of this engagement might vary, but very often the covenant made the outlawed person the son of his protector and gave him the rights and duties of a tribesman."[678] It appears that this process was intended to show who their new protector was. The creation of a son or a protected stranger within his tribe might give the impression of adoption, but this mechanism had very different functions and purposes. These functions are the security of this stranger, paying compensation on their behalf and defending them from other tribes. Most importantly, this relationship is not one of a person becoming a family member of another, as in adoption. Instead, an individual through *wala* became a member of the whole tribe for protection, with his large family or clan. Unlike adoption, the *wala* bond had a core condition of common descent for accepting strangers.

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672 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 50
673 It is spelt in different forms, *diyah, diyyeh, or diya*
674 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 57-67
675 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 4-10
676 Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 162-165; Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 4-10; Lewis. *The Arabs in History.* Op. Cit. p. 30
677 Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 201
678 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 53-54

4.2.3 *Wala's* Primary Condition was the Common Descent

It is the condition of common descent that distinguishes *wala* from adoption. Adoption, whether historically or in the present, does not necessitate a common ancestor for adoptees and adopters. Meanwhile, before Islam *wala* was exclusively associated with individuals of similar heritage and status. *A*ccording to Smith,

> "Kinship then among the Arabs means a share in the common blood which is taken to flow in the veins of every member of a tribe in one word; it is the tribal bond which knits men of the same group together and gives them common duties and responsibilities from which no member of the group can withdraw."[679]

As Smith shows, *wala* held men together in a tribe. However, their belief in common blood was contrived and had no basis in reality. They were not related by blood. Instead, a kinship was formed through pacts. According to Beeston, kinship was the mere "grouping of two or more village communities into a unit called by a term corresponding to Arabic *Sa'b*, for purposes primarily economic, secondarily socio-political."[680] According to Wensinck and Crone, "… practically every lawbook states that *wala* should be regarded as a fictitious kinship tie…."[681] These *wala* bonds were not permanent. From the tribal people's perspective, it was a genuinely held belief that they were of common blood. From a factual standpoint, these bonds were frequently dissolved and created and had nothing to do with biological kinship. Because after *wala* bonds, they would grant a stranger the right to kill their biological kin. According to Smith, "a man grants his *jar* blood revenge against his own full brother."[682] In other words, after the *wala*, these men would grant strangers the right to kill their biological brothers. Biological kinship had no significance over the bonds created through *wala*. The belief in a common descent

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[679] Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 27; Crone. *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate*. Op. Cit. p. 51

[680] Beeston. "Kingship in Ancient South Arabia". Op. Cit. p. 258

[681] Wensinck and Crone. *'Mawlā'.* Encyclopaedia of Islam. Op. Cit.

[682] *Jar* is protected member of the tribe or stranger that joined the tribe later for protection. See Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 43-51

only mattered while they were in the same tribes, and after the breakup, they would regard each other as strangers. Earlier studies on adoption in Islam suggest that this was the manipulation of biological identity.[683]

Although factually, *wala* was established on a fictitious belief, though it did not hold the same meaning for those who practised it. This false notion of a shared bloodline suggests manipulation of biological identity. However, this fictitious claim to kinship by tribe lacked any ulterior motive for altering biological kinship, as it did not affect anyone's rights or responsibilities. These rights and obligations ceased upon the dissolution of *wala.* In Chapter Six, I will examine *ahadith* referenced by earlier studies from a theological perspective to illustrate the manipulation of biological identity or paternity prior to Islam. These *ahadith* addressed inheritance reform in Islam rather than *wala*. A transformation in biological kinship or identity represented a cultic belief that impacted tort liabilities. Individuals altered their biological identity to demonstrate their affiliation with another tribe, as previously noted, and this was not a manipulation of biological identity, but rather a shift in social identity or allegiance.

In the event of an attack, the victim tribe would state, "Our blood has been spilt."[684] The tribal ethos for pursuing revenge and compensation was that the murder of a tribe's *ahl* (member) constituted a murder of the whole tribe. Before Islam, tort liabilities were the responsibility of tribes and biological families. If a tribe member committed a murder, the victim's tribe pursued the offender's tribal kinship for *diyah* (compensation) and not (solely) the biological family members. Likewise, for *qisas* (retaliation or retribution), the revenge sought by victims for any wrongdoing was from the entire tribe, rather than the immediate biological family members of the offenders.[685] Although this was fictitious kinship, this was not a secret or

[683] I will analyse *ahadith* in chapter five, which the scholars like Naqvi, Sonbol and Ibn Kathir argued was about adoption, which is a claim to fictitious kinship. See chapter one, the section on literature review.

[684] Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 25-26; Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 201; Crone. *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate*. Op. Cit. p. 51

[685] Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 41-70

deliberate manipulation of biological identity to seek advantage or hurt anyone. It could be considered a morally and ethically questionable social practice because, as shown, tribal *wala* bonds were not permanent, frequently dissolved, and ties were often switched. However, this does not necessarily indicate that these were adoptions or deliberately manipulated biological identities, as the naming pattern suggests that identity change was a norm in the Arabian Peninsula.

As Table 1 shows, Prophet Muhammad's clan was known by the ancestral name Banu Hashim.[686] Before Islam, it was common among tribal people to change their names to identify with a cult or a religious goddess. Tribes often named their children after their goddesses.[687] Goddesses existed in the history of the Arab people, dating back to the Nabatean kingdom.[688] The Qur'an mentions these goddesses as *al-lat, al-uzza*[689] *and al-manat.*[690] The analysis of specific names found in historical sources, such as Al-Tabari, reveals that many companions and family members of the Prophet Muhammad were affiliated with *al-Uzza* or other ancient goddesses.[691] For example, *abd* is an Arabic term used for a slave, and many of the names consist of this designation*,* i.e. the slave of *al-Uzza, al-Lat* or *al-Manat*. The Quraysh, Prophet Muhammad's tribe, had adopted the goddess *al-Uzza.*[692] The following names of Prophet Muhammad's companions and relatives had the designation *'abd'*, such as Zayd al-Hibb (the beloved), b. Harithat b. Sharahil b. 'Abd al-'Uzza … b. Zayd al-Lat (Prophet's freedman);[693] Hakim b. Hizam b. Khuwaylid b.

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[686] Banu Hashim was nephew Prophet Muhammad's grandfather, which shows that tribes were not huge entities. See Lings, *Muhammad:* his life, Op. cit. pp. 6-9; Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 118-120

[687] McNeill and Waldman. (edit.*). The Islamic World.* Op. Cit. p. 10; A. Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah, with introduction and Notes. London, New York, Toronto: Oxford University Press. 1955. p. 38

[688] Lewis. *The Arabs in History.* Op. Cit. p. 30; Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 35-40

[689] Q. 53: 19

[690] Q. 53: 20; Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 20; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 156

[691] Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 565-566

[692] Khalid destroyed Al-Uzza, See, Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 565-566

[693] Al-Tabari. Muhammad, Ibn, Jarir. *The history of al-Tabarī = Ta'rīkh al-rusul wa'l-mulūk.* Vol. XXXIX, Biographies of the Prophets' Companions, and Their Successors. Translated and

'Abd al-'Uzza b. Qussay. (Kadijah's nephew, the wife of Muhammad);[694] Abu al-As b. al-Rabi b. 'Abd al-'Uzza b. 'Abd Shams b. Abd Manfa b. Qussay. (Muhammad's daughter Zaynab's husband and father-in-law of Ali ibn Talib);[695] Umar b. al-Khattab b. Nufayl b. 'Abd al-'Uzza b. Riyah b. Abdallah b. Qurt b. Rzah b. Adi b. Ka' b. (Second caliph of Islam);[696] Al Zubayr. B. al Awwam b. Khuwaylid b. Azad b. 'Abd al-'Uzza b. Qussay,[697] and Abdallah b. Budayl b. Warqa b. 'Abd al-'Uzza.[698] Allah informs people in the Qur'an that the goddesses had no authority and were mere names given by people and their forefathers.[699] As indicated in the Qur'an, the name holds no intrinsic value. A false belief in blood ties contradicts Islamic principles, but the concerns regarding biological identity are irrelevant to *wala.* Furthermore, the concept of *'wala'* did not extend to children as contracting parties.

4.2.4 *Wala* was not for the care of vulnerable children

Several historical sources, including Ibn Ishaq's *Sirat* Rasul Allah, possibly the earliest source in Islamic history, show no evidence of *wala* concerning children. Wensinck and Crone argued that *wala* cannot be granted to children.[700] *Wala* could not be arranged with children because they could not understand and fulfil their contractual obligations. According to Rahim,

> "An infant, even if possessed of understanding, is, however, under no obligation with respect to what is regarded in law as a benevolent act having a semblance of penalty, such as payment of blood money (*diyat),* which is realisable from the member of another tribe."[701]

In addition, the organisational and family dynamics within tribes in the Arabian Peninsula do not indicate a practice of adoption, such as the one established in law

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annotated by Ella Landau-Tasseron and Ehsan, Yar-Shater (editor). New York: State University of New York. 1998. p. 6

694 Al-Tabari. *The history of al-Tabarī.* Vol. XXXIX. p. 6

695 Al-Tabari. *The history of al-Tabarī.* Vol. XXXIX. p. 13

696 Al-Tabari. *The history of al-Tabarī.* Vol. XXXIX. p. 22

697 Al-Tabari. *The history of al-Tabarī.* Vol. XXXIX. p. 27

698 Al-Tabari. *The history of al-Tabarī.* Vol. XXXIX. p. 34

699 Q. 53: 23

700 Wensinck and Crone. *'Mawlā'.* Encyclopaedia of Islam. Op. Cit.

701 See Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 241

or historically by the Romans or any other community. Instead, vulnerable children were likely cared for by a wider kinship group within the tribe. The tribal leadership was ultimately responsible for the welfare issues of his tribe. As shown earlier, the tribe leader financially supported orphans, widows, and the poor. Since most people in the Arabian Peninsula lived in kinship groups within clans, they could provide communal care for vulnerable children, such as orphans and those in need.[702] This is a common practice not just in the Arabian Peninsula, as shown in Chapter Two, but in most Muslim countries, where extended families and the local community care for their orphans.[703] Since *wala* served a different purpose, it does not address any policies regarding children's care and protection. *Wala* was essential for the social, political, and economic prosperity of its members, but it had no relevance to the adoption of children. Consequently, the assertion that it enabled paternity manipulation lacks legitimacy. However, a few of the *wala* rules conflicted with Islamic principles.

4.3 *Wala's* rules conflicting with Islamic principles

Wala had specific rules that were incompatible with Islamic principles, as they breached the fundamental rights of vulnerable members of society. For example, as shown in Chapter One, recent studies showed that adoption allowed equal inheritance to adopted family members, and Islam disapproved of this policy.[704] *Wala* did not allow equal inheritance rights to its members, which is a reason for its reform in Islam.[705] The tribal customary law on inheritance was designed to keep the power and stability of the tribe.[706] *Wala* was predominantly male-led, and to maintain control, only mature men could inherit if they could fight and defend their property independently.[707] Inheritances among male members were shared equally regardless of the effort and asset contribution, including rights to communal

[702] A common practice in certain countries is Shaheen Sardar Ali's "Rights of the Child under Islamic Law and Laws of Pakistan: Op. Cit., p. 9
[703] See chapter two, section 2.4.3, p. 91
[704] See chapter one, section 1.2.2, pp. 23-24
[705] See chapter six, The Causes for Inheritance Reform in Islam, section 6.3.
[706] Esposito. *Women in Muslim Family Law.* Op. Cit. p. 39; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 148
[707] Esposito. *Women in Muslim Family Law.* Op. Cit. p. 39

ownership of pasturing grounds.[708] This means not all male members of the tribe received an inheritance share, but women also did not qualify for it. Women were considered weak members because they did not participate in battles or protect property; therefore, they did not receive a share of the booty and inheritance.[709] Likewise, wives and biological children did not get inheritance under *wala*.[710] Daughters also did not qualify for inheritance after marriage because they were not considered part of the tribe unless their husband was of the same tribe.[711]

The second rule of *wala* that was incompatible with Islamic principles was collective punishment, wherein men were not individually accountable for their actions. Under Islamic principles, individuals, not the group as a whole, are responsible for their conduct.[712] Allah says in the Qur'an that every individual is personally accountable for their actions, regardless of age or gender, not during their lifetime but in the afterlife for the *Qiyama* (resurrection or Judgement Day).[713] While under *wala,* male members shared typical responsibilities regardless of kinship or territorial proximity, including good and bad fortune.[714] The whole group was a legitimate target for the crimes committed by any of their members against other tribes.

Furthermore, as discussed earlier, pagans often named their children after the religious goddess or used fictitious patronymics.[715] Fictitious patronymics affect certain rights introduced in Islam for children, which stem from paternity and biological kinship. The rights include inheritance, marriage, prohibited degrees of kinship, acknowledgement of paternity, and maintenance of children and spouses,

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[708] Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 65-66; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 149

[709] Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 65-66; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 12

[710] Esposito. *Women in Muslim Family Law.* Op. Cit. p. 39-40

[711] Esposito. *Women in Muslim Family Law.* Op. Cit. p. 39

[712] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 344-348

[713] Q. 27:36

[714] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 148-149

[715] William, H. McNeill, and Marilyn Robinson Waldman. (edit.*). The Islamic World.* Chicago, London: The University of Chicago Press. 1973. p. 9; Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 24

which will be explored in more detail in Chapter Six.[716] Some pre-Islamic pagan societies practised polyandry.[717] In Islam, these practices impacted rights emanating from paternity, which then led to the regulation of marriage.[718] These are some *wala* rules that changed in Islam, but Islam did not prohibit this practice in its entirety, as shown by earlier studies on adoption.

The revelation in the Qur'an expanded over two decades, reforming many customs practised by pagan tribal societies in the Arabian Peninsula. Not all reforms are explicitly relevant to *wala*, which recent studies have described as adoption. As shown, *wala* had unjust rules that were changed in the early period of Islam. References to *wala* in the Qurʾan, *ahadith,* and Islamic jurisprudence demonstrate that it was never prohibited in Islam. According to Ibn Rushd, "The reliance of Hanafites in establishing *wala,* through the contract of clientage, are the words of exalted…"[719] Indeed, Allah says in the Qur'an,

> "And to everyone, We have made patronised relatives (i.e., inheritors) of that (property) which parents and nearest-kin have left, and the ones with whom you contracted oaths, (Or: your right hands have made a pledge) (so) bring them their assignment by will (by *wasiyyah*) ..."[720]

The Arabic script in the above verse uses *mawla* for 'patronised relatives (i.e., inheritors)'. The latter part, which states 'your hand-made covenant', refers to the practice of *wala.* In this verse, *wala* is translated as a covenant, which scholars analysed in Chapter One, epitomised as adoption. The discussion of *wala* in the verse concerns inheritance shares for those with whom they had alliances. Inheritance rules later changed, and this condition of inheritance under *wala* is no longer valid due to the revelation on inheritance in verse Q. 8:75. According to the

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716 Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 340-345

717 Al-Tabari. *The history of al-Tabarī.* Vol. XXXIX. Op. Cit.

718 Chapter five analyses the institution of marriage, the regulation of paternity, and its rights in detail.

719 Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 437

720 Q. 4:33, translation by Dr Ghali, available at: https://quran.com/4?startingVerse=33, accessed 20/05/2020.

revelation in Q. 8:75, blood relatives take priority for inheritance.[721] These rules on inheritance in Islam demonstrate that *wala* is an integral part of Islamic principles. According to Islamic jurists, inheritance arises from three types of relationships: one by descent, second by affinity, and third by *wala*.[722] This further demonstrates that *wala* was an accepted practice within Islam.

Furthermore, the two conditions of *wala* concerning tort liabilities, namely *diya* and *qisas* (compensation and retaliation), remain integral to Islamic principles. Both conditions are found in the Qurʾan.[723] These ancient functions of retribution, as in *wala*, are heavily ingrained in modern-day jurisprudence based on Islamic principles. *Diyah* and *qisas* are standard principles found in Islamic jurisprudence for wrongdoing and murder, as they were under *wala* before the advent of Islam. The authorities for compensation for premeditated murders are in the Qur'an: أَدَآء (*ada'ah*, payment) in Q. 2:178 and دِيَةٌ (*diyah,* blood-money) in Q. 4:92. The continuation of these rules in the Qur'an shows that the *wala* was reformed and not prohibited. Post-Islam, the offender's biological kin are responsible for compensating victims' families, and it is the victims' kin who have the right to pardon the offender rather than the tribe's head, as it happened before Islam.[724] The reason earlier studies did not discuss *wala,* despite conflating it with adoption, is that the theological sources explain it in the context of formerly enslaved people and not in a parent-child relationship.

4.3.1 *Wala* in the Qur'an and *Ahadith*

According to Wensinck and Crone, *wala* was an institution for formerly enslaved people and foreigners, and in Arabic, it means affinity and proximity.[725] The Arabic term for former slaves is '*walā' al-ʿitq'*, translated as affinity or kinship by

[721] Mustafa Khattab, the Clear Quran, https://quran.com/4?startingVerse=33&translations=158%2C131, accessed, 17/02/2024.
[722] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 437
[723] Q. 4: 92 and Q. 2: 178, Q. 2:179
[724] Sinha, Encyclopaedia Britannica. *Diyah,* Islamic Law. Published 2015. Op. Cit.
[725] Wensinck and Crone. *'Mawlā'.* Encyclopaedia of Islam. Op. Cit.; School of *Ahl al Bait*. *Walã' al-'Itq'.* Op. Cit., Crone, *Roman, Provincial and Islamic Law.* Op. Cit. pp. 36-42

emancipation.[726] The formerly enslaved people, their children and the people who freed them established kinship through '*wala'* and were known as '*mawla' (pl. mawālī)* or *'maula'* as appears in the translations of verses Q. 33:4 and Q. 33:5 in the Qur'an.[727] The use of the term *mawla* for emancipated slaves in the Qur'an does not mean that *wala* was a new institution recommended in Islam. According to Lapidus, *wala* was "… inherited from pre-Islamic Arabia."[728] As demonstrated earlier, *wala* was practised before Islam, influenced by the surrounding ruling kingdoms. Similarly, the term *mawali* was utilised in *wala* with non-Muslims in the Arabian Peninsula before it appeared in the Qur'an.

For example, Prophet Muhammad asked for information from *Shayu'kh* (religious scholars) of Ibn Humayd, Salamah Muhammad b. Ishaq Asim's tribe, and he replied that they were *Khazraj,* the *maula* of the Jews.[729] *Wala* is shown in the Qur'an as a provider and protector. *Wala* in the *ahadith* appears in the context of slavery. According to Crone, the early sources of *ahadith* did not show households adopting enslaved people or freedmen to serve and only discussed them in a manumission context.[730] This is the crux of confusion for those conflating *wala* with adoption. The reason *ahadith* discussed formerly enslaved people only in the context of manumission is that tribes did not accept them before Islam, unlike those whom they considered of common descent and equal in status.

4.4 Enslaved Individuals were not accepted through *Wala* before Islam

Enslaved people and those considered of low social status in society, such as "… vagabonds like the Sa'alik, itinerant musicians and tinkers", were not accepted by tribes through *wala* before Islam.[731] An enslaved person's only protection lay with

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[726] Crone, Patricia. *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate*. Cambridge Studies in Islamic Civilization. Cambridge: Cambridge University Press, 1987. doi:10.1017/CBO9780511522246. pp. 35-42; School of *Ahl al Bait*. *Walã' al-'Itq'.* Op. Cit.

[727] Wensinck and Crone. *'Mawlã'.* Encyclopaedia of Islam. Op. Cit.; see chapter five for a complete analysis of this verse Q. 33:5

[728] Lapidus, *A History of Islamic Societies,* 3rd edition, Op. Cit. p. 60

[729] Al-Tabari. *The history of al-Tabarī = Ta'rīkh al-rusul wa'l-mulūk.* Vol.6, Op. Cit. p. 124

[730] Crone, Patricia. *Roman, Provincial and Islamic Law.* Op. Cit. p. 68

[731] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. pp. 201-202

their master, who was seen as equivalent to their property.[732] Enslaved people frequently suffered violence because they were considered part of the tribes' common property.[733] In other words, an enslaved person was not safeguarded like their master or clan as an equal human being within the tribe, but rather as a mere possession of their master. Enslaved individuals often suffered the consequences of blood feuds when tribes clashed with one another.[734] If a slave of one master was injured, they would seek revenge by harming the perpetrator's slave.[735] With the rise of Islam, enslaved people largely embraced the new religion because Islam promoted the principle of equality.

Allah says in the Qur'an, "O humanity! Indeed, We created you from a male and a female and made you into peoples and tribes so that you may get to know one another..."[736] According to the Qur'an and *ahadith,* no one has an advantage due to their social status.[737] The Qur'anic revelations appeared throughout the life of Prophet Muhammad, and "…. the tendency was persistently toward asserting individual rights based on equality before God."[738] In a *hadith,* Prophet Muhammad stated, "O humanity! Your Lord is one, and your ancestry is one. No Arab is superior to a non-Arab, nor is any non-Arab superior to any Arab. No white is superior to any black, nor is any black superior to any white except on account of their righteousness." According to Hodgson, equality was the core issue for people to move to this new order of life, where individuals were independent.[739] People in Islam could show "… a personal devotion to moral purity and this personal impurity implied to a just social behaviour: generosity to the weak and curbing the license of the strong."[740] In Islam, this was an opportunity to establish a new community

[732] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 202
[733] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 12; Hoyland and Pipes. *Muslims and Others in Early Islamic Society.* Op. Cit. p. 282
[734] Hoyland and Pipes. *Muslims and Others in Early Islamic Society.* Op. Cit. p. 282
[735] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 202
[736] Q. 49: 13, translation by Maarif-ul-Quran, available at: https://quran.com/49?startingVerse=13, accessed 06/06/2020.
[737] Q. 49:13; Al-Nawawī, Abu Zakariya Yahya Ibn Sharaf. *Riyad- us-Saliheen.* Commentary by Hafiz Salahuddin Yousaf and translated by Muhammad Amin and Abu Usamah Al-Arabi bin Razduq. Royad. Saudi Arabia; Darussalam. 1998. p. 539.
[738] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 181
[739] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 172-173
[740] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 172

because more settled clans were unsettled due to the latest wave of religion. People were trapped between two main tribes in Medina, Aws and Khazraj.[741] Given that Islam emphasises equal rights for all, it explains why many enslaved individuals and those of low social status, who suffered under the existing system, embraced the religion before any other group and contributed to the emancipation of other Muslims.[742]

For example, Bilal was an enslaved person who was tortured by his pagan owner for his religious beliefs and was freed by Abu Bakr.[743] There are numerous references to slave emancipation among groups and individuals. The Qur'an contains several verses encouraging the emancipation of enslaved people.[744] In a narration by Abu Hurairah, Prophet Muhammad states that whoever sets an enslaved Muslim free, Allah will reward him by liberating every part of his body from hellfire.[745] Several authentic *ahadith* demonstrate a movement among the companions of Prophet Muhammad to emancipate enslaved people in large numbers.[746] According to a hadith, Prophet Muhammad's companions freed approximately eighty thousand enslaved individuals in one day.[747] Abdur-Rahman bin Auf, a companion of Prophet Muhammad, liberated around thirty thousand enslaved people. Another example is Abu Bakr As-Siddiq, the first caliph of Islam, and Abdullah bin Umar, the son of the second caliph of Islam, both of whom freed many enslaved individuals.[748] The *ahadith* do not specify the period for these numerous emancipations. The figures are also inconsistent with sources like Ibn Ishaq's sira Rasul Allah, which only highlights individual cases.[749] Nevertheless, a significant number of captives or

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[741] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. pp. 172-173

[742] Guillaume. *The Life of Muhammad:* A Translation of Ishaq's *Sirat* Rasul Allah. Op. Cit. p. 143; Roberts. *The Social Laws of the Qoran.* Op. Cit. p. 60

[743] Guillaume. *The Life of Muhammad:* A Translation of Ishaq's *Sirat* Rasul Allah. Op. Cit. pp. 143-150, 628-648

[744] Q. 2:177; Q. 90:13; Q. 9:60; Q. 4.92

[745] Sahîh Al-Bukhâri*. Book of Manumission of Slaves*: 2517*.* Book 49. *Hadīth*. No. 1. @ https://sunnah.com/bukhari/49; Al-Nawawī. *Riyad- us-Saliheen*. 1998. Op. Cit. p. 1020

[746] A *Hadīth* by Al-Bukhari and Muslim. Chap. 236, no. 1358 cited in Al-Nawawī. *Riyad- us-Saliheen*. 1998. Op. Cit. pp. 1019

[746] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 206

[747] Al-Nawawī. *Riyad- us-Saliheen*. 1998. Op. Cit. p. 1020; Also See Sonbol, *Rise of Islam: 6th to 9th Century,* Op. Cit. p. 7

[748] Al-Nawawī. *Riyad- us-Saliheen*. 1998. Op. Cit. p. 1020

[749] Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. p. 144-150

prisoners of war were freed due to various conflicts during the early period of Islam.[750]

Regardless of the motivations for emancipation or the precise numbers, the underlying issue was that enslaved people lost support from their masters due to their new religion and bore the brunt of the enemies of Islam.[751] As indicated earlier by Coulson, a person's survival was impossible without tribal backing, which guaranteed members' security and economic, social, and political welfare.[752] Regardless of how the enslaved person was treated, as long as they remained their master's property, they had someone to support them. However, the issue in early Islam was that these newly freed men faced social and economic isolation after emancipation. Since they left their masters, they required the financial means to survive independently.[753] The formerly enslaved people, referred to as *mawali* in historical sources, needed *wala* to participate in society. Within the tribal system, governance was conducted at the tribal level. As previously indicated, tribes admitted individuals for *wala* based on their lineage from common ancestors, and individuals who were formerly enslaved did not fulfil this criterion.

It was not uncommon for formerly enslaved individuals to be unaware of their biological heritage. The slave trade was prevalent in the Arabian Peninsula, as it was in other regions of the world.[754] Enslaved people were either captives or "purchased children with no family of their own, and it was customary for them to become part of the clan."[755] In the pre-Islamic Arabian Peninsula, it was customary to raid other tribes and capture prisoners as a form of bounty.[756] Prisoners included women and

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[750] There were several battles during the early period of Islam, See Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 289,370, 456, 566; Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 182

[751] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 170

[752] Coulson. *A history of Islamic law,* Op. Cit. p. 9

[753] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 202

[754] Cartwright, Mark. "Slavery in the Roman World." *Ancient History Encyclopedia*. Last modified November 01, 2013. https://www.ancient.eu/article/629/. Accessed 15/06/2019; Rodriguez, Junius P. (editor). *The Historical Encyclopedia of World Slavery*. Volume I, A-K. Oxford: ABC-Clio, 1997. pp. xvii-xviii

[755] Guillaume. *The Life of Muhammad*. Op. Cit. p. 780

[756] Guillaume. *The Life of Muhammad*. Op. Cit. p. 780

children, often sold separately into slave markets.[757] The enslaved people were not only sold as children but also transported across the region.[758] Enslaved people were regularly exchanged among owners and were known by the names of their masters.[759] The practice of uprooting slave people continued in the early period of Islam in Muslim society as well.[760] Nonetheless, the issue in early Islam was a significant number of formerly enslaved individuals requiring social and economic inclusion.

As previously indicated, before Islam, *wala* existed between an individual and a tribe or between two tribes, with mutual conditions depending on the strength of the parties involved. With the emergence of Islam, enslaved individuals received support through patronage.[761] A formerly enslaved person required a patron to assist him with a *wala*.[762] This was not a one-to-one relationship, like that of a father-son bond in the context of adoption. The patrons consisted of individuals or entire tribes, irrespective of the patron's legal identity.[763] For a formerly enslaved person, *wala* was "… a solemn agreement binding the *mawla,* his patron and the tribe."[764] The protocol for *wala* was akin to that of individuals with established heritage or those who did not require a patron. The purpose of *wala* in Islam was to safeguard the rights of the underprivileged. In other words, formerly enslaved people, or *mawālī,* were intended to receive all the benefits that a tribe afforded its members based on their lineages.

In Islam, *wala* was intended to establish a fundamental bond of mutual support and foster an inclusive community. According to Shelly, *mawlas* represented "… an

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[757] Guillaume. *The Life of Muhammad*. Op. Cit. p. 780

[758] Gibb. et al. *The Encyclopaedia of Islam,* New edition, Vol. 1, Op. Cit. pp. 22-*26*

[759] Ref on the slave trade

[760] Wensinck and Crone. *'Mawlā'.* Encyclopaedia of Islam. Op. Cit.

[761] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 437; Crone, Patricia. *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate*. Cambridge Studies in Islamic Civilization. Cambridge: Cambridge University Press, 1987. doi:10.1017/CBO9780511522246. pp. 35-42

[762] School of *Ahl al Bait*. *Walã' al-'Itq'.* Available on: http://en.wikishia.net/view/Walã%27_al-%27Itq, accessed on 06/08/2019; Wensinck and Crone. *'Mawlā'.* Encyclopaedia of Islam. Op. Cit.; Schacht, Joseph. *An Introduction to Islamic Law.* Oxford: Clarendon Press. 1964. 130

[763] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 203

[764] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 202

expression of communal identity based on shared social bonds."[765] As Shelly demonstrated, the purpose of *wala* was to safeguard formerly enslaved people within their new community by fostering close bonds, mutual support, and a communal identity as Muslims. In Islam, the criminal penalties were fixed, and a central system of charity was established to support "… individuals a status independent of clan associations, and so could foster individualistic culture traits."[766] However, these rights under *wala* for formerly enslaved people existed only in theory, and their treatment was not comparable to that of those with common descent and equal social status.

4.4.1 The requirement of the patron breached the fundamental rights of formerly enslaved individuals.

The issue was not *wala* itself. Instead, it was the treatment of formerly enslaved individuals resulting from the patronage system. Unlike adoption, the patronage system merely sponsored formerly enslaved individuals without recognising them as family members. Free individuals had the opportunity to establish kinship ties. They had a choice as to whether to adopt their name after *wala* with tribes, or they might be "accorded privilege in return for a service."[767] However, these rules did not apply to formerly enslaved individuals. They were required to have a sponsor to facilitate *wala*, which severely limited their fundamental rights. Patronage imposed numerous conditions on formerly enslaved people for sponsoring their *wala* with the tribe, including the obligation to provide their services for free, as well as restrictions on inheritance and marriage rights, which solely benefited the patrons.[768]

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[765] Dissertation on mawla, P. 16…comeback to it.

[766] Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 181; Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 49

[767] Hoyland and Pipes. *Muslims and Others in Early Islamic Society.* Op. Cit. p. 306

[768] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. pp. 437-442; John, Nawas. A client's client: the process of Islamization in early and classical Islam. Journal of Abbasid Studies, 1 (2014), brill publication. pp. 143-158; Bernards, Monique and John Nawas. (edit) Patronate and Patronage in early and classical Islam, in Islamic history and civilisation: studies and texts, (edited by Wadad Kadi and Rotraud Wielandt), vol. 16, brill Leiden: Boston. 2005

According to Averroës, emancipation was not truly in the interest of enslaved people. Those who emancipated enslaved individuals subsequently imposed new conditions, including depriving their heirs of inheritance, requiring consent for marriage, and ensuring their services were not remunerated.[769] These conditions of *wala* for formerly enslaved people are documented in Islamic jurisprudence in the context of manumission because, as demonstrated earlier, they were only accepted into the tribe after the advent of Islam.

The consensus among jurists of Islamic jurisprudence is that the *wala* belongs to a person who manumits enslaved persons, and their opinion is based on the authority of the Prophet Muhammad. Prophet Muhammad stated, "*wala* belongs to the one who sets (him) free."[770] The responsibility of blood payment and marriage guardianship on behalf of a formerly enslaved person was on the emancipator.[771] The *hadith* indicates that enslaved people, whose bond was established through *wala,* were not permitted to marry or own property without the consent of their patron or manumitter.[772] The *hadith* narrated by Jabir ibn Abdullah states that a marriage without the consent of the master is considered fornication.[773] According to jurisprudence, an enslaved person had the right to marry, but they needed permission from their master, as they remained the master's property. In the case of a divorce, the wife did not have the right to make a claim against her husband, as the interests of his master took precedence over those of his wife.[774]

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769 Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 437

770 Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 437

771 Wensinck and Crone. *'Mawlā'.* Encyclopaedia of Islam. Op. Cit.

772 Sunan Abi Dawud. Book of Marriage (Kitab Al-Nikah). Chapter. 683: An enslaved person Getting Married Without the Permission of His Owner. Book 12, Hadith 33: available at: https://sunnah.com/abudawud/12/33, accessed 20/08/2019 "Narrated Jabir ibn Abdullah: The Prophet (ﷺ) said: If any slave marries without the permission of his masters, he is a fornicator."

773 Sunan Abi Dawud. Book of Marriage (Kitab Al-Nikah). Chapter. 683: An enslaved person Getting Married Without the Permission of His Owner. Book 12, Hadith 33: available at: https://sunnah.com/abudawud/12/33, accessed 20/08/2019 "Narrated Jabir ibn Abdullah: The Prophet (ﷺ) said: If any slave marries without the permission of his masters, he is a fornicator."

774 An enslaved person could not own property because he was the property of his master. An enslaved person needed permission from his master to do a business or own property. See Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 247

The extensive ruling on inheritance concerning formerly enslaved people subject to *wala* demonstrates that it is a well-accepted institution in Islam.[775] A *hadith* indicates that a Muslim cannot inherit from a non-Muslim formerly enslaved person except in certain circumstances.[776] A narration in Malik states, "…. A Muslim does not inherit from *kafir,* by kinship, clientage (*wala)* …."[777] In other words, a Muslim may not inherit from a non-Muslim, including individuals whom he has emancipated or with whom he has established a contractual relationship for emancipation. Inheritance represents one of the nonreciprocal requirements of *wala* (clientage) within Islamic law. The emancipator is entitled to inherit the estate of his manumitted slave.[778] Inheritance rights were exclusively reserved for patrons, excluding formerly enslaved individuals. Consequently, formerly enslaved people did not inherit from their patrons under *wala*, which signifies a crucial distinction in *wala* between Zayd Ibn Harithah and the Prophet Muhammad (*wala* that existed before Islam between parties of equal status and lineage), a topic I will examine in the following chapter.

Wala for formerly enslaved people did not cease upon the death of the original parties. It was passed on to their heirs. Being a *mawla* was not merely a genealogical concern. It was a matter of identity and rights. Not only were the original parties or *mawali* subject to oppressive conditions, but their descendants also faced a similar fate. For instance, Abu Hanifah was known as a *mawla* because his grandfather had

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[775] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. pp. 437-442

[776] There are multiple *Ahādīth,* including *Umar ibn Uthman; Ali ibn Talib and Umar ibn Khattab.* Mālik Ibn Anas. A*l-Muwatta.* 1982. Op. Cit. p. 240; Burton. (Commentary & editor). *Abu 'Ubaid al-Qasim b. Sallam's K. Al-nasikh wa-l Mansukh*. Op. Cit. p. 144

[777] Mālik Ibn Anas. A*l-Muwatta.* 1982. Op. Cit. p. 240; *Kafir* is an Arabic term employed for a person who denies Islam despite knowing it. "*Kafir* (infidel, non-believer, Arabic: كافر): In Islamic literature, the term *kafir* includes all concepts that refer to non-belief (Yücedoğru, 2006; Ulutürk, 1986). The word *kafir* originated from the Arabic *kufr* (الكفر), meaning "concealing". *Kafir* is used to identify people perceived to be trying to deny or hide the truths of Islam even though they are witness to these truths. This term can only be used to denote non-belief in the tenets of Islam, and it cannot be used to imply the absence of any/all religious beliefs. Smith (1979, p. 38) also highlights that the term non-believer is not equivalent to the term *kafir*, because the latter always implies that the person believes in something (other than Islam)." See, Sevinç, K., Coleman III, T.J. and Hood Jr., R.W., Non-Belief: An Islamic Perspective. *Secularism and Nonreligion*, 2018. 7(1), p. 5. DOI: http://doi.org/10.5334/snr.111;Hodgson. *The Venture of Islam, Vol. 1,* Op. Cit. p. 174; Schacht. *An Introduction to Islamic Law.* Op. Cit. p. 131

[778] Wensinck and Crone. *'Mawlā'.* Encyclopaedia of Islam. Op. Cit.; Mālik Ibn Anas. A*l-Muwatta.* 1982. Op. Cit. p. 242

been emancipated. [779] *Mawali* could not participate in society, and since this status was inherited through generations, their children continued to endure this discrimination, despite not being part of the original affiliations.[780] Although *wala* was necessary in the tribal system, it compelled formerly enslaved people with genuinely unknown heritage to accept patrons, which meant they had to adopt a patron's surname as their own. This was not a manipulation of biological identity but rather a common practice for a weaker or less powerful tribe to assume a patron's identity. The requirement for a patron was a cruel practice for formerly enslaved individuals, necessitating reform, which I will explore further in the following chapter. Moreover, the practice of *wala* did not vanish immediately.

4.4.2 *Wala's* Practice After Islam and Inequality

Despite numerous *ahadith* and revelations in the Qur'an emphasising righteous behaviour and equality, people did not strictly adhere to these principles. Prophet Muhammad highlighted these concerns during his final pilgrimage. During his farewell *Hajj* (pilgrimage) to Makkah, the Prophet Muhammad addressed his people and urged them to abandon the arrogance and pride of their ancestors. He stated that those who are closer to Allah are the righteous and pious, rather than the evil and wrongdoers. All humankind are descendants of Adam, and Allah created Adam from dust.[781] He declared that everyone was equal and "there is no superiority of an Arab over a non-Arab or vice versa."[782] These *ahadith* by Prophet Muhammad demonstrate that the people of the Arabian Peninsula took pride in their lineage and discriminated fiercely against enslaved individuals and non-Arabs. Several

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[779] Willis. *Slaves and Slavery in Muslim Africa*. Op. Cit. p. 217

[780] Malik states, "The generally agreed-on way of doing things among us about a child of a slave by a free woman, while the father of the slave is free, is that the grandfather (the father of the slave), attracts the wala' of his son's free children by a free woman. They leave their inheritance to him if their father is a slave. If the father becomes free, the wala' returns to his mawali. If he dies and he is still a slave, the inheritance and the wala' go to the grandfather. If the slave has two free sons, and one of them dies while the father is still a slave, the grandfather, the father of the father, attracts the wala' and the inheritance." See Muwatta Malik. Book on. Setting Free and Wala'. كتاب العتق والولاء. Book no. 38 Hadith. 1487, https://sunnah.com/urn/41546

[781] Ahmad. Hadīth no. 22970 and Jami` at-Tirmidhi Hadīth no. 3270; both sources class this *hadīth* as *Sahih (*authentic); Hassan. *History of Islam* (Classical Period 571-1258 C.E.). Volume. 1. Op. Cit. pp. 77-78

[782] Hassan. *History of Islam* (Classical Period 571-1258 C.E.). Volume. 1. Op. Cit. p. 78

ahadith indicate that inequality and discrimination were prevalent during the lifetime of Prophet Muhammad, particularly against enslaved individuals. A hadith narrated by Al-Ma'rur bin Suwaid reveals that Prophet Muhammad stated,

> "… your slaves are your brothers. Allah has placed them under your authority and he who has his brother under him, should feed him from whatever he eats, and dress him with whatever he wears and do not burden them (assign burdensome task to them) beyond their capacity and if you burden them then help them."[783]

According to Hassan, Arab people were so proud of their lineage that they condemned all others.[784] Likewise, several *ahadith* illustrate the mistreatment of enslaved individuals. The *ahadith* particularly emphasise how people prided themselves on their lineage. According to a narration by Abu Hurairah, Prophet Muhammad stated, "Allah has removed the pride of *Jahiliyyah* from you and boasting about lineage. (A person is either) a pious believer or a miserable sinner, and the people are the children of Adam, and Adam is from dirt."[785] As shown, lineage and social status play a significant role in *wala* in the Arabian Peninsula. According to Goldziher,

> "If any part of Muhammad's achievement may be called original, it is part of his prophecy directed against the status quo. It did away with all the barbarous abominations of the cult and the society of pagan Arabs, their tribal life, and their worldview. It put an end to the *jahiliyyah,* "barbarous".[786]

Pride in lineage was a significant factor that sustained *wala* for a considerable time following the advent of Islam and was not prohibited, as earlier studies suggest when conflating it with adoption. According to Sourdel, "… to belong to an Arab tribe remained a sign of pride for two or three centuries, so much so that, as we

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783 Al-Bukhari and Muslim, citied in Al-Nawawī. *Riyad- us-Saliheen*. 1998. Op. Cit. p. 1025[783]

784 Hassan. *History of Islam* (Classical Period 571-1258 C.E.). Volume. 1. Op. Cit. 43

785 Jami` at-Tirmidhi. *The books of virtue.* Book no. 49 *Hadīth* no. 4337. Status. Hasan. Available at: https://sunnah.com/urn/638510. Accessed. 20.07.2019

786 Goldziher. *Introduction to Islamic Theology and Law.* Op. Cit. p. 13

have seen, the first converts attached themselves by the bond of clientship to a tribe…."[787] The practice of *mawlas* began to decline when there were no enslaved people left to be freed.[788] Despite the recommendations of the Qur'an and *ahadith*, the pagan population of the Arabian Peninsula did not immediately abandon their customs. Sourdel and Watt suggest that people continued their traditions even after embracing Islam.[789]

Mernissi asserts that the liberation of enslaved individuals represents one aspect, whereas the provision of humane treatment constitutes a distinctly separate matter.[790] Despite numerous revelations advocating for the abandonment of slavery, "… Muslim society remained a slave society for centuries and only renounced it under pressure from the colonial powers in the twentieth century."[791]

While numerous regulations were reformed within Islam, there is no evidence to support the notion that *wala* was wholly prohibited. The significant concerns for formerly enslaved individuals and their social status constitute the most compelling rationale for intervention by Allah, as elucidated in the Qurʾan at Q. 33:5, which clarifies the status of this vulnerable group that I will explore further in the following chapter.

4.5 Conclusion

This chapter illustrates that the practice recognised by earlier studies as analogous to adoption within the Arabian Peninsula is termed *wala*. The fundamental principles of *wala* cannot be equated to adoption, fostering, guardianship, *al-tabbani,* or *kafala*. *Wala* did not cultivate a father-son relationship as commonly conceived within the context of adoption, whether from a legal or philosophical viewpoint. Furthermore, none of the diverse interpretations of *wala* correspond

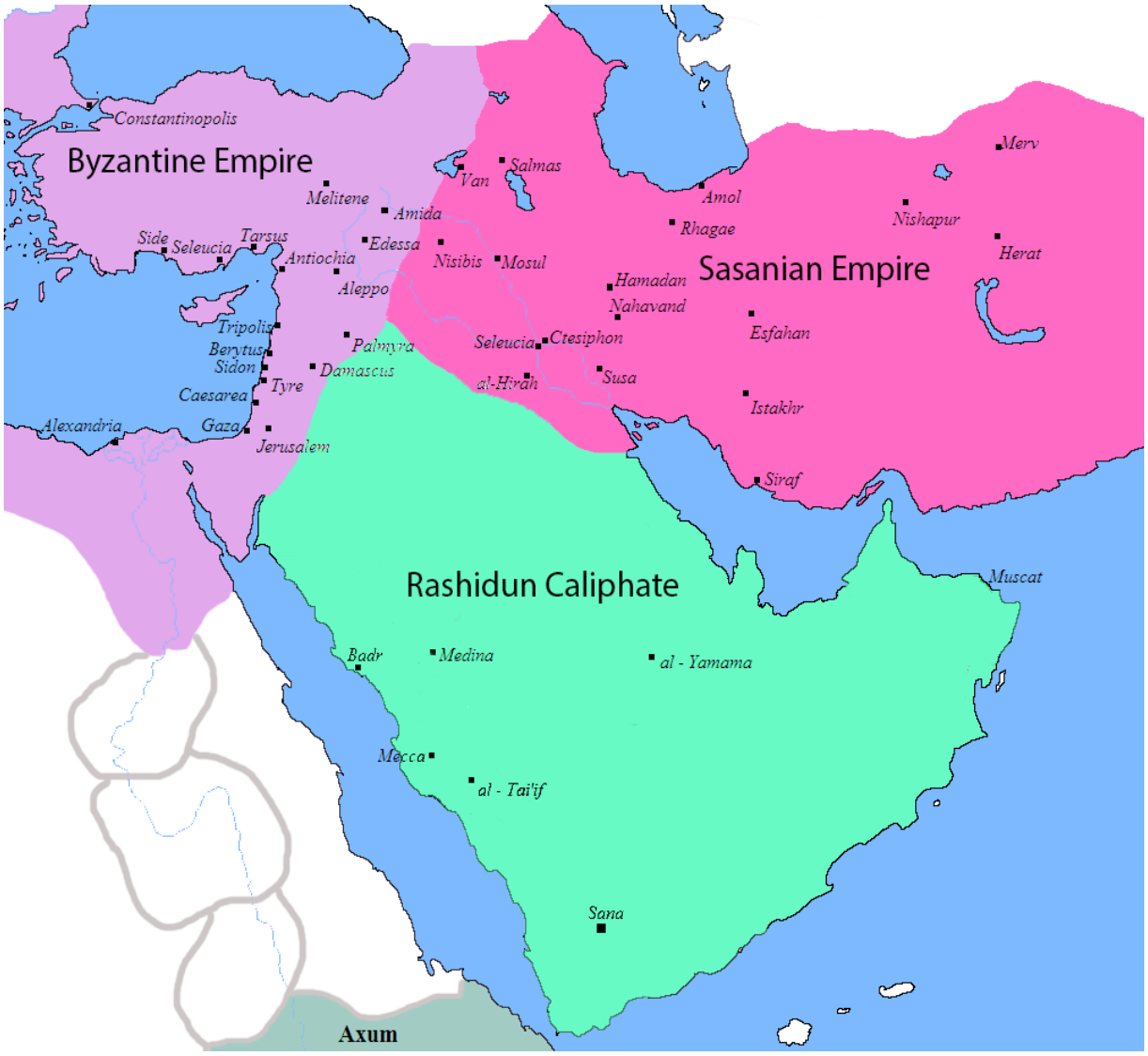
[787] Sourdel, Dominique. *Medieval Islam,* France: Press Universitaires De France. 1979, (translated by), Watt J. Montgomery London: Routledge & Kegan Paul. 1983. p. 38, 25
[788] Hoyland and Pipes. *Muslims and Others in Early Islamic Society.* Op. Cit. p. 286
[789] Sourdel, Dominique. *Medieval Islam,* France: Press Universitaires De France. 1979, (translated by), Watt J. Montgomery London: Routledge & Kegan Paul. 1983. pp. 37-38
[790] Mernissi, Fatima. *The Veil and The Male Elite:* A feminist interpretation of women's rights in Islam. United States: Perseus Books Publishing L.L.C. 1991. p. 150
[791] Mernissi. *The Veil and The Male Elite.* Op. Cit. p. 151

with the legal and theological principles that govern the care and protection of vulnerable children. *Wala* displays characteristics of an organisational structure with administrative functions aimed at self-governance for a specific group, in contrast to adoption, which establishes a parent-child relationship. *Wala* is translated as tribal allegiances, affiliations, associations, forms of adoption, connections, covenants, treaties, and agreements. *Wala* was a prevalent custom that served its members across various domains, including security, social, economic, and political dimensions. *Wala* was intended for individuals of the same lineage who pledged an oath of loyalty to the tribe, rather than to an individual, in matters of protection and other social issues. These were collectives of individuals uniting, which could involve a solitary man pledging an oath as the head of his clan. Individuals entering tribes through *wala* were often the heads of their own families, which typically comprised their wives and children.

Most studies overlook *wala* from an adoption perspective, as theological sources discuss it only in terms of slavery. Before Islam, enslaved individuals and those with low social status were never accepted as tribe members through *wala*. Following the rise of Islam, they could join tribes with patronage assistance, but this came at the cost of fundamental rights to marriage, inheritance, and labour. The *wala* concept for formerly enslaved individuals was not implemented as intended, despite many Qur'an and *ahadith* principles emphasising equality and social cohesion. This discriminatory treatment arose from *Jahiliyah* culture, not religion. *Wala* is a pre-Islamic concept tied to regional concerns and not comparable with adoption. Although some imperfections exist, *wala* was not explicitly prohibited in Islam. Instead, its patronage condition was abolished, which I will examine in the next chapter. Investigating physical contracts or *wala* is beyond the scope of this thesis, as some relevant sources are unavailable in English. These documents have survived and require further exploration to enhance understanding of the commitments and varying treatments based on descent and status.

Map.1 6th - 7th centuries A. D. [792]

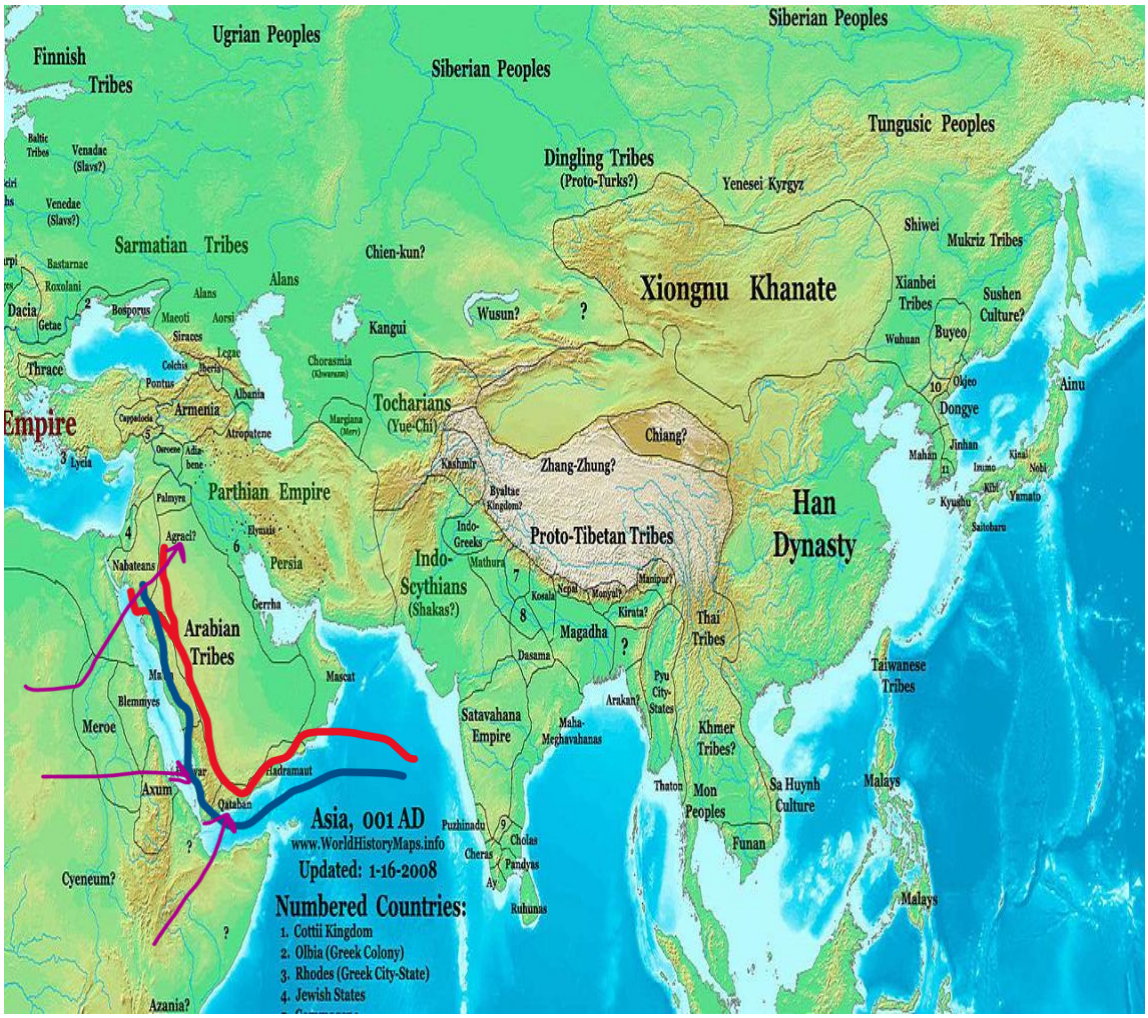
Map one shows kingdoms surrounding the central territory of the Arabian Peninsula, which is shown as the Rashidun Caliphate. The Byzantine and Sasanian Empires surrounded the central territory on the upper and right sides. On the left side were Nabateans at the bottom, where the map shows Sana. Persians on the right side at the lower side, where it shows Muscat.



[792] By Javierfv1212 and edited by HistoryofIran. - File: Pre_Islamic_Arabia.PNG, Public Domain, https://commons.wikimedia.org/w/index.php?curid=26144272, accessed 20/12/2019

Map 2 Trade Routes in the Arabian Peninsula [793]

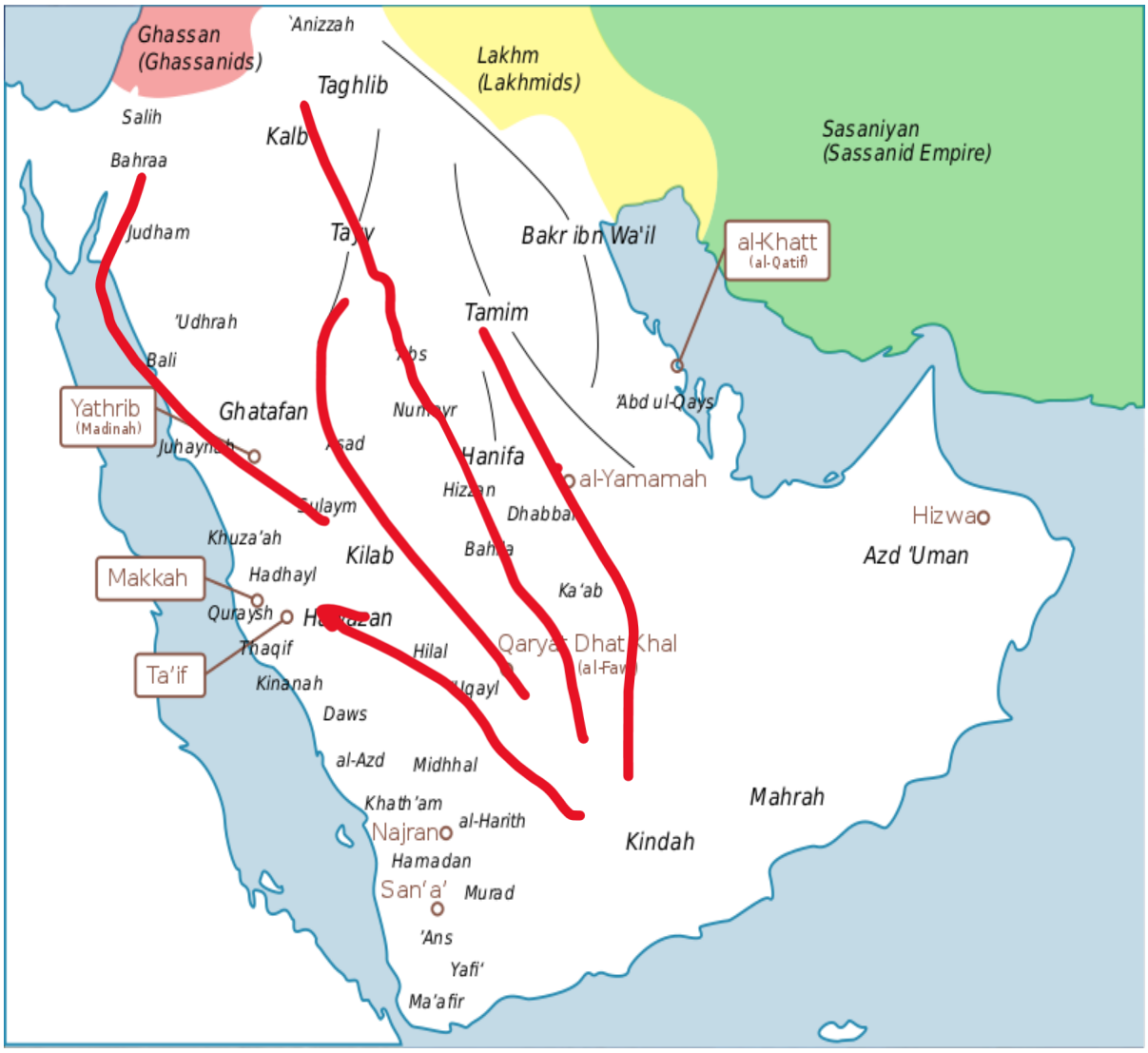
Map 2 shows land and sea trade routes through the Arabian Peninsula. The primary reason for the establishment of tribal and individual *wala* was to protect these routes.



[793] By Talessman at English Wikipedia, CC BY 3.0, https://commons.wikimedia.org/w/index.php?curid=3781555

Map 3: Kindah tribe's migration after invasion by the Byzantines. Similarly, the Himyarite people migrated during an invasion by Abyssinians.[794]

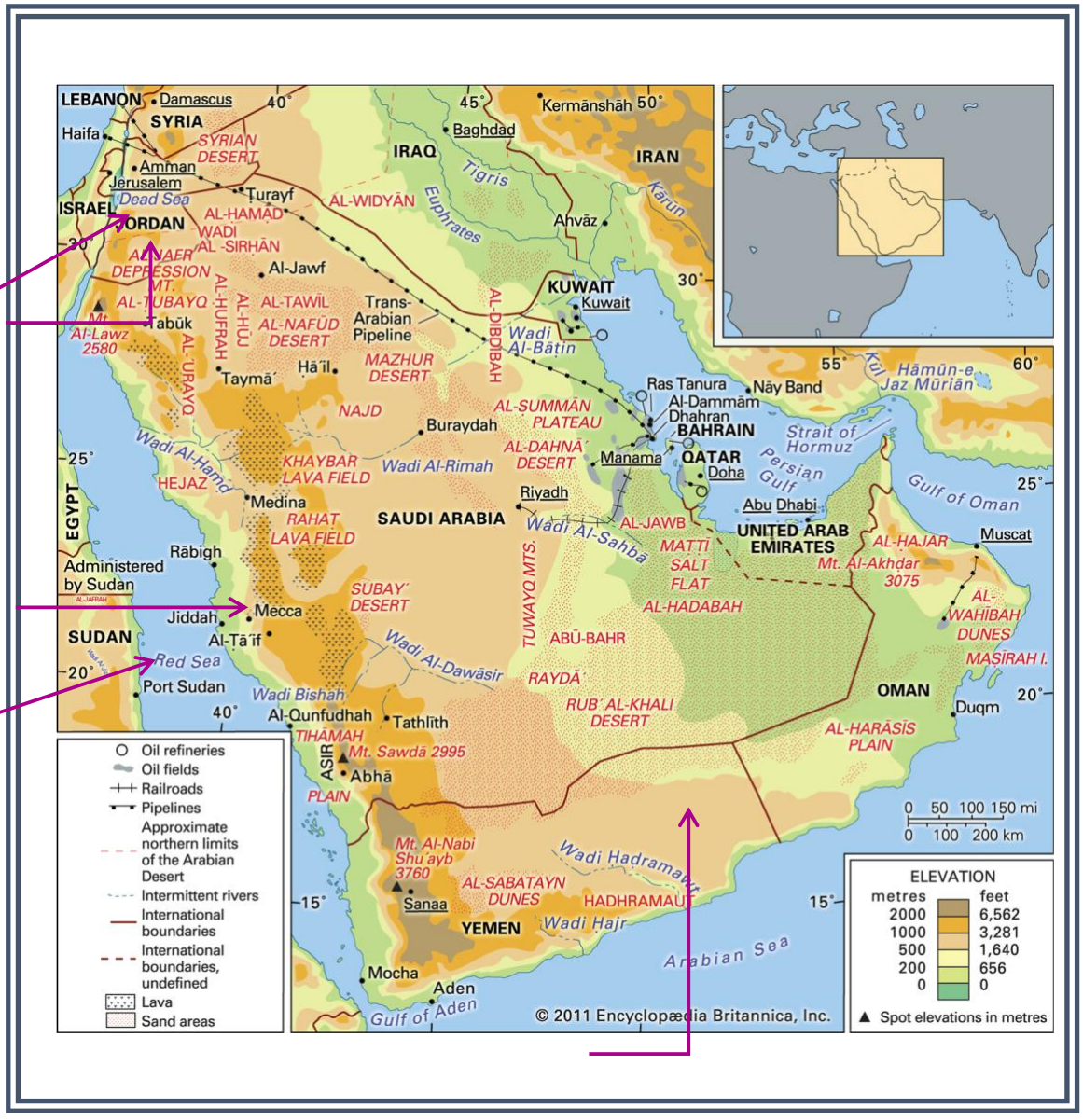
Map three shows different tribes that were possibly self-governing. The Kindah tribe broke up and fled to other areas in the Arabian Peninsula, including Makkah and Tamim. This territory did not have one set of rules or administration.



[794] Murraytheb موري (talk) - I created this work myself, with info from [see below], Public Domain, https://commons.wikimedia.org/w/index.php?curid=10201031 accessed 20/12/2019

Map 4 Modern-day map showing the Dead Sea and present-day countries[795]

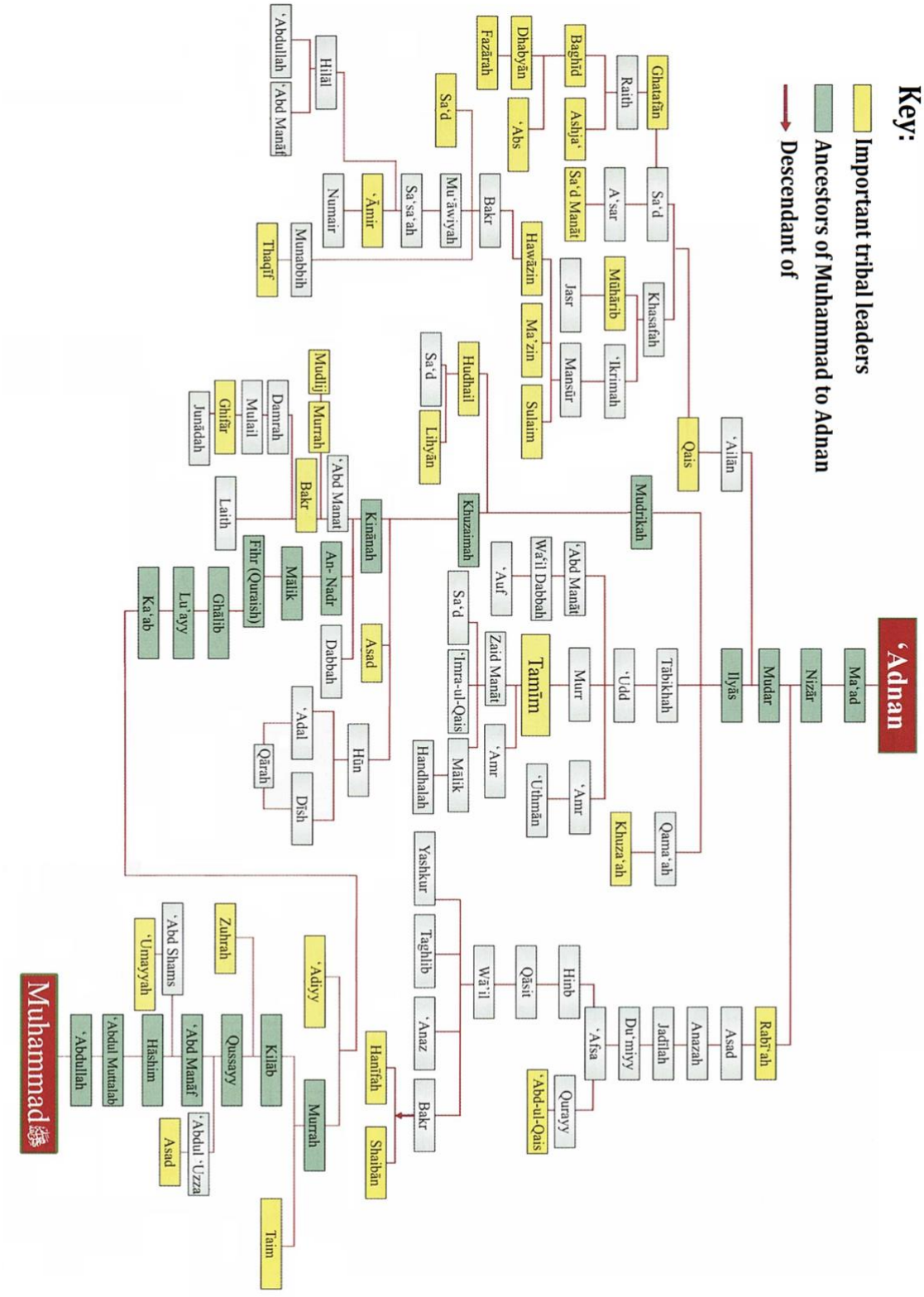
Arrows on the map indicate relevant locations, including the Dead Sea, as well as Roman-governed areas in present-day Jordan and Syria. The prominent rulers from the Roman, Persian, or Sassanian never ruled the central territory of Makkah, as shown by the arrow in the middle.



[795] Courtesy Encyclopaedia Britannia. Inc

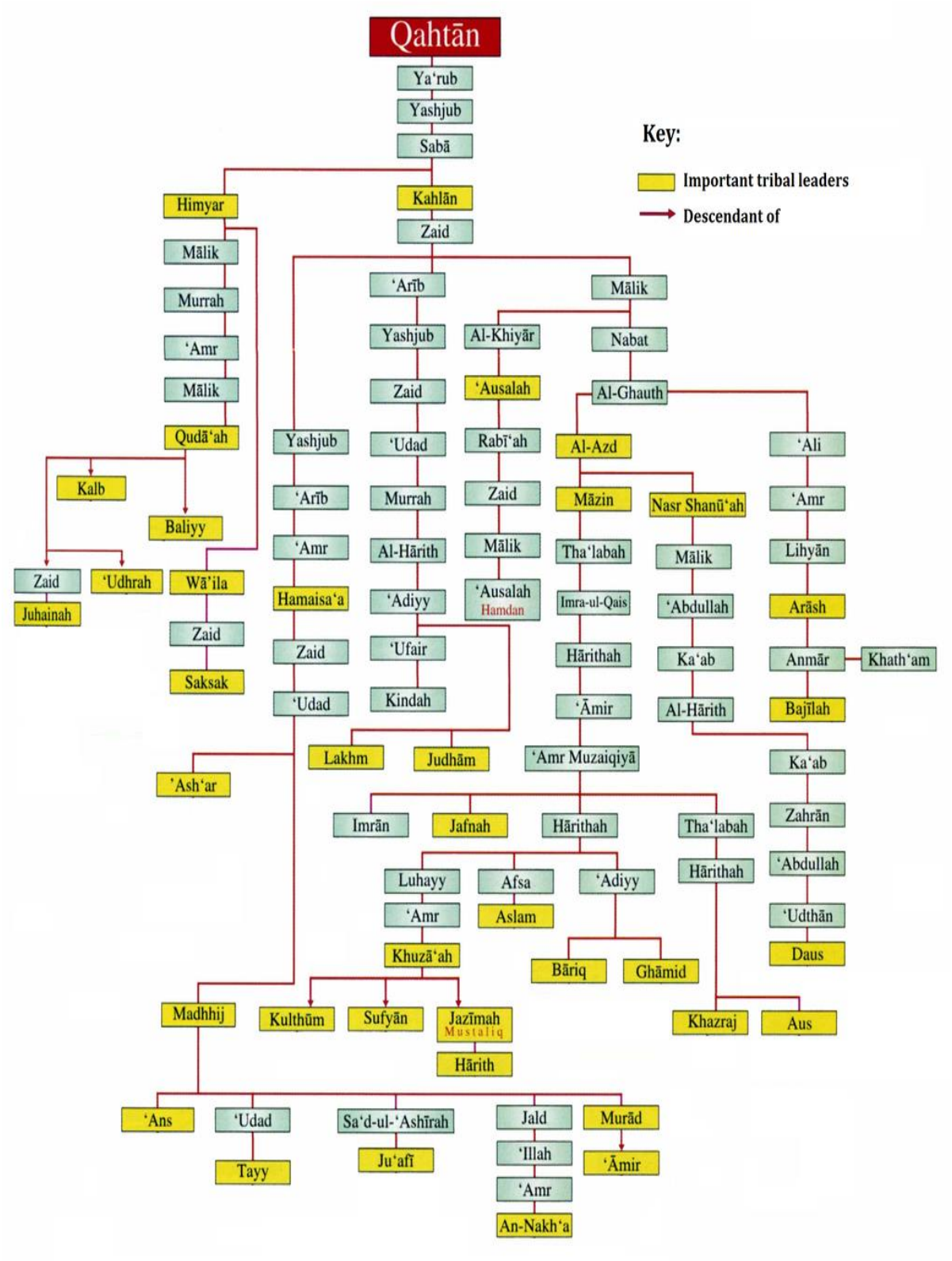
Table 1: Family structure of Adnan, Prophet Muhammad's tribe[796]

This map shows one of the two prominent descendants of the Arabian Peninsula.



[796] Erisedstar30259 - Own work, CC BY-SA 4.0, ttps://commons.wikimedia.org/w/index.php?curid=44134952, accessed 20/12/2019.

Table 2: Family structure of the Qahtan tribe[797]



[797] Erisedstar30259 - Own work, CC BY-SA 4.0, https://commons.wikimedia.org/w/index.php?curid=42344376, accessed 20/12/2019 The evidence from Roman history identifies two types of adoption. The first is adrogation (*adrogatio)*, primarily associated with the possibility of family extinction through a childless man. The second is the adoption of *paterfamilias* (kinship led by a father).[797]

Chapter. 5

Adoption in the Qur'an and Islamic Jurisprudence

5. Introduction

This chapter examines the rationale behind the revelations in Q. 33:4 and Q. 33:5 from the Qur'an, which are associated with the prohibition of adoption, to determine whether these messages pertain to adoption or *wala.* Given the insights about *wala* in Chapter Four concerning its abuse when applied to formerly enslaved individuals, and beyond offering sponsorship, it functioned primarily as a mechanism for tribes to ensure security. These verses may more likely refer to *wala.* The final section will briefly explore why Islamic jurisprudence fails to engage meaningfully with such a significant subject as adoption, which could preserve and protect the rights of vulnerable children and, perhaps, the parenthood of those who are issueless.

The revelations associated with adoption in verses Q.33:4 and Q.33:5 of the Qur'an employ a hermeneutic approach, transitioning from literal translations to evaluate whether all scholars provide similar interpretations or contexts. The analysis will focus on the Qur'an, translated into English from the mid-20th century onwards by renowned scholars such as Yousuf Ali, Sahih International, Pickthall, Dr Ghali, Muhsin Khan, Mufti Taqi Usmani, Abdul Haleem, Abul Ala Maududi, Dr Mustafa Khattab, and M.H. Shakir. The second stage will involve analysing exegetical sources of the Qur'an by Ibn Kathir and others, which elucidate the causes of revelations for verses Q.33:4 and Q.33:5. This should aid in understanding the rationale for these revelations and the other sources that support this rationale, which scholars have shown to indicate the prohibition of adoption. One of the principles of Islamic jurisprudence's methodology is ijtihad, which permits ongoing reasoning, as demonstrated in Chapter Two, and is also employed by scholars of exegesis. The sources for this chapter are diverse and encompass perspectives on adoption from both Shi'i and Sunni madhahib (jurisprudential doctrines).

5.1 *Wala* or adoption, the revelation in Q.33:4 in the Qur'an

The revelations associated with the adoption are found in verses Q. 33:4 and Q. 33:5 in Chapter 33, Al-*Ahzab* (The Clans).[798]

Allah says in the Qur'an at Q. 33:4,

> "Allah has not made two hearts for an his interior. And He has not made your wives whom you declare unlawful your mothers. And He has not made your claimed [i.e., adopted] sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] way."[799]

مَّا جَعَلَ ٱللَّهُ لِرَجُلٍ مِّن قَلْبَيْنِ فِى جَوْفِهِۦ ۖ وَمَا جَعَلَ أَزْوَٰجَكُمُ ٱلَّٰٓـِٔى تُظَٰهِرُونَ مِنْهُنَّ أُمَّهَٰتِكُمْ ۚ وَمَا جَعَلَ أَدْعِيَآءَكُمْ أَبْنَآءَكُمْ ۚ ذَٰلِكُمْ قَوْلُكُم بِأَفْوَٰهِكُمْ ۖ وَٱللَّهُ يَقُولُ ٱلْحَقَّ وَهُوَ يَهْدِى ٱلسَّبِيلَ ٤

The words in brackets in the above English translation of the verses are additions by translators to clarify meaning in context, indicating that the words in brackets do not have literal equivalents in the Arabic script. Q. 33:4 appears to present four distinct subjects: first, a man cannot possess two hearts; second, your wives are not your mothers; third, your adopted sons are not your true sons; and fourth, Allah speaks the truth and guides you along the right path.[800] In the last statement, Allah declares in the Qur'an that this book is intended for the guidance and betterment of believers.[801] One could argue that Allah guides His people for their advantage

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[798] "The Surah discusses three important events which are: the Battle of the Trench (or *Al-Ahzab*: the Clans), which took place in Shawwal, A. H. 5; the raid on Bani Quraizah, which was made in Dhil-Qa'dah, A. H. 5; and the Holy Prophet's marriage with Hadrat Zainab, which also was contracted in Dhil-Qa'dah, A. H. 5. These historical events accurately determine the period of the revelation of this Surah. See Quran.com, available at: Surah Al-Ahzab - 1-73 - Quran.com, accessed 17/06/2022.

[799] Sahih International, Qur'an 33:4; available at: https://quran.com/33, accessed 28/02/2022.

[800] Hilālī, and Khan. *Interpretation of the Meanings of the Nobel Qur'an.* Part 6. 1992. p. 201-208; Ibn Kathīr. 2000. p. 633; Ayatullah Sayyid, Kamal Faghih Imani et al, (Compiled). *An Enlightening Commentary into the Light of the Holy Qur'an:* Nūr Al-Qur'ān Fī Tafsīr Al-Qur'ān*: Part 21*. Vol. 14. Transl. by Saiyed Abbas Sdr-ʿĀmelī. Ed. by Celeste Smith; 14. Isfahan: Amir-ul-Muʾmineen Ali Library. 2008. p. 395; Ali. *The Holy Quran, Text, Translation and Commentary*. Op. Cit. p. 1102-1103

[801] Several verses in the Qur'an state that the book of Allah is a guide for the believers' betterment. See, Q. 17:9, Sahih International (Trans.). "Indeed, this Qur'an guides to that which is most suitable and gives good tidings to the believers who do righteous deeds that they will have a great reward." Q. 16:89. Sahih International (Trans.). "And We have sent down to you

rather than disadvantage, that is, in the best interests of believers. The revelations may contain wisdom that can only be contemplated within the constraints of human intellect, as the Divine has no limitations. As noted, the last subject is the truth, reiterated in several verses throughout the Qurʾan and not the focus of discussion in this chapter. However, the analysis of the prohibition of adoption is based on the explanation provided by the translators of the revelation.

The second statement in the above translation, 'your adopted sons', is linked to the prohibition of adoption. As previously stated, the translators included words to clarify the context. In this instance, the word adopted is in brackets, signifying that it is not a literal translation, as depicted above.[802] In other words, the original Arabic merely uses the phrase your sons, أَبْنَاءكُم. It does not specify whether it refers to adopted or biological sons, but the translation clarifies this in brackets (true). The significant Arabic terms in verse Q. 33:4 concerning adoption are أَبْنَاءكُم أَدْعِيَاءكُم (adiyāh'kum abnāh'kum), translated as 'your adopted sons'. However, it is the latter part of the Arabic term, أَدْعِيَاءكُم (adiyā'kum), in Q. 33:4 that demonstrates it is *wala* and not adoption.

The term أَدْعِيَاءكُم (adiyā'kum) in Q. 33:4 differs from the term used for adoption in Arabic, 'al-tabannī' (literally, taking another as a son).[803] As demonstrated in the previous chapter, al-tabannī' does not originate from the Qurʾan. The interpretations of أَدْعِيَاءكُم (Adiyā'kum) in the subsequent verse, Q. 33:5, which is also linked to adoption, suggest that these terms are used in the context of slavery, rather than adoption, regardless of whether it concerns children or adults. This term أَدْعِيَاءكُم (your adopted) appears only once in the entire Qurʾan.[804] The second verse, Q. 33:5, which scholars associate with 'your adopted son' in Q. 33:4, is phrased slightly differently: "ادْعُوهُمْ" (udh'oouhum) (call them).[805] In Q. 33:5, 'your

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the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims." Available at: quran.com, accessed 20/08/2019.

802 See Appendix 3, section A, adoption, for the Arabic script of verses Q.33:4 and Q.33:5 or click on the above link.

803 Powers. *Adoption.* Encyclopaedia of Islam. Op. Cit.

804 Sahih International; Pickthall; Dr. Ghali; Muhsin, Khan; Abdullah, Yusuf Ali. Mufti Taqi, Usmani; Abdul Haleem; Abul Ala Maududi (With Tafsir), available at: Quran.com. Op. Cit.

805 Unique Ziyarat, Op. Cit.

adopted' appears solely as an addition in English translations, not in the Arabic script.[806] This term "ادْعُوهُمْ" (udh'oouhum) is accompanied by another preposition ", فَادْعُوهُمْ" (fad'oouhum) (call on them), which carries a meaning not significantly different from "ادْعُوهُمْ" (call them). The phrase "فَادْعُوهُمْ" (fad'oouhum), translated as "call on them", is positioned within the context of polytheism, where non-believers in Islam are instructed to summon their deities.[807] Nonetheless, it is the interpretations of this latter term "ادْعُوهُمْ" (udh'oouhum) (call them) that reveal these revelations pertain to wala for formerly enslaved individuals, rather than adoption.

5.1.1 Your adopted sons (أَدْعِيَاءكُمْ أَبْنَاءكُمْ) (adiyāh'kum abnāh'kum)

A few English translations for أَبْنَاءكُم أَدْعِيَاءكُم (adiyāh'kum abnāh'kum) appear as 'your adopted sons'[808], but the translations by Pickthall and Shakir provide the significant context which shows that the revelations relate to wala. Pickthall translated أَدْعِيَاءكُم (adiyāh'kum abnāh'kum) as 'your claimed sons' and Shakir as 'your asserted sons'.[809] These different translations of أَدْعِيَاءكُم (adiyāh'kum abnāh'kum) indicate that this term is not exclusively restricted to 'your adopted sons', and the scholars employed these additional words to clarify the revelation in context. Pickthall and Shakir's translations, namely 'asserted sons' and 'your claimed sons', illustrate an element of imposing a condition. This was indeed the institution of wala, as established in the previous chapter, rather than adoption. The timing of revelations in Q.33:4 and Q.33:5 is also consistent with the concerns for formerly enslaved people during the early period of Islam. The revelation in Q.33:4 was disclosed around 627 A.D., when many enslaved people were liberated by their fellow Muslims. Some translators of these verses also suggest that these revelations pertain to customs or practices in the Arabian Peninsula.

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806 See, Sahih International (trans), Q. 33:5

807 See Sahih International (trans), Indeed, those you [polytheists] call upon besides Allah are servants like you. So, call upon them and let them respond to you if you should be truthful.

808 Sahih International; Dr. Ghali; Muhsin, Khan; Abdullah, Yusuf Ali. Mufti Taqi, Usmani; Abdul Haleem; Abul Ala Maududi (With Tafsir) And Dr. Mustafa Khattab, *The Clear Quran, Quran.com. Op. Cit.*

809 Pickthall, also M.H. Shakir, available at https://www.al-islam.org, accessed 16/08/2018.

Yusuf states about Q.33:4, “Apart from the condemnation of general hypocrisy”, the other two are pagan customs from the Times of Ignorance (Jahiliyah). 816 As shown in the translation of the verse earlier, apart from hypocrisy and the statement about Allah, the other two customs or practices in Q. 33:4 are ‘your adopted sons’ and ‘*zihār*’. I demonstrated in the previous chapter that wala was an entrenched custom in the Arabian Peninsula, subject to certain conditions. The revelations in Q.33:4 highlight these conditions of *wala* and not adoption. These conditions are more evident from the second verse, Q. 33:5, associated with the prohibition of adoption. This second verse indicates that the people subject to the revelation in Q.33:4 had an unknown biological heritage and were enslaved. In the previous chapter, I discussed formerly enslaved people who did not know their biological identity in the early period of Islam, and they needed indigenous patrons as sponsors for wala. In the second verse,

Allah says in the Qur’an at Q. 33:5,

> “Call them (adopted sons) by (the names of) their fathers, that is more just with Allah. But if you know not their father’s (names, call them), your brothers in faith and Mawa’likum (your freed slaves). And there is no sin on you if you make a mistake therein, except in regard to what your hearts deliberately intend. And Allah is Ever Oft-Forgiving, Most Merciful.”[810]

ٱدْعُوهُمْ لِـَٔابَآئِهِمْ هُوَ أَقْسَطُ عِندَ ٱللَّهِ ۚ فَإِن لَّمْ تَعْلَمُوٓاْ ءَابَآءَهُمْ فَإِخْوَٰنُكُمْ فِى ٱلدِّينِ وَمَوَٰلِيكُمْ ۚ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَآ أَخْطَأْتُم بِهِۦ وَلَٰكِن مَّا تَعَمَّدَتْ قُلُوبُكُمْ ۚ وَكَانَ ٱللَّهُ غَفُورًا رَّحِيمًا ٥

4.2.2.2 Your freed slaves: مَوَالِيكُمْ (mawā’liyakum).

The message in verse Q.33:5, as conveyed in the English translation above, is self-explanatory. The words in brackets are additions made by scholars in the English translations. The significant term in this verse is مَوَالِيكُمْ (mawā’liyakum), as it indicates that the revelations concern wala for former slaves, rather than adoption.

[810] Muhsin, Khan. Qur’an 33:5; available at: http://quran.com/4/12, accessed 20/03/2015.

This verse addresses individuals of unknown heritage who were previously enslaved. The various English translations of mawā'liyakum in verse Q.33:5 illustrate that these individuals were once enslaved people.

Khan translated 'مَوَالِيكُمْ (mawā'liyakum) as above in brackets, 'your freed slaves', while Shakir translated it as 'those asserted to you'.[811] Ghali translated mawā'liyakum as 'patronised ones', Khattab translated it as 'your close associates', Usmani as 'your friends', Sahih International as 'those entrusted to you', and Yusuf as 'your maulas' (also spelt as above mawla).[812] These translations by scholars of different madhahib do not differ significantly in the overall meaning of the verse, except for the term mawā'liyakum.[813] All these varying translations indicate that the revelations in these verses pertain to formerly enslaved individuals of unknown heritage. The revelation states that if one does not know their heritage, they should consider them as brethren in faith. Individuals subjected to *wala* were referred to as *mawla* (singular) or mawali (plural), and they were emancipated persons unaware of their biological lineage. As previously shown, formerly enslaved individuals suffered greatly because they had to concede many of their fundamental rights to gain the support of a patron for *wala*.

Furthermore, the revelation in Q. 33:5 pertains to the male gender, which is only apparent from the context, as the Arabic script of this verse does not contain the term أَدْعِيَاءكُم أَبْنَاءكُم (adiyā'kum abnā'kum) 'your adopted sons'.[814] The translators of the Qur'an indicate that both verses are connected, which is significant. If one accepts that these verses are linked and that Q. 33:5 addresses the individuals mentioned in Q. 33:4, then, as demonstrated above, these refer to formerly enslaved individuals rather than adoptees in the sense of adoption (a parent-child

811 M.H. Shakir, available at https://www.al-islam.org, accessed, 26/05/2020.

812 Sahih International; Pickthall; Dr. Ghali; Muhsin, Khan; Abdullah, Yusuf Ali. Mufti Taqi, Usmani; Abdul Haleem; Abul Ala Maududi (With Tafsir) and Dr. Mustafa Khattab, *The Clear Quran,* Op. Cit. Quran.com

813 Dr. Ghali; Muhsin, Khan and M.H. Shakir, available at https://www.al-islam.org

814 The term "أَبْنَاءكُمْ" (abnaa'kum), beside the above reference, also appears four times elsewhere in the Qurʾān at Q. 2:49; Q. 7:141; Q. 14:6 concerning Pharaoh, translated as 'killing your sons' and the last reference at Q. 3:61 is translated as 'call your sons to pray'.

relationship). This is because adoption, as defined in the previous chapter, applies not only to individuals of unknown heritage or formerly enslaved individuals.

The message in Q. 33:5 specifically addresses unknown heritage and freedmen. According to Yousuf, freedmen were often called after their master's name as the 'son of so and so'. In Q. 33:5, Yousuf states that freedmen often lost their biological identities completely due to slavery. As their relationship with their masters was close, the Qurʾan recommends calling them *mawlā*.[815] A hadith by Ibrahim al-Taimi further indicates that this message was meant for formerly enslaved people. Al-Bukhari recorded this *hadith* in "The Book of Emancipating Slaves". A part of this hadith states, "… he who claims anyone else as his father beside his own father or makes one his ally other than the one (who freed him), there is a curse of Allah …"[816] According to this *hadith*, formerly enslaved people were instructed not to refer to anyone as their father and not to ally with anyone other than those who freed them. Notably, this *hadith* also demonstrates that *wala*, which recent studies have equated to adoption, was not prohibited. This *hadith* is consistent with the practice of *wala* discussed in the previous chapter, which showed that this tradition pressured formerly enslaved people in the early period of Islam to adopt patrons to gain access to tribal society. The latter part of this *hadith* indicates that being an ally was permissible.

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[815] Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1975. Op. Cit. p. 1103; Wensinck, and Crone. "Mawlā", in: *Encyclopaedia of Islam* Op. Cit.*;* Pipes. *Mawlas: Freed Slaves and Convert in Early Islam*. Op. Cit. pp. 283-291

[816] "Ibrahim al-Taimi reported on the authority of his father:
'Ali b. Abu Talib (Allah be pleased with him) addressed us and said: He who thinks that we (the members of the Prophet's family) read anything else besides the Book of Allah and this Sahifa (and he said that Sahifa was tied to the scabbard of the sword) tells a lie. (This Sahifa) contains (problems) pertaining to the ages of the camels and (the recompense) of the injuries, and it also records the words of the Prophet (ﷺ): Medina is a sacred territory from 'Ayr to Thaur (it is most probably Uhud). He who innovates (an act or practice) or gives protection to an innovator, there is a curse of Allah and that of His angels and that of the whole humanity upon him. Allah will not accept from him (as a recompense) any obligatory act or supererogatory act, and the responsibility of the Muslims is a joint responsibility; even the lowest in rank can undertake the responsibility (on behalf of others), **and he who claims anyone else as his father besides his own father or makes one his ally other than the one (who freed him), there is a curse of Allah**. that of His angels and that of the whole mankind upon him. Allah will not accept the obligatory act of the supererogatory act (as a recompense) from him." Sahih Muslim: The Book of Emancipating Slaves: Chapter: The prohibition of a manumitted slave taking anyone as a Mawla except the one who manumitted him: Book 20, Hadith 24: https://sunnah.com/muslim/20/24

Wala was practised during the time of the Prophet Muhammad, as it existed before Islam.[817] Islam began around 610 A.D., and the revelations in Q. 33:4 and Q. 33:5 took place around 627 A.D.[818] This indicates that the concern was not *wala*. The issue was with the patrons for *wala* for those of formerly enslaved individuals of unknown heritage. The revelations in these verses illustrate this very issue. Allah states in these revelations that if one does not know the name of their father, they should be called brethren in faith. Notably, the revelation only advises a change in the patron's status for *wala*, which suggests that it is not prohibited in its entirety. Similarly, the association of Zayd ibn Harithah with these revelations in verses Q. 33:4 and Q. 33:5 is from the perspective of slavery, not adoption.

5.2 Zayd Ibn Harīthah, a freedman of Prophet Muhammad.

The revelations in verses Q. 33:4 and Q. 33:5 address a group, not an individual. The term مَوَالِيكُم (mawā'liyakum) is translated as plural, indicating that it refers to a group of people rather than an individual (namely Zayd ibn Harithah). Zayd's *wala* with Prophet Muhammad predates Islam, and the revelations were, as previously mentioned, more in line with the emancipation of enslaved individuals. Zayd's *wala* differed from those of formerly enslaved individuals who were unaware of their biological heritage. Before Islam, only freedmen or those expelled from their tribes were accepted by other tribes through *wala*, as their ancestry would have been known in both cases. Zayd's *wala* was that of a freedman with a known heritage, and crucially, it occurred before Islam, when enslaved individuals were not granted independent admission into tribes.

Zayd ibn Harithah was a descendant of the Banu Kalb, a North Arabian tribe.[819] His parents were Harīthah bin Shurahbil and Suda bint Thalabah. His father was from the Kalb tribe, while his mother belonged to the Bani Maan tribe. Zayd's tribe, "… Quda'a, (was) close to Quraysh and equal in prestige" to Prophet Muhammad.[820]

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817 Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. p. 25

818 Watt, *Muhammad at Mecca*, Op. Cit. p. 9

819 Asad. *The Message of the Qur'an*, Op. Cit. p. 645; Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. pp. 37-40.

820 Sonbol. *Adoption in Islamic society.* Op. Cit. p. 46-47

Prophet Muhammad's tribe was Quraysh. Zayd was captured by Banu al-Qayn bin Jasr's tribe during an attack on his mother's tribe when she was visiting her family.[821] Zayd was sold into slavery at the fair of Ukiiz near Taif.[822] Hakim b. Hizam, Khadija's nephew (Prophet Muhammad's first wife), bought Zayd and gifted him to his aunt. Khadija gave Zayd to Prophet Muhammad after their marriage.[823]

According to Guillaume, Zayd was a young man when Khadija had him as an enslaved person from her nephew.[824] According to other sources, he was captured at eight, and one source indicates he was fifteen.[825] According to Al-Tabari, he was an adult. Al-Tabari describes him as a young man of full stature.[826] Likewise, Ibn Ishaq states in his *Sirat Rasul Allah* that he was a young man when Khadija's nephew (Hakim b. Hizam) bought him from Syria as an enslaved person.[827] The timing of his purchase or sale is not significant, but his age is an essential factor in the context of adoption. Zayd's age is inconclusive as to when he was captured or sold into slavery, but his *wala* with Prophet Muhammad occurred when he was an adult.

Zayd became an ally of Prophet Muhammad through *wala* when he was an adult, probably over thirty years old, married and possibly had a child himself.[828] Zayd's son, Usamah, was the first child born to Islam.[829] Zayd is said to have died at fifty-five in Madinah during the raid of Mu'ta in the 8th year after *hijrah* (629 A.D.).[830]

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821 Al-Shati, Bint. *The Wives of the Prophet,* Matti Moosa and D. Nicholas Ranson (Trans). Lahore: Sh. Muhammad Ashraf, 1971. p. 140

822 Al-Shati, Bint. *The Wives of the Prophet* …p. 141

823 Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. p. 38

824 A. Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah, with introduction and Notes. London, New York, Toronto: Oxford University Press. 1955. p. 714

825 As referenced above, Asad suggests he was caught at the age of eight. However, Powers states he was born in 680 and was captured in his twenties. One thing is clear that his *wala* took place when he was an adult and married. See. Powers. *Zayd b. Muhammad,* Op. Cit.; Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. p. 37

826 Al-Tabari, Muhammad. Ibn Jarir. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* Biography of the Prophet's Companions and Their Successors. Vol. XXXIX. Translated and annotated by Ella Landau-Tasseron. Albany, State University of New York Press. 1999. p. 6

827 Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. p. 714

828 Yassari. *Adding by Choice: Adoption and Functional*, Op. Cit. p. 934; Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. p. 715; Powers, The finality of Prophecy

829 Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. p. 71

830 Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. p. 532; Al-Tabari. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* Biography of the Prophet's Companions and Their Successors. Vol. XXXIX. Op. Cit. p. 10; Hassan. *History of Islam* (Classical Period 571-1258 C.E.). Volume. 1. Op. Cit. p. 73

Zayd's age upon death shows he was about ten years younger than Prophet Muhammad. On the other hand, according to Ling, there is an even smaller age gap between Zayd and Prophet Muhammad. He states that Zayd was gifted to Khadija about twenty years before the advent of Islam.[831] Ling shows that Zayd was born around 590 A.D. If it is accepted that Zayd's age was fifteen when Khadija had him, then his birth year would be around 575 A.D. Similarly, if Zayd died in 629 A.D. at the age of A.D. If it is accepted that Zayd's age was fifteen when Khadija had him, then his birth year would be around 575 A.D. Similarly, if Zayd died in 629 A.D. at the age of fifty-five.[832] This shows Zayd's birth around 574 A.D., and Prophet Muhammad was born in 570 A.D. These different sources indicate that the latter age gap is more likely. Therefore, his birth was possibly around 574 or 575 A.D. Zayd is shown to have participated in many battles, which are recorded with dates very close to his death.[833] Despite Zayd's birth and death dates being inconsistent in the historical sources, the majority indicate that he was only four or five years younger than Prophet Muhammad.[834]

The ages of Prophet Muhammad and Zayd, as well as the circumstances surrounding their alliance, do not fit any definition of adoption, whether practised by the Romans or other communities worldwide, whether historical or contemporary. Both men were of similar age, and neither was childless, nor was Zayd a vulnerable child in need of care that the Prophet had to adopt him. Their alliance was more in line with the regional custom of *wala,* which involved security and the payment of compensation in the event of any incident. The ceremony between Zayd and Prophet Muhammad for this alliance also indicates that it was *wala.*

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831 Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. p. 71

832 Robinson. *The rise of Islam.* Op. Cit. p. 183

833 Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 308, 496, 521, 523, 569, 687

833 Sonbol. *Adoption in Islamic society.* Op. Cit. p. 47

834 The reason for this explanation is that the contemporary scholars allude to historical adoption by Romans that Arabian Peninsula also had similar practise. See chapter one, section on studies on adoption in Islam, a study by Naqvi.

As illustrated in the previous chapter, *wala* was for those of similar ancestry, which was true for Zayd and Prophet Muhammad. Zayd was residing with Prophet Muhammad when his people recognised him through his poetry.[835] Zayd sent a message to his family through these individuals, informing them that he was in Makkah near the House (Ka'ba).[836] In his message to his family, Zayd stated, "I live with the best of families, may God be blessed; from father to son, of Ma'add they are the noblest."[837] When Zayd's father discovered his whereabouts, he desperately came with his paternal uncle Ka'b to reclaim him. They intended to pay a ransom to Prophet Muhammad to secure Zayd's release.[838] Ransom payments were customary in the Arabian Peninsula to buy back prisoners captured during tribal raids or wars.[839]

Prophet Muhammad informed Zayd's father and uncle that he would invite Zayd into their presence to confirm his wishes, and if he chose to return with them, he would not accept any payments for him.[840] When Zayd was called, he decided to remain with Prophet Muhammad rather than return with his father and uncle.[841] After learning of his decision, Prophet Muhammad took Zayd to Hījr near the Ka'aba. He stated, "O all those who are present, witness that Zayd [hereby] becomes my [adopted] son, with mutual rights of inheritance."[842] The words in brackets are not from the original Arabic source but have been added by English translators to explain in context. Prophet Muhammad affirmed in front of the Quraysh tribe members that Zayd was his son and exchanged mutual rights of

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[835] It was before Islam.

[836] Al-Tabari. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* Biography of the Prophet's Companions and Their Successors. Vol. XXXIX. Op. Cit. P. 7

[837] Al-Tabari. *The History of al-Tabari*. Vol. XXXIX. Op. Cit. p. 7

[838] Al-Tabari. *The History of al-Tabari*. Vol. XXXIX. Op. Cit. P. 8

[839] Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. pp. 155-159; Gibb. H.A.R. et al (editor) *The Encyclopaedia of Islam,* New edition, Vol. 1, Leiden: E.J. Brill. 1960. pp. 24-25; Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. p. 314

[840] Al-Tabari. *The History of al-Tabari*. Vol. XXXIX. Op. Cit. P. 8

[841] Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. p. 715

[842] Al-Tabari. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* Biography of the Prophet's Companions and Their Successors. Vol. XXXIX. Op. Cit. P. 9; Powers. *The Abolition of the Adoption in Islam, Reconsidered.* Op. Cit. p. 106; Powers. *Adoption.* Encyclopaedia of Islam. Op. Cit.; Naqvi. *Adoption in Muslim Law.* Op. Cit. p. 287; Yassari. *Adding by Choice: Adoption and Functional*, Op. Cit. p. 929; Pollack et al. *Classical Religious Perspectives of Adoption Law,* 2004, Op. Cit. pp. 733 and Tasseron. '*Adoption, Acknowledgement of Paternity.* Op. Cit. p. 169

inheritance and defence.[843] This affirmation and its conditions, such as mutual inheritance, show that it was *wala*, not adoption.

5.2.1 Why was it *'wala*' and not 'adoption'?

The mutual rights of inheritance and defence in Arabic *diyah* (blood money) and *qisas* (retaliation or retribution) were common conditions of *wala* in the Arabian Peninsula*,* as practised before Islam. The ceremonial oaths for *wala* were taken near religious sites*,* as Prophet Muhammad and Zayd did around the Ka'aba since publicly executed contracts could not be quietly annulled by one party. Furthermore, Zayd was not required to assign his services and right to marriage to Prophet Muhammad, which formerly enslaved people (*mawali)* did; this further demonstrates that Zayd and Prophet Muhammad instituted *wala* to formalise their relationship, following pre-Islamic customs. According to Islamic jurisprudence, when formerly enslaved people were admitted into tribes through *wala* with the assistance of a patron, the right to inheritance was not mutual. Only patrons retained the right to inheritance.

Second, the primary condition of *wala* before Islam was the same heritage. Zayd and Prophet Muhammad were both from the Quraysh. Zayd's biological identity and lineage were known prior to his *wala* with Prophet Muhammad. Zayd's father and uncle returned to claim him, and after his refusal, Prophet Muhammad took him for an oath in public, as was the common practice of *wala*. Before Islam, individuals seeking *wala* were freedmen who had been bought back or fugitives expelled by their tribes. Zayd was a freedman of Prophet Muhammad and declined to return to his father. In *wala*, not everyone changes their identity; however, as demonstrated in the previous chapter, most freedmen or fugitives changed their names to reflect their affiliation with the tribe. Despite Zayd's known identity, he

[843] Ibn Hisham 2:264 and Al-Tabari, 2:215, as cited in Al-Shati, Bint. *THE WIVES OF THE PROPHET* …p. 141: Naqvi, *Adoption in Muslim Law,* Op. Cit. p.286; Yassari. *Adding by Choice: Adoption and Functional*, Op. Cit. p. 929; Tasseron. '*Adoption, Acknowledgement of Paternity.* Op. Cit. p. 170

was referred to as Zayd ibn Muhammad after the *wala* oath*,* which aligns with this custom as it was practised prior to Islam.

Zayd appears in historical sources as a *mawla* of Prophet Muhammad and possibly the first man to accept Islam.[844] As shown, *mawala* were those people who allied with others through *wala* rather than adoption. Contemporary English translators and commentators of the Qur'an have interpreted *mawala* as 'adopted'*,* but this does not imply that this was adoption as understood in the context of a parent-child relationship.[845] Zayd was not a child when he took that ceremonial oath – nor would an oath by a child be considered valid. Zayd's case highlights genuine concerns for children, as the historical conditions were not ideal. In tribal warfare, children were captured as booty and sold into slavery.[846] Women and children captured in raids were sold separately in slave markets.[847] Selling children into slavery at such a young age explains why enslaved people in such a large number did not know their biological identity as adults. In addition, the timing of the revelation in Q.33:4 and Q.33:5 shows that they were not about condemning Zayd's *wala* with Prophet Muhammad or adoption.

5.2.2 Why are revelations for formerly enslaved people and not Zayd or adoption?

Zayd's *wala* with Prophet Muhammad predates the revelations concerning the prohibition of adoption. According to Lings, Zayd's *wala* occurred approximately thirty-five years before these revelations (Q. 33:4 and Q. 33:5).[848] The rise of Islam began with the Qur'anic revelation in 610 A.D.[849] Zayd took the oath of *wala* in Makkah, before the advent of Islam. The revelations in Q. 33:4 and Q. 33:5 were

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[844] Al-Tabari. *The history of al-Tabarī = Ta'rīkh al-rusul wa'l-mulūk.* Vol.6, Muhammad at Mecca / translated and annotated by W. Montgomery Watt and M.V. McDonald. New York: State University of New York. 1988. p. 86; Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. p. 46; Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 652.

[845] In the UK, a minor is under the age of eighteen. Similarly, in Islam, different ages have been associated with minors by different *madhahīb, a*s I will analyse later.

[846] Muir. *The life of Mohammad from sources*. Op. Cit. pp. 320, 346; Gibb. et al. *The Encyclopaedia of Islam,* New edition, Vol. 1, Op. Cit. pp. 22-*26*

[847] Guillaume. *The Life of Muhammad.* Op. Cit. pp. 592-93, 791

[848] Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. p. 213

[849] Andani, Khalil. *Revelation in Islam: Qur'ānic, Sunni, and Shiʿi Ismaili Perspectives*. Harvard University, 2020. P.1971

revealed in Madinah around 627 A.D., occurring 17 years after his acceptance of Islam.[850] These revelations occurred during the Madinah period, not in Makkah. I argue that the timing of the revelations in Q. 33:4 and Q. 33:5 pertains more to concerns for formerly enslaved individuals rather than Zayd himself. These revelations emerged during the movement to liberate enslaved people following the hijrah (migration) to Madinah. Scholars tend to associate Zayd ibn Harithah with these revelations because he was known as the *mawla* of Prophet Muhammad and reverted to his biological father's name after the revelations.[851] However, not everyone subject to *wala* reverted to their original names following the revelation of Q. 33:4 and Q. 33:5. Miqdad Al Aswad, mentioned in the previous chapter, maintained his assumed identity even after the revelation in Q. 33:5.[852]

Although the revelations in Q. 33:4 and Q. 33:5 do not reveal the causes, they only mention practices or customs. These customs were very cruel, as demonstrated by *wala*, the mistreatment of formerly enslaved people through patronage, and I will discuss *zihar* later. However, certain events suggest that the revelation could not have addressed Zayd's *wala* because he was very dear to Prophet Muhammad and his family.[853] According to a *hadith*, "He was known as the beloved, and his son Usamah was known as the beloved son of the beloved."[854] Their relationship did not change after the revelations associated with the prohibition of adoption because he and his family remained part of Prophet Muhammad's household. Another *hadith* in the narration of A'ishah indicates that Prophet Muhammad loved Zayd dearly and never sent him on military campaigns as an ordinary soldier. Instead, he appointed him as a commander. According to A'ishah, he would have

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[850] Watt J. Montgomery, *Muhammad at Medina,* Oxford: Clarendon Press. 1956. p. 9

[851] Sahih Muslim: The Book of Emancipating Slaves: Chapter: The prohibition of a manumitted slave taking anyone as a Mawla except the one who manumitted him: Book 20, Hadith 24: https://sunnah.com/muslim/20/24

[852] Miqdad's biological father was Amru ibn Tha'la al-Barhani, not Al-Aswad.

[853] Lings. *Muhammad: His Life Based on the Earliest Sources.* Op. Cit. pp. 46, 96,113, 128,132,235,237,258,272,274,282,286-288,336; Guillaume. *The Life of Muhammad:* A translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 114, 186, 308, 314, 364, 532-539,662-665,738, 791

[854] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. Vol 7. p. 695 ; Muir, William. *The life of Mohammad from original sources by Sir William Muir*. (1819-1905). New and rev. ed. by T.H. Weir. Edinburgh: John Grant. 1923. Pp. 512-513

been a caliph if he had outlived Prophet Muhammad.[855] Zayd participated in several campaigns, including al-Jammu, al-Is in Jumada I, al-Taraf in Jumada II, Hisma in Jumada II, Wadi al-Qura in Rajab, and Umm Qirfah in Ramadan.[856] This does not clarify the prohibition of adoption, as some contemporary scholars claim.[857] Zayd's treatment by Prophet Muhammad illustrates that the revelations in the Qur'an do not address Zayd, nor *wala* as custom overall, but rather the plight of formerly enslaved people who suffered significantly due to their unknown identity and had to adopt patrons for their *wala*.

Islam does not restrict individuals from addressing others out of affection, as a hadith indicates that referring to someone as a daughter or son out of respect is permissible. According to *hadith*, in Anas ibn Malik's narration, Prophet Muhammad referred to him as my son. He stated that Prophet Muhammad was accustomed to addressing him with, "... O my son."[858] This *hadith* indicates that addressing someone affectionately, such as referring to them as 'father', 'mother', 'brother', or 'sister', is permitted. However, the names used by people from the Arabian Peninsula may convey the impression of a natural son or daughter. A *hadith* by 'A'ishah states that kuniyah, which implies closeness in the relationship, is "given after the name of one's children, with the addition of the word Abu (father) or Umm (mother), for example, Abu Bakr, Umm Abdullah."[859] To illustrate the close connection between individuals, the naming convention in the Arabian Peninsula often stems from the father or mother.[860] For instance, 'Ibn' (son of) and 'bint' (daughter of) suggest a natural relationship between a parent and child. However,

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[855] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. Vol 7. p. 695

[856] Al-Tabari, Muhammad. Ibn Jarir. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* The Victory of Islam, Vol. VIII. Translated and annotated by Michael Fishbein. Albany, State University of New York Press. 1997. pp. 95-96

[857] See chapter one, section 1.2.3, p. 26 and also Al-Qaradawi.net, حكم التبنِّي في الإسلام, available at: https://www.al-qaradawi.net/content/حكم-التبنى-في-الإسلام%D9%90, accessed 07/02/2024.; Kutty, Faisal. "Islamic Perspectives on Adoption." *The Oxford Handbook of Religious Perspectives on Reproductive Ethics*(2024): 239. P. 243;

[858] Imam Muslim, *Hadīth* No. 5351. Translated by Siddiqi, 2000. p. 1412; Jami` at-Tirmidhi. Chapter. 16: What Has Been Related About Adhering to The Sunnah and Staying Away from Innovation. Book no. 41. *Hadīth*. 34: https://sunnah.com/tirmidhi/41/34, accessed 16/04/2019

[859] Al-Qazwini, *Sunan Ibn Majah.* Op. Cit. p. 50

[860] See Beth, Notzone, and Gayle, Nesom. *The Arabic naming System.* Council Science Editors, Vol. 1. 2005, pp. 20-21, available at: https://www.councilscienceeditors.org/wp-content/uploads/v28n1p020-021.pdf, accessed 20/06/2019

this applies to any relationship, not just adopted children. The intention should not be to conceal familial ties or deliberately hide the actual relationship. Intentionally concealing the genuine relationship constitutes a sin. In the Qur'an, Allah condemns those who lie.[861]

Furthermore, this tradition of using *kuniyah* (to indicate the closeness of the relationship) is specific to a region (possibly the Middle East or Arabic speakers) and is uncommon among Muslims worldwide.[862] In the case of the South Asian region, people often name their children based on personal preference rather than placing particular emphasis on a surname or family status.[863] Usually, names in South Asia are associated with religious figures, such as Muhammad, Ali, and Fatima. According to Mufti Menk, surnames should not be a significant issue in adoption because people create names, but they should not falsify their relationship with the children.[864] As shown previously, Allah says in the Qur'an that people make these names with nominal value. Although *wala,* as shown in the last chapter, was a custom based on fictitious claims, it did not result in much abuse as it later did when applied to formerly enslaved people.

5.3 *Zihār:* women's divorce and their rights

Zihār, 'Your back is like my mother's' is another custom mentioned in Q.33:3, whereby men perpetrated abuse against women through a pagan divorce. Like *wala,* this custom was also based on false narratives. *Zihār* was also a pre-Islamic tribal custom from the Arabian Peninsula in which a man in a domestic dispute would utter to his wife, 'Your back is like my mother' (*zihār*), and this declaration constituted a divorce.[865] The women subjected to such a divorce were not free to

[861] Q. 51.10, available at: Surah Adh-Dhariyat - 1-60 - Quran.com; Q. 45:7, Surah Al-Jathiyah - 1-37 - Quran.com, accessed 15/06/2022

[862] Ref showing this to be the case. (For example, Muhammad popular name in UK and USA), a search of the birth record or any other statistic on Muslim children can confirm this point.

[863] Leela Dube, *Women and kinship: Perspectives on gender in South and South-East Asia*, United Nations University Press, Tokyo, and New York. 1997, pp. 36-38, 88

[864] Mufti Menk on the topic of adoption in Islam, All Islamic scholars' views. Noor Mohd. Brown: available at: https://www.youtube.com/watch?v=iwN9AUMFc4s, accessed 18/06/2017

[865] Yusuf Ali. *The Holy Qur'an:* 1989. Op. Cit. pp. 1055, 1432-1433; Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. pp. 127-128; Rahman. *Islamic Law. Op*. Cit. pp. 317-318

leave their husbands' homes and lived in a state of enslavement without any marital rights.[866] The women were not permitted to remarry,[867] even though the divorce was final and irrevocable.[868] This custom was highly abusive and unjust to the rights of women. Often, men used this custom as a tool to marry another woman.[869] The women subjected to such divorces faced extreme financial hardship and humiliation because the former husbands were not obligated to pay maintenance to them and their children.[870]

The revelation regarding *zihar* was specific to the incident involving Khawlah bint Tha'labah, the wife of Aus Ibn Samit. Khawlah bint Tha'labah. She was divorced through *zihar* during the lifetime of Prophet Muhammad.[871] Khawlah bint Tha'labah had young children, and her husband did not provide financial support after the divorce.[872] She approached Prophet Muhammad to complain about her circumstances.[873] Although Prophet Muhammad could not intervene, Allah accepted her prayers and revealed a way to reform this pagan divorce. The initial revelation in Q. 33:4 is subject to supplementary reforms elsewhere in the Qurʾan.[874] Allah informed men in Q. 58:2 that this was false, and their mothers are only those who gave them birth.[875] The supplementary provisions in the Qurʾan

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866 Yusuf Ali. *The Holy Qur'an:* 1989. Op. Cit. pp.1055, 1432-1433

867 Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. p. 1103; Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. p. 128; Pickthall and Marmaduke William. 1977. *The Glorious Qur'an: Text and Explanatory Translation / by Mohammed M. Pickthall*. New York: Muslim World League- Rabita. p. 441; Asad. *The Message of the Qur'an*, Op. Cit. p. 639; Al-Ghazālī. *A Journey through the Qur'an.* 1998. Op. Cit. p. 299

868 Asad. *The Message of the Qur'an*, Op. Cit. p. 639

869 Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. p. 1103

870 Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. p. 1103

871 Doi. *Sharīʿah: The Islamic Law*. Op. Cit. p. 184; Ibn Hannibal et al. 1993. *The Chapter on Marriage and Divorce.* pp. 39-42

872 Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. p. 1103

873 Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. p. 1103

874 Q. 58:1 and Q. 58: 2 to 4 abrogates the practice of *zihār;* introduced a new law for regulating divorce by *zihār* and the different penalties for rectifying the relationship. From the practice of *zihār,* it is clear it was not a new practice in Islam. It was a tradition running in pagan Arabs and had grave consequences for a social group. See. Towards Understanding the Quran, accessed 20/05/2016, available online at http://islamicstudies.info/reference.php?sura=58&verse=2&to=4; for detail *fiqh* on *zihār,* see, Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. pp. 127-139

875 Q. 58 :2

recommend the correct procedure for dissolving unsalvageable marriages and the consequences of not following new guidance.[876]

The mention of *zihar* in Q.33:4 indicates that the revelations in this verse address the abuse of vulnerable individuals perpetuated through practices based on false narratives, whether concerning formerly enslaved people, divorcing women, or those subjected to criticism by hypocrites. In the Qurʾan, Allah says, "For He is the just God, and will not allow human customs or pretences to trample on the just rights of the weakest of His creatures."[877] All these practices illustrate that they have been reformed to prevent the abuse of vulnerable people's rights, rather than abolished, as they serve a purpose in society. Simultaneously, the revelations in Q.33:5 mention unintentional and genuine mistakes, suggesting that draconian practices like *wala* and *zihar* were prevalent before Islam, and that new Muslims may have adhered to them as well.

5.4 Intentional or Genuine Mistakes and Seeking Forgiveness.

The message about intentional and genuine mistakes in Q. 33:5 can be understood in two ways. First, as shown, these pagan practices violated others' rights and were often based on false narratives. According to this statement in verse Q. 33:5, if you perform an unintentional action or hold a mistaken belief, you do not sin.[878] The clause indicates that not everything practised prior to the revelation of these customs unwittingly amounted to a sin. People practising wala or zihār were not doing anything wrong, as this was the norm before Islam. For example, Zayd's *wala* with the Prophet Muhammad occurred before the revelation in the Qur'an and adhered to a tradition in the region. The intentional and genuine mistakes

[876] Q. 58 :3; New provisions imposed several conditions for such divorce, including freeing an enslaved person, and if they could not afford to free an enslaved person, they were required to fast for two months. If they were unable to fast, they were required to feed sixty poor people. These punitive measures were to halt this abusive custom, and the reformative revelations were to guide the Muslim *ummah* in the case of dissolving unsustainable marriages. thèse rules are in the following verses that detail the reform; Q. 2:227; Q. 2 :228; Q. 2 :229; Q. 2 :230; Q. 2 :232; Q. 2:233: Q. 2:236: Q. 33:28; Q. 2:41 and Q. 33:49; Esposito. *Women in Muslim Family Law.* Op. Cit. pp. 28-36; Rahman. *Islamic Law. Op*. Cit. p. 317

[877] Yusuf Ali. *The Holy Qur'an:* 1989. Op. Cit. p. 1432

[878] Q. 33:5

mentioned in the same verse demonstrate that following a regional tradition was not a sin.

A warning was issued for intentionally ignoring the new rules. This clause also emphasises the importance of seeking forgiveness and repentance for wrongdoing. In other words, the revelations indicate that people had the opportunity to seek forgiveness for the sins they committed unwittingly before the new guidance became available. The message in Q. 33:5 concerning Allah's mercy and forgiveness is reiterated throughout the Qur'an. The emphasis on repentance and forgiveness in Islamic jurisprudence is that all sins are forgivable, except for major sins. The authority for this scholarly opinion is found in the Qurʾan. Allah says, "If you avoid the great sins which you are forbidden to do, We shall remit from you your (small) sins and admit you to a Noble Entrance (i.e. Paradise)."[879] The message of repentance and forgiveness, alongside abhorrent customs, demonstrates that if people acted out of ignorance, they were informed about the necessity of repenting and seeking forgiveness.

This completes the analysis of verses Q.33:4 and Q.33:5 associated with the prohibition of adoption from literal translations and demonstrates that these revelations are not about adoption, categorically illustrating abusive pagan customs that had no relevance to children's care or parents' desire to have others' children due to being issueless. The second stage examines the *madhahib* to assess their perspectives on these verses in Quranic exegesis. How do Islamic scholars explain the causes of these revelations in Q.33:4 and Q.33:5 and their connection with the prohibition of adoption?

5.5 Islamic scholars on verses associated with adoption.

Scholars from various *madhahib* explain the causes of revelation in the Quran through established principles of Islamic jurisprudence, as outlined in Chapter Two. If the message of the revelation is not self-explanatory, they investigate *ahadith* and other relevant principles, including local customs and practices, to deduce the

[879] Q. 4:31

meaning. As previously shown, Q.33:4 contains four statements, three of which pertain to pagan customs such as *wala*, *zihar*, and hypocrisy. The literal translations of these verses are self-explanatory, with additional insights provided by some scholars. However, these revelations in Qur'anic exegeses are not straightforward to comprehend. Ibn Kathir summarises verses Q. 33:4 and Q. 33:5 together, referencing a few other verses and *ahadith*. According to Ibn Kathir, the message concerned a pagan custom that was abolished.[880] Ibn Kathir does not specify which pagan custom was abolished. This source indicates that verses Q. 33:4 and Q. 33:5 correspond to Q. 33:40. I will return to Q. 33:40 later. Ibn Kathir also refers to a *hadith* in the narration of Abdullah bin Umar, in which he states that after the revelation of Q. 33:4 and Q. 33:5, 'call them (adopted sons) by (the names of) their fathers ...", and they ceased referring to Zayd as 'Zayd bin Muhammad".[881] This does not indicate a link with adoption merely because Zayd reverted to his biological identity. Once again, the word adopted is in brackets, which, as previously noted, is added by contemporary translators. I also demonstrated earlier that these revelations addressed *wala*, which applied only to former enslaved individuals. Since Zayd was also a formerly enslaved person, he reverted to his biological identity after revelation.

Similarly, concerning hypocrisy, Ibn Kathir states that hypocrites claimed Prophet Muhammad had two hearts, prompting Allah to reveal verse Q.33:4 to clarify this misconception.[882] Although Ibn Kathir also notes that the hadith about two hearts is defective.[883] In other words, if one interprets 'two hearts' not literally but figuratively or symbolically, it can be seen as relating to hypocrisy, where a hypocrite acts in one way for themselves (one heart) while demanding something different from another (the other heart). They possess a dual nature, thus being double-hearted, akin to the English expression 'two-faced'. Even though the

[880] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. Vol 7. p. 633

[881] *This hadith* is cited in Bukhari, Muslim, Tirmidhi and Nasa'I, See Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. Vol 7. p. 634Shaih Al-Bukhari, Vol 6, *hadīth* No. 305: citied in Hilālī, and Khan. *Interpretation of the Meanings of the Nobel Qur'an.* Op. Cit. Part 6. 1992. p. 202

[882] Ibn Kathīr's Qur'anic exegesis

[883] Shaykh. Safiu-Rahman Al-Mubarakpuri et al. *Tafsir Ibn Kathīr (10 Volumes; Abridged)*. 2000a. Vol. 7. p. 635: also see, no. 2410 and At-Tabari 20:204.

referenced *hadith* is flawed and does not meaningfully connect to adoption, the English translator of the exegesis links it to adoption, asserting that it was not a natural process since it was a fabricated claim by individuals comparable to those asserting two hearts.[884] It serves as a pertinent analogy for hypocrisy but not for adoption. Aside from this *hadith*, other *ahadith* address the manipulation of paternity (as noted in the bold text in the footnote), veiling, and repentance.[885] Despite presenting these diverse *ahadith*, this exegesis fails to clarify how these verses and *ahadith* relate to revelations in Q.33:4 and Q.33:5 or adoption. As previously indicated, these verses discuss various customs, none of which pertain to adoption, although some translations associate mawla with those of uncertain heritage. However, Ibn Kathir's exegesis does not elucidate *mawla* or its connection to adoption.

The debate over *mawla* is significant as it reveals the identity of individuals of unknown heritage. These individuals were formerly enslaved, not adoptees in the context of parent and child. Nothing in Ibn Kathir's exegesis links these revelations to adoption. The latter translators added notes and attempted to establish a connection to adoption through an analogy. However, the additional notes from the translators lack references or *hadith* to support this analogy with adoption. The literal translations of the Qur'an, along with verses Q.33:4 and Q.33:5, do not

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[884] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. Vol. 7. p. 635: also cited in, no. 2410 and Al-Tabari 20:204.

[885] "Abu Dharr states that he heard the Prophet, may Allah bless him and grant him peace, say, **"A person who knowingly claims a father other than his own has disbelieved**. A person who claims to be from a people when he is no one will take his place in the Fire. A person who calls a man an unbeliever or says, 'Enemy of Allah,' when that is not the case will have that come back on him." Status: Sahih, See Al-Bukhari, Muhammad. Al-Adab Al-Mufrad 433; Book 24. Defamation: hadīth. 15: https://sunnah.com/adab/24/15

Narrated Abu `Uthman: "I heard from Sa'd, the first man who has thrown an arrow in Allah's Cause, and from Abu Bakra who jumped over the wall of the Ta'if Fort along with a few persons and came to the Prophet. They both said, "We heard the Prophet (ﷺ) saying, "**If somebody claims to be the son of somebody other than his father knowingly, he will be denied Paradise** (i.e., he will not enter Paradise).' "Narrated Ma'mar from `Asim from Abu Al-`Aliya or Abu `Uthman An-Nahdi who said. "I heard Sa'd and Abu Bakra narrating from the Prophet." `Asim said, "I said (to him), 'Very trustworthy persons have narrated to you.' He said, 'Yes, one of them was the first to throw an arrow in Allah's Cause and the other came to the Prophet (ﷺ) in a group of thirty-three persons from Ta'if.'" See Sahih al-Bukhari: Military Expeditions led by the Prophet (PBUH) (Al-Maghaazi): (56) Chapter: The Ghazwa of At-Taif; Book 64, Hadīth 356: https://sunnah.com/bukhari/64/356

mention veiling or the issue of gender privacy. This exegesis also references *mahram* and veiling. The *hadith* in question pertains to Salim, a grown man whose adopted mother was advised to breastfeed him to resolve the *mahram* issue. The scholars annotating and, presumably, the translator, as indicated in the additional notes of the source, suggest that no physical contact occurred between the mother and the adopted son. It is challenging to understand why clarifying physical contact was deemed necessary, while no explanation is offered for how veiling is associated with these revelations or adoption. Conflating various subjects without providing a reasonable explanation for the causes of revelations creates additional confusion. This could explain why many recent studies on adoption arrive at differing conclusions regarding the prohibition of adoption in Islam.[886] When one analyses these subjects from multiple historical perspectives by examining the timing of revelation, cultures, customs, and social issues at the time of the revelations, the findings diverge significantly. Similar difficulties are apparent from the other revelations associated with adoption.

Ibn Kathīr's exegesis references verse Q. 33:40 alongside Q. 33:4 and Q. 33:5 without clarifying how the revelations in this verse are connected to the latter two. Allah states in the Qur'an at Q. 33:40, "Muhammad is not the father of any of your men, but he is the Messenger of Allah and the last (end) of the Prophets. ...."[887] Powers employs this reference, Q. 33:40, to support the prohibition of adoption in Islam. According to Powers, adoption was abolished in Q. 33:4 and Q. 33:5 because it conflicted with Q. 33:40.[888] Powers noted that Prophecy was typically inherited in earlier religions. Since Prophet Muhammad had an adopted son, this was at odds with the revelation in Q. 33:40.[889] According to Powers, "the Islamic narrative was designed to create a plausible history-like context in which Muhammad could be said to have repudiated Zayd, thereby confirming the truth of the Qurʾanic pronouncement that Muhammad was not only a messenger but also a seal of

[886] See chapter one studies to date on adoption in Islam.
[887] Al-Mubarakpuri et al. *Tafsir Ibn Kāthīr*. 2000. Vol. 7. Op. Cit. p. 634
[888] Powers. *Muhammad Is Not the Father of Any of Your Men.* Op. Cit. pp. 9-10
[889] Powers. *Adoption.* Encyclopaedia of Islam. Op. Cit.; Powers. *Muhammad Is Not the Father of Any of Your Men.* Op. Cit. pp. 24-30

Prophets."[890] Powers contends that Islamic scholars sought to construct a narrative to defend Prophet Muhammad's status as the last Prophet by claiming that adoption was abolished.

Similarly, another verse is linked to adoption, Q. 33:37. An analysis of the revelation in this verse indicates a distinctly different reason from adoption.

Allah says in the Qurʾān in Q. 33:37,

> "And (remember) when you said to him on whom Allah has bestowed grace and you have done a favour: "Keep your wife to yourself, and have Taqwa of Allah." But you did hide in yourself that which Allah will make manifest, you did fear the people whereas Allah had a better right that you should fear Him. So, when Zayd had completed his aim with her, we gave her to you in marriage so that there may be no difficulty for the believers regarding the wives of their adopted sons when the latter have no desire to keep them. And Allah's command must be fulfilled."[891]

The translation of Q. 33:37 has a very different context from the revelations in Q. 33:4 and Q. 33:5. Firstly, it discusses favours. Secondly, it indicates that the truth was concealed due to fear of public reaction. Thirdly, the revelation pertains to divorce and marriage rather than adoption. Again, the term أَدْعِيَائِهِمْ (Adi'iyahim) in this passage has been translated into English as your adopted sons. However, as stated earlier, only Q. 33:4 used the Arabic term for sons, أَبْنَاءكُمْ (Abn'ahkum). It is challenging to understand how the revelations in Q. 33:37 relate to Q. 33:34 and Q. 33:5, as there is no coherent explanation in exegesis, and the revelations in Q. 33:37 relate to marriage regulations.

5.5.1 Marriage and Adoption

The revelation in Q. 33:37 pertains to a marriage between Zayd ibn Harithah's former wife, Zaynab bint Jahsh, and the Prophet Muhammad. Zaynab was married

[890] Powers. *Adoption.* Encyclopaedia of Islam. Op. Cit.
[891] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol. 7. p. 695

to Zayd ibn Harīthah, whom the contemporary scholars claim was an adopted son of Muhammad.[892] After her divorce from Zayd ibn Harithah, she married Prophet Muhammad.[893] It has been suggested that Prophet Muhammad was attracted to Zaynab when he visited Zayd.[894] Zayd was not home, and "Zaynab rose towards him and said, 'Come here, O Messenger of God, '" but he turned away while muttering something.[895] Zayd returned home and asked Zaynab why she did not invite the Prophet. Zaynab replied that she did, but Muhammad had turned away, muttering something, and only heard him saying, "Praised be God the Great, praised be God who turns the hearts."[896] According to Roberts, Zayd went to Prophet Muhammad and offered to divorce Zaynab so he could marry her. Initially, Prophet Muhammad refused because divine law did not allow a marriage between a man and his daughter-in-law, and he was also fearful of public reaction.[897] According to Roberts, the revelation in Q. 33:37 subsequently sanctioned marriage with adopted sons' wives and not with biological sons' wives.[899] However, a *hadith* from al-Bukhari, in the narration of Anas bin Malik, presents a different context than these contemporary scholars, who have provided very different narratives on the abolition of adoption. According to this *hadith*, Prophet Muhammad favoured Zayd by manumitting him.

> "and (remember) when you said to him (Zayd bin Harīthah (R.A.) the freed slave of the Prophet on whom Allah has bestowed grace (by guiding him to Islam) and you Muhammad have done favour by manumitting him. Keep

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[892] Roberts. *The Social Laws of the Qorân*. Op. cit. p. 50; Watt. *Muhammad Prophet and Statesman.* Op. cit. pp. 156-159

[893] Roberts. *The Social Laws of the Qorân*. Op. cit. p. 50

[894] Roberts. *The Social Laws of the Qorân*. Op. cit. p. 50; Powers, David S. *Muhammad Is Not the Father of Any of Your Men: The Making of the Last Prophet*, University of Pennsylvania Press, 2011. ProQuest Ebook Central, https://ebookcentral.proquest.com/lib/bham/detail.action?docID=3442005. pp. p. 9, 24-34; Sonbol. *Adoption in Islamic society.* Op. cit. pp. 51-52; Al-Tabari. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* Biography of the Prophet's Companions and Their Successors. Vol. XXXIX. Op. cit. P. 181-182

[895] Al-Tabari. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* Biography of the Prophet's Companions and Their Successors. Vol. XXXIX. Op. cit. P. 181-182

[896] Al-Tabari. *The History of al-Tabari (Ta'rikh al-rusul wa'l-muluk):* Biography of the Prophet's Companions and Their Successors. Vol. XXXIX. Op. cit. pp. 181

[897] Roberts. *The Social Laws of the Qorân*. Op. cit. p. 49; Al-Tabari. *The History of al-Tabari.* Vol. XXXIX. Op. cit. pp. 181

your wife yourself and fear Allah. But you did hide what you were made aware of that Zainab bint Jahsh would be given to you in the marriage."[898]

According to Ibn Kathir, this hadith shows that Allah reiterated to His messenger that he did a favour to Zayd by bringing him into faith and freeing him from slavery.[899] In the Qurʾan, Allah states that Muhammad could marry Zaynab without difficulty after the termination of marriage and the necessary idd'ah (compulsory period after divorce or death of husband).[900] Ibn Kāthīr indicates that Allah knew Zaynab would be the wife of His Prophet once Zayd divorced her.[901] As shown in the revelation in Q.33:37, Prophet Muhammad was reluctant to implement the marriage, despite it being ordained by Allah and not connected to adoption.

Understanding the causes of revelations in more detailed exegeses can be highly confusing and complex. At the same time, literal translations of the revelations are relatively easy to comprehend, and they do not present any debate regarding adoption. Scholars translating historical sources have included notes to clarify the context, which, as demonstrated, reflect individual interpretations as they perceive the intent of the verses, often without explaining why such interpretations are pertinent to the subject at hand. As shown above, this highlights the misinterpretation that arises when references are presented without a clear explanation of their connection to a specific revelation. Consequently, these unexplained references lead to diverse interpretations. In this instance, scholars concluded that these verses related to the adoption of children. However, verse Q. 33:40 appears self-explanatory, as Muhammad is proclaimed to be more than any earthly relation, being the Messenger of Allah and the Last Prophet. Likewise, the

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[898] *Hadīth* no. 4787, Sahîh Al-Bukhâri, and Muhammad Muhsin Khan. 1997. Vol 6. p. 267

[899] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol. 7. p. 695

[900] *idd'ah* is arbic term for a waiting period for a woman before she can contract another marriage after divorce. Due to complexities of linage of a child, this is period normally if she is pregnant or not from previous husband. The waiting time between 12 to 18 weeks according to different sects of Muslim. For further information on Zaynab bint Jash's marriage to Prophet Muhammad. See, Stowasser, Barbara Freyer, *Wives of the Prophet*, in Encyclopaedia of the Qurʾān, General Editor: Jane Dammen McAuliffe, Georgetown University, Washington DC. Available at: http://dx.doi.org/10.1163/1875-3922_q3_EQCOM_00219, accessed 20/01/2019

[901] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol.7. p. 699

revelation in Q. 33:37 concerns marriage and has no apparent connection to adoption.

The Shi'i interpretation of these verses linked to adoption has similar issues. However, they indicate, as I demonstrated in the previous chapter, that Zayd was the *mawla* of Prophet Muhammad, further confirming that these revelations pertain to *wala*, not adoption.

5.5.2 *Shi'i Madhab* on Q.33:4 and Q. 33:5

The Shi'i interpretation of Q. 33:4 and Q. 33:5 indicates that people began referring to Zayd by his biological father's name after the revelation.[902] He was called '*maula*' or '*mawla*' Rasulullah (friend or emancipated slave of the Prophet).[903] This is significant because *mawlas* were not adoptees, as shown in the previous chapter. Nevertheless, they provide similar explanations for these verses as other *madahib*. This source also argues that Q. 33:4 was about an abhorrent custom in the 'age of Ignorance' when adopted children were taken as biological sons. It is noted that "Islam severely negated these illogical and superstitious rules… in order to condemn this wrong custom."[904] According to this *Shi'i* exegesis, the latter part of this verse deals with adoption, the rights of the wives of Prophet Muhammad and women in general due to the Prophet's marriage with Zayd's ex-wife.[905] Faghih Imani et al. state that the revelation was to clarify propaganda by Islam's enemies concerning this marriage.[906]

Faghih Imani et al. also demonstrate that in the early period of Islam, a member of the pagan Quraysh claimed that a man named Jamil ibn Mu'ammar had two hearts, possessed a strong memory, and was more knowledgeable than the Prophet

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[902] Ruh-ul-Ma' Ali, Vol. 21, p. 131, cited in Faghih Imani et al., *An Enlightening Commentary into the Light of the Holy Qur'an,* Op. Cit. p. 402

[903] '*Maula*' has been given several meanings, friend, and emancipated slave. It is explained they could continue to keep a relationship with the master but not divulge their paternity. See. Faghih Imani et al, Op. Cit. 1998. Vol 14. p. 402

[904] Faghih Imani et al, *An Enlightening Commentary into the Light of the Holy Qur'an,* Op. Cit. p. 402

[905] Khatib, *The Bounteous Koran.* Op. Cit. p. 548

[906] Faghih Imani et al., *An Enlightening Commentary into the Light of the Holy Qur'an,* Op. Cit. p. 402

Muhammad.[907] However, in the Battle of Badr, he held one shoe in his hand, and when questioned about the other, he believed he was wearing it.[908] His superstitious belief or hallucination led him to believe he had two hearts. The scholar of this exegesis proposes that the rationale for revelation was to introduce social reform for relationships based on 'superstitious falsehoods and deviations' from the fundamental law of nature and justice. However, there is no explanation for relationships founded on falsehoods, nor any rationale for these revelations, as the various explanations do not demonstrate a logical connection with adoption. Furthermore, there is no clarification on how adoption was based on false narratives.

Faghih Imani et al. further explain for Q.34:4 that a man cannot simultaneously entertain multiple thoughts of the exact nature. If he does, he is a hypocrite.[909] The scholars offer a *hadith* by Ali ibn Abbas, which states, "The love of us and the love of our enemy does not assemble in one's heart, since Allah has not appointed for a man two hearts within him, that he loves with one and hates with another… ."[910] This *hadith* may well reference hypocrisy. Nevertheless, these explanations do not sufficiently demonstrate how they illustrate adoption.

Furthermore, the English translation mentions children under verse Q.33:5 without clarifying how these relate to children's adoption or which source confirms this, such as a *hadith or* verse. According to Faghih Imani et al, people "…take some other children as their own children and adopt them as their own sons."[911] Contemporary scholars, possibly translators of historical sources, appear to be linking these verses with adoption. As I demonstrated in the previous chapter, the custom equated with adoption by contemporary scholars (*wala)* did not involve children. The translators

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[907] Faghih Imani et al, (compiled). *An Enlightening Commentary into the Light of the Holy Qur'an:* Part 21. 1. ed. Vol. 14. p. 395-400

[908] Faghih et al, *An Enlightening Commentary.* Op. Cit. pp. 395-396

[909] Commentary of Ali-ibn- 'Ibrahim, according to Nur-uth-Thaqalayn Vol. 4. p. 234 (cited in Faghih et al, *An Enlightening Commentary.* Op Cit. p. 397). Please I did not have access to this source as cited by Faghih et al.

[910] Commentary of Ali-ibn- 'Ibrahim, according to Nur-uth-Thaqalayn Vol. 4. p. 234 (cited in Faghih et al., *An Enlightening Commentary.* Op Cit. p. 397)

[911] Faghih Imani et al, *An Enlightening Commentary into the Light of the Holy Qur'an,* Op. Cit. p. 399

of *Shi'I* exegesis seem to associate with children because adoption at present involves children.

Other scholars also do not provide any direct reference to adoption. According to Asad, the message in verse Q. 33:4 is metaphorical and not apparent from simple transliterations. In his interpretation of verses Q. 33:4 and Q. 33:5, Asad states, "… it should be borne in mind that the Qur'an frequently uses the metaphor of God's 'speech' to express His creative activity."[912] I have previously demonstrated, through my analysis of the English translations of Q. 33:4 and Q. 33:5, that the revelations concern formerly enslaved individuals and other similar practices that infringed upon the rights of the most vulnerable. The examination of the verses did not reveal any symbolic representation of adoption in any form.

Likewise, according to Al-Ghazali, the revelations in verse Q. 33:4 are precursors to other revelations in the Qurʾan.[913] This indicates that the brief mention of hypocrisy, your adopted sons and *zihār* in Q.33:4 are precursive to revelation elsewhere in the Qur'an. Indeed, hypocrisy has numerous references elsewhere in the Qurʾan, within various contexts.[914] Several *ahadith* indicate that hypocrisy was prevalent in the early period of Islam.[915] For example, the extreme opposition to the new Abrahamic faith became more successful with new followers who avoided problems by not voicing their new beliefs in public,[916], or they would claim to be believers while secretly worshipping idols.[917] The hypocrites frequently targeted vulnerable members of society by accusing them of wrongdoing or even harming them through

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912 Asad. *The Message of the Qur'an*, Op. Cit. p. 639

913 Al-Ghazālī. *A Journey through the Qur'an.* 1998. Op. Cit. p. 298

914 Hypocrisy has been mentioned in several *Ayhaats*: Q. 26:89; Q. 63:2; Q. 9:110; Q. 2:10; Q. 9 :125: Q. 4:146: Q. 9:66; Q. 10:57; Q. 22:53: Q. 59:11; Q. 6 :160; Q. 9:97; Q. 9 :101 and in few more verses.

915 Hypocrisy was common during early Islam, according to *hadīth*, "The sign of hypocrite is three (things): when he talks, he lies, when he promises he breaks promise, and when he is trusted he betrays." See, Ibn Rajab, ʿAbd al-Raḥmān, ibn A. 2007. *The Compendium of Knowledge and Wisdom / Ibn Rajab Al-Hanbali;* Translated by Abdassamad Clarke, edited by Abdassamad Clarke London: Turath Publishing, 2007. pp. 741-751; Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 247-277

916 Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. p. 1102

917 Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. p. 1102

deception in the early period of Islam.[918] It seems plausible that the revelations about two hearts in Q. 33:4 concern hypocrisy but not adoption. Unlike hypocrisy, the Qur'an does not have other revelations that show the prohibition of adoption. There is considerable confusion regarding the causes of the revelations in Q.33:4 and Q.33:5 in exegesis, leading some contemporary scholars to claim that adoption is not prohibited in Islam.

Likewise, according to Al-Ghazali, the revelations in verse Q. 33:4 serve as precursors to other revelations in the Qurʾan.[919] This indicates that the brief mention of hypocrisy, your adopted sons, and zihār in Q. 33:4 act as precursors to revelations found elsewhere in the Qur'an. Indeed, hypocrisy is referenced numerous times throughout the Qurʾan within various contexts.[920] Several *ahadith* illustrate that hypocrisy was prevalent during the early period of Islam.[921] For instance, the intense opposition to the new Abrahamic faith gained traction with new followers who avoided issues by refraining from publicly voicing their new beliefs.[922] The hypocrites often targeted vulnerable members of society by accusing them of wrongdoing or even deceiving them during the early days of Islam.[923]

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[918] Ai'shah, the wife of Prophet Muhammad, is the primary case as a victim of hypocrisy. She lost her necklace, went to look for it, and became separated from her caravan. She spent a night without her caravan, and when she caught up with the caravan in the morning with Safwan b. al-MU'ATTAL Al-Salami. Hypocrites started spreading lies about her. See Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 493-499, while hypocrisy from a religious perspective, where people, particularly from Auz and Khazraj tribes pretended to be Muslim and harmed innocent people through their deception. See, pp. 242-279

[919] Al-Ghazālī. *A Journey through the Qur'an.* 1998. Op. Cit. p. 298

[920] Hypocrisy has been mentioned in several *Ayhaats*: Q. 26:89; Q. 63:2; Q. 9:110; Q. 2:10; Q. 9 :125: Q. 4:146: Q. 9:66; Q. 10:57; Q. 22:53: Q. 59:11; Q. 6 :160; Q. 9:97; Q. 9 :101 and in few more verses.

[921] Hypocrisy was common during early Islam, according to *hadīth*, "The sign of hypocrite is three (things): when he talks, he lies, when he promises he breaks promise, and when he is trusted he betrays." See, Ibn Rajab, ʿAbd al-Raḥmān, ibn A. 2007. *The Compendium of Knowledge and Wisdom / Ibn Rajab Al-Hanbali;* Translated by Abdassamad Clarke, edited by Abdassamad Clarke London: Turath Publishing, 2007. pp. 741-751; Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 247-277

[922] Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. p. 1102

[923] Ai'shah, the wife of Prophet Muhammad, is the primary case as a victim of hypocrisy. She lost her necklace, went to look for it, and became separated from her caravan. She spent a night without her caravan, and when she caught up with the caravan in the morning with Safwan b. al-MU'ATTAL Al-Salami. Hypocrites started spreading lies about her. See Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. Cit. pp. 493-499, while hypocrisy from a religious perspective, where people, particularly from Auz and Khazraj tribes pretended to be Muslim and harmed innocent people through their deception. See, pp. 242-279

Alternatively, those who would claim to be believers while secretly worshipping idols. [924] It seems plausible that the revelations about two hearts in Q. 33:4 relate to hypocrisy rather than adoption. Unlike hypocrisy, the Qur'an contains no other revelations that indicate a prohibition on adoption. The explanation in exegesis for the revelations in Q. 33:4 and Q. 33:5 appears to be the cause of the considerable confusion surrounding the practice of adoption, prompting some contemporary scholars to assert that it is not prohibited in Islam.

Lings, in his biography of Prophet Muhammad, states that the revelations in Q. 33:4 and Q. 33:5 "… did not annul adoption as such, nor did it affect in any way the love and the intimacy between the adopter and the adopted … It was merely a reminder that there was no blood relationship … ."[925] Lings's explanation is relatively brief. It does not provide a basis for his remarks or reference any source besides the verse itself (Q.33:4).[926] Malyan et al. also state that adoption is not prohibited in Islam.[927] In contrast, according to Chaumont, "Modern and contemporary ethnology has shown that despite its theoretical prohibition, adoption used to be practised in numerous Muslim societies."[928] As shown in chapter three, many Muslims practise adoption, and a few Muslim countries legally recognise it, which appears to stem from this confusion over adoption from a theological perspective.

While some contemporary scholars argue that people have abandoned the practice of the Prophet Muhammad, Suleiman states that Muslims have abandoned the *Sunnah* of Prophet Muhammad regarding the care of orphans.[929] He noted that the

[924] Yusuf Ali. *The Holy Qur'an: Text, Translation & Commentary.* 1968. Op. Cit. p. 1102

[925] Lings. *Muhammad: His Life Based on the Earliest Sources.* 1983. Op Cit. pp. 213-214

[926] Malyan, Zulfia, Jaka Ghianovan, and Abil Ash. "Tabanni Concept of Al-Qur'an Perspective: In The Study of Ijtima'i Interpretation." *Riwayat: Educational Journal of History and Humanities* 7, no. 3 (2024): 1187-1198. P. 1190

[927] Malyan, Zulfia, Jaka Ghianovan, and Abil Ash. "Tabanni Concept of Al-Qur'an Perspective: In The Study of Ijtima'i Interpretation." *Riwayat: Educational Journal of History and Humanities* 7, no. 3 (2024): 1187-1198. P. 1190

[928] Chaumont, E. *"Tabannin",* in: Encyclopaedia of Islam. Second edition. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth. E. Van, Donzel. W.P, Heinrichs. Consulted online on 29 April 2017 http://dx.doi.org/10.1163/1573-3912_islam_SIM_8913: First published online: 2012. First print edition: ISBN: 9789004161214, 1960-2007. accessed 29/04/2017

[929] Omar, Suleiman. *Reviving a Lost Sunnah: Adoption and Foster Care in Islam*, published 2017, available at: https://yaqeeninstitute.org/omar-suleiman/reviving-a-lost-sunnah-adoption-and-foster-care-in-islam/#.XTxXNExFyUk, accessed 18/06/2018

Qurʾan and *ahadith* urge Muslims to care for the vulnerable and orphans.[930] This illustrates that the confusion surrounding adoption originates from historical sources, and this misunderstanding has persisted into contemporary scholarship.

I have demonstrated that adoption has been misunderstood. As shown in the previous chapter, what earlier studies referred to as adoption was, in fact, '*wala'.* The revelations, as illustrated in Q.33:4 and Q.33:5, do not even prohibit *wala,* let alone adoption. Modern scholars who have translated or annotated texts have employed the term 'adoption' without a thorough understanding of the concept from both historical and contemporary perspectives. The methodology of Islamic jurisprudence shows that scholars utilise various principles to shape policies based on the Qur'an and *ahadith,* as exemplified by the case of adoption. As discussed in Chapter Two, under the principle of *istihsan,* or juristic preference, local cultures and practices have influenced the opinions and rulings of theological scholars and jurists. These various explanations linking the revelation with adoption demonstrate that the differing perspectives of scholars stem from their interpretations of adoption as an instrument. It is common knowledge that formal or legal adoption among humans pertains to children and, historically, adults. Adoption lacks a historical definition, and not every scholar has studied what was considered adoption in the pre-Islamic Arabian Peninsula. As shown in Chapter One, one of the concerns of scholars of adoption in Islam was the lack of debate on the topic of adoption in Islamic jurisprudence.

5.6 Insufficient discussion regarding children's adoption in Islamic jurisprudence

According to Powers, Pesle was the first Western scholar to study adoption from an Islamic perspective in 1919, when he stated, "Of all the institutions of Islamic law… adoption is arguably the one that [Muslim] jurists have most neglected."[931]

[930] Omar, Suleiman. *Reviving a Lost Sunnah: Adoption and Foster Care in Islam*, published 2017, available at: https://yaqeeninstitute.org/omar-suleiman/reviving-a-lost-sunnah-adoption-and-foster-care-in-islam/#.XTxXNExFyUk, accessed 18/06/2018

[931] Pesle, Octave. *L'adoption en droit musulman***.** Thèse pour le doctrorat ès-sciences juridiques présentée et soutenue publiquement, le 12 Avril 1919. Alger: Imprimerie F. Montégut, 1919, p. 9 cited in David, S. Powers. *Adoption,* available online:

In other words, Islamic scholarship did not discuss adoption in the same manner as other social practices. Yassari and Landau-Tasseron also raised similar concerns.[932] As shown, adoption is a highly challenging subject for analytical purposes in Islam. The absence of rulings on adoption in Islam can be attributed to two reasons. Firstly, the institution of adoption has undergone significant changes in most Western countries today, particularly in the UK. Adoption offers stability and a home environment for vulnerable children, and perhaps was not an issue that could have caused debate. Historically, particularly in Roman times, adoption was often of adults rather than children. There are references to adoption in the Qur'an in the context of children, as seen in Q. 12:21 and Q. 28:9, as discussed in Chapter Two. These references lack the term *al-tabanni,* which could explain why contemporary scholars could have overlooked it. Likewise, the earlier analysis from the Qur'an demonstrated that *wala*, equated to adoption, had nothing to do with children's care, and contemporary studies did not identify this practice because, in theological sources, it is contextualised within slavery.

Secondly, the translation and interpretation of ancient Arabic manuscripts raise questions about whether scholars can derive accurate translations from them.[933] More evidence is needed to demonstrate that the examined verses pertain to adoption. For instance, certain ideas familiar to the late 20th century were unknown to both tribal and urban societies in 7th-century Arabia. Furthermore, it remains debatable whether contemporary scholars possessed sufficient knowledge of modern legal adoption to influence their interpretations, such as the mistaken belief that it necessitates a change in biological identity. Alternatively, they incorrectly assumed that the practice of adopting children, as we understand it today, existed before Islam among the tribes of the Arabian Peninsula, a topic

http://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0226.xml, accessed on 05/06/2017

[932] Yassari. *Adding by Choice: Adoption and Functional*, Op. Cit. p. 934; Landau-Tasseron. *Adoption, Acknowledgement of Paternity.* Op. Cit. p. 169

[933] We know scholars have been criticised for their inadequate translations of the Qur'an's certain verses. See, Burman, Thomas E. "Tafsīr and Translation: Traditional Arabic Qur'an Exegesis and the Latin Qur'ans of Robert of Ketton and Mark of Toledo." *Speculum* 73, no. 3 (1998): 703-32. Accessed January 12, 2019. doi:10.2307/2887495. p. 729

indeed addressed in the Qur'an in the early 7th century.[934] However, a review of historical literature from the early 7th century to the 9th century reveals no evidence to support this claim. Yet, adoption is represented in Islamic sources through modern translations.[935] Historically, discussions of children's care in theological sources are often associated with marriage, genealogy, inheritance, and maintenance, rather than being viewed as separate entities like legal adoption.

5.7 Conclusion

The insights found in verses Q.33:4 and Q.33:5 of the Qurʾan provide essential context regarding the treatment of vulnerable individuals within society. Rather than addressing the topic of adoption, these verses respond to pagan customs prevalent in the Arabian Peninsula, particularly concerning the practice of *wala*, which led to the exploitation of those in vulnerable positions in the early period of Islam. The revelations aimed to protect the fundamental rights of formerly enslaved individuals of unknown heritage, reforming the condition of patron rather than prohibiting adoption. The case of Zayd ibn Harithah serves as an important distinction. Zayd, a freedman of Prophet Muhammad, established a *wala* long before the revelations were made, at a time when social norms were different. This guidance on prohibiting patron requirements emerged approximately seventeen years into the rise of Islam, around 627 A.D., indicating that the fundamental concept of *wala* was not inherently problematic. The challenge arose when formerly enslaved individuals, lacking known heritage, were accepted into the community with the support of a patron, which led to systemic abuses of their rights. Consequently, the reforms in verses Q.33:4 and Q.33:5 prohibited this condition of a patron for *wala* for individuals of unknown heritage. In summary, these revelations offer a nuanced approach that aims to foster better treatment and protection for vulnerable individuals, emphasising reforms that enhance their dignity and rights within the community.

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[934] Schacht. *The Origins of Muhammadan Jurisprudence.* 1967. Op Cit. p. 4

[935] Mālik Ibn Anas. *Al-Muwatta of Imam Malik Ibn Anas: The First Formulation of Islamic Law*. London, New York: New York: Kegan Paul International; Distributed by Routledge, Chapman, and Hall. 1989

Chapter. 6

Ahadith Showing Manipulation of Paternity are Not Relevant to Adoption

6.1 Introduction

The previous chapter demonstrated that the revelations in verses Q.33:4 and Q.33:5 of the Qur'an do not concern adoption or its prohibition. Instead, these revelations focus on *wala* in the context of slavery. They address the plight of formerly enslaved individuals of unknown heritage who were compelled to adopt patrons for *wala.* In doing so, they were often forced to relinquish their rights, including marriage, inheritance, and services, in exchange for their sponsorship into tribes. This bondage was indistinguishable from their previous status of slavery in the region. Thus, Allah abolished the patron condition for individuals of unknown heritage, as illustrated in revelations Q.33:4 and Q.33:5, and recommended referring to them as brethren in faith.

This chapter examines the *ahadith* related to the prohibition of adoption. A study by Sonbol, as discussed in Chapter One, demonstrates that it is the *ahadith* that indicate the prohibition of adoption in Islam.[936] Landau Tasseron also found that adoption allowed manipulation of paternity in the Arabian Peninsula and was consequently prohibited in Islam.[937] Thus, this chapter explores why individuals manipulated paternity through adoption, along with their motivations or gains. Another reason linked to the prohibition of adoption is the equal inheritance share for adoptees. Naqvi stated that adoption was forbidden in Islam because it permitted an equal share of inheritance for adoptees before the advent of Islam.[938] Furthermore, Islamic jurisprudence does provide a share for adoptees.[939] In other words, these scholars assert that since the revelations concerning inheritance do not mention adoptees as beneficiaries, it must be due to the prohibition of adoption in Islam. Therefore, this analysis will focus on whether adoptees had an equal share in inheritance before Islam and whether this was a reason for the prohibition of adoption. Additionally, why are adoptees not mentioned in inheritance in Islam?

[936] Sonbol. *Adoption in Islamic society.* Op. Cit. pp. 51, 62, 64
[937] Landau-Tasseron. "Adoption, Acknowledgement of Paternity". Op. Cit. p. 189
[938] Naqvi. "Adoption in Muslim Law". Op. Cit. p. 384
[939] Ibid …

6.2 *Ahadith* associated with adoption.

Earlier studies have referenced two of the *ahadith* on paternity manipulation as supporting evidence for the prohibition of adoption, as discussed in chapter one. However, there are several *ahadith*, either in the context of paternity manipulation or the denial of an individual's paternity and the consequences of such actions. The message across all *ahadith* is similar, but the wordings exhibit slight variations, as shown below (the actual wordings of the *ahadith* are in bold because the rest of the text consists of narrators and their contextualisations). These *ahadith* are -

1. "Abu Dharr states that he heard the Prophet, may Allah bless him and grant him peace, say, **"A person who knowingly claims a father other than his own has disbelieved**. ..."[940]
2. Narrated by Abu `Uthman: "I heard from Sa'd, the first man who has thrown an arrow in Allah's Cause, and from Abu Bakra who jumped over the wall of the Ta'if Fort along with a few persons and came to the Prophet. They both said, "We heard the Prophet (ﷺ) saying, **"If somebody claims to be the son of somebody other than his father knowingly, he will be denied Paradise** (i.e. he will not enter Paradise).' "Narrated Ma'mar from `Asim from Abu Al-`Aliya or Abu `Uthman An-Nahdi who said. "I heard Sa'd and Abu Bakra narrating from the Prophet." `Asim said, "I said (to him), 'Very trustworthy persons have narrated to you.' He said, 'Yes, one of them was the first to throw an arrow in Allah's Cause, and the other came to the Prophet (ﷺ) in a group of thirty-three persons from Ta'if.'"[941]
3. "**Do not wish for other than your fathers. Whosoever wishes for other than his father, it is *kufr***."[942]

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[940] SAl-Bukhari, Muhammad. Al-Adab Al-Mufrad 433; Book 24. Defamation: hadith. 15: available at: https://sunnah.com/adab/24/15 (Status: Sahih), accessed 18/01/2021

[941] See Sahih al-Bukhari: Military Expeditions led by the Prophet (PBUH) (Al-Maghaazi): (56) Chapter: The Ghazwa of At-Taif; Book 64, Hadith 356: https://sunnah.com/bukhari/64/356, accessed 18/01/2021.

[942] Al-Asqalani, *Fath al-Bari,* Vol. 112. p. 56; cited in Sonbol. *Adoption in Islamic society.* Op. cit. p. 51

4. *"***He who claims another father and he knows his father, it is *kufr*."**[943]
5. "…**Do not turn away from your fathers. He who turns away from his father is guilty of disbelief**."[944]
6. The narration of Yazid ibn Tariq, who states that Ali Ibn Talib noted this in a sermon,

> "…. Allah shall not accept from him any repentance nor any adjustment on the Day of Resurrection. **He who claims to assign himself to other than his father or attributes himself to other than his relatives (master) incurs the curse of Allah, the angels and all the people. Allah shall not accept any alteration nor adjustment from him on the Day of Judgement**."[945]

All the above *ahadith* share a similar context regarding the manipulation of paternity, but the two predominant themes are either denial or incorrect attribution to someone. Some of these *ahadith* are brief and lack context or broader social significance. Those who have linked these *ahadith* to the prohibition of adoption have not provided any further evidence to establish the social context beyond these brief texts, which do not inherently imply any connection to adoption. As demonstrated above, the *ahadith* address deliberate false claims of paternity and denials of paternity. They serve merely as a warning to those who are intentionally manipulating or denying paternity. The *ahadith* warrant further examination from a historical perspective to demonstrate their relevance to adoption. If this were connected to the *wala,* which has been incorrectly compared to adoption, then, as indicated in the previous chapter, formerly enslaved individuals genuinely lost their biological identity and were compelled to adopt patrons. Their actions were neither deliberate nor manipulative. Thus, these *ahadith* concerning the manipulation of paternity cannot be associated with them.

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[943] Al-Asqalani, *Fath al-Bari,* Vol. 112. p. 56; cited in Sonbol. *Adoption in Islamic society.* Op. cit. p. 51

[944] Al-Bukhari and Muslims, narrated by Abu Hurairah, Hadith No: 1807.2; also cited in Al-Nawawi, edit Masumi. 1992. pp. 447-448

[945] Bukhari and Muslim hadith No: 3: 1808

Furthermore, these *ahadith* are not harmonious with adoption. For instance, a deliberate intention to manipulate one's paternity suggests that this message is directed at adults rather than children. Additionally, why would someone intentionally alter a child's paternity? What could be the gain or motive for a parent to deny paternity, or for an adult to claim to be someone's father through adoption? Suppose the motive is to secure a share of the inheritance. In that case, an adopted child is entitled to an equal portion from the adoptive parents before Islam, as shown by earlier studies, just like biological children. Likewise, manipulating paternity would not benefit adoptive parents if it concerns the equal distribution of inheritance. Furthermore, these *ahadith* do not pertain to children, as under Islamic principles, a child cannot be held accountable for poor decisions or compensation payments.[946] The analysis of the last *hadith*, number six above, and other similar *ahadith* demonstrates that they do not address *wala* or adoption. Instead, these *ahadith* regarding paternity manipulations focus on the inheritance rights of biological children in Islam.

The last narration by Ali Ibn Talib from the above *ahadith* provides the social context of slavery. This *hadith* shows that, in addition to a biological father, identifying with a master is permissible. This narration uses the term 'master', indicating that if someone identifies with individuals other than their father or master, they commit apostasy. The term 'master' in this *hadith* is significant as it highlights another prevalent practice in the Arabian Peninsula, where masters fathered children with slaves and concubines. Likewise, a *hadith* illustrates that inheritance was the underlying cause of the manipulation of paternity in these circumstances.

According to a narration by Layth B. Abu Sulaym from Shahr B. Haushab al-Ash'ari, Prophet Muhammad, in his last *hajj* sermon in Arafa, stated,

> "God has assigned to everyone his due. Testamentary bequests to an heir are not lawful. The child belongs to the bed, and the adulterer must be stoned. He who claims as father him who is not his father, or a client a

[946] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 241

master who is not his master, on him rests the curse of God, the angels, and men everywhere. God will not receive from him compensatory atonement, however great."[947]

The *hadith* by Ali Ibn Talib discussed earlier demonstrates that it is permissible to assign one's paternity to a master. At the same time, the *hadith* by Layth b. Abu Sulaym suggests that inheritance is the cause of paternity manipulation. This *hadith* pertains to false testimonies of heirs in inheritance cases. The heirs may result from adultery or illegitimate relationships, as it states, 'The child belongs to the bed, and the adulterer must be stoned.' This principle is known as *firash* in Islamic jurisprudence, which addresses paternity disputes for children born from slavery and concubinage, rather than adoption or *wala*.

6.2.1 The principle of *firash* (a child belongs to bed) and concubines (*ummahat al-awlad* (mothers of children)

The principle of *firash* was introduced by Prophet Muhammad to resolve a paternity dispute concerning a child born to a slave girl. According to a *hadith* narrated by Aisha,

> "`Utba (bin Abi Waqqas) said to his brother Sa'd, "The son of the slave-girl of Zam'a is my son, so be his custodian." So when it was the year of the Conquest of Mecca, Sa'd took that child and said, "He is my nephew, and my brother told me to be his custodian." On that, 'Abu bin Zam'a got up and said, 'but the child is my brother, and the son of my father's slave-girl, as he was born on his bed." So they both went to the Prophet. Sa'd said, "O Allah's Messenger (ﷺ)! (This is) the son of my brother, and he told me to be his custodian." Then 'Abu bin Zam'a said, "(But he is) my brother and the son of the slave-girl of my father, born on his bed." The Prophet (ﷺ) said, "This child is for you. O 'Abu bin Zam'a, as the child is for the owner of the bed, and the adulterer receives the stones." He then ordered (his wife) Sauda bint Zam'a to cover herself

[947] Guillaume. *The Life of Muhammad:* A Translation of Ishaq's Sirat Rasul Allah. Op. cit. p. 652

before that boy as he noticed the boy's resemblance to `Utba. Since then, the boy had never seen Sauda till he died." [948]

As the above *hadith* by Aisha shows, S'ad bin Abi Waqas sought to acknowledge his nephew on behalf of his brother Utba bin Abi Waqas. One of the *ahadith* in the list above in the introduction concerns paternity manipulation and is narrated by S'ad bin Abi Waqas, whereby Prophet Muhammad told him, "He who attributes his fatherhood to someone other than his father, knowing that he is not his father, will be excluded from Paradise."[949] S'ad bin Abi Waqas was claiming his nephew's paternity on behalf of his brother. Prophet Muhammad warned them against false claims regarding someone's paternity, which appears to be a pragmatic decision. The ruling did not favour S'ad bin Abi Waqas despite his brother being the child's biological father. The child's paternity was assigned to Zam'a because he was the owner of the slave girl who bore this child. This is now known as the principle of *firash* in Islam, where paternity is assigned based on principles to protect the child's best interests rather than actual biology.

The purpose of the principle of *firash* is to safeguard children from neglect due to poverty and illegitimacy. According to Rahim, resolving paternity through the principle of *firash (*the child belongs to the bed), emphasises the children's welfare in terms of securing rights rather than the biological father.[950] The principle of *firash* (a child belongs to the bed) protects children's right to inheritance and maintenance from unregulated marriages. I will discuss later that *firash* is one of the recognised methods in Islam for assigning paternity to a child. Paternity is very significant for children's rights in Islam. According to Rahim, failure to establish paternity deprives children of their right to maintenance.[951] According to Rahman, paternity was associated with legitimacy due to a genuine concern for children's welfare.[952] Al-

[948] Sahih al-Bukhari. Book of Inheritance. Chapter. 18: The child is for the owner of the bed. Book no. 85 Hadith. 26; https://sunnah.com/bukhari/85

[949] Bukhari, Muslim and Abu Daud, 1806.1 citied in Al-Nawawi, edit Masumi. 1992. p. 447

[950] Rahim. *The Principles of Muhammadan. Jurisprudence.* Op. cit. p. 342

[951] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 342

[952] Rahman. *Islamic Law. Op*. cit. p. 336

Shafi'i asserts that the Qur'an and *ahadith* impose a duty on a father to ensure that his children are well-suckled and maintained until they are young. Al-Shafi'i referenced the case of Hind, the daughter of Atba, where Prophet Muhammad advised her that she did not need permission to take maintenance for her children from her husband Abu Sufyan's property because they were his children.[953] Islamic jurisprudence indicates that a father has a primary duty to support and maintain his biological children.

A *fatwa* by Alamgir states that fathers must support their infant children. Mothers are not required to suckle their child, as a father can procure a nurse to nourish the infant, as he is obliged to do so. [954] A father has primary responsibility for his child's maintenance. In the case of a male child, this obligation lasts until he earns a living. If a disability persists, it remains in effect for the duration of the disability. For a female child, the responsibility lasts until she gets married. [955] If the father lacks financial means, then the responsibility falls on the mother (if she has the financial resources).[956] Once the father's financial situation improves, the mother can request reimbursement for the expenses she incurred on his behalf. Likewise, if the child has an estate, for instance, given by a grandparent as a gift, the father can utilise this for his children's maintenance.[957] If the father is deceased, the responsibility for the children's maintenance falls on paternal and maternal relatives, especially grandfathers or uncles.[958] The reason paternity disputes were common in the Arabian Peninsula was that slave masters would sell enslaved individuals and concubines along with their children.

According to Averroës, it was acceptable to sell *ummahat al-awlad* (أمهات الأولاد) (mothers of children) during the early period of Islam, specifically during the life of

[953] Q. 2:233,
[954] Rahman. *Islamic Law. Op*. cit. pp. 391-397
[955] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 343; Rahman. *Islamic Law. Op*. cit. pp. 387-388
[956] Rahman. *Islamic Law. Op*. cit. p. 388
[957] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 343
[958] Rahman. *Islamic Law. Op*. cit. pp. 388-389

Prophet Muhammad.[959] According to a hadith by Jabir and Abu Sa'id, "We used to sell our slave women and the mothers of our children (*umahat Awaldina*) when the Prophet (ﷺ) was still living among us, and we did not see anything wrong with that."[960] The selling of slave women with children ceased during the caliphate of Umar.[961] According to Mernissi, Al-Tabari could not positively establish the paternity of Abu Bakr, the first caliph of Islam. She also stated that this "… was not an isolated one. On the contrary, it was the fate of that whole population of uprooted people who suffered from the doubts hanging over their paternity and whose lives reflected their resulting subordinate status."[962] As demonstrated in Chapter Four, tribes typically captured women and children as bounties during raids on other tribes, which resulted in the possibility that those children lost contact with their biological fathers. Zayd Ibn Harithah is a prime example discussed in Chapter Five. These sources, as highlighted, do indicate that children would have lost contact with their biological fathers or lawful masters due to being sold.

Moreover, pagan individuals in the Arabian Peninsula engaged in various cohabitation practices, which also contributed to unidentifiable paternity.[963] Not all practices were permitted in Islam, but marriage and the possession of concubines were. According to Al-Sahfī'i, "all women are forbidden [to men] except in two ways: either by *nikāh* (marriage) or *wati* (intercourse with a slave-woman by merits of possession).[964] Islamic jurisprudence shows that men are allowed four wives in addition to concubines (*wati)* (possibly several women).[965] This view is derived from a verse in the Qur'an. In the Qur'an, Allah says, "Except their wives or those their

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[959] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 475

[960] Ibn Majah. Sunan Ibn Majah: *The Chapters on Manumission (of Slaves)*. Arabic Ref: Book 19. *Hadith*. No. 2613. *status: Hasan* @Sunnah.com; Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 475

[961] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 475

[962] Mernissi. *The Veil and The Male Elite.* Op. cit. pp. 165-170, 176-177

[963] Smith. *Kinship & Marriage in Early Arabia*. Op. cit. p. 117

[964] Al-Shafī'i. *Al-Risala: Fi Usūl -Al-Fīqh*. Op. cit. pp. 173-175; Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp. 36-37; *Sunni fīqh* suggests three types of marriage (1) *sahih* (valid), (2*) batil* (void), (3) *fasid* (irregular), see Rahman. *Islamic Law. Op*. cit. p. 130; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. pp. 327-340; Ahmed. *The Muslim Law of Divorce.* Op. cot. pp. 853-854; Esposito. *Women in Muslim Family Law.* Op. cit. p. 18

[965] Roberts. *The social Laws of the Qoran.* Op. cit. pp. 10-11

right hands possess, for indeed, they are not to be blamed."[966] It has been suggested that the latter part of the verse, "their right hands possess," refers to women in slavery and captives turned concubines.[967] It is unclear from the verse whether this principle of 'your right hand possessed' concerns individuals who already had women before Islam, or whether it is permitted continuously in Islam. I shall not delve into this subject as it is significant to adoption. Nevertheless, the loss of paternity was a substantial issue in the early period of Islam, as it affected children's rights, which had not been previously regulated.

In Islam, paternity determines a child's faith and status, dictating whether they are free or enslaved.[968] According to Islamic jurisprudence, the rights of children born to enslaved women depend on their mother's status, which is significant as it distinguishes whether they were born free or enslaved. A *hadith* by Prophet Muhammad states that a child's birth sets enslaved women free; specifically, he mentioned his slave girl Mariya, saying, 'the birth of her child set her free'. [969] A mother's status impacts her children's rights to inheritance and freedom. Similarly, strict marriage regulations were established to preserve the purity of '*asab* and *nasab*', upon which inheritance depends. [970] Islam teaches that "The loss of *nasab* and its confusion leads to great personal and social immorality… it leads to economic and financial dislocation."[971] In pre-Islamic marriages, paternity held little importance regarding inheritance.[972] However, in Islam, maintaining legal paternity

[966] Q. 70:30; Q. 23:6, See Sahih International, https://quran.com/70/29-39, accessed 13/05/2019.
[967] Mernissi. *The Veil and The Male Elite.* Op. cit. pp. 165-170, 176-177
[968] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. Cit. p. 341
[969] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 475
[970] *Asab* or *asaba* are the agnates or successors of a male descendant and are close biologically related family members, see Schacht. *An Introduction to Islamic Law.* Op. cit. p. 161; Sonbol, *Rise of Islam: 6th to 9th Century,* Op. cit. p. 5; *asab* and of *nasab* (heirs from paternity)
[971] Abdul-Hamid Mahmud Tahmaz, *Al Ansab wa'l-Awlad.* Damascus: Dar al-Qalam, 1987. p. 16. citation by Sonbol. *Adoption in Islamic society.* Op. Cit. p. 49
[972] Arab society was very much interested in lineage. One pre-Islamic Arabian Peninsula custom was that men sent their wives to live with other men until they got pregnant. According to Jan, "Men gave their wives for seeding to famous men believing they would beget sons like them." The evidence for this is also found in a *hadith* from Al-Bukhari on the narration of Ai'shah, which claims that before Islam, four types of marriage existed. First, a man would seek the permission of the woman's father, brother or guardian for marriage and pay a dowry. The second type of marriage (*istibda') is* where a husband would utilize a man of noble birth to procreate. A husband would stay away from his wife during menstruation and send her to

through marriage regulations aims to safeguard children's rights to maintenance and inheritance.[973] Marriage clarifies paternity; this clarity is crucial for identifying heirs who are entitled to inherit. Thus, a father is responsible for the maintenance of his children. Under Islamic jurisprudence, a Muslim woman is permitted to marry only one husband to prevent any doubts concerning the paternity of her children.[974] Polyandry is prohibited, rendering children from a subsequent marriage by a woman illegitimate and ineligible for inheritance from the father.[975] Conversely, a man may marry up to four wives simultaneously, and children born from all these marriages are regarded as legitimate and equally entitled to inheritance. [976] The marriage regulations and prohibitions against adultery aim to guarantee the welfare of children through their legitimate rights to inheritance and maintenance.

As shown in Islam, *nasab* or paternity is closely associated with children's welfare through maintenance and inheritance. Inheritance and maintenance are wealth that support a child's fundamental rights, such as food, clothing, health, and education, which depend on financial resources. Islam has a patrilineal social structure.[977] The bond of the father establishes maintenance and inheritance rights

another man to get her pregnant after the cycle. The third type of marriage involved a woman who had several sexual partners simultaneously until she got pregnant and gave birth to a child. Then, she would invite these men and ask them to name the child. Fourth, a woman put a sign on her door and cohabitated with men, and when she gave birth, she invited a physiognomist to associate the child with the person the child most resembled. See Al- Bukhari at 6:127, Goldziher and Wilken, see Smith. *Kinship & Marriage in Early Arabia*. Op. cit. p. 132; Jan, Tarik. *The Life and Times of Muhammad Rasul Allah*: Universalizing the Abrahamic Tradition. Islamabad; U.K: Institute of Policy Studies. U.K. Islamic Foundation. 1999. p. 85; Mernissi. *The Veil and The Male Elite.* Op. cit. pp. 183-184; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 7; Sahih-Al-Bukhari, 5127, Book 67. Wedlock, Marriage (Nikaah), *hadith* no. 63. Sunan Abi Dawud. Book. Divorce (Kitab Al-Talaq). Hadith 98, See. Appendix. 3 for full detail

[973] See chapter four, the analysis of *zihar,* which seriously abused women and children's right to maintenance.

[974] Hodkinson. *Muslim Family Law*. Op. cit. p. 95

[975] Esposito. *Women in Muslim Family Law.* Op. cit. p. 20

[976] The criteria for more than one wife is complicated because of the equality principle, and it is not easy to fulfil them. See Hodkinson. *Muslim Family Law*. Op. cit. p. 95

[977] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 342; Esposito. *Women in Muslim Family Law.* Op. cit. pp. 27-28; Schleifer, Aliah, *Motherhood in Islam.* Cambridge: The Islamic Academy. 1986. pp. 68- 72

for only legitimate children.[978] In the pre-Islamic Arabian Peninsula, mothers could affiliate their children with whomever they preferred under one of the marriage practices.[979] Allah says in the Qurʾan, "O Prophet, when the believing women come to you pledging to you…, nor will they commit unlawful sexual intercourse, nor will they kill their children… ."[980] The Qur'an and *ahadith* strictly prohibit adultery and penalties for such offences.[981] The fear was that a fornicator or father who had an illicit relationship might not accept his biological child out of fear of punishment for adultery. If a child is not associated with a lawful father, then such a child's maintenance and inheritance fall upon the biological mother.[982] According to Islamic jurisprudence, illegitimate children inherit from their mother, and the mother inherits from them.[983] All these regulations and scrutiny of a child's procreation aim to determine their inheritance rights. Numerous issues surrounding children's procreation and rights existed before and in early Islam, resulting in some having unidentifiable paternity. Therefore, it is permissible in Islam to assign paternity through acknowledgement.

6.2.2 Acknowledging Paternity in Islam.

As shown earlier in the *ahadith, firash* is one of the methods for acknowledging children from unregulated relationships. In Islam, paternity is typically established through a child being born during a valid or irregular marriage, but not a void one, or through the father's formal acknowledgement. [984] In the early period of Islam,

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[978] Esposito. *Women in Muslim Family Law.* Op. cit. p. 27; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 342; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 241; Ahmed. *The Muslim Law of Divorce.* Op. cit. p. 912

[979] Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 11

[980] Q. 60:12, Sahih International at Quran.com; See Ali.

[981] The penalty is one hundred lashes for each fornicator, both male and female. The recommendation for slave women is half of what is for a free person (fifty lashes), The *ahadith* recommend harsher punishment which is death by stoning. See Q. 24:2, and Q. 4:25, See, Appendix. 3(F)

[982] Rahman. *Islamic Law. Op*. cit. p. 336

[983] Rahman. *Islamic Law. Op*. cit. p. 325-335; a woman inherits from three people, one from a foundling, second from her freed slave and third from her biological child. See Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 374

[984] Esposito. *Women in Muslim Family Law.* Op. cit. p. 28; Ahmed. *The Muslim Law of Divorce*. Op. cit. pp. 864-890; Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 431

people had children with enslaved women or concubines, and they could acknowledge them. Islamic jurisprudence refers to these concubines as *ummahat al-awlad* (women with children).[985] Children born from concubinage are legitimate and eligible to inherit from their father, just as children born from a valid marriage.[986] It was common in the Arabian Peninsula to acknowledge children with unassigned paternity born to concubines. A father or mother can acknowledge a child, or a family member might do this on their behalf after the death of a father. Islamic jurisprudence outlines five methods for verifying a child's paternity in Islam. [987]

> "… (1). Attribution of the child to the one on whose bed he is born (al-walad lilfirash), (2). Acknowledgement of paternity (istilhaq/iqrar/i'tiraf), (3). Proof by testimony, according to which the plaintiff must provide proof through witnesses and the one who denies the charge must take an oath (albayina 'ala man idda'a, wal-yamin 'ala man ankara), (4). Examination of morphoscopic or genealogical lines and recognition of signs of paternity (qiyafa), and (5). Drawing of lots (al-qur'a) is an Islamic divinatory procedure. In certain cases, where any decision is liable to appear unjust to one party or the other, the judge may resort to the qura." [988]

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[985] Singular. *umm al-walãd, See.* Schacht. *The Origins of Muhammadan Jurisprudence.* Op. cit. pp. 264-266

[986] Gibb. et al. *The Encyclopaedia of Islam,* New edition, Vol. 1, Op. cit. p. 28

[987] Encyclopeadia of Islam, Vol. V. (1986) 235, 398; Ibn Qaiym al-Jawziya, al-Turuq al-hukmiyafi alsiyasah al-shar'iyah, Bayrut: al-maktab al-Islami. (2002) 66-101, 335-359; Ibn Qudama al Maqdisi, Al-mughni.vol.12, Beirut: Dar al-Fikr. (1988) 123; Ibn Qasim, Abd a-Rashid, al-basmah al-wirathiya, Dar al-'Adalah wal-Qanun al-'Arabiya. http://wwwjustice-lawhome.com/vb/showthread php?t=5026; Zahalka, lyad, al-Murshidfi al-Qada' al-shar'i Kafr Qara'. (2008) 89-94.); Aref Abu-Rabia, "Paternity Suits in Tribal Society in the Middle East," US-China Law Review 9, no. 1 (February 2012): 29-44, at pp. 41-42; cited in, M. S. Sujimon, "Istilhaq and Its Role in Islamic Law," Arab Law Quarterly 18, no. 2 (2003): 117-143.

[988] Encyclopeadia of Islam, Vol. V. (1986) 235, 398; Ibn Qaiym al-Jawziya, al-Turuq al-hukmiyafi alsiyasah al-shar'iyah, Bayrut: al-maktab al-Islami. (2002) 66-101, 335-359; Ibn Qudama al Maqdisi, Al-mughni.vol.12, Beirut: Dar al-Fikr. (1988) 123; Ibn Qasim, Abd a-Rashid, al-basmah al-wirathiya, Dar al-'Adalah wal-Qanun al-'Arabiya. http://wwwjustice-lawhome.com/vb/showthread php?t=5026; Zahalka, lyad, al-Murshidfi al-Qada' al-shar'i Kafr Qara'. (2008) 89-94.); Aref Abu-Rabia, "Paternity Suits in Tribal Society in the Middle East," US-China Law Review 9, no. 1 (February 2012): 29-44, at pp. 41-42; cited in, M. S. Sujimon, "Istilhaq and Its Role in Islamic Law," Arab Law Quarterly 18, no. 2 (2003): 117-143.

The principle in Islamic jurisprudence establishes a general presumption that a child is born within a valid marriage unless a dispute arises.[989] However, a child may be affiliated with a father through his acknowledgement, even in the absence of marriage between the parents.[990] Family members may also recognise a child born from an unrecognised relationship after the father's death. Islamic principles outline several conditions for establishing a child's paternity. In the event of a dispute, four methods can be used to resolve paternity. Firstly, the parents' relationship status can determine paternity through a valid marriage contract.[991] Secondly, a minimum gestation period within a valid marriage is required, which includes the condition that conception occurred during the valid marriage, with no proven evidence of *zīna* (adultery). The third option is *iqrar* (acknowledgement) by a father that a particular child is his.[992] This latter method includes three conditions for valid acknowledgement by a father: firstly, the child's paternity must be unknown; secondly, the age gap must be appropriate for a father-child relationship; and thirdly, the claim for a son must be genuine, with no apparent evidence of ulterior motives for claiming someone else's son.[993] However, as indicated in *ahadith*, two of these principles have arisen from manipulation or denial of paternity.

The first principle, as previously mentioned, is that of *firash* (the child belongs to the bed), which stipulates that the child belongs to the master of the slave woman rather than to an adulterer. The second is the denial of paternity through *li'an* (accusation of adultery). The *firash* principle applies to conventional marriage and

[989] Ahmed. *The Muslim Law of Divorce*. Op. cit. pp. 864-890; Rahman. *Islamic Law. Op*. cit. pp. 325-34; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 341; Esposito. *Women in Muslim Family Law.* Op. cit. p. 28

[990] Ahmed. *The Muslim Law of Divorce*. Op. cit. p. 892

[991] Banu az-Zubair MK. Who is a parent? Parenthood in Islamic ethics. *J Med Ethics*. 2007;33(10):605–609. doi:10.1136/jme.2005.015396. p. 606; Ahmed. *The Muslim Law of Divorce*. Op. cit. p. 865; Rahman. *Islamic Law. Op*. cit. p. 325; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 342

[992] Banu az-Zubair MK. Who is a parent? Parenthood in Islamic ethics. *J Med Ethics*. 2007;33(10):605–609. doi:10.1136/jme.2005.015396. p. 606

[993] Esposito. *Women in Muslim Family Law.* Op. cit. p. 28; Banu az-Zubair MK. Who is a parent? Parenthood in Islamic ethics. *J Med Ethics*. 2007;33(10):605–609. doi:10.1136/jme.2005.015396. p. 606

other permissible relationships, such as children born to concubines.[994] *Firash* allows a master or married husband (who owns a slave woman or marries a free woman) to claim the child from these women. A concubine's child belongs to the master who owned her at the time of the child's birth.[995] He is not obligated to accept that it is his child. In the case of a slave mother, the child belongs to her master.[996] For the Hanafī and Malakī schools, this only applies if the father acknowledges the child.[997] For other schools of thought, in the case of an unmarried enslaved woman, the master is considered the lawful father. The master may deny paternity, but he must provide proof, in legal terms beyond a reasonable doubt, that cohabitation was not possible at the time the child was conceived, i.e., that the master was away.[998] In such cases, the gestational period is used as guidance to determine paternity.

In the case of an enslaved person, the gestation period is determined from the time of ownership by the master. The typical gestation period accepted by the majority ranges from six months to two years.[999] The principle of *firash* does not apply if the gestation period is less than six months, whether measured from the date of the marriage contract or the date of consummation.[1000] In contrast, the Malakī school permits a gestation period of five years, while the Shafī'i school allows four years, each with specific conditions concerning divorce or death to acknowledge a child.[1001] The *madhahib* (Islamic doctrines) present diverse gestation periods for a

[994]Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 432; Sahih al-Bukhari. Book of Inheritance. Chapter. 18: The child is for the owner of the bed. Book no. 85 Hadith. 26; https://sunnah.com/bukhari/85, accessed 12/12/2019; Hodkinson. *Muslim Family Law*. Op. cit. p. 315

[995] I will discuss the conditions in detail later in the next section.

[996] Roberts. *The Social Laws of the Qorân*. Op. cit. p. 55

[997] Muwatta Malik. Book on. Setting Free and Wala'. كتاب العتق والولاء. Book no. 38 Hadith. 1487, https://sunnah.com/urn/41546

[998] Gibb. et al. *The Encyclopaedia of Islam,* New edition, Vol. 1, Op. cit. p. 28; Serrano, Delfina. "'Paternity and Filiation According to the Jurists of Al-Andalus: Legal Doctrines on Transgression of the Islamic Social Order.'" Imago Temporis. Medium Aevum, VII, 2014. p. 60

[999] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 374

[1000] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 433

[1001] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp. 430-437; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 342

child to be associated with *firash*, reflecting the common paternity disputes during the early period of Islam in the Arabian Peninsula.

The second issue in *ahadith* regarding paternity manipulation pertains to *li'an* (an accusation of adultery), which involves denying the paternity of a child. This represents another principle of paternity acknowledgement that also arose in similar circumstances.

6.2.3 Repudiating paternity through the allegation of adultery (*li'an*)

Li'an is an accusation of adultery made by a husband, which has strict criteria for proving the allegations. Linguistically, *li'an* derives from the term *la'ana,* translated as "to curse" or "to condemn".[1002] The revelations on *li'an* are in Q. 24:6-7 of the Qur'an.[1003] The revelation on *li'an* arose when Prophet Muhammad adjudicated an allegation between Uwaymir al-Jilani and his wife. A narration by Abu Hurairah indicates that,

> "the verse of *li'an* was revealed, the Messenger of Allah (ﷺ) said: 'Any woman who attributed her child to people to whom he does not belong, then she has no relation to (the religion of) Allah, and she will never enter Paradise, and any man who rejects his child, while he recognises him, Allah will screen Himself from him on the Day of Resurrection and disgrace him before the witnesses.'"[1004]

[1002] *Kamus Arab-Indonesia Al-Munawwir* by *Ahmad Wirson Munawwir* (1997), Cited in Adnan, Faiz, *Li'an: Husbands, Beware*!, published on 2018, available on, LI'AN: HUSBANDS, BEWARE! - Peguam Syarie - Sedia Membantu Anda (peguamsyariefas.com.my), accessed 20/01/2023

[1003] "And those who accuse their wives ˹of adultery˺ but have no witness except themselves, the accuser must testify,[1] swearing four times by Allah that he is telling the truth," Q. 24:6, available at. https://quran.com/24?startingVerse=6, "and and a fifth oath that Allah may condemn him if he is lying." Available at: https://quran.com/24?startingVerse=7, accessed 17/05/2023

[1004] Ibn Majah. Sunan Ibn Majah: *Chapters on Shares of Inheritance Arabic*. Arabic Ref: Book 23. *Hadith*. No. 2848. *status: Hasan* @Sunnah.com; Ahmed. *The Muslim Law of Divorce*. Op. cit. p. 494-495

The *hadith* mentioned above conveys the same message as the *ahadith* highlighted by studies on adoption discussed in Chapter One, as well as illustrated in the introduction concerning paternity manipulation. This *hadith* suggests that the denial of paternity pertains to *li'an,* rather than adoption. Previous studies have referenced one or two *ahadith* partially to demonstrate their relevance to adoption, but have not considered the social contexts in which such *ahadith* are found. As shown, the referenced *hadith* provides the social context of *li'an* and the circumstances that lead to allegations of paternity denial. The allegation of *li'an* carries severe consequences if proven.[1005] The punishment for adultery (*hadd-ul-zīna*) is death by stoning.[1006] Meanwhile, Islamic jurisprudence guides the prosecution of those who make false allegations and stipulates their punishment.

The wife must present a reasonable defence against the allegation, and if she does not, it is up to the *qadi* (judge) to adjudicate. If the allegation of *li'an* is upheld, according to Islamic jurisprudence, a husband can petition for the dissolution of the marriage and deny the child's paternity.[1007] According to Averroës, children born through *zina* (adultery) cannot be attributed to their mother's lawful husband unless they were born before the advent of Islam in *Jahiliyah*.[1008] Otherwise, all children born within marriage are considered legitimate unless the father repudiates them through *li'an*.[1009] The criteria for nullifying a child's paternity in the case of *li'an* have very stringent conditions.[1010] There are strict conditions in place to protect children's rights, such as inheritance and maintenance, which stem from legal paternity. These rights, originating from legal paternity, are forfeited if the accusation is upheld.[1011] According to *fatawa*, a successful *li'an* case permits the

[1005] Q. 24:4
[1006] Rahman. *Islamic Law. Op*. cit. pp. 318, 494-495
[1007] Al-Shafī'i. *Al-Risala: Fi Usūl -Al-Fīqh*. Op. cit. pp. 147-148; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. p. 339; Ahmed. *The Muslim Law of Divorce*. Op. cit. pp. 452-499; Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp. 145 - 147
[1008] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 433
[1009] Rahman. *Islamic Law. Op*. cit. pp. 318,320; Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 430
[1010] Rahman. *Islamic Law. Op*. cit. p. 495
[1011] *Radd-ul-Muhtar, citied in* Rahman. *Islamic Law.* Op. cit. p. 328

revocation of the child's paternity and the association of the child with the alleged individual (*maulana*) with whom the mother is accused of committing adultery.[1012] The *ahadith* regarding paternity manipulation or denial address individuals who engaged in such actions to either gain or forfeit the right to inheritance. Thus, people could acknowledge children born before Islam from adultery, but they were ineligible for a retrospective share in already distributed inheritance. According to a *hadith* by Prophet Muhammad in the narration of Amr bin Shu'aib,

> "Every child who is attributed to his father after his father to whom he is attributed has died, and his heirs attributed him to him after he died, he ruled that whoever was born to a slave woman whom he owned at the time when he had intercourse with her, he should be named after the one to whom he was attributed, but he has no share of any inheritance that was distributed previously. Whatever inheritance he finds has not yet been distributed, he will have a share of it. But he cannot be named after his father if the man whom he claimed as his father did not acknowledge him. If he was born to a slave woman whom his father did not own, or to a free woman with whom he committed adultery, then he cannot be named after him, and he does not inherit from him, even if the one whom he claims as his father acknowledges him. So, he is an illegitimate child who belongs to his mother's people, whoever they are, whether she is a free woman or a slave."[1013]

The above *hadith*, narrated by Amr bin Shu'aib, demonstrates that children born to enslaved people can be assigned to their fathers after their death, allowing them to receive a share of the undistributed estate. However, they will not receive a retrospective share of the already distributed inheritance. This principle serves to prevent false claims of paternity for inheritance purposes, as a child born to a slave woman could be assigned to a person posthumously through family members' acknowledgement, provided the deceased owned and had a sexual relationship with the slave woman. Furthermore, this *hadith* indicates that if a man engages in

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[1012] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp. 147, 430

[1013] Sunan Ibn Majah: *Chapters on Shares of Inheritance Arabic*. Arabic Ref: Book 23. *hadith*. 2851. *status: Hasan.* Available at: https://sunnah.com/urn/1272140, accessed. Accessed 12/12/2019.

adultery, whether with an enslaved or a free woman, and does not acknowledge the child born from this adultery, then that child would be deemed illegitimate, and their inheritance and maintenance would fall to the mother's family. Some have exploited this rule of assigning paternity for inheritance gain, and these *ahadith* serve as a warning to them.

In Islam, lawful paternity is a mandatory condition for inheritance from the father. As illustrated, a relative could associate adults with unassigned paternity with someone following their death. There are documented cases where individuals falsely claimed paternity, with this deliberate manipulation serving mutual gain in inheritance. For instance, Mawiya Ibn Abi Sufyan recognised Ziyad Ibn Abih, the Ummayyad Governor of Basra, as his illegitimate brother. Abu Bakr claimed a son from his slave woman, who then falsely declared that her brother was Abu Bakr's son, the second son of this slave woman. Similarly, another man, Suwayd (a poet), falsely claimed a slave girl's son.[1014] All these individuals manipulated paternity for inheritance, not to enable or conceal adoption.

6.3 Inheritance in Islam was the cause of paternity manipulation, not adoption.

The second issue raised by earlier studies on the prohibition of adoption was that it granted equal inheritance rights to adoptees before Islam. The Quran contains numerous revelations that address social challenges in the Arabian Peninsula. Inheritance is one such issue that undermined the rights of vulnerable individuals within the tribal structure, and it is wrongly associated with adoption. Under tribal customary rules, only strong men received an equal share of inheritance under *wala*, not every member of the tribe. Inheritance was not based on blood relations. The tribal customary rules did not include a concept of equal inheritance shares for all members or sons, as demonstrated in Chapter Four.

[1014] Landau-Tasseron. '*Adoption, Acknowledgement of Paternity.* Op. cit. p. 180; Gibb. et al. *The Encyclopaedia of Islam,* Vol. 1, Op. cit. pp. 24-25

Women and children did not qualify for inheritances under tribal customary rules. The standard rule on inheritance in tribes was that "None can be heirs who do not take part in the battle, drive booty and protect property."[1015] Among pre-Islamic Arabs, only sons could inherit, not daughters.[1016] As shown in Chapter Four, paternity held little significance before Islam. The primary issue that prompted inheritance reform in Islam was the restrictions on heirs under tribal customary rules, which left many destitute, particularly women and biological children.

The revelation regarding inheritance in Islam arose from concerns for women and orphans during the battle of Uhud. According to Muir, Sa'd ibn Ar-Rabī died in the Battle of Uhud, leaving behind his widow and two daughters. At that time, custom dictated that his brother inherited all of his possessions. Sa'd's widow invited Prophet Muhammad and his companions to a feast. During the discussion about her husband, she expressed her grievances to Prophet Muhammad, stating that Sa'd's brother inherited all of his estate, leaving nothing for her daughters. Subsequently, the inheritance rules were modified, and Allah instructed that beneficiaries should include both male and female family members related by birth, marriage, and voluntary contributions to those in need.[1017] Prophet Muhammad then summoned Sa'd's widow and brother, advising Sa'd's brother to allocate two-thirds of Sa'd's estate to his daughters and one-eighth to his widow.[1018] The inheritance rules in Islam expanded the circle of beneficiaries to include the deceased's immediate and extended biological family members.[1019] These new regulations aimed to grant vulnerable individuals independence from tribes, eliminating their previous

[1015] Smith. *Kinship & Marriage in Early Arabia*. Op. cit. pp. 65-66, Also see Haque, Muhammad Faizul, Sohirin Mohammad Solihin, Nadzrah Ahmad, and Mohd Shah Jani. "Women Rights to inheritance in Muslim Family Law: an analytical study." *International Journal of Islamic Business & Management* 4, no. 1 (2020): 15-26.

[1016] Jan, Tarik. 1999. *The Life and Times of Muhammad Rasul Allah: Universalizing the Abrahamic Tradition Tarik Jan*. Second revised print 1999. Ed. Islamabad: U.K.: Islamabad: Institute of Policy Studies; U.K. Islamic Foundation. p. 85

[1017] Q. 4: 11 and Q. 4: 12

[1018] Muir. The life of Mohammad from original sources. Op. cit. pp. 273-274

[1019] Q. 4: 11 and Q. 4: 12

dependency on tribal support, through which they had to forfeit many of their rights. According to Esposito,

> "The inheritance provisions in the Qurʾan modified this system in order to correct injustices. Islam brought a change in the social structure. Loyalty to the Islamic community (*ummah)* transcended tribal allegiance. In the Islamic community, more emphasis was placed upon family ties between husband, wife and children. The consequent shift in allegiance from the individual tribe to the individual family unit significantly raised the status of women in the society. This Islamic reform is mirrored to the new Quranically stipulated rules of inheritance that were superimposed upon certain unjust customary law."[1020]

Esposito correctly identified tribal customary rules on inheritance as the root cause of many injustices, as individuals displayed greater loyalty to their tribal kinship through wala than to their biological families.[1021] In Islam, the emphasis is on the rights of families and children regarding maintenance and inheritance. Although changes to inheritance prompted resistance from tribal people, this opposition was not related to the manipulation of paternity or the granting of equal shares of inheritance to adoptees. According to Rahman, the Companions of Prophet Muhammad fiercely resisted new inheritance laws because they deemed the new measures unreasonable. Under Islamic provisions, they were obliged to provide shares to their daughters, which they believed did not contribute to the security of the tribes or aid in fighting enemies.[1022] According to Mernissi, when revelations repudiated traditional customs and curtailed male privileges, men began distorting the message under the guise of interpretation.[1023] The alterations to inheritance also had a debilitating impact on wala (tribal allegiances/affiliations), not because they permitted paternity manipulation, but because wala's rules on inheritance

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[1020] M Esposito. *Women in Muslim Family Law.* Op. cit. p. 39
[1021] See chapter four,
[1022] Rahman. *Islamic Law. Op*. cit. p. 550
[1023] Mernissi. *The Veil and The Male Elite.* Op. cit. P. 30

were unjust for most individuals. As demonstrated, this change in inheritance was unrelated to equal inheritance for adoptees.

Another argument presented is that the Qur'an does not mention adoptees' share of inheritance because it is prohibited in Islam.[1024] However, the revelations concerning inheritance were revealed before those linked with the prohibition of adoption. Therefore, the absence here is not clarified by the assertion that adoption was prohibited, as this was not the case at the time of the revelation on inheritance. The revelations on inheritance are found in verses Q. 4: 11 and Q. 4 : 12 in the Qur'an, in chapter An-Nisa (the women). *An-Nisa* (the women) was revealed during the siege of Madinah, around the time of the Battle of *Uhud*.[1025] The verses outline inheritance beneficiaries and their prospective shares in the Qur'an.[1026] Allah says in the Qur'an,

> "Allah instructs you concerning your children [i.e., their portions of inheritance]: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two-thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [and/or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. …" [1027]

[1024] Naqvi, Ali Raza. "ADOPTION IN MUSLIM LAW." *Islamic Studies* 19, no. 4 (1980): 283–302. http://www.jstor.org/stable/20847150. P.288; Levy, Reuben. *The social structure of Islam*. Vol. 12. Taylor & Francis, 2000. P.148

[1025] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. Vol 2. p. 367 ; Lings, *Muhammad:* his life, Op. cit. pp. 195-198;

[1026] Sahih International, https://quran.com/4/11-21, accessed 12/05/2019; For detailed rulings and differences in *madhahib,* See, Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp. 411-442; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. pp. 346-350

[1027] Q. 4 :11, Translation by Sahih International, available at: https://quran.com/4?startingVerse=11, accessed 27/01/2021.

As noted in the above verses, the revelations on inheritance do not mention adopted children as beneficiaries. The Battle of Uhud was fought in 725 A.D. In contrast, the revelations concerning adoption in verses Q.33:4-Q.33:5, as analysed in Chapter Five, which abolished patron requirements, were revealed around 727 A.D.[1028] The order of revelations indicates that inheritance reforms occurred before the abolition of the patron requirement, which took place approximately two years later, as demonstrated in 727 A.D. Hypothetically, even if the argument presented in Chapter Four regarding wala is not accepted, adoption had not yet been prohibited when the new rules on inheritance were introduced in 725 A.D. Thus, the claim that the Qur'an does not mention the shares of adoptees in inheritance due to the prohibition of adoption is illogical.

The revelations in the Qur'an regarding inheritance do not mention the shares of adoptees, as they explicitly address the needs of widows and orphans. Notably, neither the Qur'an nor the *ahadith* negate inheritance for those related by adoption. However, the Qur'an reveals that one-third of the estate can be allocated to the poor and needy. Similarly, Chapter Two demonstrates that the Qur'an readily supports the care of vulnerable children, including financial assistance when one is unable to provide physical care. [1029] Although biological children are qualified beneficiaries, the Qur'an also offers guidance on inheritance for adoptive children. Allah says in the Qur'an, "And when [other] relatives and orphans and the needy are present at the [time of] division, then provide." [1030]

[1028] Lings, *Muhammad:* his life, Op. cit. pp. 195-198; Arifin, Azis, Hamka Hasan, and Imam Subchi. "Revealing the Causes of the Loss of the Islamic Troops in the Battle of Uḥud." In *Proceedings of the 4th International Colloquium on Interdisciplinary Islamic Studies in conjunction with the 1st International Conference on Education, Science, Technology, Indonesian and Islamic Studies, ICIIS and ICESTIIS 2021, 20-21 October 2021, Jambi, Indonesia*. 2022.; Akhter, Naseem, and Aijaz Ali Khoso. "The Battle of Ahzāb (Trench): The Best Political and Military Strategy of the Holy Prophetﷺ (A Historical and Research Review." *International Research Journal of Education and Innovation* 2, no. 1 (2021): 81-85.; The battle of Uhud started in the month of Shawwal after the *hijra* 3 A.H., Learn Seerah, *The Battle of Uhud*, available online at Battle of Uhud | Learn Seerah (learnislam.org.uk), accessed on 20/04/2022; Quran.com, also see Surah An-Nisa - 1-176 - Quran.com, accessed 20/04/2022

[1029] See chapter one, section 1.3.1 *Yatīm* (orphan) in the Qur'ān.

[1030] An Nisa Q.4:8

Similarly, according to a *hadith* by Ikrima Ibn Abbas, orphans generally do not receive a share of one's estate; however, if they are present during distribution, one should offer them something.[1031] Islam grants individuals the discretion to leave their estate to enslaved individuals, wards, companions, and followers.[1032] The revelation from the Qur'an establishes a precedent through existing practices that individuals can leave an inheritance for their adopted children as well as for those enslaved, wards, the needy, and companions. As previously mentioned, adoption is merely a mechanism and a modern instrument for placing vulnerable children with families, and prior studies have linked it to the *wala,* which bears no comparison to the adoption of children.

Although Islamic jurisprudence does not explicitly stipulate a mandatory share for adoptive children, it is important to note that the care of vulnerable children is obligatory according to the Qur'an and *ahadith*.[1033] This obligation exists partly because, as demonstrated in chapter two, the Qur'an and *ahadith* do not provide a mechanism like adoption, despite outlining multiple principles for the care of orphaned children. As a result, one does not find direct evidence regarding this practice in theological sources. Orphans were often cared for by their relatives, and the revelation suggests that one-third of the assets can be allocated to them. The principle in the Qur'an allowing for one-third of the inheritance has a precedent for adoptive parents, and ultimately, it is at their discretion whether to assign a share to their adopted children if they possess any wealth.

[1031] Sahîh Al-Bukhâri, and Muhammad Muhsin Khan. *Hadith* no 4576. 1997. Vol 6. p.2

[1032] Q. 4: 11 and Q. 4:12; Q. 4:33; Sonbol, *Rise of Islam: 6th to 9th Century,* Op. cit. p. 5; Rahim. *The Principles of Muhammadan Jurisprudence.* Op. cit. pp. 346-350; The initial recommendation by Prophet Muhammad for mutual inheritance between new Muslim community abrogated after the current revelations in the Qur'an. Prophet Muhammad had recommended a blood brother bond between the muhajirs (refugees) and the Ansar (residence) revoked through the revelation Q. 8:75 to prioritise biological kinship. See John, Burton. (Commentary & editor). *Abu 'Ubaid al-Qasim b. Sallam's K. Al-nasikh wa-l Mansukh*: Cambridge: E.J.W. Gibb Memorial Trust. 1st edition, 1987. pp. 144-145; Roberts. *The Social Laws of the Qorân*. Op. cit. p. 63; Hodkinson. *Muslim Family Law*. Op. cit. pp. 309-310

[1033] See chapter two.

The revelation in the Qur'an outlines the order of inheritance. Likewise, several *ahadith* clarify the regulatory procedures for identifying heirs and their shares.[1034] As the above verse shows, biological children are primary heirs, and it is at the person's discretion to determine who qualifies more, their parents or children. As indicated earlier, paternity is a prerequisite for inheritance in Islam, and lawful paternity gives rise to a compulsory right to inheritance that cannot be rescinded. The *ahadith* warning against paternity manipulations are pertinent to assigning incorrect paternity after the estate holder's death. According to Roberts, Prophet Muhammad's primary concern regarding inheritance was the false testimony of unrighteous witnesses.[1035] The new inheritance provisions introduced new problems, including the misappropriation of the estate by the deceased's heirs, which often led to disputes. The Qur'an and *ahadith* recommend making a Will during one's lifetime if one possesses assets they wish to leave behind for their loved ones, explicitly advocating for this to avoid unnecessary litigation.[1036] A *hadith* in Al-Bukhari and Muslim by Prophet Muhammad, narrated by Abdullah bin Umar, indicates that a Muslim should not let two nights pass without making a Will.[1037] However, the new provisions regarding inheritance in Islam did cause significant issues for vulnerable children, prompting revelations in the Qur'an and *ahadith*,

[1034]See Appendix. 3. A section on inheritance; A *hadith* from Ibn Majah states three categories of heirs in Islam. The first is *ashabul-furudh* (mandatory heirs*),* those fixed by scholars and the *sunnah* of Prophet Muhammad, and they are the immediate family members of the deceased, such as children, spouses, and parents. In the second category are the nephews, cousins, and paternal uncles, while in the third category are descendants related through the female bond, such as the mother's father, sister's son, or daughter's son. See, Imam Muhammad bin Yazeed Ibn Majah Al-Qazwini, Hafiz Abu Tghir Zubair 'Ali Za'i (edit), *The English translation of Sunan Ibn Majah*, Volume 4. The chapter on share of inheritance. London; Riyah: Dar-Us-Salam. 2007. P. 31. Available on: https://www.kalamullah.com/Books/Hadith/Sunan%20Ibn%20Majah%20Vol.%204%20-%202719-3656.pdf, accessed. 20/08/2019; The latter two only inherit in the absence of the first. See Al-Qazwini. *Sunan Ibn Majah*, Vol 4. 2007. Op. cit. A hadith in Al-Bukhari shows that after the *fara'id* (recommended by the Qur'an), what is left should go to close relatives of the deceased.; See Sahih al-Bukhari. Book of Inheritance. Book no. 85 Hadith. 9: https://sunnah.com/bukhari/85, accessed 12/12/2019

[1035] Roberts. *The Social Laws of the Qorân*. Op. cit. p. 50, also Abualfaraj, Maha. "Evidence in Islamic law: reforming the Islamic evidence law based on the federal rules of evidence." *Journal of Islamic Law and Culture* 13, no. 2-3 (2011): 140-165.

[1036] Q. 2: 180; See Sahih International at https://quran.com/2/180-190 or Appendix. 3 (D) on inheritance

[1037] Sahih Muslim. The Book of Wills. Book no. 25 Hadith. 1: https://sunnah.com/muslim/25/1, accessed 20/12/2019

warning those who deny orphan children their right to inheritance under the guise of care.

6.3.1 Orphan's property (*mulkiyyah al-yatīm*)

Allah says in the Qur'an, "Those who 'swallow' the property of the orphans unjustly are actually devouring fire into their bellies, and they shall enter the burning fire."[1038] Those with orphans or assets under their care were instructed to deal with them with the utmost care. In another verse, Allah says,

> "And do not approach the orphan's property except in a way that is best until he reaches maturity. And give full measure and weight to justice. We do not charge any soul except [with that within] its capacity. And when you testify, be just, even if [it concerns] a near relative. ….."[1039]

According to the Qur'an's exegetical sources, many individuals sought to inherit the property of orphans rather than offering assistance.[1040] In Makkah, people attempted to amass wealth by any means necessary. They did not fulfil their responsibility to care for orphans and the needy as recommended in the Qur'an.[1041] Instead, they exploited their status to take advantage of the wealth belonging to orphans. Orphans, particularly orphan girls, were deprived of their rightful inheritance.[1042] Watt states, "Much property had hitherto been communal, and it was easy for an unscrupulous man to treat the communal property as his own individual property."[1043] Likewise, Rahman indicates that people substituted the movable wealth of orphans, whether livestock or cash.[1044] This is evident from the revelations in the Qur'an regarding individuals substituting the assets of orphans. Allah says in the Qur'an, "And give the orphans their properties and do not

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[1038] Q. 4:10; Doi. *Sharīʿah: The Islamic Law*. Op. cit. p. 214; See. Appendix. 3. Section. J

[1039] Q. 6:152: Sahih International, See, Appendix. 3. Section. J

[1040] Ali. *The Holy Quran, Text, Translation and Commentary*. 1968. Op. cit. p. 1733

[1041] Q 4:29-33: Ali. *The Holy Qurʾān: Text, Translation & Commentary.* 1968. Op. cit. p. 896

[1042] Qutb et al. 2004. Vol. XVIII. p. 205

[1043] Watt, W. Montgomery. *Companion to the Qurʾān: Based on the Arberry translation.* London: George Allen & Unwin Ltd. 1967. p. 61.

[1044] Rahman. *Islamic Law. Op*. cit. pp. 354-355; Hodkinson. Keith, *Muslim Family Law:* Op. cit. pp. 351-359

substitute the defective [of your own] for the good [of theirs]. And do not incorporate their properties into your own. Indeed, that is ever a great sin."[1045]

Ibn Kathīr explains that compromising the quality of goods for orphans is akin to major sins, such as forgery, deception, and theft. The guardians of orphans would substitute healthy animals for weaker ones, claiming it was "a sheep for a sheep." Sa'd bin Al-Muayyib and Az–Zuhri also state that one should not exchange an orphan's healthy animal for a weak one.[1046] Ibrahim An-Nakha'i and Ad-Dahhak commented on the quality of the products, saying, "Do not give something of bad quality for something of good quality."[1047] Similarly, the guardians of orphans would replace currency with fake notes, claiming, "A Dirham for Dihram."[1048] Consequently, there are strict instructions for Muslims that they must not substitute, diminish, orphans' property under any circumstances. Orphans' property should be returned to them upon reaching adulthood, without any deduction unless prescribed. [1049]

According to Al-Tabari, who adopted an opinion from Al-Awfi based on the narration of Ibn Abbas, those who unjustly consume orphan property are filling their stomachs with fire.[1050] Two other authentic *ahadith* indicate that consuming orphans' wealth is one of the seven destructive sins. A narration by Abu Hurairah states that Prophet Muhammad advised people to avoid a destructive sin, "…. to consume an orphan's property …."[1051] However, the warnings in these revelations and *ahadith* confused early Muslims. People avoided interacting with orphans due to fears of making mistakes in their dealings with them. Some individuals began to separate their food and vessels from those of the orphans under their care, which imposed additional hardship on the caregivers. Consequently, Allah revealed

[1045]Q. 4: 2, Sahih International, See, Appendix. 3. Section. D. Inheritance; Khatib, *The Bounteous Koran.* Op. Cit. p. 97
[1046] At-Tabari 7:525; cited in Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol 2. p. 372
[1047] At-Tabari 7:525; cited in Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol 2. p. 372
[1048] *Dirham* is the currency of some middle eastern countries; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. Vol 2. pp. 371-372
[1049] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol.2. p. 371
[1050] At-Tabari 8:23 cited in Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol.2. p. 386
[1051] At-Tabari 7:525; cited in Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol 2. p. 372

guidance concerning the mixing of property to clarify this misunderstanding, stating that the earlier verse did not imply that the caregiver should separate their food. The message was that Allah was aware of their actions and intentions.[1052] In other words, those caring for vulnerable children might be able to hide their ill intentions or motives from others, but Allah knows their true intentions. Furthermore, subsequent revelations guide how to deal with orphans' property without sinning. Allah says in the Qurʾan,

> "In the world and hereafter. And they ask you concerning orphans. Say: 'Reforming their affair is the best', and that you intermix with them, for they are your brethren. Allah knows the corruption from the reformer. If He wills, He truly can overburden you. Surely God is Mighty, Wise."[1053]

The revelations informed people that they could merge the orphan's property with their own, provided that their intentions prioritised the orphan's welfare.[1054] Notably, the Qur'an and *ahadith* indicate that vulnerable children were actively supported by others, with guidance centred on protecting their rights rather than entirely prohibiting this practice.

6.4 Conclusion

The *ahadith* concerning paternity manipulations linked to the prohibition of adoption do not relate to *wala,* a custom equated with adoption from a historical perspective. Instead, the focus of these *ahadith* is on the newly established inheritance rights in Islam for biological children, which depend on lawful paternity. Inheritance has historically been a significant issue within tribal structures, as it was limited to certain members of the tribe. The revelations regarding inheritance

[1052] Qutb. *In the Shades of The Qur'ān: Fī Zilāl al-Qur'ān.* Vol. I. Op. cit. p. 266

[1053] Q. 2:220, Khatib, *The Bounteous Koran.* Op. Cit. p. 44

[1054] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. 2000. Vol 1. p. 611; the current law on children offers similar rights as the Qur'an provided to children in the early 7th century. According to S. 1 (1). "When a court determines any question with respect to— (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration." See S.1(1)a, (3)b and (3)d of the Children Act 1989.

respond to the hardships faced by women and orphaned children who were deprived of their inheritance from their biological fathers upon their deaths. Before Islam, inheritance was not based on kinship ties; only strong tribesmen were entitled to inherit, while women and children were excluded. Likewise, in pre-Islamic Arabia, men also fathered children with enslaved women and concubines. In Islam, individuals could acknowledge those children with unidentified paternity. However, some men fraudulently exploited this principle to claim inheritance. Hence, these *ahadith* address those manipulating paternity to secure an inheritance for mutual gain or to deny the paternity of children born from their illegitimate relationships, thereby denying those children their right to inheritance and maintenance.

Chapter. 7

The Revelations on *Mahram*, Suckling, Veiling, Privacy/Gender Interaction and Their Impact on Adoption

7. Introduction

Continuing with the same approach as the previous chapter on inheritance and manipulated paternity claims, this chapter focuses on aspects of family life that influence or are influenced by potential adoption(s). Specifically, I examine *mahram* (individuals with a prohibited degree of marriage), breastfeeding, veiling, and gender interactions, and their effects on adoption. First, I inquire into the causes of revelations regarding *mahram,* suckling, veiling, and modesty/privacy. In other words, what is the broader social/legal rationale and context for these revelations? Second, I examine whether and how these issues are related to adoption, as well as the strength of the evidence supporting this connection (i.e., whether the evidence is derived from the Qur'an or *ahadith?)*. Third, I assess how these rulings impact suckling, marriage eligibility, and veiling from an adoption perspective.

7.1 The Qur'an on *mahram* (a prohibited degree of marriage) and its impact on adoption

As the *ahadith* analysed in the previous chapter indicate, the principles of paternity were established to protect children's rights and did not apply to adoption. A marriage contract was one of the means of determining the paternity of children, which, in turn, entitled them to maintenance and inheritance. Similarly, the revelations in the Qur'an regarding *mahram*, suckling, veiling, and gender interaction have specific contexts, aimed at protecting women and their rights that are not directly pertinent to adoption. *Mahram* (محرم) is an Arabic term referring to individuals with whom marriage is prohibited.[1066] This term derives from the root letters of حَرَّم ḥarrama, meaning forbidden.[1067] The Qur'anic revelation concerning *mahram* primarily addresses women, influenced by the marriage and kinship customs of specific pagan communities in the Arabian Peninsula that were notably complex and variable, significantly infringing on women's rights to consent and marriage.[1068]

As shown in Chapter Four, women were not only captured in raids, purchased, or married against their will, but male family members, such as the husband's brothers

or stepsons, inherited them when they became widows or exchanged them for a dowry.[1055] According to Watt, the custom of inheriting women was an ancient Semitic one, whereby upon the death of a husband, a woman became the wife of his eldest stepson or a close relative.[1056] Smith makes a similar point,[1057] while Tarik also shows that men married their sisters and the widows of their fathers (i.e., stepmothers).[1058] If the stepsons did not wish to marry their stepmother, they might trade her to a third party for the dowry.[1059] The rationale for the revelation in the Qur'an on *mahram* was to prevent such abuses of women's rights, like inheriting them or marrying without their consent. The rules on *mahram*, I will demonstrate, do not limit adoption or provide a reason for its prohibition.

In the Qur'an, Allah says, "And do not marry those [women] whom your fathers married, except what has already occurred. Indeed, it was an immorality and hateful [to Allah] and was evil as a way."[1060] The verse demonstrates that the revelation sought to address the practice of men marrying their stepmothers or the widows of their fathers. In the following verse, Allah mentions other *mahram* women that a man cannot marry.[1061] Allah says in the Qur'an,

> "Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your stepdaughters under your guardianship [born] of your wives unto whom you have gone in. But if you

[1055] Smith. *Kinship & Marriage in Early Arabia*. Op. cit. p. 111

[1056] Ruth, 3.12, Mark, 12.18-25; Deuteronomy, 2.5-10, cited in Watt, W. Montgomery. *Companion to the Qur'an: Based on the Arberry translation.* London: George Allen & Unwin Ltd. 1967. p. 63; Rahman. *Islamic Law. Op*. cit. p. 84; Watt, W. Montgomery. *Muhammad at Medina.* Oxford: Clarendon Press, 1956. pp. 272-273

[1057] Smith. *Kinship & Marriage in Early Arabia*. Op. cit. pp. 104-110

[1058] Jan, Tarik. 1999. *The Life and Times of Muhammad Rasul Allah:* p. 85

[1059] Smith. *Kinship & Marriage in Early Arabia*. Op. Cit. pp. 104-110

[1060] Q. 4:22, see https://quran.com/4/22-33, accessed 20/06/2019; See, Appendix. 3 for the detail on the following hadīth. Sahih al-Bukhari, Chapter. 25: "Forbidden to you (for marriage) are your mothers, your daughters...": Book. 67. *Hadīth. 43: https://sunnah.com/bukhari/67/43*, accessed 15/12/2019

[1061] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp.37-38; Rahman. *Islamic Law. Op*. cit. pp. 110-116; Watt, W. Montgomery. *Muhammad at Medina.* Oxford: Clarendon Press, 1956. pp. 280-284

have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful."[1062]

From a theological perspective, the revelation prohibits marriage between two categories of people related by kinship, as defined by law. One category is based on marriage or, in legal terms, affinity, and the second is based on blood or consanguinity. The earlier part of the verse mentions women in the prohibited degree of marriage. Notably, the last part of the above second verse provides the context for the revelation. The verse states, "except for what has already occurred", which shows that incestuous marriages were taking place. The revelations are consistent with the customs in the region, as highlighted above. The verse, as mentioned earlier, Q. 4:23, concerns *mahram,* while verse Q. 4:22 prohibits marriage with stepmothers and explicitly addresses men due to concerns about inheriting women. These revelations only mention women forbidden from marriage, not men. One of the barriers to adoption in Islam, as shown by earlier studies, is the *mahram.*[1063] In other words, it is suggested that in light of the revelation on *mahram,* adopters and adoptees are not *mahram* for each other.

As illustrated above, the revelations contained within the Qur'an do not encompass every relationship that is prohibited in marriage, nor do they present an exhaustive list of such prohibited relationships. For instance, sons, fathers, brothers, milk fathers, milk brothers, milk sisters, and milk relatives, such as paternal and maternal uncles and aunts, were later identified by Islamic scholars, possibly through *ahadith*. I will return later to how scholars recognised these other relatives through suckling and the rationale behind it. However, hypothetically, one might argue that most female relations are mentioned, but not adopted ones. As I will discuss, besides suckling mothers, other female relatives of suckling are also excluded, despite being a well-established custom in the region. Since the revelation on *mahram* pertains

[1062] Q. 4:23, Sahih International, available online at https://quran.com/4/23-33, accessed 20/06/2019

[1063] See chapter, section. 1.2, studies on adoption in Islam, p.28

to specific circumstances concerning the inheritance of women, it only mentions a few other common female relatives. In other words, this serves as an indicative list of those included in the category of *mahram*. I demonstrated in chapter four that adopting children was not among the prevalent practices during the revelations of the Qur'an in the Arabian Peninsula. Therefore, the absence of 'adopted daughters' or 'adopted sisters' (and so on) from this list could be attributed to their relative rarity, rather than the notion that they are not or would not be *mahram,* or that adoption was prohibited.

The revelation following the discussion on *mahram* also addressed an issue concerning the care of female orphans. What is significant from these later revelations is that they indicate the care of vulnerable children in families was never outlawed in Islam, regardless of the mechanism used by families and communities, whether termed *kafala* or adoption. The concerns for orphan girls were that they were being abused under the guise of care due to their inheritance ordained in Islam.[1064] As shown in the previous chapter, relatives or neighbours often cared for their family's orphans in the Arabian Peninsula, possibly without formal arrangements.[1065] The revelations show that some individuals abused this role of trust. Primarily, orphan girls were exploited by their guardians because they often took them under their care to appropriate their estate by marrying them themselves or by preventing their marriage to another person. This problem was exacerbated by the Battle of *Uhud* between 625 AD and early 627 AD, which left many widows and orphans, who were subsequently offered such "protection" through marriage.[1066]

According to Watt, the crux of the problem was not merely the large number of widows resulting from the battles, but also the many unmarried girls placed under

[1064] Q. 4: 2-35, See. Appendix. 3 for full verses; Battle of Badr 624 A.D., Battle of Uhud 625 A.D. and Battle of Trenches 627 A.D. left many widows and orphans. See World History Encyclopaedia, *Prophet Muhammad Timeline,* available at Prophet Muhammad Timeline - World History Encyclopedia, accessed 20/04/2022

[1065] Yassari, Nadjma, Lena-Maria Möller, and Marie-Claude Najm, eds. *Filiation and the Protection of Parentless Children: Towards a Social Definition of the Family in Muslim Jurisdictions*. Springer, 2019., pp.9-13

[1066] Esposito. *Women in Muslim Family Law.* Op. cit. p. 20

the guardianship of uncles, cousins, and other relatives.[1067] Some guardians would keep their wards unmarried to enjoy unchecked control over their property.[1068] For example, Jabir Ibn Abdallah had a blind female cousin, and when her father died, he left her a significant amount of wealth. Jabir prevented her from marrying by using her disabilities as an excuse, claiming that nobody would want to marry her.[1069] For Mernissi, this was a selfish ploy by Jabir to deny his cousin a marriage, as her husband would have been entitled to claim her wealth under the new inheritance revelations in the Qur'an.[1070] She continues, "If a fatherless girl was ugly, he did not pay her share. He kept her from marrying, and he waited for her to die so that he could take over her inheritance.[1071] The *ahadith* confirm such social problems. According to a *hadith* by Ai'sha, the guardian of an orphan girl inherited all her wealth by marrying her, including a date palm garden. He did not grant her matrimonial rights as a spouse because the real motive for marriage was to appropriate her wealth.[1072] This abusive practice concerning orphan girls is also evident from a *hadith* narrated by Abdullah ibn Abbas, which states,

> "In Ignorance Days, a man may have an orphan girl in his charge, and he throws his dress over her. When he does that, no one is allowed to marry her. If she is pretty and he likes her, he marries and takes all her wealth. If she is ugly, he prevents her from marrying until she dies, when he inherits her wealth. God has forbidden all that."[1073]

As shown by these examples, the cause for the revelation was carers encroaching on orphan girls' inheritance under the pretext of care. However, the revelations only warned people not to exploit orphan girls, and there is no suggestion that they prohibited the care of orphan girls in response to these abuses. In the Qur'an, Allah says, "And if you fear that you will not deal justly with the orphan girls, then marry

[1067] Watt. *Muhammad Prophet and Statesman.* Op. cit. pp. 151-155
[1068] Watt. *Muhammad at Medina,* Op. cit. p. 276, 373-88
[1069] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 124
[1070] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 124
[1071] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 124
[1072] *Hadith* No. 4600: Sahîh Al-Bukhâri, and Khan. 1997. *The Translation of the Meanings of Sahîh Al-Bukhâri.* Vol. 6. p. 101
[1073] Qutb. *In the Shades of The Qur'ān: Fī Zilāl al-Qur'ān.* Vol. III. Op. cit. p. 327

those that please you of [other] women…."[1074] The revelation does not show that people should stop taking orphans under their care. Instead, they were advised to prevent the abuse of their rights. The message was that men should not marry orphan women if they did not like them, and most translations and exegesis indicate this as the exact cause for the revelation in this verse.[1075]

Revelation in the Qur'an also demonstrates that people were dissatisfied with the new rights granted to women and requested Prophet Muhammad to have these reversed. Allah states in the Qur'an, at Q. 4:127

> "And they request from you, [O Muhammad], a [legal] ruling concerning women. Say, "Allah gives you a ruling about them and [about] what has been recited to you in the Book concerning the orphan girls to whom you do not give what is decreed for them - and [yet] you desire to marry them - and concerning the oppressed among children and that you maintain for orphans [their rights] injustice." And whatever you do of good - indeed, Allah is ever Knowing of it." [1076]

According to Mernissi, Jabir Ibn Abdallah consulted Prophet Muhammad about revelations prohibiting marriage with orphans in an attempt to persuade him to reconsider the revelations.[1077] Prophet Muhammad stated that Allah has revealed what He has and will not change it.[1078]

It was not just female orphans and widows who were being mistreated in a pagan society. In the pre-Islamic pagan culture of the Arabian Peninsula, women did not

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[1074] Q. 4:3, "And if your fear that you will not do justice to the orphan, then, marry the women you like, in twos, in threes and fours. But, if you fear that you will not maintain equity, then (keep to) one woman, or a bondwoman you own. It will be closer to your not doing injustice., Maarif-ul-Quran, available at Surah An-Nisa - 1-176 - Quran.com, accessed 20/03/2022.

[1075] Q. 4: 3: Sahih International, See. Appendix. 3. Section. J; *Hadīth* no 4574: Sahîh Al-Bukhâri, and Khan. 1997. *The Translation of the Meanings of Sahîh Al-Bukhâri.*, Vol. 6. p. 86; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. Vol 2. pp. 372-374 ; Qutb. *In the Shades of The Qur'ān: Fī Zilāl al-Qur'ān.* Vol. III. Op. cit. pp. 29-32

[1076] Q. 4:127, Sahih International, See, Appendix. 3. Section. J

[1077] Inheritance in Islam introduced a share for female children, which was not the policy of tribes before Islam. See chapter five.

[1078] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 124; Khatib, *The Bounteous Koran.* Op. Cit. pp. 12, 124

have many rights, and the Qur'an readily addresses these rights specifically concerning marriage and consent. Adoption is not mentioned within these revelations. Rahman argues that women did not have a voice because male members of the tribe conducted their marriages and did so without consideration of their consent, age or previous marital status.[1079] In Islam, marriage without a valid consent was outlawed once women reached puberty.[1080] According to a *hadith,* if a man gives his daughter in marriage against her will, such a marriage is invalid.[1081] Another *hadith* narrated by Abu Hurairah states that Prophet Muhammad said, "A matron should not be given in marriage except after consulting her, and a virgin should not be given in marriage except after her permission."[1082] Islamic jurisprudence provides very detailed guidance on marriage, particularly for divorcees and widows, who are given complete autonomy to choose their spouses.[1083] The revelations in the Qur'an not only prohibit the custom of inheriting women by compulsion but also facilitate the process for women seeking to dissolve their marriages. Similarly, they simplify the claiming of financial interests provided by their husbands during the marriage.[1084]

Allah says in the Qur'an, at Q.4:19,

> "O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality…."[1085]

[1079] Rahman. *Islamic Law. Op*. cit. p. 84

[1080] Rahman. *Islamic Law. Op*. cit. p. 88

[1081] See, Appendix. 3, the section on marriage. Sahih al-Bukhari, Chapter 43: Book. 63. *hadīth. 74: https://sunnah.com/bukhari/67*, accessed. 20/10/2019

[1082] Sahih al-Bukhari, Chapter. 42: The father or the guardian cannot give a virgin or matron in marriage without her consent: Book. 63. *hadīth. 73: https://sunnah.com/bukhari/67*, accessed. 20/10/2019

[1083] Rahman. *Islamic Law. Op*. cit. pp. 83-188

[1084] Q. 2:237, "And if you divorce them before consummating the *marriage* but after deciding on a dowry, pay half of the dowry, unless the wife graciously waives it, or the husband graciously pays in full. Graciousness is closer to righteousness. And do not forget kindness among yourselves. Surely Allah is All-Seeing of what you do." See Dr Mustafa Khattab, the Clear Quran, at https://quran.com/2?startingVerse=237, accessed 4/5/2022

[1085] Q. 4:19, Sahih International, see, https://quran.com/4/19-29, accessed 20/06/2019; Sahih al-Bukhari. Prophetic Commentary on the Qur'an (Tafsir of the Prophet (PBUH)). Book. 65. *hadith.* 4579*:* https://sunnah.com/urn/42580. See, Appendix. 3

Despite the revelations aimed at preserving women's rights, concerns persisted during the early period of Islam. In his last sermon during his farewell hajj in 632 C.E., Prophet Muhammad stated, "O, men, women have rights over you just as you have rights over them."[1086] The revelations concerning *mahram* indicate that individuals were exploiting women's rights, which were subsequently addressed. The revelations related to *mahram*, marriage, kinship, and the rights of orphans, including inheritance, emerged after the Battle of Uhud and pertained to both people's property and the social and developmental rights arising from it. [1087] The revelations tackling specific social issues demonstrate that if adoption had been a concern, it would have been explicitly addressed in these primary sources, the Qur'an and *ahadith.*

Further, the link between *mahram* and adoption lacks a solid foundation. It is predominantly constructed through hypothetical arguments rather than a *hadith* or another verse in the Qur'an. One argument posits that adoption is prohibited in Islam because adoptive parents and children do not share blood ties and, therefore, can marry. Another point, as discussed earlier, is that adoptees are not mentioned in the revelation pertaining to *mahram*. This latter argument is based on the premise that if something is not explicitly stated in the Qur'an and *ahadith*, it is deemed invalid. However, this argument can be countered. If something is not stated, one might surmise that it is not prohibited because, most of the time, when

[1086] Hassan. *History of Islam* (Classical Period 571-1258 C.E.). Volume. 1. Op. cit. p. 78

[1087] Q. 4:1 - Q. 4:28, Surah an Nisa, "This Surah comprises several discourses revealed on different occasions during the period ranging probably between the end of A.H. 3 and the end of A.H. 4 or the end beginning of A.H. 5. Although it is difficult to determine the exact dates of their revelations, it is possible to assign a reasonably correct period with the help of the Commandments and the events mentioned therein and the Traditions concerning them. A few instances are given below by way of illustration:

The evidence analysed in chapter five showed that the revelation on martyrs' inheritance division was to protect orphans' rights after the Battle of Uhud. Then naturally, the question of the division of the inheritance of the martyrs and the safeguard of the rights of their orphans arose in many families at Al-Madinah. From this, we conclude that 1-28 was revealed on that occasion.", available online at, Quran.com, Surah An-Nisa - 1-176 - Quran.com, accessed 20/04/2022

things are forbidden in Islam, they are well documented in the Qur'an, such as usury, alcohol, pork, and adultery.[1088]

As shown, the revelations regarding *mahram* do not specify every relationship that is prohibited in marriage. Nonetheless, scholars have broadened their interpretations to include stepfamily and suckling relatives, which I will discuss further in the section on suckling. The second argument suggests that adoptees do not share blood ties with their adoptive parents. The revelation indicates that not all *mahram* relationships are based on blood ties. It prohibits marriage with stepmothers and several other women related by marriage. A stepmother does not have blood ties with her deceased husband's male relatives; however, marriage is forbidden to her in the Qur'an. Similarly, marriage with daughters-in-law and stepdaughters is prohibited, even though they do not share blood ties with the men related to them through marriage. A marriage contract categorises these women as *mahram*. Adopted relationships can be treated similarly to those of *mahrams* that lack blood ties. They also have a legal contract, and under UK law, marriage between adopted parents and children is not permitted.[1089]

In an adoption, once a legal contract is created, a parent-child bond develops, similar to that between a stepmother and son, which forms through a marriage contract between parents. Chapter Two demonstrated that the Qur'an and *ahadith* offer principles for caring for vulnerable children. One recommendation is that orphans should be treated as biological children, and, as shown here, stepchildren are also treated as biological children following the marriage contract. A stepson cannot marry his stepmother, as stated in the Qur'an. If one adopts this principle, one will not consider a marriage with an adopted child because one would not

[1088] Q. 2:275; Q.2:276; Q.2:278; Q.2:219; Q.17:32; Q.3:130; Q. 3:131; Q.4:161; Q.5:91; Q.5:90; Q. 25:68; Q. 19:28.

[1089] "*Section 74* provides that the general principle of *section 67* (that an adopted person is to be treated as if he had been born as the child of the adopter or adopters) is not to apply for the purposes of marriages within prohibited degrees of relationship or to incest, and for these purposes, an adopted person remains part of his natural family. The only exception is that an adopted person cannot marry his adoptive parent, as this falls within the restrictions set out in the table of kindred and affinity in Schedule 1 to the Marriage Act 1949. Otherwise, there are no restrictions on marriage within an adoptive family." Adoption and Children Act 2002, https://www.legislation.gov.uk/ukpga/2002/38/notes/division/4/1/4/9, accessed 24/06/2024.

consider a marriage with one's biological child. As indicated, revelations in the Qur'an often address specific causes. In the case of *mahram,* the rationale, or the broader social context for these revelations, was the inheritance of widows, stepmothers and orphaned women. These revelations reaffirm that people cared for orphans, but some had ill intentions and were warned. The rationale was to protect the rights of vulnerable children (orphan girls), and it was not to deny them care (in other words, nor to prohibit guardianship/adoption). As stated earlier, Islamic scholars extended the status of *mahram* to other relatives, such as those related by suckling, not mentioned in the Qur'an.

7.2 Suckling (*rāḍʿah*) and its impact on adoption.

Suckling was a pre-Islamic tribal custom whereby parents or guardians arranged for wet nurses or foster mothers to suckle their offspring.[1090] The reasons for suckling are not always apparent. They may be attributed to the birth mothers' insufficient milk production, convenience, or other significant matters. Importantly, this custom was not solely for orphans or parentless children in an adoption context, as some children had their biological mothers alive while being suckled by a foster mother. A notable example of this is Prophet Muhammad, who was nursed by his foster mother, Halima, while his biological mother, Amina, was alive.[1091] In another instance, according to *ahadith*, Prophet Muhammad's wife A'isha was also suckled by a foster mother.[1092] The rationale for revelation in the Qur'an concerning suckling

[1090] Peter, Parker. *Milk Kinship in Islam. Substance, Structure, history. Social Anthropology*, 13: (2005). 307–329. doi:10.1111/j.1469-8676.2005.tb00015.x., pp. 307-329; El Guindi, Fadwa. "Properties of kinship structure: Transformational dynamics of suckling, adoption and incest." *And Extension In Kinship* (2018): 177-201. P. 184; Sayed Sikandar Shah, "Fosterage as a Ground of Marital Prohibition in Islam and the Status of Human Milk Banks," Arab Law Quarterly 9, no. 1 (February 1994): 3-7

[1091] Guillaume. *The Life of Muhammad*. Op. cit. pp. 69-73; Hassan. *History of Islam* (Classical Period 571-1258 C.E.). Volume. 1. Op. cit. pp. 46-48

[1092] Sahih Muslim 1445i, Book 17, Hadith 12, https://sunnah.com/muslim:1445i; Narrated Aisha: Aflah asked the permission to visit me but I did not allow him. He said, "Do you veil yourself before me although I am your uncle?" `Aisha said, "How is that?" Aflah replied, "You were suckled by my brother's wife with my brother's milk." I asked Allah's Messenger (ﷺ) about it, and he said, "Aflah is right, so permit him to visit you."[1092] See Sahih al-Bukhari 2644, Book 52, Hadith 8, https://sunnah.com/bukhari:2644, accessed 20/03/2024

is about remuneration to the foster mother and the ages at which a child can be suckled.

The revelation in the Qur'an regarding suckling can be found in Q.2: 233. Allah states in the Qur'an,

> "Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. ... And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. …."[1093]

The revelation regarding the hiring of a wet nurse in the Qur'an reaffirms women's right to breastfeed their newborns but does not compel or obligate them to do so. Parents may arrange alternative options for their newborns by paying reasonable fees to wet nurses, and there is no stigma associated with this practice. These revelations also specify the suckling period, which lasts for the first two years of an infant's life, and not thereafter, as in adulthood (this is relevant for discussing another case associated with adoption). The revelations on *mahram* solely identify suckling mothers, whereas Islamic scholars have extended this status to other relatives derived from suckling not mentioned in the Qur'an.

According to Islamic jurisprudence, suckling places a child in the same category as a biological child concerning the prohibited degree of marriage or *mahram*.[1094] A *hadith* by A'ishah states, "Breastfeeding makes *haram* that which birth makes *haram*."[1095] According to Imam Malik, Imam Abu Hanifah, and Imam al-Shafi'i, the husband of a suckling mother also falls within the prohibited degree of marriage.[1096] The other *mahram* relatives depend on the active sexual relationship between the suckling mother and father. According to Imam Hanbal, the male category depends

[1093] Q. 2:233, Sahih International, https://quran.com/2/230-240, accessed

[1094] Islamic jurisprudence discusses sucking extensively and shows that marriage restrictions for suckled are equal to a biological child. Rahman. *Islamic Law. Op*. cit. pp. 48, 114-115

[1095] The translation of Haram in Arabic is prohibited; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol 1. p. p. 709

[1096] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp. 44-45; Ibn Rajab al Hanbali. Jāmiʿ al-ʿulūm wa-al-ḥikam. Op. cit. p. 712

on whether a woman's breast milk is generated from the semen of her husband or adultery or whether she is a maiden or has passed the menopause period.[1097] The prohibition does not apply to the husband and his relatives if there was no active sexual relationship between the suckling mother and her husband during the period of suckling.[1098]

For the consideration of milk kinship, Islamic jurisprudence involves a rigorous process. There is no specific age or criteria for a woman to suckle a child.[1099] However, several conditions must be met for suckling to be valid. According to Imam Malik, Abu Hanifah, and al-Shafi'i, as well as in Tafsir Ibn Kathir, the suckling must occur within the first two years of an infant's life, not with an older child.[1100] For valid milk kinship, there is a consensus among scholars that a child should

[1097] I already discussed the significance of paternity and adultery in the previous chapter because of its impact on children's right to inheritance and maintenance.

[1098] According to Imam Hanabal, this connected to "Ibn Abbas was asked about a man who had two female slaves, one of whom had breastfed a girl and the other of whom had breastfed a boy, whether it is permissible of the boy to marry the girl, and he answered, 'No. The semen [which made the two women generate the milk] is one'." See, Ibn Rajab al Hanbali. Jāmiʿ al-ʿulūm wa-al-ḥikam. Op. cit. p. 712: Although Islamic scholars have not explained specific reasoning for their conclusions, recent research shows that foster mothers' milk has similar genetic changes in children as biological mothers' milk. The milk mother's husband also contributes to the child's genetics through their relationship, which shows why scholars have placed these other milk relatives in the *mahram* category. According to a recent study,

"… even nursing women (i.e., own child's mother or anyone else nursing the child) can transfer her genetic material, such as exosomes, stem cells (both pluripotent and multi-potent stem cells) and messenger RNA to the child through human milk [5,6]. Despite the fact that there is limited research and studies on the paternal component of breast milk, the transfer of cellular components from fathers to infants cannot be excluded. In this paper, we try to explain that human milk is not only attributed to maternal components and that there is substantial evidence that human milk contains paternal components as well. Hassan AA, Taha Z, Al Nafeesah A, Adam I. Are there paternal components in human milk? Sudan J Paediatr. 2019;19(2):84-87. doi: 10.24911/SJP.106-1556954798. PMID: 31969735; PMCID: PMC6962269. Similarly, another study shows,

"During pregnancy, fetal hematopoietic cells carrying paternal human leukocyte antigens (HLA) migrate into the maternal circulation, and, vice versa, maternal nucleated cells can be detected in fetal organs and umbilical cord blood, indicating the presence of bidirectional cell traffic between mother and fetus." Ichinohe T, Maruya E, Saji H. Long-term feto-maternal microchimerism: nature's hidden clue for alternative donor hematopoietic cell transplantation? Int J Hematol. 2002 Oct;76(3):229-37. doi: 10.1007/BF02982792. PMID: 12416733. The above studies show the rationale behind *mahram* through suckling, which is the exchange of genetic materials through milk.

[1099] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 46

[1100] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. pp. 41-42; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. Vol 2. 2000. p. 416

experience a minimum of five suckles within their first two years of life.[1101] Imam Malik, Abu Hanifah, and their students, however, argue that any amount of milk suckled is sufficient to satisfy the condition of milk kinship. Averroës presents several options. According to him, one or two suckles are inadequate, while three and four are sufficient, and five to ten suckles are also recommended.[1102] The latter two opinions, regarding five and ten suckles, are also supported by a *hadith* on Ai'shah's narration, which states, "Ten incidents of suckling establish the prohibition (concerning marriage). It was later abrogated with five, and the Messenger of Allah died while this statement was still recited as part of the Qurʾan."[1103] The child's primary source of nourishment should also be milk when suckling occurs within those first two years.[1104] The suckling method may be directly from the breast or extracted.[1105] These perspectives arise because a weak child might be unable to latch; milk may be fed through alternative means, and a poorly or underdeveloped child may struggle to digest heavy milk, or if milk is scarce, it may be substituted. A valid suckling requires witness testimony, which hinges on the credibility of the witnesses and the number of witnesses. [1106]

As demonstrated, suckling was an established custom in the region and is endorsed by Islam, as referenced in the Qur'an. Suckling, or alternative provisions for the maintenance of biological children in the Qur'an, obligate fathers to fulfil their duties, a responsibility that did not exist in the pagan community before Islam. Through their reasoning, Islamic scholars categorised suckling kinship as *mahram.* From a theological perspective, the connection between suckling and adoption is not pragmatic. As indicated, recognising someone as *mahram* through suckling is not a straightforward process. It may be applied in limited cases of adoption. Generally, it is not practical for adoption because vulnerable children in need of care

[1101] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. Cit. pp. 41-42; Based on authentic *hadīth* from Sahih al-Bukhari
[1102] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp. 41-42
[1103] Muslim 2: 1075; citied in Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. Vol 2, p. 416
[1104] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 43-44..
[1105] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp. 43-44
[1106] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. pp. 45-46

or orphans can be of any age, not just under two, and adopting mothers may not be able to serve as wet nurses.

The connection to adoption in earlier studies is illustrated through only one *hadith*. However, a compelling alternative explanation for this *hadith* suggests that it is irrelevant to adoption. Ai'shah narrates this hadith, and it states,

> "Sahla bint Suhayl, who was the wife of Abu Hudhayfa, and one of the tribes of 'Amr ibn Lu'ayy, came to the Messenger of Allah, may Allah bless him and grant him peace, and said, 'Messenger of Allah! We think of Salim as a son, and he comes in to see me when I am uncovered. We only have one room, so what do you think about the situation?' The messenger of Allah, May Allah bless him and grant him peace, said, 'Give him five drinks of suckling."[1107]

Firstly, if this *hadith* pertains to adoption, it suggests that adoption is not prohibited, as some have claimed, because it offers a solution. However, it may not be practical and even seems to contradict the revelation, which establishes an age limit of two years for suckling. More importantly, the case of Salim does not satisfy the conditions for suckling to be deemed a *mahram*, as previously demonstrated in Islamic jurisprudence. The principle of *mahram* in this *hadith* was not accepted by any of the Prophet Muhammad's wives, apart from Ai'shah. According to *Tafsir Ibn Kathir,* Ai'shah advocated for the suckling of adults to address the issue of *mahram,* but the other wives of the Prophet disagreed with her perspective.[1108] Notably, Ai'shah did not apply this principle in the context of adoption or regarding the children in her care.

Ai'shah exercised this principle of suckling in her interactions with adults.[1109] The application of this principle to adults only underscores its irrelevance to adoption or

[1107]Ibn Anas (translated Bewley) 1989, p. 245-246; Abu Dawud 2:550; cited in Al-Mubarakpuri 2000, Vol 2, p. 416; See, Appendix. 3 for full *ahādīth* on child suckling.

[1108] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol 1. p. 652

[1109] "A'isha umm al-muminin took that as a precedent for whatever men she wanted to be able to come to see her. She ordered her sister, Umm Kulthum bint Abi Bakr as-Siddiq and the

even to vulnerable children. Even if we consider the possibility of extending it to suggest that applying this to an adopted child would render them *mahram*, thereby resolving one of the issues hindering adoption, it necessitates that the adoptive mother must be lactating and breastfeed the adopted child within two years of age, as Allah stipulates this period in the Qur'an for suckling. Nevertheless, footnote sixty, point 1, indicates that Prophet Muhammad's other wives did not adopt this rule, as documented in Muwatta (an ahadith collection). Prophet Muhammad's other wives stated that this principle of suckling was an exception, meaning that adults cannot become *mahram* through suckling. The Qur'an and Islamic jurisprudence specify that suckling must involve a child, not an adult. Salim was an adult. Nevertheless, assessing the rationale of this *hadith* is challenging due to its varying versions across most *ahadith* collections.

As the footnote indicates, the *hadith* about Salim linked with adoption has various versions across *ahadith* collections.[1110] The English translations of all these versions

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daughters of her brother to give milk to whichever men she wanted to be able to come in to see her. The rest of the wives of the Prophet, may Allah bless him and grant him peace, refused to let anyone come in to them by such nursing. They said, 'No! By Allah! We think that what the Messenger of Allah, may Allah bless him and grant him peace, ordered Sahla bint Suhayl to do was only an indulgence concerning the nursing of Salim alone. No! By Allah! No one will come in upon us by such nursing!'" Muwatta Malik » Suckling » Hadith, Book 30, Hadith 13, available at: https://sunnah.com/malik/30/13, accessed 25/06/2024.

[1110] 1. "Sahla bint Suhayl who was the wife of Abu Hudhayfa and one of the tribe of Amr ibn Luayy, came to the Messenger of Allah, may Allah bless him and grant him peace, and said, **'Messenger of Allah! We think of Salim as a son, and he comes in to see me while I am uncovered. We only have one room, so what do you think about the situation?'** The Messenger of Allah, may Allah bless him and grant him peace, said, **'Give him five drinks of your milk and he will be mahram by it.'** She then saw him as a foster son. A'isha umm al-muminin took that as a precedent for whatever men she wanted to be able to come to see her. She ordered her sister, Umm Kulthum bint Abi Bakr as-Siddiq and the daughters of her brother to give milk to whichever men she wanted to be able to come in to see her. The rest of the wives of the Prophet, may Allah bless him and grant him peace, refused to let anyone come in to them by such nursing. They said, **'No! By Allah! We think that what the Messenger of Allah, may Allah bless him and grant him peace, ordered Sahla bint Suhayl to do was only an indulgence concerning the nursing of Salim alone. No! By Allah! No one will come in upon us by such nursing!'** "This is what the wives of the Prophet, may Allah bless him and grant him peace, thought about the suckling of an older person." See Muwatta Malik, Suckling, Book 30, Hadith 13, Book 30, Hadith 12, https://sunnah.com/malik/30/13, accessed 16/05/2024.;

2. **"Ibn Abu Mulaika reported that al-Qasim b. Muhammad b. Abu Bakr had narrated to him that 'A'isha (Allah be pleased with her) reported that Sahla bint Suhail b. 'Amr came to Allah's Apostle (ﷺ) and said: Messenger of Allah, Salim (the freed slave of Abu Hudhaifa) is living with us in our house, and he has attained (puberty) as men attain it and has acquired knowledge (of the sex problems) as men acquire, whereupon he said: Suckle him so that he**

vary, making it challenging to distinguish between the actual wording of the narrations and the explanatory notes provided by translators, as noted in the footnote above. I have highlighted the original text of the narration in bold, while scholars later elaborated on the remainder of the text, as referenced in a footnote. The narration itself appears brief, as emphasised in bold in the footnote. These differing versions illustrate that the original text is both concise and elaborated, as shown in later versions. The narration in Sahih al-Bukhari, the earlier source, contains the term 'adopted' in brackets. It states, "O Allah's Messenger (ﷺ)! We used to consider Salim as our (adopted) son, and now Allah has revealed what you know (regarding adopted sons)."[1111] In Chapter Five, I demonstrated that the words in brackets are supplementary notes added by either annotators or translators. Version number two in the footnote indicates that Salim was a formerly enslaved person, noted in brackets, who lived in the same house and reached puberty and sexual maturity. This information regarding slavery in the *hadith* is significant as it reveals a connection with *wala* in the context of slavery rather than adoption, as discussed in Chapter Four, along with the concerns around privacy regarding enslaved individuals, which is addressed in the Qur'an.

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may become unlawful (in regard to marriage) for you He (Ibn Abu Mulaika) said: I refrained from (narrating this hadith) for a year or so on account of fear. I then met al-Qasim and said to him: You narrated to me a hadith which I did not narrate (to anyone) afterwards. He said: What is that? I informed him, whereupon he said: Narrate it on my authority that 'A'isha (Allah be pleased with her) had narrated that to me." See Sahih Muslim 1453c, Book 17, Hadith 35, https://sunnah.com/muslim:1453c, accessed 16/05/2024.;

3. "**Narrated `Aisha:** Abu Hudhaifa bin `Utba bin Rabi`a bin `Abdi Shams who had witnessed the battle of Badr along with the Prophet (ﷺ) adopted Salim as his son, to whom he married his niece, Hind bint Al-Walid bin `Utba bin Rabi`a; and Salim was the freed slave of an Ansar woman, just as the Prophet (ﷺ) had adopted Zaid as his son. It was the custom in the Pre-lslamic Period that if somebody adopted a boy, the people would call him the son of the adoptive father and he would be the latter's heir. But when Allah revealed the Divine Verses: 'Call them by (the names of) their fathers . . . your freed-slaves,' (33.5) the adopted persons were called by their fathers' names. The one whose father was not known, would be regarded as a Maula and your brother in religion. Later on, Sahla bint Suhail bin `Amr Al-Quraishi Al-`Amiri-- and she was the wife of Abu- Hudhaifa bin `Utba--came to the Prophet (ﷺ) and said, "**O Allah's Messenger (ﷺ)! We used to consider Salim as our (adopted) son, and now Allah has revealed what you know (regarding adopted sons)."** The sub-narrator then mentioned the rest of the narration." See Sahih al-Bukhari 5088, Book 67, Hadith 26, https://sunnah.com/bukhari:5088, accessed 16/05/2024.

[1111] Ibid…. Sahih al-Bukhari 5088, Book 67, Hadith 26, https://sunnah.com/bukhari:5088, accessed 16/05/2024.

Salim was known as the *mawla* of Abu Hudayfah. According to Shi'i jurisprudence, Salim was Abu-Hudhayfah's slave and was freed by him and called a son, and it was after the revelation that Salim was called *mawla*.[1112] However, Salim was emancipated before the advent of Islam. He was known as a *sa'ibah* of Abu Hudayfah's wife. According to a *hadith* in Sahih al-Bukhari, "The Muslims did not free slaves as *sa'iba*, but the people of the Pre-Islamic Period of Ignorance used to do so."[1113] One of the *hadith* texts in Sahih al-Bukhari*,* as in the above footnote no. 60 shows that Salim was a freed slave of an Ansar woman, and Salim's case was like Zayd Ibn Harithah, who was also freed before Islam by Prophet Muhammad. I demonstrated in Chapter Five that Zayd's identity was known, and he had formed a *wala* with Prophet Muhammad before Islam, because only people of known ancestry could affiliate with those of similar heritage, a phenomenon recent studies refer to as adoption.

It appears that Salim's biological identity was unknown and could not be linked to Abu-Hudhayfah, much like Zayd Ibn Harithah with Prophet Muhammad. None of the versions of this *hadith* mentions Salim's father's name or tribe. All other individuals in this *hadith* are identified by their biological identities, reflecting the customary practice among people in the Arabian Peninsula of having very detailed names that include paternal and tribal affiliations. Nevertheless, Salim was referred to as *sa'ibah,* a title given by pagan people to someone they significantly cherished. The term *sa'ibah* is also mentioned in the Qur'an.

Allah says in the Qur'an, at Q.5:103, "Allāh has not appointed [such innovations as] baḥīrah or sā'ibah or waṣīlah or ḥām. But those who disbelieve invent falsehood about Allāh, and most of them do not reason."[1114] The explanation note in Sahih International indicates that *baḥīrah*, *sā'ibah, waṣīlah, or ḥām* were breeds of camels

[1112] Ruh-ul-Bayan, cited in Faghih Imani et al., *An Enlightening Commentary into the Light of the Holy Qurʾan,* Op. cit. p. 402; For further information on *mawla,* see Hoyland and Pipes. *Muslims and Others in Early Islamic Society.* Op. cit. pp. 277-322

[1113] Sahih al-Bukhari. Book of Inheritance. Chapter. 20: The heir of the Sa'iba. Book no. 85 Hadīth. 30; https://sunnah.com/bukhari/85, accessed 12/12/2019

[1114] Sahih International, available at: https://quran.com/5?startingVerse=103, accessed 20/05/2024.

that were free from human services because they were offered to idols.[1115] Likewise, Ibn Kathir shows that Al-Bukhari records the meaning of *sa'ibah*, "... a female camel let loose for free pasture for the idols, and nothing was allowed to be carried on it. Abu Hurayrah said that the Messenger of Allah said,"[1116] Since Salim was freed before Islam and given the title of *sa'ibah*, it indicates that he was likely much loved yet remained bound by loyalty. According to the *hadith,* an enslaved person freed as *sa'ibah* cannot be freed from fealty.

> "Abu Sa'id bin Amr told us, on the authority of Abu Bakr bin Abi Maryam, on the authority of Damra, Rashid bin Sa'd, and others, who said about the one who freed Sa'ib, 'His loyalty is to the one who freed him. He only released him from slavery and did not spare him from loyalty."[1117]

As the above *hadith* illustrates, Salim could have been freed, yet he remained under the authority of his owners. This indicates that Salim was a free slave rather than an adopted child. The *hadith* mentions that Abu Hudhayfa's wife stated that Salim is like their son and enters her rooms when she is uncovered or wearing short clothing, which Abu Hudhayfa disapproves of. It was customary in the region for enslaved individuals to serve or attend to their owners without restrictions. Abu Hudhayfa's wife's concerns regarding privacy concerning bondpeople are addressed in the Qur'an.[1118] The revelation outlines the times and reasons for seeking permission. In the Qur'an, Allah says,

> "O believers! Let those 'bondspeople' in your possession and those of you who are still underage ask for your permission ⌜to come in⌝ at three times: before dawn prayer, when you take off your ⌜outer⌝ clothes at noon, and after the late evening prayer. ⌜These are⌝ three times of privacy for you. Other than these times, there is no blame on you or them to move freely,

[1115] Sahih International, available at: https://quran.com/5?startingVerse=103, accessed 20/05/2024.
[1116] Ibn Kathir, published on 10th November 2006, available at: http://www.mquran.org/content/view/7022/4/
[1117] Sunan ad-Darimi, Book 21, Hadith 3034, https://sunnah.com/urn/6130340, accessed 21/05/2024
[1118] Ali. *The Holy Qurʾān.* 1975. Po. Cit. p. 915

attending to one another. This is how Allah makes the revelations clear to you, for Allah is All-Knowing, All-Wise."[1119]

According to Yousaf Ali, this verse pertains to individuals who were bonded. Yousaf Ali notes that servants and their children had the freedom to enter houses at any time. The revelation instructed them to seek permission three times before entering their masters' private quarters.[1120] Particularly at night, visitors should discreetly ask for permission to enter, as people are expected to remove their outer garments while sleeping. Free adults were already subject to rules requiring permission before entering others' private spaces. The revelation in the Qur'an advised all personal attendants to adhere to the same privacy rules when serving their masters and mistresses day and night.[1121] According to Burton, before the dawn prayer, the midday prayer is the time when men take naps, and 'īsha' (dusk prayer) is when permission is required to enter their space.[1122] The relevant times are early morning, noon, and evening when individuals rest and remove their outer garments. According to an authentic hadith by Abu Musa, "One should knock three times and enter when permitted. If there is no reply, one should leave."[1123] As demonstrated, this hadith is more relevant to privacy rather than to adoption or even *mahram* per se.

After advising bond individuals, the revelations in the following verse recommend that biological children maintain privacy upon attaining puberty. According to the revelations in the Qur'an, biological children transitioning to adulthood must seek permission before entering their parents' private space. In the Qur'an, Allah says,

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[1119] Q. 24:58, Dr. Mustafa Khattab, the Clear Quran, Surah An-Nur - 1-64 - Quran.com, accessed 04/04/2022; Q. 24:59, **"**O ye who believe! Let your slaves, and those of you who have not come to puberty, ask leave of you at three times (before they come into your presence): Before the prayer of dawn, and when ye lay aside your raiment for the heat of noon, and after the prayer of night. Three times of privacy for you. It is no sin for them or for you at other times, when some of you go around attendant upon others (if they come into your presence without leave). ..." Pickthall's Translation, available at: quran.com. accessed 20/12/2019

[1120] Ali. *The Holy Qurʾān.* 1975. Po. Cit. p. 915

[1121] Ali. *The Holy Qurʾān.* 1975. Po. Cit. p.915

[1122] Burton, John (Commentary & editor). *Abu 'Ubaid al-Qasim b. Sallam's K. Al-nasikh wa-l Mansukh*: Cambridge: E.J.W. Gibb Memorial Trust. 1st edition, 1987. p. 143

[1123] Sunan Ibn Majah, Etiquette - كتاب الأدب, Hadith 3706, Chapter 17: Seeking Permission to Enter, avaiale at: https://sunnah.com/ibnmajah:3706, accessed 20/07/2023

"And when your children reach the age of puberty, let them seek permission to come in, as their seniors do…."[1124] According to Burton, a man asked Prophet Muhammad about entering upon his mother without her consent.[1125] He lived in the same house and was her attendant. Prophet Muhammad advised him always to seek permission unless he wished to see his mother undressed.[1126] As these revelations show, this is not about adoptees. The rules of privacy are equally applicable to pubescent children, even those who are biological.

As shown, the strong rationale of the *hadith* concerning Salim and Sahla bint Suhayl pertains to privacy rather than *mahram,* which is addressed in the Qur'an. Mitigating *mahram* through suckling does not exempt anyone from privacy rules, regardless of whether they are adopted or biological children. As the Qur'an's revelations on privacy demonstrate, Salim would not be permitted into the private space of Sahla bint Suhayl even if one accepts that he became a *mahram* for her. Rules regarding privacy within the household apply to all adults and pubescent children, irrespective of gender, relationship status or *mahram* conditions, including those who are *mahram.* Therefore, these rules do not, in themselves, serve as grounds to prohibit adopted children from a home. As noted, the revelations concerning bond servants do not specify a particular gender or relationship and likewise do not ban interaction between certain genders or relatives.

7.3 Veiling (*hijab)* and its impact on adoption

Veiling or covering, much like gender interaction, is another subject associated with adoption due to concepts of privacy in the home and the need for modesty. However, as I will demonstrate, the reasoning behind veiling varies significantly, and the evidence linking it to adoption is unsubstantiated. The *hijab*'s standard English translation is 'covering', often referred to as veiling. Veiling has its roots in pre-

[1124] Q. 24:59, D. Mustafa Khattab, the Clear Quran, Surah An-Nur - 1-64 - Quran.com, accessed 04/04/2022.

[1125] Burton, John (Commentary & editor). *Abu 'Ubaid al-Qasim b. Sallam's K. Al-nasikh wa-l Mansukh*. Op. cit. pp. 142-143

[1126] Burton, John (Commentary & editor). *Abu 'Ubaid al-Qasim b. Sallam's K. Al-nasikh wa-l Mansukh*: Cambridge: E.J.W. Gibb Memorial Trust. Ist edition, 1987. p. 143

Islamic Middle Eastern and Mediterranean societies, dating back to around 1132-1115 B.C. or possibly even earlier.[1127] Evidence of the *hijab* appears in numerous cultures, including Zoroastrian, Byzantine, Sassanian, Jewish, and Christian.[1128] According to Lapidus, women from third-century Sassanian communities, fourth-century Jewish communities, and sixth-century Byzantine societies practised veiling, suggesting that Islamic society may have adopted the veil alongside these other groups.[1129] Women were either secluded or wore enveloping garments to cover themselves. Royal women in the Persian Empire (present-day Iran) from the Achaemenid (ca. 500–330 B.C.E.) through the Sassanid (226–651 C.E.) dynasties also practised veiling to shield them from the gaze of commoners.[1130] Jewish women covered their heads and faces in public.[1131] The women of ancient Rome donned a garment called the 'palla', while Christian women received similar instructions to cover their heads in religious settings.[1132] Historically, women veiled for various reasons, such as signalling royal status, differentiating themselves from slaves and prostitutes, or simply adhering to fashion trends.[1133] The rationale for veiling in Islam is not vastly different.

In Islam, veiling was to protect women. According to Mernissi, the initiation of the *hijab* was to separate women from men because men harassed and pressured them to commit *zina* (fornication).[1134] This practice of harassment was known as "*ta'arrud*

[1127] KAHF, MOHJA. "From Her Royal Body the Robe Was Removed: The Blessings of the Veil and the Trauma of Forced Unveilings in the Middle East." In *The Veil: Women Writers on Its History, Lore, and Politics*, edited by Jennifer Heath, 1st ed., 27–43. University of California Press, 2008. http://www.jstor.org/stable/10.1525/j.ctt1pnq61.6: Gleason, Joseph (4 June 2018). "Why Russian Women Still Cover Their Heads in Church (Hint: It's in the Bible)". Russian Faith. Accessed, 23/06/2024.; Marlowe, Michael D. "The Woman's Headcovering". Bible Research. Accessed, 23/06/2024; A shawl worn over the clothes, Clothing in Ancient Roman, available at: https://www.crystalinks.com/romeclothing.html, accessed 20/12/18.

[1128] KAHF, "From Her Royal Body the Robe Was Removed. Op. Cit. p. 27

[1129] Lapidus, Ira. M. *A History of Islamic Societies,* 3rd edition, Cambridge: Cambridge University Press. 2014. P. 19

[1130] Heath, Jennifer, ed. 2008. *The Veil: Women Writers on Its History, Lore, and Politics*. Berkeley: University of California Press. Accessed June 23, 2024. ProQuest Ebook Central. p.252

[1131] KAHF, From Her Royal Body the Robe Was Removed, Op. Cit. p.27

[1132] A shawl worn over the clothes, Clothing in Ancient Roman, available at: https://www.crystalinks.com/romeclothing.html, accessed 20/12/18; Marlowe, Michael D. "The Woman's Headcovering". Op. Cit.

[1133] A shawl worn over the clothes, Clothing in Ancient Roman, available at: https://www.crystalinks.com/romeclothing.html, accessed 20/12/18.

[1134] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 163

(taking up a position along a woman's path to urge her to fornicate)."[1135] Prophet Muhammad found it quite concerning and queried the reasons for this practice. The men explained, "We only practice *ta'arrud* with women we believe to be slaves."[1136] Mernissi also states that even Prophet Muhammad's wives experienced harassment when they went out.[1137] According to Mernissi, a man saw Ai'shah and proposed to Prophet Muhammad that he exchange his wife.[1138] Exchanging wives was yet another pagan custom. According to Mernissi, this is when Allah revealed the covering of the Prophet's wives and the women of believers.[1139] Al-Tabari also offers a similar cause for the veiling of women. According to Al-Tabari, a part of the verse on *hijab* was revealed after a man named Uyayana ibn Hisn stated that he intended to marry Prophet Muhammad's wives after his death.[1140] He was advised that Allah has forbidden such practices.[1141] The revelation also shows that veiling was intended to protect women from sexual abuse. In the Qur'an, Allah says,

> "O Prophet, tell your wives and your daughters and the women of the believers to bring down over themselves [part] of their outer garments. It is more suitable that they will be known and not abused … ."[1142]

As mentioned above, the revelation advises that the outer garment or *hijab* is to protect women from sexual abuse. The verse does not specify a particular group of women or list those required to veil. However, according to Mernissi, only aristocratic women were initially safeguarded, not slave women.[1143] Indeed, Islamic scholars like Al-Tabari and several ahadith also indicate that enslaved women were not obligated to veil:

[1135] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 180
[1136] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 180
[1137] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 170; Muir. The life of Mohammad from original sources. Op. cit. pp. 292-293
[1138] According to Mernissi, Prophet Muhammad was used to receiving delegations from every corner of Arabia as a leader of the Muslim *ummah*. His wives often accompanied him in these meetings. Arabs practised all sorts of customs, including exchanging wives, See Mernissi. *The Veil and The Male Elite.* Op. cit. p. 172
[1139] Q. 33:59; Mernissi. *The Veil and The Male Elite.* Op. cit. p. 180
[1140] Mernissi. *The Veil and The Male Elite.* Op. cit. pp. 170-171
[1141] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 171
[1142] Q. 33:59, translation by Sahih International, available at: Quran.com, accessed 20/11/2019.
[1143] Mernissi. *The Veil and The Male Elite.* Op. cit. p. 180

> "The respectable women should not look like the slave girls from their dress when they move out of their houses, with uncovered faces and loose hair; they should rather draw and let down over them a part of their sheets or outer garments so that no evil person may dare molest them."[1144]

Likewise, a *hadith* shows that slave women were not required to veil. According to a *hadith* narrated by Anas,

> "The Prophet (ﷺ) stayed for three days between Khaibar and Medina, and there he consummated his marriage to Safiyya bint Huyai. I invited the Muslims to the wedding banquet, during which neither meat nor bread was offered. He ordered for leather dining-sheets to be spread, and dates, dried yoghurt and butter were laid on it, and that was the Prophet's wedding banquet. The Muslims wondered, "Is she (Saffiyya) considered as his wife or his slave girl?" Then they said, "If he orders her to veil herself, she will be one of the mothers of the Believers; but if he does not order her to veil herself, she will be a slave girl. So when the Prophet (ﷺ) proceeded from there, he spared her space behind him (on his she-camel) and put a screening veil between her and the people."[1145]

According to another *hadith,* when women were freed from slavery, they also had to veil themselves. According to Umm Salamah, Prophet Muhammad said, "When a slave of one of your women has agreed to pay for his freedom (i.e. he is a Mukatib) and can pay the full price, she must veil herself from him." [1146] According to Abdul Ala Maududi's tafsir and some others, as shown below in the footnote, the instructions for women were to cover themselves while outdoors, as this showed their chastity and purity of character.[1147] The recommendation for veiling appears

[1144] Al-Tabari's commentary of the Q. 33:59 in Jamial Bayan, vol. xxii, p. 33. citied in Quran.com, available at: https://quran.com/33/50-60?translations=20,19. Accessed 20/11/2019

[1145] Sahih al-Bukhari 5085, Book 67, Hadith 23, https://sunnah.com/bukhari:5085, accessed 04/04/2024.

[1146] Related by Ahmad and the four Imams. At-Tirmidhi graded it as Sahih." Book 15, Hadith 15, https://sunnah.com/bulugh/15/15,

[1147] The following is tafsir from different scholars for Q. 33:59, "Ibn Abbas also has made almost the same commentary. In his statements which have been reported by Ibn Abi Hatim and Ibn

to apply to women of marriageable age, as the revelations in the subsequent verses indicate that older women, along with those who are sick or disabled, will not be held accountable for failing to cover. Allah states in the following verse,

> "As for elderly women past the age of marriage, there is no blame on them if they take off their ⌜outer⌝ garments without revealing their adornments. But it is better for them if they avoid this ⌜altogether⌝. ..."[1148] "There is no restriction on the blind, the disabled, or the sick. ..."[1149]

A *hadith* also shows that veiling protects women when they go out. According to a *hadith* by A'ishah… Umar bin Al-Khattab used to say to Allah's Messenger, "Let your wives be veiled", but he did not do so.[1150] The wives of the Prophet used to go out to answer the call of nature at night only at Al-Manasi.' One day, Sauda, daughter

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Marduyah, he says: "Allah has commanded the women that when they move out of their houses for an outdoor duty, they should conceal their faces by drawing and letting down over themselves a part of their sheets, keeping only the eyes uncovered." Qatadah and Suddi have given the same explanation of this verse.

All the great commentators who have passed after the period of the companions and their immediate followers have given the exact meaning of this verse. Imam Ibn Jarir Tabari, in his commentary of this verse, says: "The respectable women should not look like the slave-girls from their dress when they move out of their houses, with uncovered faces and loose hair; they should rather draw and let down over them a part of their sheets or outer garments so that no evil person may dare molest them." (Jamial Bayan, vol. xxii, p. 33).

Allama Abu Bakr al-Jassas says: "This verse points out that the young woman has been commanded to conceal her face from the other men; when moving out of the house she should cover herself up well to express chastity and purity of character so that people of doubtful character do not cherish any false hope when they see her." (Ahkam al- Quran, vol. iii, p. 458).

Allama Zamakhshari says: "It means that they should let down a part of their sheet over themselves and should cover their faces and wrap up their sides well." (AlKashshaf, vol. ii, p. 221). Allama Nizamuddin Nishapuri says: "That is, they should let down a part of the sheet over them: in this verse, the women have been commanded to cover the head and face." (Gharaib al-Quran, vol. xxii, p. 32).

Imam Razi says: "What is mean is that the people may know that they are not promiscuous women. The woman who covers her face, though the face is not included in the satar, cannot be expected to uncover her satar, which is obligatory to cover before the other man. Thus, everyone will know that they are modest and virtuous women who cannot be expected to do anything indecent." (Tafsir Kabir. vol. vi, p 591)" (*Satar* in Arabic is to cover or conceal), See, Abdul Ala Maududi tafsir. Available at: https://quran.com/33/50-60?translations=20,19. Accessed 20/11/2019

[1148] Q. 24:60, Dr. Mustafa Khattab, the Clear Quran, Surah An-Nur - 1-64 - Quran.com, accessed 04/04/2022.

[1149] Q. 24:61, Dr. Mustafa Khattab, the Clear Quran, Surah An-Nur - 1-64 - Quran.com, accessed 04/04/2022

[1150] Sahih al-Bukhari. *Book of Asking Permission*: 6240. Book 79. *Hadīth*. No. 148. vol. 1, available at: https://sunnah.com/bukhari/79; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol 7. p. 697

of Zam'a, went out, and she was a tall woman. Umar bin Al-Khattab saw her while he was at a gathering and said, "I have recognised you, O Sauda!" Umar said this was when he was anxious for divine clarification regarding the veiling of women.[1151] These circumstances led to the revelation of veiling, and women were asked to cover their complete bodies, excluding the eyes.[1152] According to Averroës, Prophet Muhammad's advice to Sauda to veil was precautionary and not obligatory.[1153] I will return to the circumstances surrounding Sauda's veiling. First, yet another *hadith* demonstrates that the veiling was revealed to protect women when they were out in the community, rather than relating to privacy in the home.

According to Umar bin Al-Khattab, "… And as regards the (verse of) the veiling of the women, I said, 'O Allah's Messenger (ﷺ)! I wish you ordered your wives to cover themselves from the men because good and bad ones talk to them.' So, the verse of the veiling of the women was revealed ..."[1154] However, according to Tafsir Ibn Kathir, the recommendation for veiling came after the marriage of Prophet Muhammad to Zaynab bint Jash. Tafsir Ibn Kathir cites a *hadith* from Imam Ahmad to support this opinion, explaining the reason for the revelation. The *hadith* states that Prophet Muhammad sent his marriage proposal to Zaynab through Zayd ibn Harithah after completing her *i'dda*.[1155] Following the marriage, Zayd was accustomed to accompanying Prophet Muhammad around, and when he followed him to Zaynab's apartment, Prophet Muhammad drew a curtain after him to protect her modesty.[1156] During this incident, Allah revealed His ruling on *hijab,* "enter not the Prophet's houses unless permission is given to you … And when you ask [his

[1151] Sahih al-Bukhari. *Book of Asking Permission*: 6240*.* Book 79. *Hadīth*. No. 148. vol. 1, available at: https://sunnah.com/bukhari/79; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol 7. p. 697

[1152] Sahih al-Bukhari. *Book of Asking Permission*: 6240*.* Book 79. *Hadīth*. No. 148. vol. 1, available at: https://sunnah.com/bukhari/79; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol 7. p. 697

[1153] Averroës. *The Distinguished Jurist's Primer:* Ibn Rushd. Vol. II. 2000. Op. cit. p. 433

[1154] Sahih al-Bukhari 402, Book 8, Hadith 53https://sunnah.com/bukhari:402, accessed 04/04/2022.

[1155] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. 2000. Vol 7. pp. 696-697; *i'dda* is a compulsory waiting period for a woman before she can remarry. The woman does not socialise with men, and the waiting period is to identify if there is any pregnancy.

[1156] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. Cit. 2000. Vol 7. pp. 696-697

wives] for something, ask them from behind a partition ….” [1157] Likewise, a *hadith* narrated by Anas bin Malik shows, “The Verse of Al-Hijab (veiling of women) was revealed in connection with Zainab bint Jahsh. (On the day of her marriage to him) the Prophet (ﷺ) gave a wedding banquet with bread and meat; ...”[1158]

The two sources mentioned above provide different perspectives on veiling. The underlying reasons for revelations regarding veiling are not that far apart. Both rationales aim to protect women and their privacy, though they come from different narratives. Notably, neither rationale for veiling addresses its necessity within the home. Furthermore, the revelation indicates that women are not required to wear a veil in front of bonded individuals, children, or those with whom they live. Allah says in Q. 33:55,

> “There is no blame upon them [i.e., women] concerning their fathers or their sons or their brothers or their brothers’ sons or their sisters’ sons or their women or those their right hands possess [i.e., slaves].[1] And fear Allāh. Indeed, Allāh is ever, over all things, Witness.”[1159]

The latter revelation in the Qur’an indicates that women do not have to veil themselves around people they know. Furthermore, the revelations regarding veiling and *mahram* are not exhaustive, as demonstrated in Q. 33:55. This does not imply that women must veil from those *mahram* not mentioned in the revelation. It illustrates that the revelation provides a principle rather than an exhaustive list of every detail, as noted previously regarding *mahram.* Here, the emphasis on veiling is on being outside the home, rather than within the house with familiar people. For instance, a *hadith* by Prophet Muhammad indicates that uncles from the suckling are also *mahram,* yet they are not mentioned in the Qur’an concerning veiling. A’isha narrates this *hadith.*

[1157] Q. 33:53; Sahih al-Bukhari. *Book of Asking Permission*: 6238. Book 79. *Hadīth*. No. 12. Available at: https://sunnah.com/bukhari/79; Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. 2000. Vol 7. p. 697

[1158] Sahih al-Bukhari 7421, Book 97, Hadith 49, https://sunnah.com/bukhari:7421, accessed 04/04/2024.

[1159] Sahih International, https://quran.com/33?startingVerse=55, accessed 04/04/2024.

> "A asked the permission to visit me but I did not allow him. He said, "Do you veil yourself before me although I am your uncle?" A'isha said, "How is that?" Aflah replied, "You were suckled by my brother's wife with my brother's milk." I asked Allah's Messenger (ﷺ) about it, and he said, "Aflah is right, so permit him to visit you."[1160]

As the *hadith* as mentioned above demonstrates, an uncle whose brother's wife suckled Aisha was her *mahram,* and she did not need to veil from him. These individuals are not mentioned in the Qur'an. Therefore, one cannot argue that adopted sons are excluded and women must veil around them, nor that adoption was prohibited. As previously stated, the revelations in the Qur'an often do not provide a comprehensive list. They present principles that scholars typically apply to address similar social issues, such as suckling being a customary practice, and scholars identify these other individuals from whom suckling is permitted as *mahram*. As previously shown, adoption was not a prevalent practice in the Arabian Peninsula.

Nevertheless, people cared for vulnerable children, and if concerns arose, they would have been addressed directly in the Qur'an, just as all other social issues discussed in this chapter. Notably, none of these concerns regarding veiling, as illustrated in the revelations, pertain to adoption. Veiling was intended to protect women from sexual harassment and safeguard their privacy. Another reason was the considerable respect accorded to the wives of Prophet Muhammad. As shown, the associations between veiling and the prohibition of adoption are not supported. The explanation on veiling coming from *Tafsir Ibn Kathir* is the same *hadith* as analysed earlier for suckling.

According to Tafsir Ibn Kathir, there was no issue of veiling before the revelation in Q. 33:4 or of being alone with adopted sons, as they were regarded as biological sons.[1161] This tradition remained until the wife of Abu Hudhayfah, Sahlah bint

[1160] Sahih al-Bukhari 2644, Book 52, Hadith 8, https://sunnah.com/bukhari:2644, accessed 20/03/2024.

[1161] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. Vol 7, p. 636; Q. 33:4. As demonstrated in chapter four, tribes never accepted salve and people of low social status for tribal affiliation.

Suhayl, approached Prophet Muhammad and stated, "We used to call Salim our son, but Allah has revealed what He has revealed. He used to enter upon me, but I feel that Abu Hudhayfah does not like that." [1162] As noted earlier, the significant link of this *hadith* pertains to privacy rather than veiling a *mahram* in the context of adoption. Furthermore, the revelation indicates that women do not have to veil from those whom their right hands possess, a phrase associated with personal attendants within the context of slavery. However, in Tafsir Ibn Kathir, this *hadith* is linked with adoption under the verses Q.33:4 and Q.33:5, which, as discussed in Chapter Five, are incorrectly correlated with the prohibition of adoption. Despite Tafsir Ibn Kathir not mentioning veiling or its relevance to adoption, recent studies have developed this connection.[1163] However, there is no other reference from primary theological sources to support the findings of recent studies regarding the veiling requirement for adopted relationships.

The second reference for veiling through adoption is the *hadith* analysed in the previous chapter concerning paternity manipulation. As I demonstrated, this *hadith* pertains to inheritance, not adoption, and it is this *hadith* that provides the principle of *firash (*i.e., paternity depends on a lawful contract of marriage or ownership of an enslaved person, rather than biological connection). Most *ahadith* collections categorise this *hadith* under the chapter on inheritance instead of veiling. Nevertheless, one version of this *hadith* includes additional information related to veiling; however, it does not provide the rationale and context for this extra information about veiling. According to this *hadith*, narrated by Ai'shah, Utba bin Abi Waqas entrusted the care of his illegitimate son to his brother Sa'd bin Abi Waqas. Utba informed him that he had conceived a child with a slave girl of Zam'a (an enslaved woman's master).[1164] Utba's brother (Sa'd) and Zam'a's son (Ab'd bin Zam'a) went to Prophet Muhammad to contest custody of this child. Prophet Muhammad advised them that "this boy is for you as the boy belongs to the bed

[1162] Al-Mubarakpuri et al. *Tafsir Ibn Kathīr*. Op. cit. Vol 7. p. 636
[1163] See chapter one, section .
[1164] Mālik Ibn Anas. A*l-Muwatta.* 1982. Op. cit. p. 344

(where he was born) and for the adulteress is the stone (i.e. deprivation)."[1165] In other words, custody was granted in favour of the enslaved person's master (the mother's owner rather than the biological father's family). However, when Prophet Muhammad saw the boy, he resembled Utba (the child's biological father). He advised Zam'a's daughter (the master's biological daughter), Sauda bint Zam'a, to preserve the hijab (avoid contact) with the boy. [1166] "Since that moment, the boy did not see Sauda again until he died." [1167]

According to this *hadith,* Zam'a's son was Sauda's stepbrother. Although these siblings did not share any blood ties.[1168] They were *mahram* to each other based on their father's acknowledgement of this child. Likewise, as shown earlier, the revelation on veiling also indicates that women do not have to wear a veil from people they are familiar with, including their male and female attendants. Furthermore, according to this *hadith*, a sister never saw her stepbrother until his death, which is not in keeping with Islamic principles on social contact, as shown in the *hadith.* The Qur'an and *ahadith* encourage social contact with extended family members. Allah says in the Qur'an at Q.4:1, honour your family ties.[1169] According to a *hadith* by Ibn Abbas,

> "Keep a record of your lines of descent so that you can maintain ties of kinship. He will not make his relatives distant when they are close relatives, even if they live far away. He will not consider them to be close relatives if they are distant ones, even if they live near him. Every time of kinship will come on the Day of Rising in front of each individual and testify on his behalf that he has

[1165] Muhammad, Muhsin Khan. *Sahih Al-Bukhari: The translations of the meaning of Sahih Al-Bukhari.* The Book of Wasaya (Wills and Testaments). Vol. 4. India; New Delhi: Kitab Bhavan. 1984. *hadith*. 8. p. 5

[1166] These are extra notes in the *hadith* without references.

[1167] Khan. *Sahih Al-Bukhari:* The Book of Wasaya (Wills and Testaments). Vol. 4. *hadith.* 8. p. 5

[1168] According to this translation, as shown above, the stepsister was advised to avoid contact, which is different to veiling. The above-referenced *hadith* is only an English translation, not the original Arabic source. The term *hijab* in the *hadith* concerning Sauda in Tafsir Ibn Kathir is translated in English as "avoiding contact," which suggests not having social contact. The veiling shown in this *hadith* seems impractical or even in line with veiling. Veiling, as shown in the revelation, is to cover up one's body rather than avoiding contact.

[1169] Q.4:1, Dr. Mustafa Khattab, The Clear Quran, https://quran.com/4?startingVerse=1, accessed 23/06/2024.

maintained that tie of kinship if he did indeed maintain it. It will testify against him that he cut if off if he cut it off."[1170]

Another *hadith* also demonstrates the considerable significance of social contact with kin. According to this *hadith* narrated by A'isha, Prophet Muhammad stated, "Kinship (Rahim) is derived from Allah. If anyone maintains ties of kinship, Allah maintains ties with him. If anyone cuts them off, Allah cuts him off."[1171] As this *hadith* illustrates, maintaining contact with kin is akin to maintaining contact with Allah. This indicates that kinship ties are too vital in Islam to be entirely neglected. Since the Qur'an and *hadith* emphasise preserving kinship, it is difficult to understand why Sauda ceased contact with her stepbrother or whether she was advised to veil in appropriate covering, as often recommended in Islam, rather than entirely severing contact. It is also unclear whether the brother was a child or an adult, which requires further exploration because Allah states in the Qur'an at Q. 24:31 that women do not need to wear a veil from children, enslaved people, and men who have no sexual desire.[1172]

The reason for the revelations on veiling in the Qur'an, as previously discussed, was to shield women from sexual violence, which was a significant concern given the cultural practices before and during the early period of Islam. The revelations and the *ahadith* on veiling advise women of marriageable age to cover their bodies only when they are outside their private dwellings for outdoor duties, in order to protect

[1170] Al-Adab Al-Mufrad » Ties of Kinship - كتاب صِلَةِ الرَّحِمِ » Hadith 73, Chapter: Learn your lineages so that you can maintain ties of, Book 2, Hadith 27, https://sunnah.com/adab:73, accessed 23/06/2024.

[1171] Al-Adab Al-Mufrad » Ties of Kinship - كتاب صِلَةِ الرَّحِمِ » Hadith 55Chapter: The excellence of maintaining ties of kinship, Book 2, Hadith 9, https://sunnah.com/adab:55. accessed 23/06/2024.

[1172] Allah says in the Qur'an, at Q.24:31 "And tell the believing women to reduce [some] of their vision[1] and guard their private parts and not expose their adornment[2] except that which [necessarily] appears thereof[3] and to wrap [a portion of] their headcovers over their chests and not expose their adornment [i.e., beauty] except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess [i.e., slaves], or those male attendants having no physical desire,[4] or children who are not yet aware of the private aspects of women. And let them not stamp their feet to make known what they conceal of their adornment. And turn to Allāh in repentance, all of you, O believers, that you might succeed." See Sahih International, https://quran.com/24?startingVerse=31, accessed 04/04/2024.

themselves from sexual harassment. As noted, there is no substantial evidence that women need to veil from their adopted sons. Only one *hadith* is referenced regarding veiling and *mahram,* which provides limited information on the rationale for veiling. As mentioned earlier, the sound explanation for this *hadith* is rooted in privacy rather than veiling or addressing the issue of *mahram* in the context of adoption. Therefore, the assertion that adoption is prohibited because adopted children cannot be with their adoptive parents after puberty, or that a female must don a veil once the child reaches puberty, is impractical as it does not align with the *ahadith* and the Qur'an.

7.4 Gender interaction/socialisation and adoption

Veiling is also linked to the broader principle of modesty and its preservation during interactions between *non-mahram* individuals. In the Arabian Peninsula, both sexes mingled freely within their tribes, and women wore the veil only when engaging with members of other tribes.[1173] According to Jan, nudity was a social norm.[1174] Zakariya also indicates that modesty was not part of the pre-Islamic pagan lifestyle. According to Zakariya, covering private areas held little significance in Arab society, yet Muhammad exemplified modesty. He consistently covered his private parts, even prior to the tenets of Islam.[1175] Islam establishes certain principles for covering specific parts of the human body that apply to everyone, irrespective of gender or relationship status. The Qur'an and ahadith both contain references to social interactions between opposite genders, accompanied by specific regulations that apply to all individuals above puberty, regardless of whether they are adopted or biological children.

According to Mohd, "In Islam, men and women who are non-blood relatives may not socialise freely, but only with certain limitations. Limitations include that they

[1173] Sonbol, *Rise of Islam: 6th to 9th Century,* Op. cit. pp. 4, 6-7

[1174] Jan. *The Life and Times of Muhammad Rasul Allah.* Op. cit. 85

[1175] M. Muhammad. Zakariya. *Shamail-e-Tirmidhi, Imam Abi Eesaa Muhammad bin Easaa bin Sorah At-Tirmidhi*: with Commentary from Muhammad Zakriyya Kandhelwi (Translated by Muhammad bin Abdurrahmaan Ebrahim). Laxmi Nagar, Delhi: Rightway Publications. 2001. P. 378

must observe the *awrah* and Islamic teachings while socialising."[1176] *Awrah* is an Arabic term in Islam for parts of the human body that must be covered, and the Qur'an and *ahadith* obligate both men and women to cover these parts with clothing.[1177] The rule of *awrah* applies to everyone, regardless of gender and *mahram,* except in the case of husband and wife. According to the *hadith,* "A man is not to look at the '*awrah* of a man, and a woman is not to look at the '*awrah* of a woman. A man is not to be alone with a man under one garment, and a woman is not to be alone with a woman under one garment'."[1178]

In the Qur'an, Allah says in Q.24:30, "Tell the believing men to lower their gaze (from looking at forbidden things)".[1179] The following verse, Q.24:31, referenced above under veiling, addresses females, stating that women should lower their gaze and be modest in their displays.[1180] The revelation in Q.24:31 indicates that women can interact with their slaves, whether male or female. The *ahadith* are more explicit regarding gender interaction, suggesting that social interaction between *non-mahrams* is permissible within specified rules. The revelation on social interaction is in verse Q. 24:61, which follows the revelation concerning privacy for bond people in Q.24:58. As shown earlier, pubescent children are advised to observe privacy in Q.24:59, but veiling is not compulsory for the elderly and sick in Q;24:60. Allah says in the Qur'an at Q.24:61,

> "There is no restriction on the blind, or the disabled, or the sick.[1] Nor on yourselves if you eat from your homes, or the homes of your fathers, or your mothers, or your brothers, or your sisters, or your paternal uncles, or

[1176] Mohd. Malaysia. Filiation and the Protection. Op. cit. pp. 230-231

[1177] Islamic Terminology, https://islamic-dictionary.tumblr.com/post/5658467793/awrah-arabic-عورة-is-a-term-used, accessed 20/04/2022; Q. 7:26 "O children of Adam! We have provided for you clothing to cover your nakedness and as an adornment. However, the best clothing is righteousness. This is one of Allah's bounties, so perhaps you will be mindful.", available at: https://quran.com/7/26, accessed 20/04/2022.

[1178] Jami` at-Tirmidhi » Chapters on Manners - كتاب الأدب عن رسول الله صلى الله عليه وسلم » Hadith. 2793, chapter. 43 on Manners, narrated**' Abdur-Rahman bin Abi Sa'eed [Al-Khudri] from his father, who said:** "The Messenger of Allah (ﷺ) said: 'A man is not to look at the 'Awrah of a man, and a woman is not to look at the 'Awrah of a woman. A man is not to be alone with a man under one garment, and a woman is not to be alone with a woman under one garment.'", available at: https://sunnah.com/tirmidhi:2793, accessed 20/04/2022.

[1179] Q. 24:30

[1180] Q. 24:31; Wikan. *Behinds the veil in Arabia.* Op. cit. p. 57

> your paternal aunts, or your maternal uncles, or your maternal aunts, or from the homes in your trust, or ˹the homes of˺ your friends. There is no blame on you for eating together or separately. However, when you enter houses, greet one another with a greeting 'of peace' from Allah, blessed and good. This is how Allah makes His revelations clear to you, so perhaps you will understand."[1181]

The revelation in the above verse is gender-neutral, indicating that both men and women face no restrictions when dining with family, friends, and trusted relatives. Similarly, according to the *hadith*, a woman is permitted to eat with her relatives, enslaved individuals, and those with whom her husband dines, regardless of whether they are men or women. According to a *hadith* by Malik,

> "Yahya said that Malik was asked, "Can a woman eat with other than her relative or slave?" Malik said, "There is no harm in that if it is in a manner which is accepted for a woman to eat with men."
>
> Malik said, "A woman sometimes eats with her husband, and with others, he dines with or with her brother in the same way. It is disapproved of for a woman to be alone with a man when there is no relationship between them by blood, marriage or suckling that would prevent him marrying her."[1182]

Besides the above, there are a few other references that emphasise modesty and morality in public places.[1183]

As shown, the revelations in the Qurʾan and *ahadith* permit social interaction according to certain principles of modesty, which apply to everyone, irrespective of *mahram* or relationship status. The guidance on social interactions is found in the same chapter that addresses veiling, privacy, modesty, and social engagement. These revelations, as demonstrated, were prompted by societal issues prevalent in

[1181] Q. 24:61, Dr. Mustafa Khattab, the Clear Quran, Surah An-Nur - 1-64 - Quran.com, accessed 04/04/2022.

[1182] Malik b. Anas. Al-Muwatta. The Description of the Prophet, may Allah Bless Him and Grant Him Peace. Book. 49, *hadith* 35: https://sunnah.com/urn/417680

[1183] Al-Nawawī. *Riyad- us-Saliheen*. 1998. Op. cit. chapter 290. pp. 1226-1230

the Arabian Peninsula at the time and have nothing to do with the adoption of children, contrary to arguments put forth in previous studies regarding the prohibition of adoption.

7.5 Conclusion

The revelations in the Qur'an and *ahadith* regarding *mahram*, suckling, veiling, modesty, and gender interaction illustrate that these principles addressed specific societal concerns. They aimed to protect women's rights within a particular cultural context. The revelation on *mahram* aimed to address widow inheritance practices, safeguarding widows while emphasising the importance of women's rights in matters of marriage and finances. The perspective on *mahram* relationships can also be viewed as establishing a precedent for understanding adoption within a legal framework. The revelation on suckling was intended to regulate the common practice of hiring women to breastfeed children and had no direct association with adoption. Similarly, the revelation on veiling sought to protect women from societal abuses and had no direct link to adoption. The principles concerning gender interaction apply universally and are not exclusive to adopted or biological relationships. Overall, the Qur'anic revelations on these issues do not impose additional restrictions or obligations on households with adopted children. Instead, they offer valuable guidance for tackling societal challenges and promoting a safe and respectful environment for all individuals.

Chapter. 8

Conclusion

8. Introduction

This chapter concludes the discussion on adoption in Islam. It provides a brief overview of all the questions addressed in this thesis, demonstrating that adoption is not prohibited in Islam, as established by previous studies. It also emphasises the significance and contributions of this thesis in understanding adoption in Islam and children's rights, as well as the practical impact on children's adoption from a theological perspective. Additionally, the chapter acknowledges its limitations and identifies areas that require further research.

8.1 Findings: Is adoption prohibited in Islam?

Adoption plays a crucial role for children who are unable to reside with their biological parents. In the United Kingdom, there exists a deficit of adoptive and foster families, which consequently impacts the rights of children. Insufficient placements often fail to meet the language, cultural, and religious needs of those involved. Research suggests that a child's identity is crucial to their overall well-being and development. One contributing factor to the limited number of Muslim adoptive families in the United Kingdom is the perception that adoption is prohibited in Islam. Prior studies have not sufficiently examined adoption from theological, historical, social, and regional viewpoints, leading to misconceptions regarding historical adoption practices in the Arabian Peninsula.

Chapter two analyses the Qur'an and *ahadith* to determine whether Islam sanctions adoption and to explore alternative methods for the care of vulnerable children. This chapter illustrates that the Qur'an and *ahadith* provide guidance on the care and protection of vulnerable children. However, the primary theological sources do not delineate a specific method, such as adoption, fostering, *kafala,* or guardianship. The principles governing the care of vulnerable children have arisen from social concerns related to reforms in inheritance during the formative period of Islam, rather than from a prohibition of adoption. The Qur'an discusses *kafala* and adoption within similar contexts pertaining to events that occurred before the advent of Islam, without articulating explicit affirmative or negative stances on either method.

Scholars have chosen to utilise *kafala* for orphans and abandoned children, as it was a prevalent regional practice. However, it is not explicitly mandated in the Qur'an as an alternative to adoption.

The *kafala* system features numerous variations in its practice and concept. It serves as a multifaceted instrument, with its language, purpose, and requirements shifting based on the context. *Kafala* originated from commercial activities, involving a contract in which the parties include a third party as a guarantor for compensation. Scholars sometimes draw upon existing customs when a social issue is not addressed in the Qur'an and *ahadith*. From a legal and theological perspective, *kafala* is not solely focused on serving vulnerable children or regulating their placements within families. Different regions possess varying perceptions of care standards for vulnerable children, and *kafala* primarily addresses domestic social concerns. This makes it incompatible with legal instruments such as adoption, fostering, or guardianship, which are commonly practised in most developed countries. However, the principles outlined in the Qur'an and *ahadith* prioritise the welfare of children, suggesting that any modern instrument, including fostering and adoption, that safeguards children's welfare could be regarded as compliant with these provisions in Islam, provided they do not contradict the fundamental tenets of Islam.

The next stage involved querying adoption and *kafala* practices within Muslim countries worldwide to assess whether they have consistent policies in line with the new definition of children's welfare, as outlined in international law. Many Muslim countries have differing policies on adoption and *kafala*, even if they adhere to the same jurisprudential school of thought. The changes made to *kafala* in these countries are often driven by social concerns rather than theological ones. Although some Muslim countries permit full adoption, while others do not have a legislated position indicating their prohibition, individuals in most countries practice adoption without interference from the state. This suggests that not everyone believes adoption is prohibited in the Qur'an. If adoption is indeed prohibited in the Qur'an, then Muslim countries permitting adoption do not strictly adhere to the Qur'an's

teachings, which appears contradictory. Furthermore, international law does not recognise *kafala* as equal to adoption.

In Chapter Four, the research centred on the historical background of adoption in the Arabian Peninsula to understand why this practice is prohibited in Islam. This thesis revealed that adoption, as demonstrated by previous studies, was incorrectly analogised with the custom of *wala* in the Arabian Peninsula. *Wala* served a different purpose than modern-day adoption. *Wala* is defined as tribal allegiances, connections, covenants, and agreements. Unlike the adoption we recognise today, where a child becomes a new member of a family, *wala* was a customary practice that provided its members with security and social, economic, and political support. This created a bond between isolated individuals and weaker tribes, as well as those of a more powerful or larger tribe. It did not involve children, and adult males engaged in *wala* did not become family members. In contrast, adoption establishes a parent-child relationship, which is essential for the child's well-being. Furthermore, adoption in Roman times involved issueless adults adopting another adult to ensure they had someone to perform their funeral rituals, which similarly represented a parent-child relationship.

Wala was a discriminatory instrument, as it did not accept enslaved people and those of low social status before Islam. Enslaved individuals who accepted Islam lost the protection of their masters and became socially and economically isolated. After the advent of Islam, they were compelled to join *wala* with the sponsorship of a patron due to their unknown heritage, with *wala*'s primary condition being common descent. Although Islam promoted equality and allowed formerly enslaved individuals to join tribes through *wala*, they were often exploited by patrons who denied them their fundamental rights to marriage and inheritance while utilising their services for free. This mistreatment stemmed from pre-Islamic culture rather than the religion itself. Despite these imperfections, *wala* as a system was not prohibited in Islam, with only its condition of patron being abolished. Islamic jurisprudence frequently references its other conditions, such as blood money and retaliation, which remain integral to Islamic principles in criminal matters today.

Adoption is not extensively addressed in Islamic jurisprudence, and *wala* is predominantly associated with slavery. Consequently, recent studies on adoption in Islam have found little evidence of this practice.

The analysis in chapter five focused on the revelations in Q.33:4 and Q.33:5 associated with the prohibition of adoption. These revelations addressed harmful customs in the Arabian Peninsula that exploited vulnerable members of society, such as divorced women, their children, and formerly enslaved individuals. The revelations aimed to reform these customs, rather than to prohibit practices like *wala* or *zihar*. They served as a response to specific issues and guidance for the new community. The term 'adopted' in Q.33:5 was interpreted to relate to slavery rather than to the adoption of children. The requirement of a patron sponsor for *wala* applied solely to formerly enslaved individuals of unknown heritage and not to those of high status. This unequal treatment contradicted the principle of equality in Islam. The analysis also underscored how scholars misinterpreted adoption due to differing social contexts.

Zayd Ibn Harithah is often associated with adoption, which, as shown, was a form of *wala*. Zayd was a freedman of the Prophet Muhammad, and rather than returning to his father, he entered into a *wala* with the Prophet based on mutual conditions, as was the practice before Islam. Their *wala* included mutual rights of inheritance that were not permitted for formerly enslaved people, even following the advent of Islam. Post-Islam, only patrons had the right to inherit from their *mawala* (formerly enslaved person), not the other way around. Zayd's *wala* with the Prophet Muhammad occurred before Islam, at a time when tribes did not accept slaves or individuals of low social status. The individuals mentioned in the revelations in Q.33:4 and Q.33:5 are of unknown heritage. Zayd's biological identity was recognised before his *wala* with the Prophet Muhammad, and his return to his biological identity was consistent with new guidance in the Qur'an. *Wala* itself was not an issue, as the revelations in Q.33:4 and Q.33:5 emerged approximately seventeen years after the rise of Islam, around 627 A.D. The problem arose when they began to accept formerly enslaved people through a modified form of *wala*,

aided by a patron who significantly exploited the rights of these vulnerable individuals.

The main reason highlighted for the prohibition of adoption, from both theological and academic perspectives, was that it led to the manipulation of adoptees' biological identity. They referenced *ahadith,* which indicated that adult men manipulated their paternity; however, as shown, this was done to gain inheritance or to deny the inheritance of children born from adultery. Historically, under tribal customary rules, only male members were eligible for inheritance, leaving many others without support. Consequently, Islamic rules pertaining to inheritance were modified to include both male and female family members, emphasising lawful paternity and ensuring children's rights to inheritance and maintenance. The investigation found that changes in inheritance rules within Islam were the primary reason for the manipulation of paternity, not adoption.

As demonstrated, the concept of adopting children is not directly addressed in the Qur'an or *ahadith*. Likewise, other familial and social matters, such as *mahram*, suckling, *hijab,* and modesty, have been associated with the prohibition of adoption. These issues were also pertinent to specific societal concerns in a pagan culture regarding women's rights and did not directly relate to adoption. The revelation concerning *mahram* aimed to protect widows in a pagan society that had significant issues with incest, where stepsons inherited their stepmothers. Subsequently, Allah revealed verses that discuss women's rights to marriage and financial resolution. Recent studies on adoption raised the issue of exclusion of adoptees from the list of *mahram* relatives, indicating that adopted children do not satisfy the criteria for *mahram*, which could result in familial discord. It is essential to acknowledge that the Qur'an does not categorise everyone as *non-mahram*, and that some relatives are identified as such by Islamic scholars later on.

The theological associations with the prohibition of adoption stem from misunderstandings originating in secondary sources. According to Islamic jurisprudence methodology, secondary sources, such as individuals' opinions or

findings, hold no priority over the revelations in the Qur'an. These revelations indicate that these matters are either irrelevant to child adoption or fail to provide justifiable grounds for its prohibition. One principle of Islamic jurisprudence entails studying local cultural traditions to comprehend the teachings in the Qur'an and *ahadith*. This study examined adoption and found no apparent connection between the revelations and the practice of adoption. Previous research revealed that adoption in the Arabian Peninsula before Islam resembled that in other communities worldwide, with motivations encompassing religious rituals, infertility, and social, economic, and security considerations. However, these studies did not clarify how these motivations related to children or why they contradicted Islamic principles, ultimately incorrectly concluding that adoption is prohibited in Islam. The issue with earlier studies was their failure to distinguish between evidence from sociological, historical, and theological perspectives, rendering their conclusions ambiguous.

8.2 Contribution and significance of the study, including implications of the findings on children's adoption in Islam

This thesis employed a hermeneutical approach to study adoption in Islam. This method facilitated a thorough investigation from theological, philosophical, and literary perspectives. The research examined gaps identified in earlier studies on adoption, drawing upon evidence from the Qur'an and *ahadith*. Furthermore, it engaged with theological and broader historical literature to achieve its objectives. The hermeneutical method offers a fresh perspective on adoption in the Arabian Peninsula before the advent of Islam, providing comprehensive insights. The primary data, derived from the Qur'an and *ahadith*, address all the thesis questions through a hermeneutical approach.

The findings of this thesis make a significant contribution to the field of adoption in Islam by illuminating the historical and cultural context of adoption and its practices in Muslim countries. The research reveals that the concept of adoption in Islam is intricately linked to pre-Islamic customs, such as *wala*, which served various social, economic, and political purposes, unlike contemporary adoption. Understanding

the origins of these practices sheds light on why adoption is prohibited in certain Muslim countries and how they are perceived within Islamic jurisprudence. Furthermore, the findings highlight the discriminatory nature of *wala*, especially in its treatment of enslaved individuals and those of low social status. By exploring the impact of *wala* on vulnerable populations, the research emphasises the complex intersection of cultural traditions, religious principles, and social justice within the context of adoption in Islam. These insights provide a deeper understanding of the complexities surrounding adoption and its interpretation in Islamic history. The significance of this thesis lies in its contribution to understanding adoption in Islam and its implications for children's rights. From a theological perspective, this study has a practical impact on children's adoption, offering a nuanced understanding that can guide adoption practices within Islamic communities. By clarifying the misconceptions surrounding adoption in Islam, this research aims to promote the well-being of orphaned and vulnerable children by encouraging adoption within the framework of Islamic principles. This can inform ongoing discussions and policy considerations regarding children's welfare, family dynamics, and legal frameworks for adoption within Islamic societies.

8.3 Thesis's limitations and the questions for further research

Despite the insights gained, it is essential to acknowledge the limitations of this study, particularly regarding the scope of specific theological interpretations and the need for further research. Future studies could explore the historical and cultural contexts surrounding adoption in early Islamic societies and contemporary adoption practices within Muslim communities, thereby enriching the discourse on adoption in Islam. The critical need to understand adoption in Islam cannot be overstated. It is also imperative to examine legal policies and provisions for marginalised children and to conduct targeted empirical studies on adoption practices. Research must urgently assess the impact of the lack of suitable families on the well-being of Muslim children in the care of local authorities. Furthermore, in-depth theological and historical research can provide invaluable insight into tribal practices and formal procedures for vulnerable children. It is of utmost importance

to scrutinise the implementation of Quranic principles related to the protection of children's welfare and to advocate for modern developments in childcare provision within the realm of Islamic jurisprudence.

8.4 Conclusion

In conclusion, analysing various revelations in the Qur'an and *ahadith* has shown that adoption is not prohibited in Islam. The findings reveal that the Qur'an provides principles rather than exhaustive lists, allowing for the adaptation of Islamic teachings to address contemporary social issues. In summary, this thesis seeks to dispel misconceptions and provide a comprehensive understanding of adoption in Islam, emphasising its compatibility with Islamic principles and its potential positive impact on the lives of vulnerable children.

Appendix 1 (A) Glossary

Arabic terms	Transliteration	Translation
أَدْعِيَاءكُمْ أَبْنَاءكُمْ	*Adiyāh'kum abnāh'kum*	Your adopted sons
أَبْنَاءٌ *ʾabnāʾ*	*[pl. of n. ابْنٌ/ʾibn]*	Sons[1184]
أهل	*Ahl*	People, inhabitants [1185]
عبد	*Abd*	Slave[1186]
والأحاديث النبوية	*Hadith al Nabawi*	Prophetic narrations
أحاديث/ حدِيث	*Hadıth* pl. *ʾaḥādıth*	Discourse,[1187]

A method of information compilation is often used for common traditions (literally means a person heard sayings or witnessed an event). In other words, although not exclusive, it is usually a record of the Prophet Muhammad's sayings and practices. [1188]

إِجْماع	*Ijmaa*	Consensus or agreement [1189]
اجتهاد	*Ijtihad*	Logical reasoning by one's judgement (full definition in chapter one) or personal reasoning[1190]
القياس	*Qiyas*	An analogy or analogical deduction

[1184] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ب/ن/و-ي b–n–w/y", in Dictionary of Qurʾanic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 February 2023 <http://dx.doi.org.bham-ezproxy.idm.oclc.org/10.1163/1875-3922_dqu_SIM_000242>

[1185] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "أ/ه/ل ʾ–h–l", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 26 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000135>

[1186] Reverso Dictionary, available at: English-Arabic dictionary | Arabic translation | Reverso, accessed 20/12/2022; Edward. William Lane, Arabic-English Lexicon, Part.5 Beirut: Lebanon. 1980, p. 1935

[1187] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ح/د/ث ḥ–d–th", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000397

[1188] John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 101; Wehr. A dictionary of modern written Arabic. Op. cit. P. 101

[1189] John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 133

[1190] John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 134

أولياء/ ولي	*Waliy* pl. ʾauliyāʾ	Near, close, protector, sponsor, patron, close associate, legal guardian, possessor, owner[1191]
الولي	*Waliy*	Guardianship
الولاية	*Wilayah*	Who has authority or guardianship.
الوصاية	*Wasi* / *wisāya*	Guardians, Guardianship[1192]
إِمَاءٌ / أَمَة	*Ama pl. imā, amawāt*	Bond maid, slave girl[1193]
أَعْرَابٌ	*ʾAʿrāb pl.ʾaʿrābi*	An Arab of dessert/ a Bedouin[1194] أَعْرَابٌ *ʾaʿrāb* [coll. n.] desert Arabs (9:120) لِأَهْلِ كَانَ مَا الْأَعْرَابِ مِنَ حَوْلَهُمْ وَمَنْ الْمَدِينَةِ it is not for the people of Medina and those of the desert Arabs around them.[1195]
عصبة/ عاصب	*Asab or asaba*	Paternal relationship.[1196] the agnates or successors of a male
أصحاب الفرائض	*Ashabul-farahid*	Mandatory heirs (as recommended in the Qur'an)
سبب النزول /اسباب النزول	*Sabab al nazul pl. asbab-al-nazul*	Cause, means of obtaining[1197] Causes of revelation
آيَةٌ	*ʾāyatun* [n.; dual آيَتَيْنِ *ʾāyatayn*; pl. آيَاتٌ *ʾāyāt*] Sign, indicator, indication[1198]	

[1191] Wehr. A dictionary of modern written Arabic. Op. cit. p.1100

[1192] Almaany Dictionary, child under puberty In Arabic - Translation and Meaning in English Arabic Dictionary of All terms Page 1 (almaany.com), accessed 21/01/2023

[1193] Wehr. A dictionary of modern written Arabic. Op. cit. p.25; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "أ/م/و ʾ–m–w", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 21 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000116>

[1194] Badawi, Elsaid M. Muhammad Abdel Haleem. Arabic-English dictionary of Qur'anic Usage, Leiden: Brill, 2008, p.601

[1195] Badawi, Elsaid M., and Abdel Haleem, Muhammad. 'ع/ر/ب ʿ–r–b'. In Dictionary of Qur'anic Usage, edited by Elsaid M. Badawi and Muhammad Abdel Haleem. Accessed January 15, 2023. Doi: http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001121; Wehr. A dictionary of modern written Arabic. Op. cit. p.601

[1196] Wehr. A dictionary of modern written Arabic. Op. cit. p.616; Almaany Dictionary, agnates In Arabic - Translation and Meaning in English Arabic Dictionary of All terms Page 1 (almaany.com), accessed 21/01/2023

[1197] Wehr. A dictionary of modern written Arabic. Op. cit. pp.392, 956, 957

[1198] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "أ/ي/ي ʾ–y–y", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January

بُلُوغ	*Buluug*	A child under puberty[1199]
ضَعِيفٌ	*Daʿif*	Weak (*hadith's* status)[1200]
ضَمَانه	*Damāna*	Compensation or damages
دِيَةٌ	*Diyatun*	Indemnity or compensation paid to the family of a victim.[1201] Blood money/indemnity for bodily harm [1202]
فَرَضَ	*Faraḍa* *pl. Fara'id*	To make obligatory, ordained[1203] mandatory obligations[1204]
فتاوى / فتوى	*Fatwa Pl. fatawa*	Formal legal opinion[1205]
فطرة	*Fitrah*	A state of intrinsic goodness
حُدُودٌ/ حَدٌّ	*Hudūd* [pl. of n. *ḥadd*]	Prescribed limits, boundaries[1206]
حد الزنا	*Hadd-ul-zīna*	Punishment for adultery
مَال	*Māl*	Property
حَمَّالَةٌ مَال	*Hamāla bi'l-māl*	Surety for wealth or property[1207]

2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000153; Wehr, Hans. A dictionary of modern written Arabic: (Arabic- English) 1909-1981, edited by J. Milton Cowan Urbana, Ill: Spoken Languages Services, Inc., c1994, p.36

[1199] Almaany Dictionary, available at puberty In Arabic - Translation and Meaning in English Arabic Dictionary of All terms Page 1 (almaany.com), Consulted online on 15 January 2023

[1200] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ض/ع/ف ḍ–ʿ–f", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001027>

[1201] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "و/د/ي w–d–y", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001857>

[1202] Wehr. A dictionary of modern written Arabic. Op. cit. p.1069

[1203] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ض/ر/ف f–r–ḍ", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001278>

[1204] Wehr. A dictionary of modern written Arabic. Op. cit. p.706

[1205] Wehr. A dictionary of modern written Arabic. Op. cit. p. 696

[1206] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "د/د/ح ḥ–d–d", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000398;

[1207] Wehr. A dictionary of modern written Arabic. Op. cit. p. 833

حَمَّالَةٌ	*Hammālatun* [intens. act. part. fem.]	One who usually carries, one whose profession is to carry things[1208]
حَمَّالَةٌالنفس	*Hamāla bi'l-nafs*	Bail or surety for the person [1209]
حَمَّالَةٌ wealth	*Hamāla*	Provide surety for person and
حَسَنٌ	*Hasan*	Good[1210]
حَيٌّ	*Hayy*	Living,[1211] Arab kindred groups or tribes formed the basis of social and political unity
حجاب	*Hijab*	Hides, a thing that prevents, veils, or protects[1212]
الهجرة	*Hijrah*	Migration: Prophet Muhammad's migration to Medina[1213]
عِشَاءٌ	*ʿIshāʾ*	The first part of the night marked by the disappearing of the twilight, evening[1214]
صَلاَةِالْعِشَاءِ	*Salaat al ishāʾ*	The night prayer: [1215]

[1208] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ح/م/ل ḥ–m–l", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000457>

[1209] Wehr. A dictionary of modern written Arabic. Op. cit. p. 833

[1210] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ح/س/ن ḥ–s–n", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000421; Wehr, Hans. A dictionary of modern written Arabic: (Arabic- English) 1909-1981, edited by J. Milton Cowan Urbana, Ill: Spoken Languages Services, Inc., c1994, pp.177-178

[1211] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ح/ي/ي ḥ–y–y", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 26 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000484>

[1212] Reverso Dictionary, available at: English-Arabic dictionary | Arabic translation | Reverso, accessed 20/12/2022; Edward. William Lane, Arabic-English Lexicon, Part.2 Beirut: Lebanon. 1980, p. 516; John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 112

[1213] John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 112

[1214] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ع/ش/و-ي ʿ–sh–w/y", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001142

[1215] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ع/ش/و-ي ʿ–sh–w/y", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001142; Wehr, Hans.

		evening prayer, when night falls[1216]
نِكَاحَ الِاسْتِبْضَاعِ	*Nikah istibda'*	Marriage, whereby a husband sends his wife to another man for intercourse until she gets pregnant to have a noble child[1217]
اِسْتِحْسَان	*Iistihsan*	To approve or to sanction[1218] Judicial preference
جَاهِلٌ	*Jāhil*	Ignorant[1219]
جَاهِلِيَّة	*Jahiliya*	State of Ignorance/ pre-Islamic paganism or time
جَاهِلِيَّةٌ	*Jāhiliyyatun*	Normally associated with lawlessness) the time prior to the coming of Islam in Arabia, the state of pagan ignorance[1220]
جَارً	*Jār*	Neighbour[1221]
الجيران	*Jirān.* pl. of *Jār*	Protected strangers

A dictionary of modern written Arabic: (Arabic- English) 1909-1981, edited by J. Milton Cowan Urbana, Ill: Spoken Languages Services, Inc., c1994, p.615

[1216] Reverso Dictionary, available at: English-Arabic dictionary | Arabic translation | Reverso, accessed 20/12/2022; Edward. William Lane, Arabic-English Lexicon, Part.5 Beirut: Lebanon. 1980, p. 2055

[1217] Sunnah.com, The Hadith of the Prophet Muhammad (صلى الله عليه و سلم) at your fingertips, Sahih al-Bukhari 5127 - Wedlock, Marriage (Nikaah) - كتاب النكاح - Sunnah.com - Sayings and Teachings of Prophet Muhammad (صلى الله عليه و سلم), accessed 27/01/2023

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[1219] F. STEINGAS, *The Student's Arabic–English Dictionary*, Crosby Lockwood and Sons: London: available at The student's Arabic-English dictionary. :: Steingass, Francis Joseph, 1825-1903: Free Download, Borrow, and Streaming: Internet Archive. Accessed 20/12/2022; Wehr, Hans. A dictionary of modern written Arabic: (Arabic- English) 1909-1981, edited by J. Milton Cowan Urbana, Ill: Spoken Languages Services, Inc., c1994, p.144; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ج/ه/ل j–h–l", in Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000369>

[1220] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ج/ه/ل j–h–l", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000369;

[1221] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ج/و/ر j–w–r", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 27 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000373>

اسْتَجَارَ	*ʾIstajāra*	To ask for protection, to seek asylum, to seek sanctuary[1222]
الكفالة	*Kafāla*	Surety or undertaking, sponsorship, to feed, support, provide[1223]
نظام الكفالة	*Nizam al kifala*	Sponsorship system
خارجي /الخوارج	*Khawārij /* Khariji also called Kharijites	Secedes. early sectarian group in Islam, neither *sunni or shii.* A group of Ali's followers, who accused him of rejecting Qur'an.[1224]
كُفَّار/ كَافِر	*Kafir* pl. *kuffār*	Disbeliever[1225] unbeliever[1226]
خزرج	*Khazraj*	A large ruling clan from seventh century in Medina. [1227]
كُفُور	*Kufūr*	Rejecting or denying God[1228]
كفر	*Kufr*	Unbelief, Infidelity, denial of God[1229] from original source or deviator [1230]

[1222] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ج/و/ر j–w–r", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 27 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000373>

[1223] Badawi, Elsaid M. Muhammad Abdel Haleem. Arabic-English dictionary of Qur'anic Usage, Leiden: Brill, 2008, p.833

[1224] John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 171

[1225] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ك/ف/ر k–f–r", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 27 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001451>

[1226] John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 165

[1227] John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 172

[1228] Wehr, Hans. A dictionary of modern written Arabic: (Arabic- English) 1909-1981, edited by J. Milton Cowan Urbana, Ill: Spoken Languages Services, Inc., c1994, p.812; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ك/ف/ر k–f–r", in Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001451

[1229] Badawi, Elsaid M. Muhammad Abdel Haleem. Arabic-English dictionary of Qur'anic Usage, Leiden: Brill, 2008, p.833

[1230] John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 176

كنية	*Kunyah*[1231] *Kuniyah or Kunya*	Teknonym or patronymic: in Arabic conjunction identifying closeness in a relationship
القيط	*Laqīt*	Foundling or abandoned child
لُعِنَ	*Luʿina*	To be rejected, to be cursed (Q.24:23) [1232]
	Li'an	Accusation of adultery
مذهب /مَذَاهِب	*Madhab pl. madāhib*	Manner followed, policy or procedure adopted, ideology, doctrines, movement, school.[1233]
مُحَرَّم	*Mahram pl. mahrim*	Forbidden, inviolable, unmarriageable, being in degree on consanguinity[1234]
المصالح	*Maslaha`*	Decision made in the interests of the public
	Muftis	Scholars of Islamic law
مَالَ الْيَتِيمِ	*Maal al- yatīm*	The orphan's property
المروءة	*Muruwwa* generosity[1235]	Bravery, loyalty to kin, and
مِيرَاثٌ	*Mırāth*	*Inheritance,* inheriting, ultimate possession[1236]

[1231] Shahpurshah Hormasji Hodivala, Historical Studies in Mughal Numismatics, Numismatic Society of India, 1976 (Reprint of the 1923 ed.); Pedzisai Mashiri, "Terms of Address in Shona: A Sociolinguistic Approach", *Zambezia,* XXVI (i), 1999. pp. 93–110; Islamic terminology available at: https://islamic-dictionary.tumblr.com/post/10098203002/kufr-arabic-%D9%83%D9%81%D8%B1-is-the-term-which-describes

[1232] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ل/ع/ن l–ʿ–n", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 21 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001523>

[1233] Wehr. A dictionary of modern written Arabic. Op. cit. p. 313

[1234] Wehr. A dictionary of modern written Arabic. Op. cit. p. 172

[1235] "murūʾa", in: Encyclopaedia of Islam, Second Edition, Glossary and Index of Terms, Edited by: P.J. Bearman, Th. Banquis, C.E. Bowworth, E. van Donzel, W. P. Heinrichs Bowworth. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1573-3912_ei2glos_SIM_gi_03390; Zargar, Cyrus Ali. "Virtue and Manliness in Islamic Ethics", *Journal of Islamic Ethics* 4, 1-2 (2020): 1-7, doi: https://doi.org/10.1163/24685542-12340047

[1236] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "و/ر/ث w–r–th", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 27 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001859>

أَنْسَابٌ / نَسَبٌ	*Nasab* [n., pl. *ʾansāb*] relation[1237]	lineage, paternal kinship, blood
(نسبة)	*Nisbah pl. nisab* affinity[1238]	Attribution, imputation, kinship,
نِكَاحٌ	*Nikāḥ*	Marriage (also marriage cost)[1239]
قاضي	*Qadi* pl. *qudā'h*	Judge, (judges)[1240]
قِصاَص	*Qiṣāṣ*	Retaliation or revenge[1241]
القيامة	*Qiyamah*	Resurrection day, or the day of judgement[1242]
رَضَاعَةٌ	*Raḍāʿatun*	Breast-feeding, suckling[1243]
صاحِبة	*Sa'iba*	Emancipated slave without *walā*

status.[1244]

*(*صَاحِب *ṣāḥib* [n.; dual صَاحِبَيْن *ṣāḥibayn*; pl. أصْحاب *ʾaṣḥāb*; fem. صاحِبة *ṣāḥibatun*] **1** companion, associate (9:40) إِذْ يَقُولُ لِصَاحِبِهِ لاَ تَحْزَنْ إِنَّ اللَّهَ مَعَنَا *when he [Muḥammad] said to his companion, 'Do not grieve, God is with us,'*; *(12:39) صَاحِبَيِ السِّجْنِ *my two prisoner companions* **2** fellowman (53:2) ضَلَّ مَا

[1237] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ن/س/ب n–s–b", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001687>; Wehr. A dictionary of modern written Arabic. Op. cit. p. 960

[1238] Wehr. A dictionary of modern written Arabic. Op. cit. p. 960

[1239] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ن/ك/ح n–k–ḥ", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001740; Wehr. A dictionary of modern written Arabic. Op. cit. p. 997

[1240] Wehr. A dictionary of modern written Arabic. Op. cit. p. 771; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ق/ض/ى q–ḍ–y", in Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001378>

[1241] Wehr. A dictionary of modern written Arabic. Op. cit. p. 766; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ق/ص/ص q–ṣ–ṣ", in Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001372

[1242] Wehr. A dictionary of modern written Arabic. Op. cit. p. 74;

[1243] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ر/ض/ع r–ḍ–ʿ", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000676>; Wehr, Hans. A dictionary of modern written Arabic: (Arabic- English) 1909-1981, edited by J. Milton Cowan Urbana, Ill: Spoken Languages Services, Inc., c1994, p.344

[1244] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ص/ح/ب ṣ–ḥ–b", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000961

		غَوَى وَمَا صَاحِبُكُمْ *your fellowman [Muḥammad] has not strayed nor has he erred* **3** [feminine صَاحِبَةً] wife, consort (72:3) ولا وَلَدًا مَا اتَّخَذَ صَاحِبَةً *He has taken [for Himself] neither a consort [wife] nor child*; *(68:48) صَاحِبِ الْحُوتِ (an epithet for Jonah) *the fellow of the whale*.)[1245]
الصحابة	*Sahabah*	The Companions of Prophet Muhammad,[1246] Borrowed from Arabic صَحَابِيّ (*ṣaḥābiyy*, "co mpanion"), from صَحِبَ (*ṣaḥiba*, "to be a companion").[1247]
صَحِيْح	*Sahih*	Authentic (*ahadith's* status)
شُيوخ /شَيخ	*Shaykh* pl. *shuyūkh*	An old man, an ageing man[1248]
سِنّ البُلُوغ	*Sinn-i-buluug*	When a male or female child reaches puberty[1249]
سِنّ الرّشْد	*Sinn-i-rushd*	A stage of maturity for a child
سُنَن/ سُنّةٌ	*sunnatun* pl. *sunan*	Modes or manners or customs of life and living, norms, established practice.[1250] Habitual practices, customary procedure or

[1245] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ص/ح/ب ṣ–ḥ–b", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000961>

[1246] Wehr. A dictionary of modern written Arabic. Op. Cit. p. 504; Britannica, T. Editors of Encyclopaedia. "Companions of the Prophet." Encyclopedia Britannica, May 14, 2020. https://www.britannica.com/topic/Companions-of-the-Prophet.; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ص/ح/ب ṣ–ḥ–b", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000961>

[1247] Wehr. A dictionary of modern written Arabic. Op. Cit. pp. 503-504; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ص/ح/ب ṣ–ḥ–b", in Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000961

[1248] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ش/ي/خ sh–y–kh", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000948; Wehr. A dictionary of modern written Arabic. Op. cit. p. 496; Oxford English Dictionary (Online ed.). Oxford University Press. Available at: https://www.oed.com/view/Entry/177849?redirectedFrom=sheikh#eid, accessed 20/12/2022

[1249] Wehr. A dictionary of modern written Arabic. Op. Cit. p. 74; https://rekhtadictionary.com/meaning-of-sinn-e-buluug?keyword=%E0%A4%B8%E0%A4%BF%E0%A4%A8%E0%A5%8D%E0%A4%A8-%E0%A4%8F-%E0%A4%A4%E0%A4%AE%E0%A5%80%E0%A4%9C%E0%A4%BC

[1250] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "س/ن/ن s–n–n", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000861

		action.[1251] In Islam, commonly Prophet Muhammad's sayings and practices.
سورةٌ الأحزاب	*Surah-al-Ahzab*	The confederates (chapter 33 in the Qurʾān) أَحْزَابٌ *ʾaḥzāb* [pl. of n. حِزْب *ḥizb*], parties, allies, particularly those ganging up against *the* cause of God and His messengers[1252]
سورةٌ / سُوَر	*Suwar* pl. *sūratun*	Enclosure, eminence, glory, honour, dignity, rank, station, sign, token[1253]
تَفْسير	*Tafsır*	Explanation, interpretation, elucidation[1254]
عُلَمَاءُ	*ʿUlamāʾ* pl. عالِم *ʿālim* professional[1255]	The learned/scholar/
أُمَّة	*umma*	Nation, generation, people[1256]
الأَعْرَافُ / عَرَّفَ	*Urf* pl. *ʾaʿrāf*	Customs, practices, conventions, traditions, habits, customary law. [1257]

[1251] Wehr. A dictionary of modern written Arabic. Op. Cit. p. 433; https://www.al-islam.org/tags/sunnah

[1252] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ح/ز/ب ḥ–z–b", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000414>

[1253] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "س/و/ر s–w–r", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000871>

[1254] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ف/س/ر f–s–r", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001290

[1255] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ع/ل/م ʿ–l–m", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001168; Wehr. A dictionary of modern written Arabic. Op. Cit. pp. 636-637; *Brown, Jonathan A.C. (2014). Misquoting Muhammad: The Challenge and Choices of Interpreting the Prophet's Legacy. Oneworld Publications. p. 3*; Gilliot, Cl., Repp, R.C., Nizami, K.A., Hooker, M.B., Lin, Chang-Kuan, and Hunwick, J.O. ''Ulamā''. In Encyclopaedia of Islam, Second Edition, edited by P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, P.J. Bearman (Volumes X, XI, XII), Th. Bianquis (Volumes X, XI, XII), et al. Accessed January 13, 2023. Doi: http://dx.doi.org/10.1163/1573-3912_islam_COM_1278.

[1256] Wehr. A dictionary of modern written Arabic. Op. Cit. p. 25

[1257] H. Patrick Glenn, *Legal Traditions of the World*. Oxford University Press, 2007, pg. 201; Wehr. A dictionary of modern written Arabic. Op. Cit. p. 606; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ع/ر/ف ʿ–r–f", in Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001127>

أصول الفقه	*Usūl-al-fīqh*	Principles of Jurisprudence (a methodology to interpret Qur'an and hadith) from فَقِهَ *faqiha*, to understand, comprehend (Q.11.91, Q. 17.44))[1258]
فَقِهَ	*Faqiha or fiqh*	Understanding, comprehension, knowledge,[1259]jurisprudence developed through different methods. The Divine Revelations (*wahy*), which is the Qurʾān*,* while *fīqh* is analogical deduction stemming from *madhahīb* (doctrines), human reasoning (*al-ijtihad*), developed by jurists and early scholars of Islam.
إسلام	*Islam*	*Islam* is an Arabic word, meaning a path to follow
وَحْيٌ	*Waḥy*	The act of revealing/Revelations: in Islam, it is Qurʾān [1260]
مَوْلَى	*Mawlā* [pl. مَوَالِي *mawālı*]	Master, protector, patron, client, companion, associate, [1261]
وَلاَءَ	*Walā*	Friendship, allegiance, devotion, loyalty, clientage [1262]
وَالِي	*Wālı* ally[1263]	Protector, supporter, guardian,

[1258] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ف/ق/ه f–q–h", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001306; Wehr. A dictionary of modern written Arabic. Op. Cit. p.19

[1259] Wehr. A dictionary of modern written Arabic. Op. Cit. p. 723; Britannica, T. Editors of Encyclopaedia. "fiqh." *Encyclopedia Britannica*, April 6, 2018. https://www.britannica.com/topic/fiqh.

[1260] Wehr. A dictionary of modern written Arabic. Op. Cit. pp. 1056-1057; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "و/ح/ي w–ḥ–y", in Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001853>

[1261] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "و/ل/ي w–l–y", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001905; Wehr. A dictionary of modern written Arabic. Op. Cit. p.1101

[1262] Wehr. A dictionary of modern written Arabic. Op. Cit. p.1100

[1263] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "و/ل/ي w–l–y", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001905;

وَلاء العِتق	*Walā ʾ al-ʻitq*	Affinity or kinship by emancipation[1264]
وَطِئَ المَرْأَةَ	*Watī al marhatun*	Intercourse with a slave-women
وَصِيَّةٌ	*Waṣiyyatun*	Act of making a bequest[1265]
تَوْصِيَةٌ	*Tawṣiyatun*	The making of a will or bequest[1266]
يَتِيم	*Yatım* [n., dual يَتيِمان *yatımān*; pl. يَتَامَى *yatāmā*] orphan[1267]	
الضمانة	*Admana*	Compensation
ذِمَّةٌ	*Dhimmatun*	A pledge of protection, a covenant of mutual protection, personal undertaking, good faith[1268]
	Za'ama	Surety, bail, liability
زِنَا	*Zinā*	Adultery, fornication (unlawful sexual intercourse)[1269]

[1264] Hilary Kilpatrick, *Mawali and Music,* A chapter in Islamic History and Civilisation edited by Wadad Kadi and Rotraud Weilandt Volume 61. Patronate and Patronage in Early and Classical Islam, edited Monique Bernard and John Nawas, Brill Leiden: Boston, 2005, available at: https://medpopculture.voices.wooster.edu/wp-content/uploads/sites/140/2018/02/kilpatrick_mawali-and-music.pdf

[1265] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "و/ص/ي w–ṣ–y", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 27 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001878>

[1266] Badawi, "و/ص/ي w–ṣ–y", in: Dictionary of Qur'anic Usage, Op. Cit.

[1267] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ي/ت/م y–t–m", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_001921;

[1268] Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ذ/م/م dh–m–m", in: Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 26 January 2023 <http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000625>

[1269] John L. Esposito, ed. (2014). *Ijtihad*. *The Oxford Dictionary of Islam*. Oxford: Oxford University Press, p. 348; Badawi, Elsaid M. and Abdel Haleem, Muhammad, "ز/ن/ي z–n–y", in Dictionary of Qur'anic Usage, Edited by: Elsaid M. Badawi, Muhammad Abdel Haleem. Consulted online on 15 January 2023 http://dx.doi.org/10.1163/1875-3922_dqu_SIM_000755; Wehr. A dictionary of modern written Arabic. Op. cit. p. 383

Appendix 1 (B) Table of Cases

Dawson v Wearmouth [1999] 1 FLR 1167

Gillick v West Norfolk and Wisbech AHA AC 112 (HL) 1986

Newcastle City Council v Z [2005] EWHC 1490

Re D, L and LA (Care: Change of forename) [2003] 1 FLR

Re G (Children) (Residence: Same-Sex Partners) [2006] 1FCR 436

Re G (education: Religious Upbringing) [2012] EWCA Civ 1233

Z (A Child) (Egyptian fostering UK adoption) [2016] EWHC 2963 (Fam)

Re R (A Child) [2002] 1 FCR 170

Re S (Change of Names: Cultural Factors) [2001] 3 FCR 648

Humphreys v. Polak, [1901] 2 K.B. 385

Appendix 1 (C) Table of Statutes, Regulations and Abbreviations

- Adoption Agencies Regulations 2005 amended by the Adoption Agencies (Miscellaneous Amendments) Regulations 2013 ('AAR')
- Suitability of Adopters Regulations 2005 ('SAR')
- Adoption Support Services Regulations 2005 ('ASSR')
- Statutory adoption guidance – 2014. ('SG')
- Care Planning, Placement and Case Review (England) Regulations 2010, amended by the Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014 ('CPPCR')
- Statutory guidance – Early permanence placements and approval of prospective adopters as foster carers: 2014 ('EPSG')
- Adoption (Intercountry Aspects) Act 1999 (c 18) ('the AIAA 1999')
- Adoption Act 1950 (This Act was repealed by the Adoption Act 1958, s 59(2), Sch 6.) (the 1950 Act)
- Adoption Act 1960 (8 & 9 Eliz 2 c 59) (Whole Act repealed by Adoption Act 1976, s 73(1), (3), Schs 2, 4; Adoption (Scotland) Act 1978, s 66(3), Sch 4) (the 1960 Act)
- Adoption Act 1964 (c 57) (Whole Act repealed by Adoption Act 1976, s 73(1), (3), Schs 2, 4; Adoption (Scotland) Act 1978, s 66(3), Sch 4) ('the 1964 Act')
- Adoption Act 1968 (c 53) (Whole Act repealed by Adoption Act 1976, s 73(1), (3), Schs 2, 4; Adoption (Scotland) Act 1978, s 66(3), Sch 4) (the 1968 Act)
- Adoption Act 1976 (This Act (except Pt IV (ss. 38–49) and Sch 2, para 6) is repealed with savings relating in particular to records and the disclosure of adoption information, and specific regulations made under this Act, by the Adoption and Children Act 2002, s 139(2), (3), Schs 4, 5.) (the 1976 Act)
- Adoption and the Children Act 2002 ('the 2002 Act')
- Adoption of Children (Regulation) Act 1939 (2 & 3 Geo 6 c 27) (Whole Act repealed by Adoption Act 1950, s 46, Sch 4) (the 1939 Regulation Act)
- Adoption of Children Act 1926 (the 1926 Act)
- Adoption of Children Act 1949 (12, 13 & 14 Geo 6 c 98) (Whole Act repealed by SL(R)A 1993, s 1(1), Sch 1, Pt VIII) (the 1949 Act)
- Adoption of Children Act 1958 (Whole Act repealed by Adoption Act 1976, s 73(3), Sch 4; Adoption (Scotland) Act 1978, s 66(3), Sch 4) (the 1958 Act)
- Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015[1270] ('the CPF Regs 2015')
- Care Planning, Placement and Case Review (England) Regulations 2010 ('the CPPCR Regs 2010')

[1270] Fostering legislation in England. Available at: https://www.thefosteringnetwork.org.uk/policy-practice/policies/fostering-legislation-in-england, accessed 20/06/2019

- Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013 ('the CPPCRFS Regs 2013')
- Child Care Act 1980 ('the 1980 Act')
- Children (Leaving Care) Act 2000 ('the 2000 Act')
- Children Act 1989 ('the 1989 Act')
- Children Act 2004 ('the 2004 Act')
- Children and Families Act 2014 ('the 2014 Act')
- Children and Young Persons Act 1933 ('the 1933 Act')
- Children and Young Persons Act 1933 (the 1933 Act)
- Children and Young Persons Act 1969 ('the 1969 Act')
- Children and Young Persons Act 1969 (the 1969 Act)
- Criminal Act 1928 ('the 1928 Act')
- Custody of Children Act 1891 ('the 1891 Act')
- Equality Act 2006[1271] ('the 2006 Act')
- Equality Act 2010 ('the 2010 Act')
- Family Reform Act 1989
- Family Law Reform Act 1969
- Framework for the Assessment of Children in Need and their Families[1272] ('the FACNF Regs')
- Guardianship of Minors Act 1971 (the 1971 Act)
- Human Rights Act 2000 ('the HRA 2000')
- Inheritance Act 1833 ('the 1833 Act')
- International Covenant on Civil and Political Rights 1966. ('ICCPR')
- Legitimacy Act 1969
- Legitimacy Act 1926
- Poor Laws Act 1899 ('the 1899 Act')
- United Nations International Children's Emergency Fund (UNICEF)

- Universal Declaration of Human Rights 1945 (UDHR)

[1271] The Equality Act 2006 establishes a new Commission for Equality and Human Rights, which obliged to promote awareness, understanding and best practice in human rights. The 1989 Convention is not specifically referenced in the Equality Act, although the Minister gave an assurance during the Bill's passage through Parliament that the 'human rights' referred to in the bill included those conferred by the 1989 Convention. Cited in Online, *Rights of Children in Domestic and International Law,* http://www.yourrights.org.uk/yourrights/the-rights-of-children-and-young-people/rights-of-children-in-domestic-and-international-law.shtml, accessed on 12th July 2010

[1272] Department of Health, 2000

Appendix 1 (D) Convention on the Rights of the Child 1989

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989
entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the 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; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

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

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

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts

of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

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

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

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

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.1/ The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year.

At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-

General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

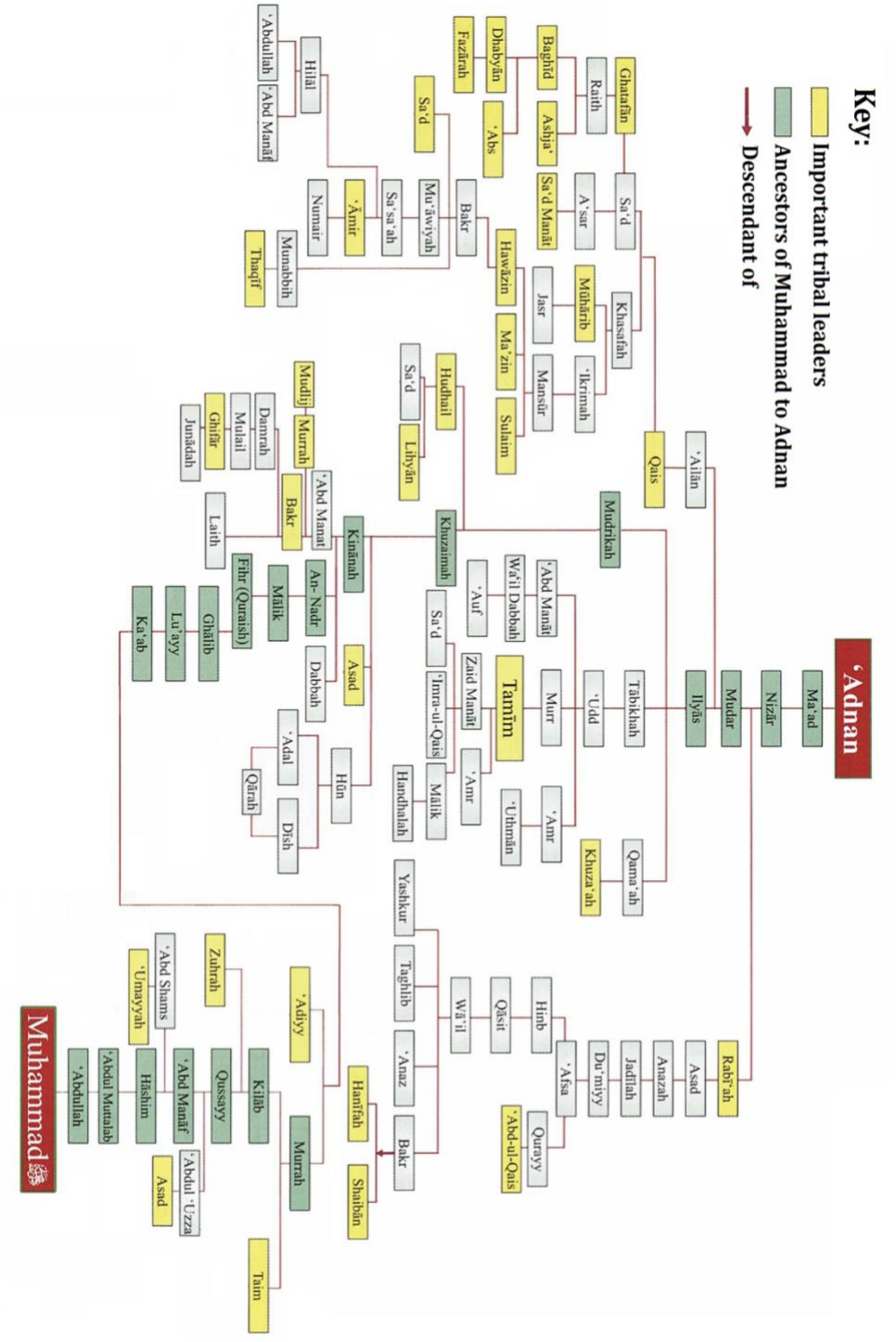
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1/ The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).

Available at: https://www.ohchr.org/en/professionalinterest/pages/crc.aspx; accessed 20/08/2019

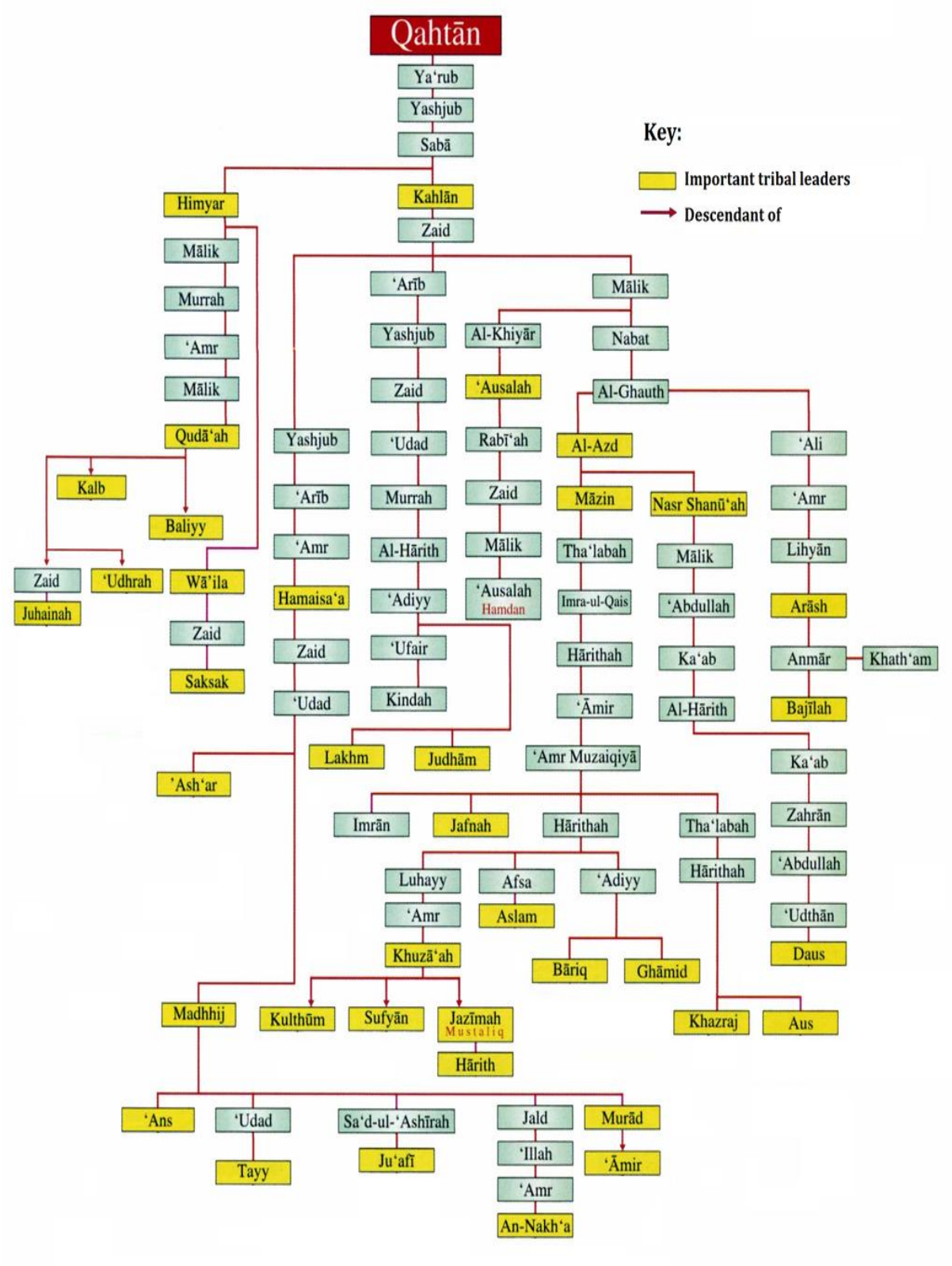
Appendix 2

A. Table. 1: Family structure of Adnan, Prophet Muhammad's tribe[1273]



[1273] Erisedstar30259 - Own work, CC BY-SA 4.0, ttps://commons.wikimedia.org/w/index.php?curid=44134952, accessed 20/12/2019

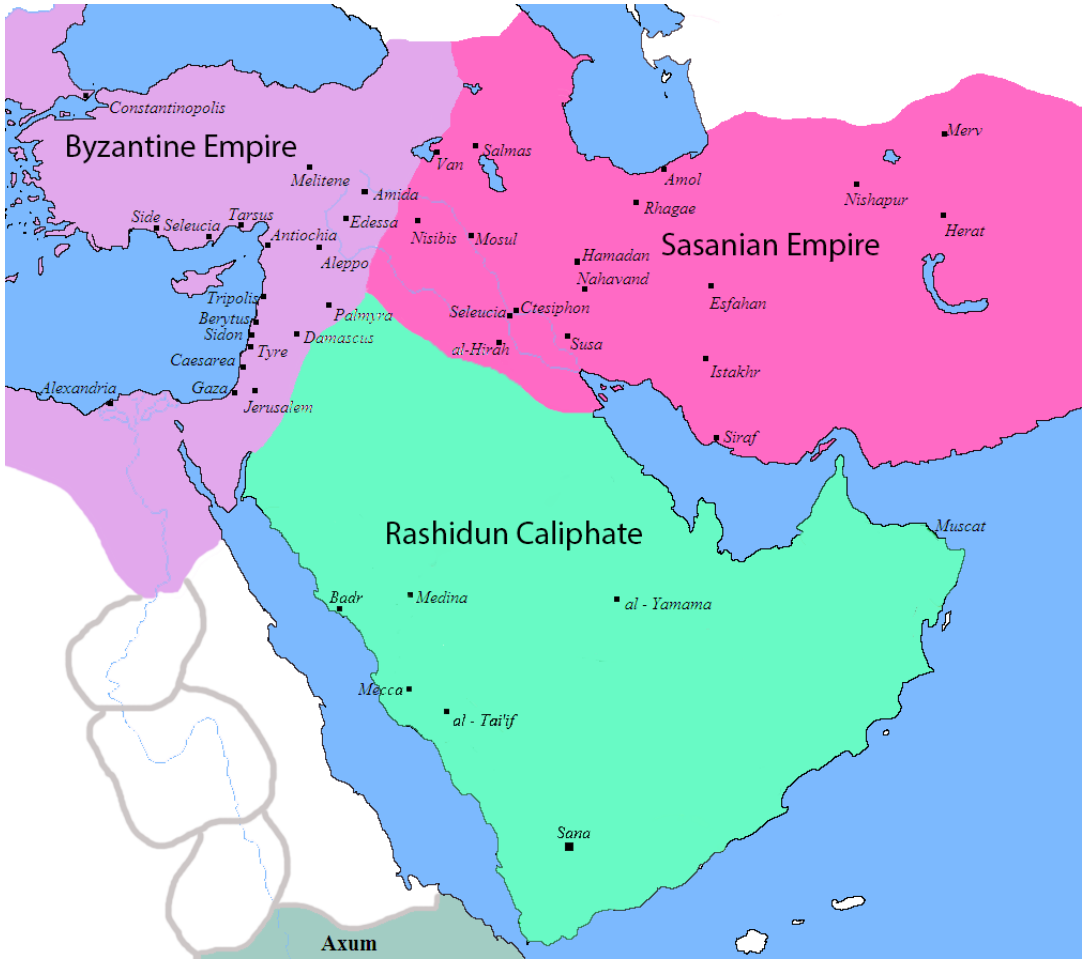
B. Table. 2 Family structure of the Qahtan tribe[1274]



[1274] Erisedstar30259 - Own work, CC BY-SA 4.0, https://commons.wikimedia.org/w/index.php?curid=42344376, accessed 20/12/2019

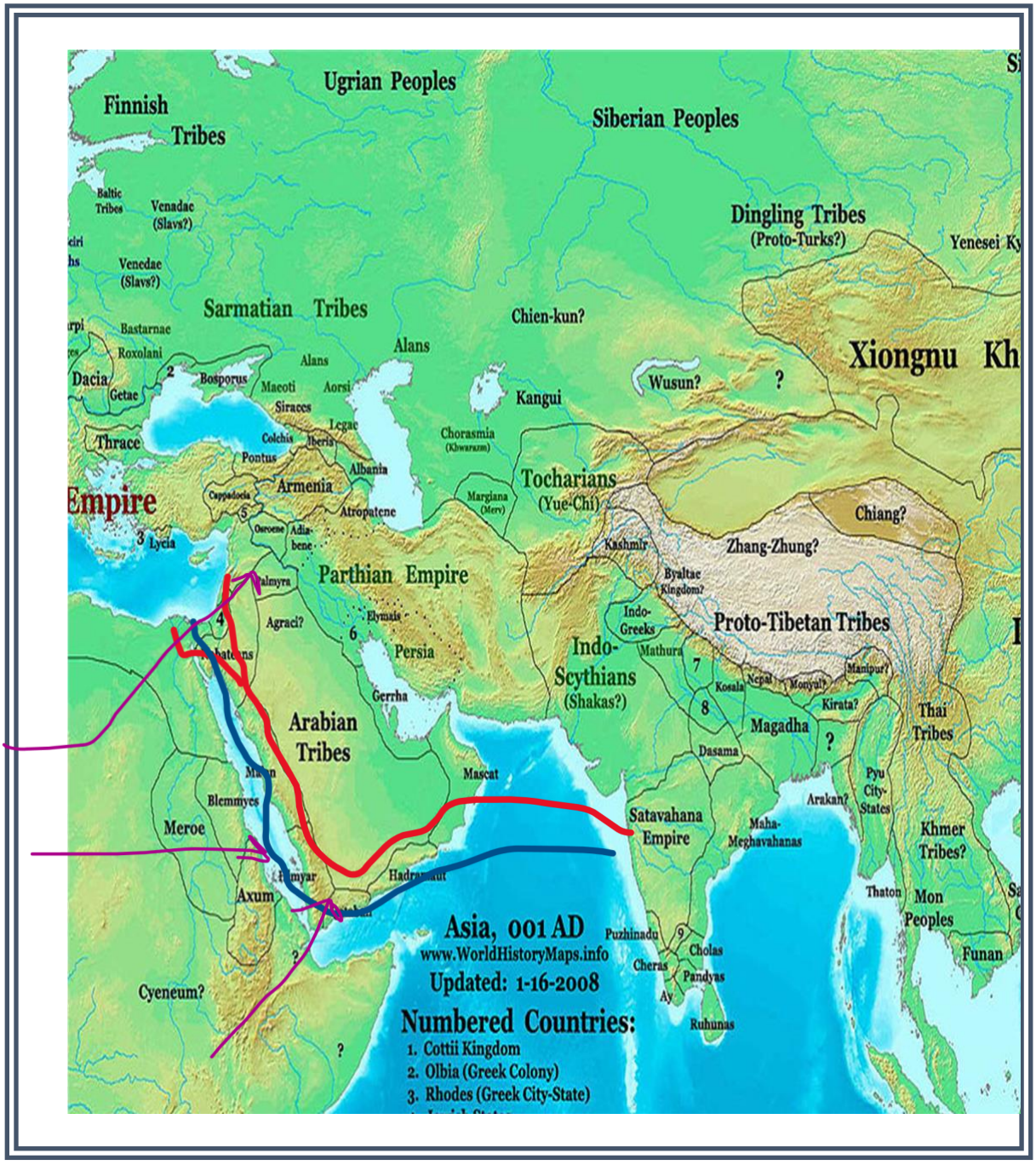
C. Map. 1 6th - 7th centuries A. D. [1275]

Note: Byzantine and Sasanian Empires around Arabian Peninsula



[1275] By Javierfv1212 and edited by HistoryofIran. - File:Pre_Islamic_Arabia.PNG, Public Domain, https://commons.wikimedia.org/w/index.php?curid=26144272, accessed 20/12/2019

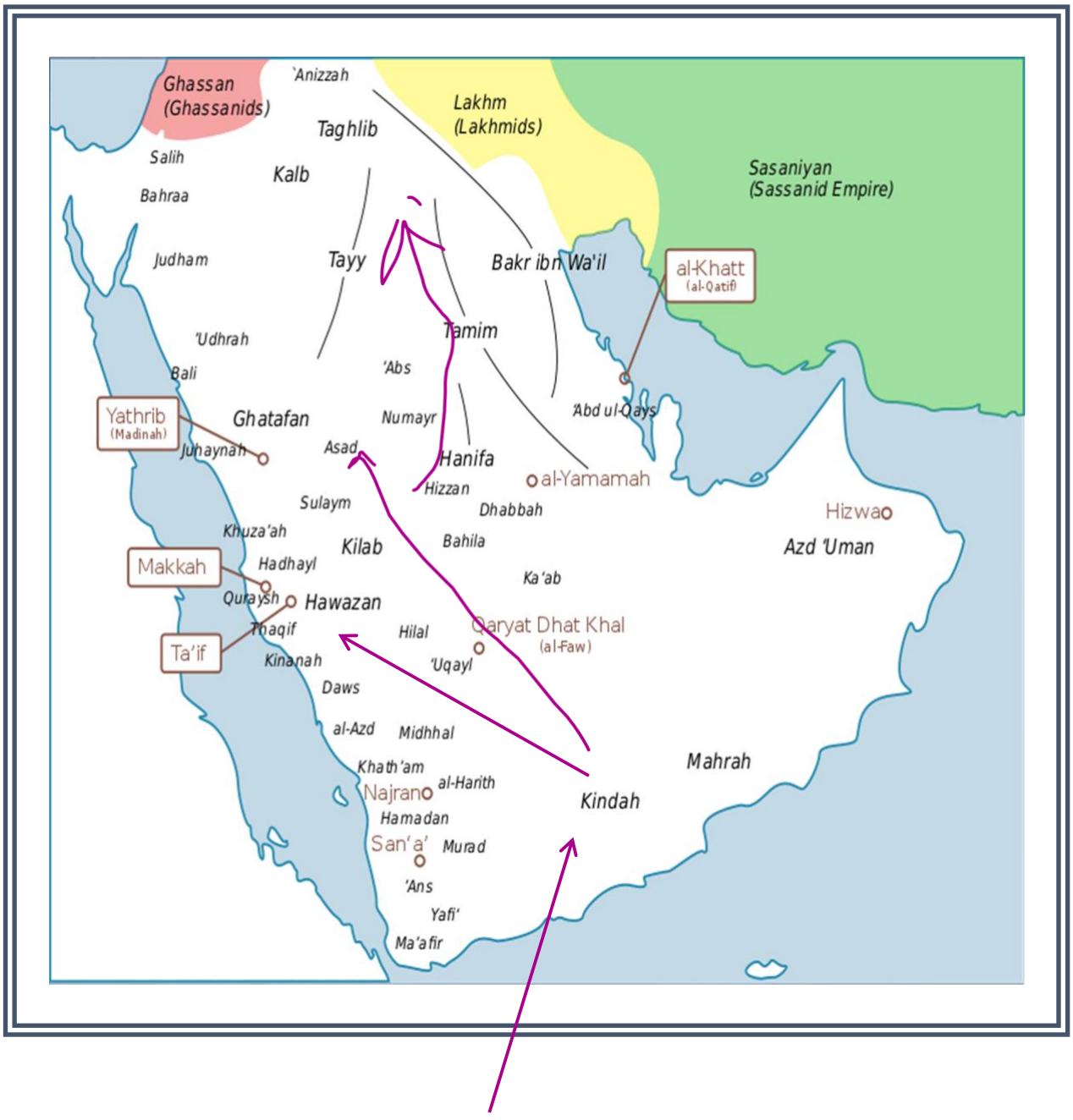
D. Map. 2 Trade Routes in the Arabian Peninsula [1276]



[1276] By Talessman at English Wikipedia, CC BY 3.0, https://commons.wikimedia.org/w/index.php?curid=3781555

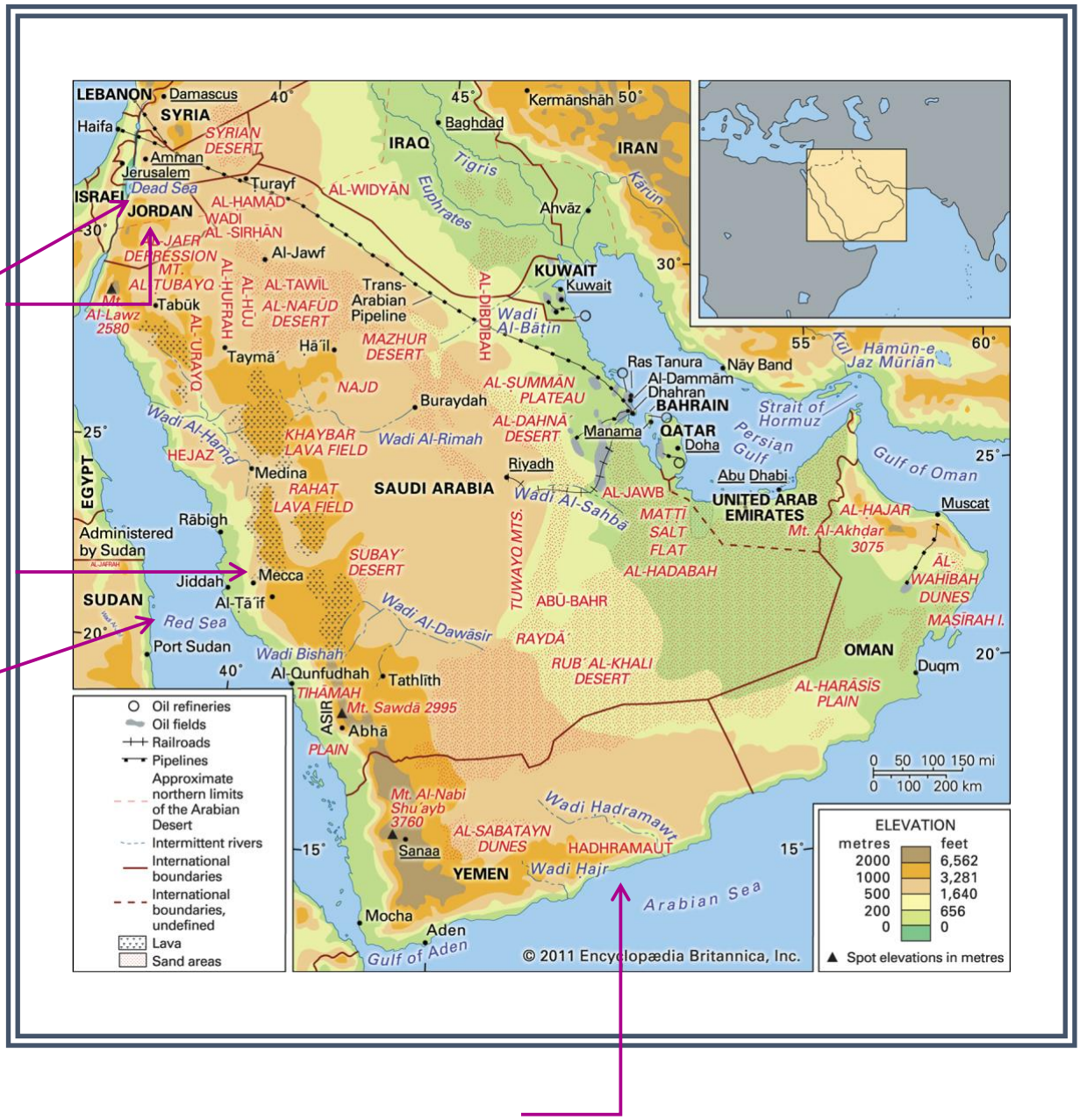
E. Map. 3 Kindah tribe's emigration after invasions by Byzantines and Himyarite people emigrated when invaded by Abyssinians[1277]

This tribe broke and spread in several areas in the Arabian Peninsula



[1277] Murraytheb موري (talk) - I created this work myself, with info from [see below], Public Domain, https://commons.wikimedia.org/w/index.php?curid=10201031 accessed 20/12/2019

F. Map. 4 Modern-day map showing the Dead Sea and present-day countries[1278]



[1278] Courtesy Encyclopaedia Britannia. Inc

Appendix 3: *Ahadith* and the revelations (verses) from the Qur'an(translation) referenced in the thesis

A. Adoption

I. Q. 33:4

Yusuf Ali: Allah has not made for any man two hearts in his (one) body: nor has He made your wives whom ye divorce by Zihar your mothers: nor has He made your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But Allah tells (you) the Truth, and He shows the (right) Way.

Dr. Mustafa Khattab: Allah does not place two hearts in any person's chest. Nor does He regard your wives as ˹unlawful for you like˺ your real mothers, ˹even˺ if you say they are. Nor does He regard your adopted children as your real children. These are only your baseless assertions. But Allah declares the truth, and He ˹alone˺ guides to the ˹Right˺ Way.

Mufti Taqi Usmani: Allah has not made for any man two hearts in his chest cavity, nor did he make your wives whom you subjected to Zihār, your mothers, nor did he make your adopted sons your (real) sons. That is (merely) a word uttered by your mouths. And Allah says the truth and He shows the (right) way.

DR. Ghali: In no way has Allah made to any man two hearts within the hollow (of his breast); and in no way has He made your spouses whom you (declare) as your mother's back (i.e., divorce by Dhihar, a pre-Islamic form of divorce) (truly) your mothers; and in no way has He made your adopted sons your sons (in fact). That (Literally: temptation; i.e., if the hypocrites had been asked to apostatize from Islam) is your saying, (the words) of your mouths; and Allah says the Truth, and He guides on the way.

Sahih International: Allah has not made for a man two hearts in his interior. And He has not made your wives whom you declare unlawful your mothers. And he has not made your adopted sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] way.

Pickthall: Allah hath not assigned unto any man two hearts within his body, nor hath He made your wives whom ye declare (to be your mothers) your mothers, nor hath He made those whom ye claim (to be your sons) your sons. This is but a saying of your mouths. But Allah saith the truth and He showeth the way.

Muhsin Khan: Allah has not put for any man two hearts inside his body. Neither has He made your wives whom you declare to be like your mothers' backs, your real mothers. [AzZihar is the saying of a husband to his wife, "You are to me like the back of my mother" i.e. You are unlawful for me to approach.], nor has He made your adopted sons your real sons. That is but your saying with your mouths. But Allah says the truth, and He guides to the (Right) Way.

II. Q. 33:5

Dr. Ghali: Call them after their (true) fathers; (that) is more equitable in the Reckoning with Allah. Yet, in case you do not know their fathers, then they are your brothers in the religion, and your patronized (ones); and it is no fault in you in whatever mistakes you make, but (only) what your hearts premeditate. And Allah has been Ever-Forgiving, Ever-Merciful.

Muhsin Khan: Call them (adopted sons) by (the names of) their fathers, that is more just with Allah. But if you know not their father's (names, call them) your brothers in faith and Mawalikum (your freed slaves). And there is no sin on you if you make a mistake therein, except in regard to what your hearts deliberately intend. And Allah is Ever OftForgiving, Most Merciful.

Pickthall: Proclaim their real parentage. That will be more equitable in the sight of Allah. And if ye know not their fathers, then (they are) your brethren in the faith, and your clients. And there is no sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you). Allah is ever Forgiving, Merciful.

Yusuf Ali: Call them by (the names of) their fathers: that is juster in the sight of Allah. But if ye know not their father's (names, call them) your Brothers in faith, or your maulas. But there is no blame on you if ye make a mistake therein: (what counts is) the intention of your hearts: and Allah is Oft-Returning, Most Merciful.

Sahih International: Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you. And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful.

Mufti Taqi Usmani: Call them by (the name of) their (real) fathers; It is more equitable in the sight of Allah. And if you do not know their fathers, then they are your brothers in faith and your friends. There is no sin on you in the mistake you make, but in that which you do with intention of your heart; and Allah is Most-Forgiving, Very-Merciful.

Dr. Mustafa Khattab: Let your adopted children keep their family names. That is more just in the sight of Allah. But if you do not know their fathers, then they are ⌜simply⌝ your fellow believers and close associates. There is no blame on you for what you do by mistake, but ⌜only⌝ for what you do intentionally. And Allah is All-Forgiving, Most Merciful.

B. Paternity/ Acknowledgement/Maintenance

I. **Q. 2:228** "Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation. And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise." Sahih International

II. **Q. 2:234** “And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days]. And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner. And Allah is [fully] Acquainted with what you do.” Sahih International

III. **Q. 2:233 “**Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do.” Sahih International

1. **Al-Bukhari, Muhammad. Al-Adab Al-Mufrad 433; Book 24. Defamation: hadīth. 15: https://sunnah.com/adab/24/15**

“Abu Dharr states that he heard the Prophet, may Allah bless him and grant him peace, say, "A person who knowingly claims a father other than his own has disbelieved. A person who claims to be from a people when he is not one of them will take his place in the Fire. A person who calls a man an unbeliever or says, 'Enemy of Allah,' when that is not the case will have that come back on him." **Status: Sahih**

2. **Riyad as-Salihin. The Book of the Prohibited actions. Book. 18; Hadīth. 295: https://sunnah.com/riyadussaliheen/18/295,**

Abu Dharr (May Allah be pleased with him) reported:

I heard the Messenger of Allah (ﷺ) saying: "A person who attributes his fatherhood to anyone other than his real father, knowing that he is not his father, commits an act of disbelief. And he who makes a claim of anything which in fact does not belong to him, is none of us. He should make his abode in Hell, and he who labels anyone as disbeliever or calls him the enemy of Allah and he is in fact not so, his charge will revert to him." **[Al-Bukhari and Muslim]**

3. **Sunan Ibn Majah. The Chapters on Wills - كتاب الوصايا. Book 22, Hadīth 2816: https://sunnah.com/urn/1270290**

It was narrated from 'Amr bin Kharijah:

“The Prophet (ﷺ) addressed them when he was on his camel. His camel was chewing its cud and its saliva was dripping between my shoulders. He said: 'Allah (SWT) has allocated for each heir his share of the inheritance, so it is not permissible (to make) a bequest for an heir. The child belong to the bed and the adulterer gets the stone.

Whoever claims to belong to someone other than his father, or (a freed slave) who claims that his Wala is for other than his Mavali, upon him will be the curse of Allah, the angels and all the people, and no charge nor equitable exchange will be accepted from him." Or he said: "No equitable exchange nor change." **Status: Sahih**

4. **Sahih al-Bukhari: Military Expeditions led by the Prophet (pbuh) (Al-Maghaazi): (56) Chapter: The Ghazwa of At-Taif; Book 64, Hadīth 356: https://sunnah.com/bukhari/64/356**

Narrated Abu `Uthman:

I heard from Sa`d, the first man who has thrown an arrow in Allah's Cause, and from Abu Bakra who jumped over the wall of the Ta'if Fort along with a few persons and came to the Prophet. They both said, "We heard the Prophet (ﷺ) saying, " If **somebody claims to be the son of somebody other than his father knowingly, he will be denied Paradise** (i.e. he will not enter Paradise).' " Narrated Ma`mar from `Asim from Abu Al-`Aliya or Abu `Uthman An-Nahdi who said. "I heard Sa`d and Abu Bakra narrating from the Prophet." `Asim said, "I said (to him), 'Very trustworthy persons have narrated to you.' He said, 'Yes, one of them was the first to throw an arrow in Allah's Cause and the other came to the Prophet (ﷺ) in a group of thirty-three persons from Ta'if.'

5. **Sahih Muslim: The Book of Emancipating Slaves: Chapter: The prohibition of a manumitted slave taking anyone as a Mawla except the one who manumitted him: Book 20, Hadīth 24: https://sunnah.com/muslim/20/24**

Ibrahim al-Taimi reported on the authority of his father:

'Ali b. Abu Talib (Allah be pleased with him) addressed us and said: He who thinks that we (the members of the Prophet's family) read anything else besides the Book of Allah and this Sahifa (and he said that Sahifa was tied to the scabbard of the sword) tells a lie. (This Sahifa) contains (problems) pertaining to the ages of the camels and (the recompense) of the injuries, and it also records the words of the Prophet (ﷺ): Medina is a sacred territory from 'Ayr to Thaur (it is most probably Uhud). He who innovates (an act or practice) or gives protection to an innovator, there is a curse of Allah and that of His angels and that of the whole humanity upon him. Allah will not accept from him (as a recompense) any obligatory act or supererogatory act, and the responsibility of the Muslims is a joint responsibility; even the lowest in rank can undertake the responsibility (on behalf of others), and **he who claims anyone else as his father besides his own father or makes one his ally other than the one (who freed him), there is a curse of Allah**. that of His angels and that of the whole mankind upon him. Allah will not accept the obligatory act of the supererogatery act (as a recompense) from him.

6. **Sahih al-Bukhari: Blood Money (Ad-Diyat): Chapter. 17: If someone kills himself by mistake, there is no Diya: Book. 87, Hadīth. 29: https://sunnah.com/bukhari/87/29**

Narrated Salama:

We went out with the Prophet (ﷺ) to Khaibar. A man (from the companions) said, "O 'Amir! Let us hear some of your Huda (camel-driving songs.)" So he sang some of them

(i.e. a lyric in harmony with the camels walk). The Prophet (ﷺ) said, "Who is the driver (of these camels)?" They said, "Amir." The Prophet said, "May Allah bestow His Mercy on him!" The people said, "O Allah's Messenger (ﷺ)! Would that you let us enjoy his company longer!" Then 'Amir was killed the following morning. The people said, "The good deeds of 'Amir are lost as he has killed himself." I returned at the time while they were talking about that. I went to the Prophet (ﷺ) and said, "O Allah's Prophet! Let my father be sacrificed for you! The people claim that 'Amir's good deeds are lost." The Prophet (ﷺ) said, "Whoever says so is a liar, for 'Amir will have a double reward as he exerted himself to obey Allah and fought in Allah's Cause. No other way of killing would have granted him greater reward."

7. **Sunan Abi Dawud. General Behavior (Kitab Al-Adab). Chapter. 120: When a man claims to belong to someone other than his master. Book 43, Hadīth 341: https://sunnah.com/abudawud/43/341**

Sa'id b. Malik said:

My ears heard it end my heart remembered it from Muhammad (May peace be upon him) who said: if a man claims to be the son of a man who is not his father, paradise will be forbidden for him. He said: I then met Abu Bakrah and mentioned it to him. He said: my ears heard it and my heart remembered it from Muhammad (peace be upon him).

'Asim said: I said: Abu 'Uthman! Two men testified before you. Who are they? He said: One of them is the one who is first to shoot arrow in the path of Allah or in the path of Islam, that is to say: Sa'd b. Malik. The other is the one came from al-Taif with ten and some men on foot. He then mentioned his excellence.

Abu Dawud said: When al-Nufaili mentioned this tradition, he said: I swear by Allah, this is sweater with me than honey, that is no say, his way transmission.

Abu 'Ali said: I heard Abu Dawud say: I heard Ahmad say: The people of Kufah have no light in their traditions. I did not see them like the people of Basrah. They learnt it from Shu'bah.

8. **Sahih al-Bukhari. Book of Inheritance. Chapter. 18: The child is for the owner of the bed. Book no. 85 Hadīth. 26; https://sunnah.com/bukhari/85**

"Narrated `Aisha:

`Utba (bin Abi Waqqas) said to his brother Sa`d, "The son of the slave girl of Zam`a is my son, so be his custodian." So when it was the year of the Conquest of Mecca, Sa`d took that child and said, "He is my nephew, and my brother told me to be his custodian." On that, 'Abu bin Zam`a got up and said, 'but the child is my brother, and the son of my father's slave girl as he was born on his bed." So they both went to the Prophet. Sa`d said, "O Allah's Messenger (ﷺ)! (This is) the son of my brother and he told me to be his custodian." Then 'Abu bin Zam`a said, "(But he is) my brother and the son of the slave girl of my father, born on his bed." The Prophet (ﷺ) said, "This child is for you. O 'Abu bin Zam`a, as the child is for the owner of the bed, and the adulterer receives the stones." He then ordered (his wife) Sauda bint Zam`a to cover herself before that boy as he noticed the boy's resemblance to `Utba. Since then the boy had never seen Sauda till he died."

9. **Sahih al-Bukhari. Book Supporting the Family. Chapter. 4: The expenditure of a woman and her child, whose husband is away from her. Book no. 69 Hadīth. 9; https://sunnah.com/bukhari/69**

Narrated `Aisha:

Hind bint `Utba came and said, "O Allah's Messenger (ﷺ)! Abu Sufyan is a miser so is it sinful of me to feed our children from his property?" Allah's Messenger (ﷺ) said, "No except if you take for your needs what is just and reasonable. "

C. Marriages/ Cohabitations

I. **Q. 4.22** "And do not marry those [women] whom your fathers married, except what has already occurred. Indeed, it was an immorality and hateful [to Allah] and was evil as a way."

II. **Q. 4: 23** "Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful."

III. **Q. 4:24 "** And [also prohibited to you are all] married women except those your right hands possess. [This is] the decree of Allah upon you. And lawful to you are [all others] beyond these, [provided] that you seek them [in marriage] with [gifts from] your property, desiring chastity, not unlawful sexual intercourse. So for whatever you enjoy [of marriage] from them, give them their due compensation as an obligation. And there is no blame upon you for what you mutually agree to beyond the obligation. Indeed, Allah is ever Knowing and Wise."

IV. **Q. 70:30** "Except from their wives or those their right hands possess, for indeed, they are not to be blamed"

V. **Q. 23:6** "Except from their wives or those their right hands possess, for indeed, they will not be blamed"

VI. **Q. 4:19 "**O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality. And live with them in kindness. For if you dislike them - perhaps you dislike a thing and Allah makes therein much good."

10. Sahih-Al-Bukhari, 5127, Book of Wedlock, Marriage (Nikaah), book. No 67. *hadīth* no. 63. Sunan Abi Dawud. Book of Divorce (Kitab Al-Talaq). Hadīth 98

Narrated 'Urwa bin Az-Zubair:

'Aishah, the wife of the Prophet (ﷺ) told him that there were four types of marriage during Pre-Islamic period of Ignorance. One type was similar to that of the present day i.e. a man used to ask somebody else for the hand of a girl under his guardianship or for his daughter's hand, and give her Mahr and then marry her. The second type was that a man would say to his wife after she had become clean from her period. "Send for so-and-so and have sexual intercourse with him." Her husband would then keep away from her and would never sleep with her till she got pregnant from the other man with whom she was sleeping. When her pregnancy became evident, he husband would sleep with her if he wished. Her husband did so (i.e. let his wife sleep with some other man) so that he might have a child of noble breed. Such marriage was called as Al-Istibda'. Another type of marriage was that a group of less than ten men would assemble and enter upon a woman, and all of them would have sexual relation with her. If she became pregnant and delivered a child and some days had passed after delivery, she would sent for all of them and none of them would refuse to come, and when they all gathered before her, she would say to them, "You (all) know waht you have done, and now I have given birth to a child. So, it is your child so-and-so!" naming whoever she liked, and her child would follow him and he could not refuse to take him. The fourth type of marriage was that many people would enter upon a lady and she would never refuse anyone who came to her. Those were the prostitutes who used to fix flags at their doors as sign, and he who would wished, could have sexual intercourse with them. If anyone of them got pregnant and delivered a child, then all those men would be gathered for her and they would call the Qa'if (persons skilled in recognizing the likeness of a child to his father) to them and would let the child follow the man (whom they recognized as his father) and she would let him adhere to him and be called his son. The man would not refuse all that. But when Muhammad (ﷺ) was sent with the Truth, he abolished all the types of marriages observed in pre-Islamic period of Ignorance except the type of marriage the people recognize today."

11. Sahih al-Bukhari, Chapter. 25: "Forbidden to you (for marriage) are: your mothers, your daughters...": Book. 67. *Hadīth. 43: https://sunnah.com/bukhari/67/43*

Ibn 'Abbas further said, "Seven types of marriages are unlawful because of blood relations, and seven because of marriage relations." Then Ibn 'Abbas recited the Verse:

"Forbidden for you (for marriages) are your mothers..." (4:23). 'Abdullah bin Ja'far married the daughter and wife of 'Ali at the same time (they were step-daughter and mother). Ibn Sirin said, "There is no harm in that." But Al-Hasan Al-Basri disapproved of it at first, but then said that there was no harm in it. Al-Hasan bin Al-Hasan bin 'Ali married two of his cousins in one night. Ja'far bin Zaid disapproved of that because of it would bring hatred (between the two cousins), but it is not unlawful, as Allah said, "Lawful to you are all others [beyond those (mentioned)]. (4:24). Ibn 'Abbas said: "If somebody commits illegal sexual intercourse with his wife's sister, his wife does not become unlawful for him." And narrated Abu Ja'far, "If a person commits homosexuality with a boy, then the mother of that boy is unlawful for him to marry."

Narrated Ibn 'Abbas, "If one commits illegal sexual intercourse with his mother in law, then his married relation to his wife does not become unlawful." Abu Nasr reported to have said that Ibn 'Abbas in the above case, regarded his marital relation to his wife unlawful, but Abu Nasr is not known well for hearing Hadīth from Ibn 'Abbas. Imran bin Hussain, Jabir b. Zaid, Al-Hasan and some other Iraqi's, are reported to have judged that his marital relations to his wife would be unlawful. In the above case Abu Hurairah said, "The marital relation to one's wife does not become unlawful except if one as had sexual intercourse (with her mother)." Ibn Al-Musaiyab, 'Urwa, and Az-Zuhri allows such person to keep his wife. 'Ali said, "His marital relations to his wife does not become unlawful."

12. Sahih al-Bukhari. Prophetic Commentary on the Qur'an (Tafseer of the Prophet (pbuh)). Book. 65. *hadīth.* 4579*:* https://sunnah.com/urn/42580

Narrated Ibn `Abbas:

regarding the Divine Verse: "O you who believe! You are forbidden to inherit women against their will, and you should not treat them with harshness that you may take back part of the (Mahr) dower you have given them." (4.19) (Before this revelation) if a man died, his relatives used to have the right to inherit his wife, and one of them could marry her if he would, or they would give her in marriage if they wished, or, if they wished, they would not give her in marriage at all, and they would be more entitled to dispose her, than her own relatives. So the above Verse was revealed in this connection.

13. Sahih al-Bukhari, Chapter. 42: The father or the guardian cannot give a virgin or matron in marriage without her consent; Book. 63. *hadīth. 73: https://sunnah.com/bukhari/67*

Narrated Abu Huraira:

The Prophet (ﷺ) said, "A matron should not be given in marriage except after consulting her; and a virgin should not be given in marriage except after her permission." The people asked, "O Allah's Messenger (ﷺ)! How can we know her permission?" He said, "Her silence (indicates her permission).

14. Sahih-Al-Bukhari, Chapter 43: If a man gives his daughter in marriage while she is averse to it, then such marriage is invalid. Book. 67, *hadīth* no. 74. *https://sunnah.com/bukhari/67*

Narrated Khansa bint Khidam Al-Ansariya: that her father gave her in marriage when she was a matron and she disliked that marriage. So she went to Allah's Messenger (ﷺ) and he declared that marriage invalid.

15. Sahih al-Bukhari, Chapter. 7: The partnership of orphans and inheritors; Book. 47. *ahadith. 12: https://sunnah.com/bukhari/47/12*

Narrated `Urwa bin Az-Zubair:

That he had asked `Aisha about the meaning of the Statement of Allah: "If you fear that you shall not Be able to deal justly With the orphan girls, then Marry (Other) women of your choice Two or three or four." (4.3) She said, "O my nephew! This is

about the orphan girl who lives with her guardian and shares his property. Her wealth and beauty may tempt him to marry her without giving her an adequate Mahr (bridal-money) which might have been given by another suitor. So, such guardians were forbidden to marry such orphan girls unless they treated them justly and gave them the most suitable Mahr; otherwise they were ordered to marry any other woman." `Aisha further said, "After that verse the people again asked the Prophet (about the marriage with orphan 'girls), so Allah revealed the following verses:-- 'They ask your instruction Concerning the women. Say: Allah Instructs you about them And about what is Recited unto you In the Book, concerning The orphan girls to whom You give not the prescribed portions and yet whom you Desire to marry..." (4.127) What is meant by Allah's Saying:-- 'And about what is Recited unto you is the former verse which goes:-- 'If you fear that you shall not Be able to deal justly With the orphan girls, then Marry (other) women of your choice.' (4.3) `Aisha said, "Allah's saying in the other verse:--'Yet whom you desire to marry' (4.127) means the desire of the guardian to marry an orphan girl under his supervision when she has not much property or beauty (in which case he should treat her justly). The guardians were forbidden to marry their orphan girls possessing property and beauty without being just to them, as they generally refrain from marrying them (when they are neither beautiful nor wealthy).

16. **Sahih al-Bukhari, Book of Jizyah and Mawaada'ah, Chapter. 1: Al-Jizya taken from the Dhimmi; Book. 58.** ***hadīth. 1:*** ***https://sunnah.com/bukhari/58/1***

Narrated `Amr bin Dinar:

I was sitting with Jabir bin Zaid and `Amr bin Aus, and Bjalla was narrating to them in 70 A.H. the year when Mus`ab bin Az-Zubair was the leader of the pilgrims of Basra. We were sitting at the steps of Zamzam well and Bajala said, "I was the clerk of Juz bin Muawiya, Al-Ahnaf's paternal uncle. A letter came from `Umar bin Al-Khattab one year before his death; and it was read:-- "Cancel every marriage contracted among the Magians between relatives of close kinship (marriages that are regarded illegal in Islam: a relative of this sort being called Dhu-Mahram.)" `Umar did not take the Jizya from the Magian infidels till `Abdur-Rahman bin `Auf testified that Allah's Messenger (ﷺ) had taken the Jizya from the Magians of Hajar.

D. Inheritance

I. **Q. 2:180** "Prescribed for you when death approaches [any] one of you if he leaves wealth [is that he should make] a bequest for the parents and near relatives according to what is acceptable - a duty upon the righteous." Sahih International

II. **Q. 4:11** "Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are

nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise." Sahih International

III. **Q. 4:2** "And give to the orphans their properties and do not substitute the defective [of your own] for the good [of theirs]. And do not consume their properties into your own. Indeed, that is ever a great sin." Sahih International

IV. **Q. 4:12** "And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing." Sahih International

V. **Q. 4:33** "And for all, We have made heirs to what is left by parents and relatives. And to those whom your oaths have bound [to you] - give them their share. Indeed Allah is ever, over all things, a Witness." Sahih International

VI. **Q. 8:75** "And those who believed after [the initial emigration] and emigrated and fought with you - they are of you. But those of [blood] relationship are more entitled [to inheritance] in the decree of Allah. Indeed, Allah is Knowing of all things." Sahih International

17. Sahih al-Bukhari. Book of Kafalah. Book no. 39 Hadīth. 3

"Narrated Sa`id bin Jubair:

Ibn `Abbas said, "In the verse: To every one We have appointed ' (Muwaliya Muwaliya means one's) heirs (4.33).' (And regarding the verse) 'And those with whom your right hands have made a pledge.' Ibn `Abbas said, "When the emigrants came to the Prophet (ﷺ) in Medina, the emigrant would inherit the Ansari while the latter's relatives would not inherit him because of the bond of brotherhood which the Prophet established between them (i.e. the emigrants and the Ansar). When the verse: 'And to everyone We have appointed heirs' (4.33) was revealed, it cancelled (the bond (the pledge) of brotherhood regarding inheritance)." Then he said, "The verse: To those also to whom your right hands have pledged, remained valid regarding cooperation and mutual advice, while the matter of inheritance was excluded and it became permissible to assign something in one's testament to the person who had the right of inheriting before."

18. Sahih al-Bukhari. Book of Inheritance. Chapter. 10: The inheritance of husband along with the offspring and other relatives Book no. 85 Hadīth. 16; https://sunnah.com/bukhari/85

Narrated Ibn `Abbas:

(During the early days of Islam), the inheritance used to be given to one's offspring and legacy used to be bequeathed to the parents, then Allah cancelled what He wished from that order and decreed that the male should be given the equivalent of the portion of two females, and for the parents one-sixth for each of them, and for one's wife one-eighth (if the deceased has children) and one-fourth (if he has no children), for one's husband one-half (if the deceased has no children) and one-fourth (if she has children).

19. Sahih al-Bukhari. Book of Inheritance. Chapter. 1: The inheritance. Book no. 55 Hadīth. 1; https://sunnah.com/bukhari/55/1

Narrated `Abdullah bin `Umar:
"Allah's Messenger (ﷺ) said, "It is not permissible for any Muslim who has something to will to stay for two nights without having his last will and testament written and kept ready with him."”

20. Sahih al-Bukhari. Book of Inheritance. Chapter. 16: Kindred by blood. Book no. 85 Hadīth. 24; https://sunnah.com/bukhari/85

Narrated Ibn `Abbas:

Regarding the Holy Verse:--'And to everyone, We have appointed heirs..' And:--(4.33) 'To those also to Whom your right hands have pledged.' (4.33) When the emigrants came to Medina, the Ansar used to be the heir of the emigrants (and vice versa) instead of their own kindred by blood (Dhawl-l-arham), and that was because of the bond of brotherhood which the Prophet (ﷺ) had established between them, i.e. the Ansar and the emigrants. But when the Divine Verse:-- 'And to everyone We have appointed heirs,' (4.33) was revealed, it cancelled the other, order i.e. 'To those also, to whom Your right hands have pledged.'

21. Sahih al-Bukhari. Book of Inheritance. Book no. 85 Hadīth. 9: https://sunnah.com/bukhari/85

Narrated Ibn `Abbas: The Prophet (ﷺ) said, "Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased."

22. Sahih Muslim. The Book of Wills. Book no. 25 Hadīth. 1: https://sunnah.com/muslim/25/1

Ibn Umar (Allah be pleased with them) reported Allah's Messenger (ﷺ) as saying:
It is the duty of a Muslim who has something which is to be given as a bequest not to have it for two nights without having his will written down regarding it.

D. Slaves/ *Walā*

23. Sunan Abi Dawud. Book of Marriage (Kitab Al-Nikah). Chapter. 683: A Slave Getting Married Without the Permission of His Owner. Book 12, Hadīth 33: available at: https://sunnah.com/abudawud/12/33

Narrated Jabir ibn Abdullah: The Prophet (ﷺ) said: If any slave marries without the permission of his masters, he is a fornicator. **Status: Hasan**

24. Sahih al-Bukhari. Book of Inheritance. Chapter. 23: What a woman can inherit of the Wala' (in the book it is given women). Book no. 85 Hadīth. 36; https://sunnah.com/bukhari/85

Narrated Ibn `Umar:

When Aisha intended to buy Barira, she said to the Prophet, "Barira's masters stipulated that they will have the Wala." The Prophet (ﷺ) said (to Aisha), "Buy her, as the Wala is for the one who manumits."

25. Sahih al-Bukhari. Book of Inheritance. Chapter. 19: Al-Wala' is for the manumitter. Book no. 85 Hadīth. 28; https://sunnah.com/bukhari/85

Narrated `Aisha:

I bought Barira (a female slave). The Prophet (ﷺ) said (to me), "Buy her as the Wala' is for the manumitted." Once she was given a sheep (in charity). The Prophet (ﷺ) said, "It (the sheep) is a charitable gift for her (Barira) and a gift for us." Al-Hakam said, "Barira's husband was a free man." Ibn `Abbas said, 'When I saw him, he was a slave."

26. Sahih al-Bukhari. Book of Inheritance. Chapter. 20: The heir of the Sa'iba. Book no. 85 Hadīth. 30; https://sunnah.com/bukhari/85

Narrated `Abdullah:

The Muslims did not free slaves as Sa'iba, but the People of the Pre-Islamic Period of Ignorance used to do so.

F. *Li'an*: adultery/fornication

I. **Q. 4.24** "The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment." Sahih International

II. **Q. 4:25** "And whoever among you cannot [find] the means to marry free, believing women, then [he may marry] from those whom your right hands possess of believing slave girls. And Allah is most knowing about your faith.

You [believers] are of one another. So marry them with the permission of their people and give them their due compensation according to what is acceptable. [They should be] chaste, neither [of] those who commit unlawful intercourse randomly nor those who take [secret] lovers. But once they are sheltered in marriage, if they should commit adultery, then for them is half the punishment for free [unmarried] women. This [allowance] is for him among you who fears sin, but to be patient is better for you. And Allah is Forgiving and Merciful." Sahih International

III. **Q. 24: 2 "**The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment." Sahih International

IV. **Q. 24: 4 "**And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient," Sahih International

V. **Q. 24: 5 "**Except for those who repent thereafter and reform, for indeed, Allah is Forgiving and Merciful." Sahih International

VI. **Q. 24: 6 "**And those who accuse their wives [of adultery] and have no witnesses except themselves - then the witness of one of them [shall be] four testimonies [swearing] by Allah that indeed, he is of the truthful." Sahih International

VII. **Q. 24: 7 "**And the fifth [oath will be] that the curse of Allah be upon him if he should be among the liars." Sahih International

VIII. **Q. 24: 8 "**But it will prevent punishment from her if she gives four testimonies [swearing] by Allah that indeed, he is of the liars." Sahih International

IX. **Q. 24: 9 "**And the fifth [oath will be] that the wrath of Allah be upon her if he was of the truthful." Sahih International

27. **Sahih Muslim. The Book of Suckling. Chapter. 10: The child is for the bed and suspicion must be avoided. Book 17, Hadīth. 48: https://sunnah.com/muslim/17/48**

Abu Huraira (Allah be pleased with him) reported Allah's Messenger (ﷺ) as saying:

“The child is to be attributed to one on whose bed he is born, and for a fornicator there is stoning.”

28. Malik B. Anas. Al-Muwatta. Book on. Divorce. كتاب الطلاق. Book no. 29 Hadīth. 1193

“Yahya related to me from Malik that he had heard that `Urwa ibn az-Zubayr said that if the child of the woman against whom li`an had been pronounced or the child of fornication, died, his mother inherited from him her right in the Book of Allah the Exalted, and his maternal half-brothers had their rights. The rest was inherited by the owners of his mother's wala' if she was a freed slave. If she was an ordinary free woman, she inherited her right, his maternal brothers inherited their rights, and the rest went to the Muslims.

Malik said,"I heard the same as that from Sulayman ibn Yasar, and it is what I saw the people of knowledge in our city doing."”

29. Muwatta Malik. Book on. Setting Free and Wala’. كتاب العتق والولاء. Book no. 38 Hadīth. 1487, https://sunnah.com/urn/415462

“Malik related to me that he had heard that Said ibn al-Musayyab was asked who had the wala' of the children whom a slave had by a free woman. Said said, "If their father dies and he is a slave who was not set free, their wala' belongs to the mawali of their mother."

Malik said, "That is like the child of a woman who is a mawla who has been divorced by lian; the child is attached to the mawali of his mother and they are his mawali. If he dies, they inherit from him. If he commits a crime, they pay the blood-money for him. If his father acknowledges him, he is given a kinship to him and his wala' goes to the mawali of his father. They are his heirs, they pay his blood-money and his father is punished with the hadd-punishment."

Malik said, "It is like that with a free-born woman divorced by lian. If her husband who curses her by lian does not acknowledge her child, the child is dealt with in the same way except that the rest of his inheritance after the inheritance of his mother and his brothers from his mother goes to all the Muslims as long as he was not given kinship to his father. The child of the lian is attached to the patronage of the mawali of his mother until his father acknowledges him because he does not have a lineage or paternal relations. If his lineage is confirmed, it goes to his paternal relations."

Malik said, "The generally agreed-on way of doing things among us about a child of a slave by a free woman, while the father of the slave is free, is that the grandfather (the father of the slave), attracts the wala' of his son's free children by a free woman. They leave their inheritance to him as long as their father is a slave. If the father becomes free, the wala' returns to his mawali. If he dies and he is still a slave, the inheritance and the wala' go to the grandfather. If the slave has two free sons, and one of them dies while the father is still a slave, the grandfather, the father of the father, attracts the wala' and the inheritance."

Malik spoke about a slave-girl who was set free while she was pregnant and her husband was a slave and then her husband became free before she gave birth, or after she gave birth. He said, "The wala' of what is in her womb goes to the person

who set the mother free because slavery touched the child before the mother was set free. It is not treated in the same way as a child conceived by its mother after she has been set free because the wala' of such a child, is attracted by the father when he is set free."

Malik said that if a slave asked his master's permission to free a slave of his and his master gave permission, the wala' of the freed slave went to the master of his master, and his wala' did not return to the master who had set him free, even if he were to become free himself."

30. **Sunan Ibn Majah. Chapters on Shares of Inheritance in Kitab al Fariadh كتاب الفرائض. Book 23, Hadīth 2847:**

It was narrated from Wathilah bin Asqa' that the Prophet (ﷺ) said:

"A woman may get three types of inheritance: From her freed slave woman, a foundling whom she raised, and her child concerning whom she swore in Li'an that he was legitimate."

G. Suckling/ Veiling / *Mahram*

H. Individual liability

I. **Q. 6: 164** "Say, "Is it other than Allah I should desire as a lord while He is the Lord of all things? And every soul earns not [blame] except against itself, and no bearer of burdens will bear the burden of another. Then to your Lord is your return, and He will inform you concerning that over which you used to differ." Sahih International

II. **Q. 17: 15** "Whoever is guided is only guided for [the benefit of] his soul. And whoever errs only errs against it. And no bearer of burdens will bear the burden of another. And never would We punish until We sent a messenger." Sahih International

III. **Q. 35: 18** "And no bearer of burdens will bear the burden of another. And if a heavily laden soul calls [another] to [carry some of] its load, nothing of it will be carried, even if he should be a close relative. You can only warn those who fear their Lord unseen and have established prayer. And whoever purifies himself only purifies himself for [the benefit of] his soul. And to Allah is the [final] destination." Sahih International

IV. **Q. 53: 38** "That no bearer of burdens will bear the burden of another" Sahih International

V. **Q. 15. 29** "And when I have proportioned him and breathed into him of My [created] soul, then fall down to him in prostration." Sahih International

VI. **Q. 16. 61** “And if Allah were to impose blame on the people for their wrongdoing, He would not have left upon the earth any creature, but He defers them for a specified term. And when their term has come, they will not remain behind an hour, nor will they precede [it].” Sahih International

31. Malik b. Anas. Al-Muwatta. Book on Suckling. Book. 30, Hadīth 1287: https://sunnah.com/malik/30

“Yahya related to me from Malik from Ibn Shihab that he was asked about the suckling of an older person. He said, ''Urwa ibn az-Zubayr informed me that Abu Hudhayfa ibn Utba ibn Rabia, one of the companions of the Messenger of Allah, may Allah bless him and grant him peace, who was present at Badr, adopted Salim (who is called Salim, the mawla of Abu Hudhayfa) as the Messenger of Allah, may Allah bless him and grant him peace, adopted Zayd ibn Haritha. He thought of him as his son, and Abu Hudhayfa married him to his brother's sister, Fatima bint al-Walid ibn Utba ibn Rabia, who was at that time among the first emigrants. She was one of the best unmarried women of the Quraysh. When Allah the Exalted sent down in His Book what He sent down about Zayd ibn Haritha, 'Call them after their true fathers. That is more equitable in the sight of Allah. If you do not know who their fathers were then they are your brothers in the deen and your mawali,' (Sura 33 ayat 5) people in this position were traced back to their fathers. When the father was not known, they were traced to their mawla.

"Sahla bint Suhayl who was the wife of Abu Hudhayfa, and one of the tribe of Amr ibn Luayy, came to the Messenger of Allah, may Allah bless him and grant him peace, and said, 'Messenger of Allah! We think of Salim as a son and he comes in to see me while I am uncovered. We only have one room, so what do you think about the situation?' The Messenger of Allah, may Allah bless him and grant him peace, said, 'Give him five drinks of your milk and he will be mahram by it.' She then saw him as a foster son. A'isha umm al-muminin took that as a precedent for whatever men she wanted to be able to come to see her. She ordered her sister, Umm Kulthum bint Abi Bakr as-Siddiq and the daughters of her brother to give milk to whichever men she wanted to be able to come in to see her. The rest of the wives of the Prophet, may Allah bless him and grant him peace, refused to let anyone come in to them by such nursing. They said, 'No! By Allah! We think that what the Messenger of Allah, may Allah bless him and grant him peace, ordered Sahla bint Suhayl to do was only an indulgence concerning the nursing of Salim alone. No! By Allah! No one will come in upon us by such nursing!'

"This is what the wives of the Prophet, may Allah bless him and grant him peace, thought about the suckling of an older person.”

32. Malik b. Anas. Al-Muwatta. Book on Suckling. Book. 30, Hadīth 1292: https://sunnah.com/malik/30

“Yahya related to me from Malik from Abdullah ibn Abi Bakr ibn Hazm from Amra bint Abd ar-Rahman that A'isha, the wife of the Prophet, may Allah bless him and grant him peace, said, "Amongst what was sent down of the Qur'an was 'ten known sucklings make haram' - then it was abrogated by 'five known sucklings'. When the Messenger of Allah, may Allah bless him and grant him peace, died, it was what is now recited of the Qur'an."

Yahya said that Malik said, "One does not act on this."

33. **Malik b. Anas. Al-Muwatta. The Description of the Prophet, may Allah Bless Him and Grant Him Peace. Book. 49, Hadīth 35: https://sunnah.com/urn/417680**

"Yahya said that Malik was asked, "Can a woman eat with other than her relative or slave?" Malik said, "There is no harm in that if it is in a manner which is accepted for a woman to eat with men."

Malik said, "A woman sometimes eats with her husband and with others he dines with or with her brother in the same way. It is disapproved of for a woman to be alone with a man when there is no relationship between them by blood, marriage or suckling that would prevent him marrying her."

34. **Sahih al-Bukhari. Book of Suckling. Chapter. 7 Breastfeeding an adult. Book. 17 Hadīth. 37: https://sunnah.com/muslim/17/37**

Zainab daughter of Abu Salama reported:

"I heard Umm Salama, the wife of Allah's Apostle (may peace be upon himy, saying to 'A'isha: By Allah, I do not like to be seen by a young boy who has passed the period of fosterage, whereupon she ('A'isha) said: Why is it so? Sahla daughter of Suhail came to Allah's Messenger (ﷺ) and said: Allah's Messenger, I swear by Allah that I see in the face of Abu Hudhaifa (the signs of disgust) on account of entering of Salim (in the house), whereupon Allah's Messenger (ﷺ) said: Suckle him. She (Sahla bint Suhail) said: He has a heard. But he (again) said: Suckle him, and it would remove what is there (expression of disgust) on the face of Abu Hudhaifa. She said: (I did that) and, by Allah, I did not see (any sign of disgust) on the face of Abu Hudhaifa."

I. Equality

I. **Q. 49:13 "**O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted." Sahih International

35. **Jami` at-Tirmidhi. *The books of Virtue.* Book no. 49 *Hadīth*. 4337. Available at: https://sunnah.com/urn/638510.**

Narrated Abu Hurairah [may Allah be pleased with him]: that the Messenger of Allah (ﷺ) said: "Allah has removed the pride of Jahiliyyah from you and boasting about lineage. (A person is either) a pious believer or a miserable sinner, and the people are the children of Adam, and Adam is from dirt." **Status: Hasan**

36. **Jami` at-Tirmidhi. Chapter: What Has Been Related About Learning About Lineage. Book no. 27 *Hadīth*. 85: https://sunnah.com/tirmidhi/27/85**

Abu Hurairah narrated that the Messenger of Allah said: "Learn enough about your lineage to facilitate keeping your ties of kinship. For indeed keeping the ties of kinship encourages affection among the relatives, increases the wealth, and increases the lifespan."

J. Orphan and vulnerable Children in Qur'an

I. **Q. 2: 220:** "To this world and the Hereafter. And they ask you about orphans. Say, "Improvement for them is best. And if you mix your affairs with theirs - they are your brothers." (Sahih International)

II. **Q. 4: 2:** "And give to the *orphans* their properties and do not substitute the defective [of your own] for the good" (Sahih International)

III. **Q. 4:3: "**And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]." Sahih International

IV. **Q. 4: 6:** "And test the *orphans* [in their abilities] until they reach marriageable age. Then if you perceive in." (Sahih International)

V. **Q. 4: 8:** "And when [other] relatives and *orphans* and the needy are present at the [time of] division, then provide" (Sahih International)

VI. **Q. 4: 9:** "And let those fear (in their behaviour toward *orphans*) who if they left behind them weak offspring would" (Pickthall)

VII. **Q. 4: 10:** "Indeed, those who devour the property of *orphans* unjustly are only consuming into their bellies fire.; Him, and to parents do good,)" (Sahih International)

VIII. **Q. 4: 36**: "and to relatives, *orphans*, the needy, the near neighbour, the neighbour farther" (Sahih International)

IX. **Q. 4:127:** "And they request from you, [O Muhammad], a [legal] ruling concerning women. Say, " Allah gives you a ruling about them and [about] what has been recited to you in the Book concerning the orphan girls to whom you do not give what is decreed for them - and [yet] you desire to marry them - and concerning the oppressed among children and that you maintain for orphans [their rights] in justice." And whatever you do of good - indeed, Allah is ever Knowing of it." (Sahih International)

X. **Q. 6:152:** "And do not approach the orphan's property except in a way that is best until he reaches maturity. And give full measure and weight in justice. We do not charge any soul except [with that within] its capacity. And when you testify, be just, even if [it concerns] a near relative. And the covenant of Allah fulfils. This has He instructed you that you may remember." (Sahih International)

XI. **Q. 8:41:** "And know that anything you obtain of war booty - then indeed, for Allah is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveller, if you have believed in Allah and in that which We sent down to Our Servant on the day of criterion - the day when the two armies met. And Allah, over all things, is competent." (Sahih International)

XII. **Q. 17:34:** "And do not approach the property of an orphan, except in the way that is best, until he reaches maturity. And fulfil [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned." (Sahih International)

XIII. **Q. 18:82:** "And as for the wall, it belonged to two orphan boys in the city, and there was beneath it a treasure for them, and their father had been righteous. So your Lord intended that they reach maturity and extract their treasure, as a mercy from your Lord. And I did it not of my own accord. That is the interpretation of that about which you could not have patience." (Sahih International)

XIV. **Q. 59:7:** "What Allah gave as booty (Fai') to His Messenger (Muhammad SAW) from the people of the townships, - it is for Allah, His Messenger (Muhammad SAW), the kindred (of Messenger Muhammad SAW), the orphans, Al-Masakin (the poor), and the wayfarer, in order that it may not become a fortune used by the rich among you. And whatsoever the Messenger (Muhammad SAW) gives you, take it, and whatsoever he forbids you, abstain (from it), and fear Allah. Verily, Allah is Severe in punishment." (Mushin Khan)

XV. **Q. 76:8:** "food in spite of love for it to the needy, the *orphan*, and the captive," (Sahih International)

XVI. **Q. 89:17**: "No! But you do not honour the *orphan"* (Sahih International)

XVII. **Q. 90:15:** "An *orphan* of near relationship" (Sahih International)

XVIII. **Q. 93:6:** "Did He not find you an *orphan* and give [you] refuge?" (Sahih International)

XIX. **Q. 93:9:** "So as for the orphan, do not oppress [him]." (Sahih International)

XX. **Q. 107:2**: "For that is the one who drives away the *orphan"*

38. Sunan Ibn Majah. Chapter. 6 The Orphan's Rights. Book. 22, Etiquettes. Hadīth. 33: https://sunnah.com/ibnmajah/33/22

It was narrated from Abu Hurairah that the Messenger of Allah(ﷺ) said:
"O Allah, bear witness that I have issued a warning concerning (failure to fulfil) the rights of the two weak ones: Orphans and women.'" **Status: Sahih**

39. Imam Nawawi. Riyad-ul- Salihin. The Book of the Miscellanies. Book. 1. Hadīth. 270: https://sunnah.com/riyadussaliheen/1/270

Abu Shuraih Khuwailid bin 'Amr Al-Khuza'i (May Allah be pleased with him) reported:
The Prophet (ﷺ) said, "O Allah, I declare inviolable the rights of two weak ones: the orphans and women".

40. Sahih Muslim. The Book of Commentary on the Qur'an. Book. 56 Hadīth. 6: https://sunnah.com/muslim/56/6

'Urwa b. Zubair reported that he asked 'A'isha about the words of Allah:
" If you fear that you will not be able to maintain equity amongst the orphan girls, then marry (those) you like from amongst the women two, three or four." She said: O, the son of my sister, the orphan girl is one who is under the patronage of her guardian and she shares with him in his property and her property and beauty fascinate him and her guardian makes up his mind to marry her without giving her due share of the wedding money and is not prepared (to pay so much amount) which anyone else is prepared to pay and so Allah has forbidden to marry these girls but in case when equity is observed as regards the wedding money and they are prepared to pay them the full amount of the wedding money and Allah commanded to marry other women besides them according to the liking of their heart. 'Urwa reported that 'A'isha said that people began to seek verdict from Allah's Messenger (ﷺ) after the revelation of this verse about them (orphan girls) and Allah, the Exalted and Glorious, revealed this verse:" They asked thee verdict about women; say: Allah gives verdict to you in regard to them and what is recited to you in the Book about orphan woman, whom you give not what is ordained for them while you like to marry them" (iv. 126). She said: The wording of Allah" what is recited to you" in the Book means the first verse, i. e." if you fear that you may not be able to observe equity in case of an orphan woman, marry what you like in case of woman" (iv. 3). 'A'isha said: (And as for this verse [iv. 126], i. e. and you intend" to marry one of them from amongst the orphan girls" it pertains to one who is in charge (of orphans) having small amount of wealth and less beauty and they have been forbidden that they should marry what they like of her wealth and beauty out of the orphan girls, but with equity, because of their disliking for them."

41. Sahih al-Bukhari. Book of Partnership. Chapter. 7 The partnership of orphans and inheritors. Book. 47 Hadīth. 12: https://sunnah.com/bukhari/47/12

Narrated `Urwa bin Az-Zubair:
"That he had asked `Aisha about the meaning of the Statement of Allah: "If you fear that you shall not Be able to deal justly With the orphan girls, then Marry (Other) women of your choice Two or three or four." (4.3) She said, "O my nephew! This is about the orphan girl who lives with her guardian and shares his property. Her wealth and beauty may tempt him to marry her without giving her an adequate Mahr (bridal-money) which might have been given by another suitor. So, such guardians were forbidden to marry such orphan girls unless they treated them justly and gave them the most suitable Mahr; otherwise they were ordered to marry any other woman." `Aisha further said, "After that verse the people again asked the Prophet (about the marriage with orphan 'girls), so Allah revealed the following verses:-- 'They ask your instruction Concerning the women. Say: Allah

Instructs you about them And about what is Recited unto you In the Book, concerning The orphan girls to whom You give not the prescribed portions and yet whom you Desire to marry..." (4.127) What is meant by Allah's Saying:-- 'And about what is Recited unto you is the former verse which goes:-- 'If you fear that you shall not Be able to deal justly With the orphan girls, then Marry (other) women of your choice.' (4.3) `Aisha said, "Allah's saying in the other verse:--'Yet whom you desire to marry' (4.127) means the desire of the guardian to marry an orphan girl under his supervision when she has not much property or beauty (in which case he should treat her justly). The guardians were forbidden to marry their orphan girls possessing property and beauty without being just to them, as they generally refrain from marrying them (when they are neither beautiful nor wealthy)."

42. Jami` at-Tirmidhi. Chapter. 14: What Has Been Related About Being Merciful with The Orphan and Raising Him. Book no. 27 *Hadīth*. 23: https://sunnah.com/tirmidhi/27/23

Ibn 'Abbas narrated that: "the Prophet said: Whoever takes in an orphan among the Muslims to raise, to feed him and give him drink, Allah admits him into Paradise without a doubt, unless he has done a sin for which he is not forgiven."

43. Al-Bukhari. Muhammad. Al-Adab Al-Mufrad. Generosity and Orphans Chapter. 77: Be like a merciful father to orphans. Book no. 7 *Hadīth*. 12: https://sunnah.com/adab/7/12

"Asma' bint 'Ubayd said, "I said to Ibn Sirin, 'I have an orphan in my care.' He said, 'Treat him as you would treat your own child. Beat him as you would beat your own child.'" **Status: Sahih (Al-Albani)**

44. Sunan Abi Dawud. General Behaviour (Kitab Al-Adab). Chapter. 120: When a man claims to belong to someone other than his master. Book 43, Hadīth 341: https://sunnah.com/abudawud/43/341

'Eisa bin Sahl bin Rafi' bin Khadij narrated:
"I was an orphan in the care of my grandfather Rafi' bin Khadij. I reached puberty and became a man, and I performed Hajj with him. My brother 'Imran bin Sahl bin Rafi' bin Khadij came and said: 'O my father, we have leased our land to so and so (a woman) for two hundred Dirhams.' He said: 'O my son, leave that (do not do it), for Allah will give you other provision. The Messenger of Allah forbade leasing land.'"

45. Imam Nawawi. Riyad-ul- Salihin. Chapter. 18. The Book of the Prohibited actions. Book. 18. Hadīth. 1800: https://sunnah.com/riyadussaliheen/18/290

'Ali (May Allah be pleased with him) said:
I have retained in my memory the saying of the Messenger of Allah (ﷺ) that: "No one is considered an orphan after he has attained the age of maturity; and it is unlawful to remain silent from dawn till night."

46. Sunan Ibn Majah. Chapter. 6 The Orphan's Rights. Book. 23, Etiquettes. Hadīth. 33: https://sunnah.com/ibnmajah/33/23

It was narrated from Abu Hurairah that the Messenger of Allah(ﷺ) said:
"The best house among the Muslims is a house in which there is an orphan who is treated well. And the worst house among the Muslims is a house in which there is an orphan who is treated badly."

47. Sunan Ibn Majah. Chapter. 25. The Chapter on Wills. Hadīth. 2718: https://*ahadith*.co.uk/permalink-hadīth-10090

Narrated/Authority of Amr bin Shuaib from his father, that his a grandfather said: "A man came to the Prophet (saw) and said: 'I do not have anything and I have no wealth, but I have an orphan (under my care) who has wealth." He said: "Eat from the wealth of your orphan, without being extravagant or use it for trade." He (the narrator) said: "And I think he said: 'Do not preserve your wealth using his instead.'" Hasan

48. Sahih al-Bukhari. Book of Divorce. Chapter. 27 Al- Li'an. Book. 68 Hadīth. 53: https://sunnah.com/bukhari/68/53

Narrated Sahl:
Allah's Messenger (ﷺ) said, "I and the one who looks after an orphan will be like this in Paradise," showing his middle and index fingers and separating them.

49. Sunan Abi Dawud. Book of Wills (Kitab Al-Wasaya). Chapter. 1060: Chapter: Mixing One's Food with The Food of An Orphan. Book. 18, Hadīth. 10: https://sunnah.com/abudawud/18/10

Narrated Abdullah ibn Abbas:
When Allah, Most High, revealed the verses: "Come not nigh to the orphan's property except to improve it". And "Those who unjustly eat up the property of orphans", everyone who had an orphan with him went and separated his food from his (orphan's) food, and his drink from his drink, and began to detain the remaining food which he (the orphan) himself ate or spoiled.
This fell heavy on them, and they mentioned this to the Messenger of Allah (ﷺ). So Allah, Most High, revealed the verse: "They ask thee concerning orphans. Say: The best thing to do is what is for their good; if ye mix their affairs with yours, they are your brethren." Then they mixed their food with his food and their drink with his drink.

50. Sahih al-Bukhari. Book of Wills and Testament (Wasaya). Chapter. 23: The Statement of Allah Taa'la: "... those who unjustly eat up the property of orphans...". Book. 55 Hadīth. 29: https://sunnah.com/bukhari/55/29

Narrated Abu Huraira:
The Prophet (ﷺ) said, "Avoid the seven great destructive sins." The people enquire, "O Allah's Messenger (ﷺ)! What are they? "He said, "To join others in worship

along with Allah, to practice sorcery, to kill the life which Allah has forbidden except for a just cause, (according to Islamic law), to eat up Riba (usury), to eat up an orphan's wealth, to give back to the enemy and fleeing from the battlefield at the time of fighting, and to accuse, chaste women, who never even think of anything touching chastity and are good believers.

51. Balugh- Al-Maram. The Book of Zaka. Book. 4 Hadīth. 608: https://sunnah.com/urn/2058090

Amro bin Shu'aib narrated on the authority of his father who reported on the authority of his grandfather, on the authority of Abdullah bin 'Amro (RAA) that the Messenger of Allah (ﷺ) said:
"One who becomes the guardian of an orphan, who owns property, must trade on his behalf and not leave it (saved and unused) until it is all eaten up by Zakah (which is paid yearly)." Related by At-Tirmidhi and Ad-Daraqutni with a weak chain of narrators.

52. Sunan Abi Dawud. Book of General Behaviour (Kitab Al-Adab). Chapter. 109: Reciting Tasbih when going to sleep. Book. 43. Hadīth. 294: https://sunnah.com/abudawud/43/294

Umm al-Hakam or Duba'ah, daughter of al-Zubair, said:
The Messenger of Allah (May peace be upon him) got some prisoners of war (slaves). I my sister and Fatimah, daughter of the prophet (May peace be upon him), went to the prophet (May peace be upon him). We complained to him about our condition, and asked him to command for giving us some prisoners (slaves). The Messenger of Allah (May peace be upon him) said; The orphans of Badr came before you (and took the slaves). The transmitter then mentioned the story of glorifying Allah after every prayer. He did not mention sleeping. **Sahih (Al-Albani)**

53. Sunan Abi Dawud. Book of The Division of The Khumus And the Share of His Relatives. Chapter. 1108: The Division of The Khumus And the Share of His Relatives. Book. 20. Hadīth. 60: https://sunnah.com/abudawud/20/60

Umm Al Hakam or Duba'ah daughters of Al Zibair bin 'Abd Al Muttalib said "Some captives of war were brought to the Apostle of Allaah(ﷺ). I and my sister Fatimah, daughter of Apostle of Allaah(ﷺ) went (to the Prophet) and complained to him about our existing condition. We asked him to order (to give) us some captives. The Apostle of Allaah(ﷺ) said "the orphans of the people who were killed in the battle of Badr came before you (and they asked for the captives). But I tell you something better than that. You should utter "Allaah is Most Great" after each prayer thirty three times, "Glory be to Allaah" thirty three times, "Praise be to Allaah" thirty three times and "there is no god but Allaah alone, He has no associate, the Kingdom belongs to Him and praise is due to Him and He has power over all things."
The narrator 'Ayyash said "They were daughters of Uncle of the Prophet (ﷺ)." **Sahih (Al-Albani)**

54. Jami` at-Tirmidhi. Chapter. 16: What Has Been Related About Adhering To The Sunnah And Staying Away From Innovation. Book no. 41. *Hadīth*. 34: https://sunnah.com/tirmidhi/41/34

Narrated Anas bin Malik:
"The Messenger of Allah (ﷺ) said to me: 'O my son! If you are capable of (waking up in) the morning and (ending) the evening, while there is nothing of deception in your heart for anything, then do so.' Then he said to me: 'O my son! That is from my Sunnah. Whoever revives my Sunnah then he has loved me. And whoever loved me, he shall be with me in Paradise.'"

55. Sunan Ibn Majah. Book. 8. Chapter. 24. Giving Charity to the Relatives. Hadīth. 52: https://sunnah.com/ibnmajah/8/52

It was narrated that:
"Zainab, the wife of Abdullah said: "I asked the Messenger of Allah: 'Will it be accepted as charity on my part if I spend on my husband and the orphans in my care?' The Messenger of Allah said: 'She will have two rewards, the reward for charity and the reward for upholding ties of kinship.'"

56. Sunan an-Nasa'i. Book. 35b. Chapter. 45. Mentioning The Differing Hadīths Regarding The Prohibition Of Leasing Out Land In Return For One Third, Or One Quarter Of The Harvest And The Different Wordings Reported By The Narrators. Hadīth. 71: https://sunnah.com/nasai/35b/71

'Eisa bin Sahl bin Rafi' bin Khadij narrated:
"I was an orphan in the care of my grandfather Rafi' bin Khadij. I reached puberty and became a man, and I performed Hajj with him. My brother 'Imran bin Sahl bin Rafi' bin Khadij came and said: 'O my father, we have leased our land to so and so (a woman) for two hundred Dirhams.' He said: 'O my son, leave that (do not do it), for Allah will give you other provision. The Messenger of Allah forbade leasing land.'"

57. Sahih al-Bukhari. Book. 15. Invoking Allah for Rain (Istisqaa). Chapter. 3. Request of the people to the Imam to offer the Istisqa' prayer. Hadīth. 4. https://sunnah.com/bukhari/15/4

Narrated `Abdullah bin Dinar:
"My father said, "I heard Ibn `Umar reciting the poetic verses of Abu Talib: And a white (person) (i.e. the Prophet) who is requested to pray for rain and who takes care of the orphans and is the guardian of widows." Salim's father (Ibn `Umar) said, "The following poetic verse occurred to my mind while I was looking at the face of the Prophet (p.b.u.h) while he was praying for rain. He did not get down till the rainwater flowed profusely from every roof-gutter: And a white (person) who is requested to pray for rain and who takes care of the orphans and is the guardian of widows . . . And these were the words of Abu Talib."

K. Kinship ties

I. **Q. 9:8;** “they do not observe concerning you any pact of *kinship* or covenant of protection? They satisfy you with,” (Sahih International)

II. **Q. 9:10;** “They do not observe toward a believer any pact of *kinship* or covenant of protection. And it is they who are” (Sahih International)

III. **Q. 4:1;** “and (do not cut the relations of) the wombs (*kinship*). Surely, Allah is Ever an All-Watcher over you” (Mushin Khan)

IV. **Q. 47:22;** “So would you perhaps, if you turned away, cause corruption on earth and sever your [ties of] relationship?” (Sahih International)

58. Al-Bukhari. Muhammad. Al-Adab Al-Mufrad. Ties of Kinship. Chapter. 77: The excellence of maintaining ties of kinship. Book no. 2. *Hadīth*. 9: https://sunnah.com/adab/2/9

“'A'isha reported that the Prophet, may Allah bless him and grant him peace, said, "Kinship (rahim) is derived from Allah. If anyone maintains ties of kinship Allah maintains ties with him. If anyone cuts them off, Allah cuts him off.” **Sahih** (Al-Albani)

59. Al-Bukhari. Muhammad. Book of Trade. Book no. 34. *Hadīth*. 158: https://sunnah.com/bukhari/34/158

Narrated Hisham bin `Urwa from his father:
who heard Aisha saying, "The Holy Verse; 'Whoever amongst the guardians is rich, he should take no wages (from the property of the orphans) but If he is poor, let him have for himself what is just and reasonable (according to his labors)' (4.6) was revealed concerning the guardian of the orphans who looks after them and manages favorably their financial affairs; If the guardian Is poor, he could have from It what Is just and reasonable, (according to his labors).

60. Al-Bukhari. Muhammad. Al-Adab Al-Mufrad. Ties of Kinship. Chapter. 38: Learn your lineages so that you can maintain ties of. Book no. 2. *Hadīth*. 26: https://sunnah.com/adab/2/26

“Jubayr ibn Mut'im said that he heard 'Umar ibn al-Khattab say on the minbar, "Learn your lineages so that you can maintain ties of kinship. By Allah, if there are some bad feelings between a man and his brother and he knows that there is kinship between him and that man, that will prevent him from breaking with him.” **Hasan** (Al-Albani)

61. Al-Bukhari. Muhammad. Al-Adab Al-Mufrad. Ties of Kinship. Chapter. 29: Allah loves the one who maintains ties of kinship. Book no. 2. *Hadīth*. 13: https://sunnah.com/adab/2/13

“Ibn 'Umar said, "Whoever has *taqwa* of his Lord and maintains ties of kinship, his term of life will be prolonged, his wealth will be abundant, and his family will love him.” **Hasan** (Al-Albani)

62. Al-Bukhari. Muhammad. Al-Adab Al-Mufrad. Ties of Kinship. Chapter. 32: The wrong action of someone who severs ties of kinship. Book no. 2. *Hadīth*. 18: https://sunnah.com/adab/2/18

“Jubayr ibn Mu'tim reported that he heard the Messenger of Allah, may Allah bless him and grant him peace, say, "The one who severs ties of kinship will not enter the Garden.” **Sahih** (Al-Albani)

63. Al-Bukhari. Muhammad. Al-Adab Al-Mufrad. Ties of Kinship. Chapter. 32: The excellence of maintaining ties of kinship. Book no. 2. *Hadīth*. 7: https://sunnah.com/adab/2/7

“'Abdu'r-Rahman ibn 'Awf heard the Messenger of Allah, may Allah bless him and grant him peace, say, "Allah, the Almighty and Exalted, said, 'I am the Merciful (ar-Rahman). I have created ties of kinship and derives a name for it from My Name. If anyone maintains ties of kinship, I maintain connection with him, and I shall cut off anyone who cuts them off.'” **Sahih** (Al-Albani)

64. Jami` at-Tirmidhi. Chapter on Tafsir. Book no. 47 *Hadīth*. 3560: https://sunnah.com/urn/642860

“Narrated Tawus:
Ibn 'Abbas was asked about this Ayah: Say: "No reward do I ask of you for this except to be kind for my kinship with you (42:23)." So Sa'eed bin Jubair said: 'To be kind to the family of Muhammad.' Ibn 'Abbas replied: 'You know that there was no family of the Quraish except that the Messenger of Allah (ﷺ) had some relatives among them.' He said: 'Except that you should uphold ties of kinship that exist between me and you.'” **Sahih**

L. *Kafala*/ Foundling

I. Q. 12:79 “He said: Allah forbid that we should seize save him with whom we found our property; then truly we should be wrong-doers.” Pickthall

64. Mālik Ibn Anas. A*l-Muwatta of Imam Malik Ibn Anas.* Book. 36 on Judgement الأقضية Hadīth. 1423, https://sunnah.com/urn/414690

“Yahya said that Malik related from Ibn Shihab that Sunayn Abi Jamila, a man from the Banu Sulaym, found an abandoned child in the time of Umar ibn al-Khattab. Sunayn took him to Umar ibn al-Khattab. He asked, "What has induced you to take this person?" He answered, "I found him lost, so I took him.'' Umar's advisor said to him,' 'Amir al-Muminin! He is a man who does good." Umar inquired of him, "Is it so?" He replied, "Yes." Umar ibn al-Khattab said, "Go, he is free, and you have his wala' inheritance, and we will provide for him."

Yahya said that he heard Malik say, "What is done in our community about an abandoned child is that he is free, and his wala' inheritance belongs to the Muslims, and they inherit from him and pay his blood money."

65. Sahih al-Bukhari. Book on Lost Things Picked up by Someone (Luqatah). Chapter. 9 If the owner of lost property comes back after a year. Book no. 45 Hadīth. 11; https://sunnah.com/bukhari/45

Narrated Zaid bin Khalid Al-Juhani:

A man asked Allah's Messenger (ﷺ) about the Luqata. He said, "Make public announcement of it for one year, then remember the description of its container and the string it is tied with, utilize the money, and if its owner comes back after that, give it to him." The people asked, "O Allah's Messenger (ﷺ)! What about a lost sheep?" Allah's Messenger (ﷺ) said, "Take it, for it is for you, for your brother, or for the wolf." The man asked, "O Allah's Messenger (ﷺ)! What about a lost camel?" Allah's Messenger (ﷺ) got angry and his cheeks or face became red, and said, "You have no concern with it as it has its feet, and its water container, till its owner finds it."

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