Adoption of a Child in Islamic and Pakistani Law: Problems of Implementation

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Abstract
Although Islamic law and Pakistani law prohibit adoption it is still practiced in Pakistan. Islamic law does not allow change of paternity and emphasizes on the identity of biological parents. The article explores rules regarding adoption in Islamic law along with distinctions between legitimacy by acknowledgement and adoption, and fosterage and adoption. This discussion will be followed by Pakistani law and relevant provisions of the Convention on the Rights of the Child 1989. The article argues that total prohibition does not mean that adoption is not practiced. Adoption does take place in Pakistan but is out of the domain of the law. Pakistan needs to regulate adoption to bring it in the domain of law. A state sponsored system of kafālah should be introduced where the child can be adopted with the agreement of biological parents but will not take the family name or inherit as it is the condition in Islamic law.

Keywords: Adoption, kafālah, Islamic Law, Pakistani Law

Introduction:
This article discusses the rules regarding adoption of a child in Islamic and Pakistani law and the problems relating implementation of these rules. The term ‘adoption of a child’ as used in this article means when a couple whether childless or not decide to bring a child into their family to be treated as their own. In non-Islamic societies such a child gets name of the adoptive parents and is treated like a biological child with regard to inheritance and all other rights.

On 1st August 2013 BBC reported that ‘two baby girls who were abandoned in Pakistan’s southern city of Karachi have been allocated new parents during a live television broadcast’.

This incident, which provoked criticism by different segments of society, occurred because there are no rules regarding adoption in Pakistan. No procedure is given by Pakistani law for adoptive parents to follow. This article explores rules regarding adoption in Islamic law, Pakistani law and relevant provisions of the Convention on the Rights of the Child 1989. Total prohibition does not mean that adoption is not practiced. The article argues that Pakistan needs to regulate adoption to bring it in to the domain of law.

Work has been done on the concept and the rules regarding adoption but it lacks the discussion over problems in implementation of these rules. This article
highlights that to exclude adoption from the domain of law is not a solution. As adoption is practiced by Muslims living in Pakistan and elsewhere there is a need to provide an alternative to concerned parents and children. Comparative study is done between Islamic and Pakistani law to show how Islamic law has influenced approach of legislators as well as Pakistani courts in this regard.

This is a socio-legal research in which analytical and comparative methodology is adopted. The article explores and analyzes the relevant rules of Islamic as well as Pakistani law. Effort has been made to consult original sources of Islamic law as well as writings of modern authors. For Pakistani law statutes as well as case law are consulted. Reference is made to relevant provisions of international conventions wherever convenient. This article is divided into five sections: the first section deals with the rules relating to adoption in Islamic law; the second section deals with the possibility of adoption of a child through acknowledgement; the third section discusses the alternatives of adoption in Islamic law; the fourth section elaborates upon relevant provisions of the Convention on the Rights of the Child 1989; it will be followed by the last section which entails discussion on Pakistani law. At the end conclusion will summarise my findings.

1- Adoption of a Child in Islamic Law:

In pre-Islamic Arabia adoption was a well-established institution. Arabs used to treat their adopted sons as natural sons and prohibition of marriage was created among the parties involved.\(^3\) The status of adoption in Islamic law is derived from the following verses of the Qur‘ān:

The distinction between real son and adopted son is described as under: ‘Allah has not made for any man two hearts in his (one) body: nor has he made your wives whom ye divorce by Zihār\(^4\) 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.’\(^5\)

The importance of establishment of parentage is described in Quran as under: ‘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 Mawlās (freed slaves).’\(^6\)

Another verse describes the reality of adopted son as under: ‘Behold: thou didst say to one who had received the grace of Allah and thy favour: ‘retain thou (in wedlock) thy wife and fear Allah’. But thou didst hide in thy heart that which Allah was about to make manifest: thou didst fear the people, but it is more fitting that thou shouldst fear Allah. Then when Zaid had dissolved (his marriage) with her, with the necessary (formality), We joined her in marriage to thee: in order that (in future) there may be no

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\(^1\)Adoption, Acknowledgement of Paternity and False Genealogical Claims in Arabian and Islamic Societies’, Bulletin of the School of Oriental and Islamic Studies, University of London, Vol. 66 (2), (2003); Lynn Welchman, Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy, (Amsterdam: Amsterdam University Press, 2007).


\(^4\)Zihār was an Arab custom, by which the husband divorces his wife by comparing her to his mother.

\(^5\)Al-Qurān, Al-Ahzab:4

\(^6\)Al-Qurān, Al-Ahzab:5
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difficulty to the believers in (the matter of) marriage with the wives of their adopted sons, when the latter have dissolved with the necessary (formality) (their marriage) with them. And Allah’s command must be fulfilled. 7

These verses concern Zaid ibn Hārithah who was the Prophet’s adopted son and was called Zaid ibn Muhammad. In pre Islamic Arabia adopted sons were treated like natural sons. Zainab Bint Jahsh was the Prophet’s cousin and Zaid’s ex-wife. The Prophet (PBUH) married her. According to the Qur’ān a marriage with the ex-wife of a natural son is prohibited. 8 The above mentioned verses were revealed in this context and it was made clear that adoption does not create prohibition of marriage and adopted children are not to be considered the same as natural children. Hārithah was Zaid’s biological father. According to the above-mentioned verse children should be named after their biological fathers, so Zaid, who was called Zaid ibn Muhammad, was again called Zaid ibn Hārithah after revelation of these verses. 9

These verses abolished the custom of adoption of the pre-Islamic era. In Islamic law there is no option of legal adoption according to the majority of scholars. 10 There are some scholars who are of the opinion that adoption is not prohibited, but is mubāḥ, 11 in all Muslim countries the opinion of the majority of jurists is followed. 12 This can be seen in various reports of Muslim countries to the United Nations Commission on the Rights of the Child, in which they have all said that in Islam the institution of adoption does not exist. 13

The reason for prohibition of change of lineage of a child is twofold. First is the preservation of identity of the child which is his/her basic right. The surname of a child shows the paternity and lineage of the child and is not allowed to change. 14 The child has a right to be informed about adoption and to identify itself with the name of its parents. The right to identity is acknowledged by the Convention on the Rights of the Child 1989 15 in

7Al-Qurān, Al-Ahzāb:37
8Al-Qurān, Al-Nisa:23
11Mubāḥ is an act, with reference to the doing or omission of which there is no obligation or duty. It is just a recommendation. Abdul Rahim, Muhammadian Jurisprudence, (Lahore: All Pakistan Legal Decisions, 1911), 61; Sadr-al-Shari‘ah Ubaidullah Ibn Mas‘ūd, Al-Taudīh Sharī‘ah-ul-Taqīgh, (Peshawar: Maktaba Farūqiah, 1996), Vol. 2, 258.
12David Pearl, A Text Book on Muslim Personal Law,(London: Croom Helm, 1987), p.89. The same approach is followed in Pakistan. This can be seen in Supreme Court’s judgment in Sher Afzal V. Shamim Firdaus, PLD 1980 SC 228.
15Hereinafter the CRC.
Article 8, which explicitly mentions a child’s right to identity, nationality, name and family relations, as recognized by law. The second reason is to comply with the clear rules relating to prohibition of marriage. Blood relations create a marriage prohibition whereas adoption does not. Shaheen Sardar ‘Ali rightly pointed out ‘the focus of the verses is not prohibition of adoption but on implications of equating relationships originating from different circumstances’. Adoption which includes change of lineage of the child may also create doubts in the minds of legal heirs and this may result in discord in the family. If adopted children are treated as natural children legal heirs are deprived of their shares in inheritance which is against justice.

2- Possibility of Adoption of a Child through acknowledgement:

In Islamic law a father can acknowledge a child as his child but certain conditions must be fulfilled to make this acknowledgement legally valid. This section will discuss possibility of adoption of a child through acknowledgement. In Islamic law parentage or nasab means lineage. It refers to the ability of a child to be considered a part of a family group within a tribe. Nasab relates to referring to the father’s name so that the lineage of the child can be identified. A major concern in determining parentage is that the child is legitimate. Legitimacy is established for a child if he/she is born during a valid or irregular marriage (but not in a void marriage), or by acknowledgement by the father. In Islamic law, legitimacy of a child can be established by acknowledgement. Acknowledgement of paternity is acceptable even if it takes place on a person’s death bed. There are four conditions laid down by jurists for an acknowledgement to be accepted.

(i) The paternity of the child should be unknown. If the child’s paternity is known it cannot be changed by acknowledgement as in that case the issue will be decided on the basis of evidence.

(ii) It must be possible for the acknowledged person to be the child of the acknowledge. For example, the minimum age of puberty for a boy is twelve years and the minimum period of gestation is six months: so the child must be twelve years and six

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21A regular or valid marriage is a marriage having fulfilled all necessary conditions. Irregular marriage is a marriage that suffers from a temporary bar. It is defined as good in its foundation (asl) but unlawful in its attributes. It has no legal effects till consummation. Examples of irregular marriages are: marriage with a woman in state of ‘iddah, contracting a fifth wife when one of the fourth wife is in ‘iddah, marriage without witnesses, having two sisters in wedlock. A void marriage is a marriage which suffers from a permanent bar and has no legal effect. Muhammad Amīn bin ‘Umar bin ‘Abīdīn, *Hāshiyah Radd al-Mukhtār ‘alā Al-Durr al Mukhtār*, Vol. 8, (Dār-al-Thaqāfah wa Al-Turāth, 2000), 441-442.


months younger than the acknowledging. If the mother is acknowledging the child she must be nine years and six months older than the child, as the minimum age of puberty in her case is nine years.24

(iii) If the child has attained puberty he/she must support the acknowledgement. Puberty is a condition according to the majority of jurists, but attaining the age of discretion (which is seven years) is a condition according to the Hanafis. According to the Hanafis if the child is above seven years the judge can decide whether he/she is mature enough to make a statement or not. If the child is under age or insane, its acceptance is not necessary; if the child is a major and does not support the acknowledgement evidence will be needed to prove paternity. The Mālikis differ from the majority of jurists and do not require acceptance of the child as a condition.25

(iv) No other person should have claimed paternity of the child. If two persons claim paternity of the same child, paternity will not be established because the statements of acknowledgement clash with each other. In that case paternity will be established on the basis of evidence. If a man claims paternity on the basis that the child is his child from unlawful sexual intercourse, paternity will not be established. Such a claim or acknowledgement is void. A valid acknowledgement is not only of biological paternity but also of legitimacy.26

The above-mentioned conditions are agreed upon by Muslim scholars. There are some additional conditions laid by some scholars. According to the Hanafis the child, whose paternity is going to be established, must be alive at the time of acknowledgement.27 If the child is dead acknowledgement will not establish paternity posthumously. But if the acknowledged person has children this limitation does not apply as the establishment of the paternity of their father will be in their interests. Here the Mālikīs differ from the Hanafis for, according to the former paternity can be established for a dead person. The Mālikī opinion is more logical, as even when a child is dead its identity is important for the family and the name of the father is a part of the identity. An acknowledged person is considered a natural child of the acknowledge and acknowledgement gives rise to all legal effects of a natural relationship between the parent and the child,28 but it does not give rise to a presumption of marriage between the mother and the father of the child. This is according to the majority of jurists.29 The Hanafi school disagrees and according to them establishment of paternity does give rise to the presumption of marriage.30

According to the majority of jurists (except the Hanafis) only the biological father of a child may acknowledge paternity. If the acknowledgement is made by a person related to the child but not his father, according to Abū Hanīfah it is only acceptable if confirmed by the father or in the case of his death or absence, by two heirs in the family.31 Ibn Hanbal

24Shalabī, Ḥākīm-al-Uṣrah, 696-698; Pearl, A Textbook, 90.
however considers the grandfather to be capable of acknowledgement if the father is dead. An acknowledgement of paternity will be considered true if it fulfills all the above mentioned conditions, unless it is proved false by evidence. Retraction of acknowledgement of paternity is not acceptable.

It is important to distinguish adoption from acknowledgement of legitimacy/paternity. Acknowledgement of paternity does not create paternity; it only establishes an existing relationship and a natural child is acknowledged by the biological father, whereas in adoption the paternity of the child is neither claimed nor established. In adoption the child is considered to be begotten by someone else but taken by adoptive parents into their care. A child can be adopted even though his/her father is known whereas a child cannot be acknowledged by another person in such situation.

3- Alternatives of Adoption in Islamic Law:

There are two alternatives of adoption: fosterage and kafālah. Now we will discuss each of these alternatives separately.

1- Fosterage:

Fosterage is used as an alternative to adoption. Now we will discuss fosterage and distinguish it from adoption. In Arabic the word used for fosterage is radā‘ah which literally means suckling and nursing. In its legal sense the term means ‘a child sucking milk from the breast of a woman for a certain time, which is termed the period of fosterage’. Suckling is one of the natural responsibilities of a mother. It is considered a right of the child.

If a child is suckled by a wet nurse a relationship in the prohibited degree is created between the child, the wet nurse, her husband (who is the foster father in this case), mother of the wet nurse, mother of the foster father, sister of the wet nurse, sister of the foster father, daughters of the wet nurse, her granddaughters and other children suckled from the same woman. Islamic jurists agree that inter-marriage between persons having foster relations is prohibited. Fosterage causes a permanent impediment to marriage. Two children having foster relations cannot marry. The marriage of a man with the wife of his foster son and foster father and with his wife’s foster mother is also prohibited. It is according to the verse ‘prohibited to you (for marriage) are ... foster-mothers (who gave you suck), foster sisters’. The Qur‘ān only prohibits marriage with the foster mother and sisters by this verse but Muslim jurists based on a hadith ‘whatever

32M. S. Sujimon, Istilhaq and Its Role in Islamic Law, 18 (2) ALQ (2003), 129.
39Al-Qurān, Al-Nisa:23
is prohibited by consanguinity is also prohibited by fosterage extended this prohibition to other relations and equated it with consanguinity and affinity.

Marriage is prohibited between the child and the foster father as it is presumed that the milk generates after pregnancy. The person who was the husband of the woman at the time of pregnancy which caused lactation is called the foster father. If a person married the wet nurse after she has suckled the child he will not be considered the foster father as he was not the cause for pregnancy or lactation. If the wet nurse is divorced and at the time of divorce she was neither pregnant nor lactating her ex-husband will not be considered the foster father. Similarly if two children are suckled by two different women but they are married to the same person the children will be considered foster siblings and the husband the foster father.

According to traditions the Prophet refused to marry the daughter of Hamzah and the daughter of Abū Salmah because Hamzah and Abū Salmah were the Prophet's foster brothers so their daughters were his foster nieces. He clearly said to marry these women was unlawful for him because of the prohibition caused by fosterage. Fosterage creates prohibition of marriage between the child and the family of the milk mother (wet nurse) and is sometimes used as an alternative to adoption. According to a tradition the woman who adopted Sālim ibn Abū Hudhaifah came to the Prophet to ask about the status of her relationship with her adopted son after revelation of the above mentioned verses. The Prophet advised her to make him her foster child by breast feeding him.

In spite of the prohibition of legal adoption it is a pious deed to look after an orphan or to be his guardian. The thing which is prohibited is to change the parent’s names or change the child’s lineage. The Qur’ān says that if you do not know who a child’s parents are then call the child as ‘your brother in faith’.

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43Altorki, Milk-Kinship, 233-234.
46Al-Qashīrī, Sahih Muslim, 923.
47Al-Qurān, Al-Ahzab:5
2-Kafālah:

Kafālah is Islamic alternative to adoption. The institution of kafālah primarily provides a mechanism to care for abandoned children. The word kafālah literally means ‘to nourish’ or ‘take charge of’.\(^{48}\) According to Ibn Manzūr ‘al-kāfīl’ is a person who looks after an orphan.\(^{49}\) Such a child has no right to the family name or inheritance of the adoptive parents. But the adoptive parents may give the child up to one third of their property by making a will. An illegitimate child if adopted will be associated to its biological mother and will inherit from her. To deprive the father of paternity rights in the case of an illegitimate child is a punishment as children whether legitimate or illegitimate were considered wealth in Arab society. Islam asked for deprivation of this wealth if the child is illegitimate. Generally to look after an illegitimate child is a duty of the mother and the state but such children may be taken into kafālah.\(^{50}\) By prohibiting adoption and encouraging kafālah Islam calls for a society based on truth and justice. If adopted children were to be treated as natural children then legal heirs would be deprived of their shares in inheritance which is against justice.\(^{51}\)

A baby abandoned by its parents is called a foundling. According to the Hanafis if there is a risk to the foundling’s life it is wājib\(^ {52}\) on the person who finds such a child to take care of it. If there is no risk to its life it is mandāb.\(^ {53}\) According to all schools to take care of the foundling is a collective duty of the community unless there is a risk of the death of the child in which case it is a personal duty of the person who finds her.\(^ {54}\) The person who finds a foundling should also act as the child’s guardian and should protect its interests. In the case of a dispute over guardianship the court shall decide the issue but the general rule is that a Muslim is preferred over a non-Muslim. If a person claims paternity of the foundling believing it to be his child, legitimacy of the child is established provided the conditions of a valid acknowledgement are fulfilled.\(^ {55}\) If the child is found in a Muslim locality it will be considered a Muslim according to all schools. The child will be presumed to be of the same religion which is prevalent in the locality in which it is found.\(^ {56}\) The responsibility for the foundling’s maintenance is on the ba‘it-al-māl (public funds) but if the guardian spends money on the foundling these funds are recoverable either from public funds or from the foundling after his/her death of the child in which case it is

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\(^{50}\)Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*, (Amsterdam: Amsterdam University Press, 2007), 118.

\(^{51}\)Ishaque, Islamic Principles, 401, pp.404-405, 406.


\(^{53}\)If the demand of commission of an act is not absolute the act is called commendable or mandāb. Abdul Rahim, *Islamic Jurisprudence*, 61; Sadr-al-Sharf‘ah, *Al-Tawdīh*, Vol. 2, 258.


maturity. According to the Shāfīʿīs if there is one claimant of paternity of the foundling there is no need for evidence or physiognomy to establish paternity. Being a Muslim is not a condition according to them in this case. According to the Ḥanafīs as well there is no need of evidence and paternity will be established by acknowledgement only. According to the Mālikīs paternity of a foundling is not established except by evidence. They accept circumstantial evidence in this matter for instance if it is known in the community that the claimant had a child but it was lost. The Ḥanbalīs are of the opinion that it is in the interests of the child to provide him/her with a parent and provider of maintenance so they don’t consider any condition for establishment of paternity except acknowledgement. Rules of Islamic law related to foundlings protect children irrespective of their status of legitimacy.

4- The Recognition of Islamic Alternative in the Convention on the Rights of the Child:

The Convention on the Rights of the Child 1989 is the most significant document and has contributed most in recognition and protection of the rights of the child. It is also the most ratified document in the world. It was adopted by the United Nations General Assembly in 1989 and entered into force in 1990. This document is ratified by 192 countries except Somalia and USA. A unique feature of the CRC is that it is the first ever UN human rights instrument to refer to Islamic law in one of its articles. In Article 20 kafālah is mentioned as an institution to care for children deprived of their families. This Article mentions kafālah with adoption and foster placement. Children under kafālah do not take the name of the adoptive family but they have rights to care, maintenance and education. Such a child will not inherit from the adoptive family. Article 21 is about adoption and does not apply to Muslim countries who consider adoption illegal as Article 20 explicitly mentions kafālah as an Islamic alternative to adoption.

Islamic law does not recognize legal adoption. To take a child into care is a pious deed and is recommended. The restriction in the case of adoption is that the adoptive family cannot give the child their name. The child will always be associated with its biological parents. Pakistani law by following Islamic law does not recognize adoption. Although a form of adoption does take place in practice, in law it does not create any mutual rights and duties between the adoptive parents and the adopted children. According to Article 35 of the Constitution of Pakistan 1973 it is a

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58 Shalabī, Ahkām-al-Uṣrah, 712; Nasir, Islamic Law of Personal Status, 168-169.
60 Hereinafter the CRC or the Convention.
61 Article 21 of the CRC makes express reference to the concept of kafālah as an Islamic alternative to the western concept of adoption.
62 Welchman, Women and Muslim Family Laws, 118.
responsibility of the state to protect marriage, family, the mother and the child. The state should therefore set up institutions for the care of abandoned children and orphans. A state sponsored system of kafālah should be introduced where the child can be adopted with agreement of biological parents but will not take the family name or inherit. When legal adoption is not recognised there must be an institutional set up to support abandoned children. The United Nations Committee on the Rights of the Child has shown concern that Pakistan does not have an alternative care system for abandoned children or children without parents. In its reports to the Committee Pakistan has said that most Pakistanis live with extended families who take care of children who have lost their parents. The Committee has urged Pakistan to formulate legislation for alternative care for children to ensure quality care standards and regular monitoring of such facilities. The Committee has asked Pakistan to make laws to take into consideration the views of the children in need of care during the procedure. The Committee showed concern that, although Pakistan in its report has said that adoption is un-Islamic so it refers to the Islamic system of kafālah, Pakistan does not have any laws to establish such system.65

5- Adoption in Pakistani Law and Problems in its Implementation

In Pakistani law adoption is not recognised unless there is a special custom of adoption in any family or tribe.66 According to the Guardians and Wards Act 1908 the guardian court has authority to appoint a guardian if this is in the welfare of the minor. Pakistan’s stand on adoption can be seen from the reports submitted on the Convention on the Rights of the Child by Pakistan in which Pakistan said that legal adoption is un-Islamic and being an Islamic State provisions related to adoption will not be applied in the case of Pakistan.67

Pakistani courts have frequently stated that adoption is un-Islamic. In Sher Afzal v Shamim Firdaus the Supreme Court of Pakistan said that ‘… there is no institution of adoption in Islamic law’.68 As Pakistan follows the rule of binding precedent, the decision of the Supreme Court is binding on all lower courts.

In Pakistani law legal adoption is only recognized where a special family or tribal custom is proved, which will prevail provided that the custom is given priority by

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68PLD 1980 SC 228; also see Arif Mansoor Ahmed v. Fayyaz Ali, 2000 YLR Lahore, p.2317.
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legislation over Muhammadan law. Generally rules of adoption in Pakistani law are based on Islamic law. An adopted child does not have the same rights as a biological child. The child has no right to the property of his adoptive father, neither in his life nor after his death. But an adoptive father, if he wants, can give her one-third of his property by bequest. In *Abdus Salam v. A. D. J. Jhang* the Supreme Court of Pakistan decided that an adopted child cannot inherit from her adoptive parents but has a right to inherit from her biological parents.70

Despite legal prohibition adoption is practiced in Pakistan.71 There are two ways in which this happens. The first is to use the name of the adoptive mother on the birth certificate at the time of discharge from the hospital. For this to work, arrangements are made with the doctor (or mid-wife) and the natural mother. The second is for the adoptive parents to file affidavits declaring that the natural parents have given the child into their care by their consent, without any undue influence or coercion and they are now responsible for the care of the child and will incur all expenses for her upbringing.72

In the Succession Act 1925 an adopted child is not included in the list of legal heirs. In *Mrs. Lillian Sen v. Mrs. Phyllis Merlin Xavier* the Karachi High Court observed that an adopted child is considered neither an heir nor kin so, it cannot inherit property from its adoptive parents. Adoptive parents and the adopted child have no mutual rights and duties so none could be judicially enforced.73

In *Irfana Shaheen v. Abid Waheed* the couple adopted an abandoned child after informing the police and respectable people in the locality. The couple separated afterwards. The Lahore High Court awarded custody to the adoptive mother and declared that no one can interfere with the right of an adoptive mother to custody of the child, except the biological parents. The Lahore High Court discussed the issue of abandoned children and said that according to article 35 of the Constitution of Pakistan 1973 it is the responsibility of the state to protect marriage, family, the mother and the child. The state should therefore set up institutions for the care of abandoned children and orphans. It is not only a constitutional but also a religious obligation.74

An adopted child is entitled to maintenance from the adoptive father although it has no right to inherit from him. In 2010 in *Muhammad Aslam v. Shazia Bano* the mother of three minors applied for their maintenance, one of them was an adopted child. The father argued that he is not obliged to maintain the adopted child although he said that if the adopted child is given into his custody he is ready to pay maintenance. The Lahore High Court held that an adopted child is not entitled to inherit from its adopted parents but it is entitled to maintenance.75

In Pakistan there is no statute declaring adoption illegal but case law tells us about the approach of the courts according to which adoption is considered illegal. An adopted child has no rights over its adoptive parents and vice versa. Despite this prohibition adoption occurs in practice. It is the responsibility of the state to set up

701988 SCMR 608.
72Ibid.
73PLD 2003 Karachi, 270.
74PLD 2002 Lahore, 283.
752010 YLR Lahore, 1327.
institutions for the care of abandoned children. A state sponsored system of kafālah should be introduced where the child can be adopted with the agreement of the biological parents but will not take the family name or inherit. When legal adoption is not recognised there must be an institutional set up to support abandoned children.

**Conclusion:**

Islamic law prohibits change of lineage that is why it is argued that legal adoption is prohibited in Islam. Pakistan being an Islamic state follows Islamic law and prohibits adoption. Total prohibition takes adoption out of the domain of law. Adoption is still practiced in Pakistan but no procedure or rules are there to regulate it. Kafālah is Islamic alternative to adoption but unfortunately Pakistan does not provide any such system to facilitate issueless couples. It is recommended that a state sponsored system of kafālah should be introduced where the child can be adopted with the agreement of the biological parents but will not take the family name or inherit. The Committee on the Rights of the Child has urged Pakistan to formulate legislation for alternative care for children to ensure quality care standards and regular monitoring of such facilities. The Committee has shown concern that, although Pakistan in its report has said that adoption is un-Islamic so it refers to the Islamic system of kafālah, Pakistan does not have any laws to establish such system.\(^{76}\) By introducing a kafālah system Pakistan will not only implement an important provision of Islamic law but will also comply with its international obligations.