Concept and Practice of Laws Relating to Adoption in Different Religion and Modern Societies: Special Reference to the Law of Islam

Abu Noman Mohammad Atahar Ali, University of Wollongong
Zafrin Andaleeb
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Abu Noman Mohammad Atahar Ali*
Zafir Andaleeb**

Introduction
Human civilization is thousands years old and its history of facts and concepts. Religion played a great role to develop the civilization. It is true that almost all the civilization that we see in the in ancient history are based on the religion. But religious laws and rules differ with one another. Among them adoption is a great concept available in most religions and societies. In fact, now-a-days, adoption has become a famous system among all without considering the religion and object of it. The general people along with the celebrities are doing a rampant practice of adopting child from home and abroad. As the latest great religion, Islam gives to human civilization the most scientific and logical aspects. But the so called adoption system is available in the Islamic concept or not, most of the Muslims are not aware of it. Most of the Muslims think that so called adoption system is also available in Islam. In Bangladesh Muslims take the adoption as "patok putro". But to be honest Islam does not permit the traditional adoption system though in every Muslim state of the world somehow the adoption system was practiced. The article aims at answering the concept at length.

General Concept of Adoption
Adoption is one of the most common options for infertile couples. It is the legal act of permanently placing a child with a parent or parents other than the birth (or “biological”) mother or father. An adoption order has the effect of severing the parental responsibilities and rights of the birth parent(s) and transferring those responsibilities and rights to the adoptive parent(s). After the finalization of an adoption, it believed that there is no legal difference between adopted children and those born to the parents.¹

* Lecturer, Department of Law and Justice, Southeast University.
** Lecturer, Department of Law and Justice, Southeast University.
There are several questions with regards to adoption, such as, whether the adoption is open or closed or is it by location and the origin of the child, such as domestic or international adoption. Each of these has its own features and rules.

**Objectives of adoption**

The main objective of adoption varies from one country to another, depending largely on social and legal structures. The inability to reproduce biologically is a common reason. Some couples or individuals adopt children even though they are fertile. Some may choose to do this in order to avoid contributing to perceived overpopulation, or out of the belief that it is more responsible to care for otherwise parentless children than to reproduce and son on.

Adoptees are mostly orphans. Another reason could be where a child is found abandoned and the birth parent is never traced. Or birth parents may place their child for adoption because they are unable to adequately care for the child, because they have failed to receive the resources they need to parent, or because they are pressured by their own parents or others.

Others may do so to avoid passing on inheritable diseases or out of health concerns relating to pregnancy and childbirth. Some out of fear of HIV/AIDS. Some believe that it is an equally valid form of family building, neither better nor worse than the biological route.

**Origin of Law of adoption**

Adoption is the admission of a stranger by birth to the privileges of a child by legally recognized form of affiliation. Amongst the ancient Greeks and Romans and some modern nations adoption was regulated by legal provisions. According to Roman law adoption was to create the legal relationship of father and son as if the adopted person was born by the adopter in a legal marriage. The adopted son used to get the name of the adopter and also was obligated to perform the religious duties of the adoptive father.

Marriage and sonship was present in *litera legis* of Hindu Law which recognized 12 kinds of sons of which there were five kinds of adopted sons. But modern Hindu Law recognized the *aurasa* or legitimate son, begotten by the man himself by the lawfully wedded wife. Of the adopted sons, it recognized only two kinds, the *dattaka* and *kritisra*. The *dattaka* form prevailed all over India, the *kritsinna* form prevailed in Mithila and adjoining district. *Nanda pandit* in his *Dattaka Mimansa* also accepted the adoption of a daughter. 7

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The main object of adoption in Hindu Law was religious to secure the spiritual benefit of adoptor and his ancestors by having a son for the purpose of offering cakes and libation of water to the names of adoptor and his ancestor. So adoption was considered necessary to continue the ancestral worship and confer spiritual benefit upon the departed souls by offering pindas. According to Hindu Law, a Hindu cannot go to the heaven if he has no son. So to secure a place in heaven is to take adoption. The second is secular approach, it is to secure an heir and perpetuate the adopter's name. Because, Hindu Law does not make any distinctions between a natural son and adopted son in the matter of inheritance, whether is in the application of personal law or secular law the adopted son has the same status with the natural son. From the above discussion we can say that adoption is a very ancient concept and it owes its origin to the Romans, Greeks as well as to the Hindus also.

Adoption in Islam: From the Pre-Islamic Period to Post-Islamic Concept

In Arab adoption was present in the day of jahaliyya or the Pre-Islamic period of ignorance. The custom was that, if one adopted a son, the people would call him by the name of the adopted father whom he would inherit as well. Muhammad (s.a.w) himself was fed by an adoptive mother during the first two years of his life and an important fact to keep in mind is that Muhammad himself had adopted a child. This was the case of Zayd the adopted son of Prophet Muhammad (s.a.w). Zayd was captured as a child during a raid, which was a norm before Islam. Khadija's nephew had brought him to her, and after she married Muhammad (s.a.w) she gave Zayd to him. At some point Zayd's actual family found out where Zayd was and went to Muhammad (s.a.w) to demand Zayd's return. All this took place before Nobuwat (Messengership) and regulations. Zayd was given a choice and Zayd chose to stay with Muhammad (s.a.w), it was after this that Zayd was adopted and became known as Zayd Ibn (son of) Muhammad. Zayd was one of the first to accept Islam. Muhammad (s.a.w.) arranged a marriage between Zayd and Zaynab bint Jash, the Prophet's cousin. This marriage was not a happy one, because Zaynab treated Zayd as if he was still a slave. Zayd came to Muhammad (s.a.w) on several occasions voicing his unhappiness, but Muhammad (s.a.w) advised him to stay in the marriage. When the divorce took place between them and Muhammad (s.a.w) wanted to marry Zaynab. At this juncture the question was arose by the enemies of Islam that how a father can marry his adoptive son's ex-wife?
Than Allah decreed the following:

"...Nor has He made your adopted sons your (real) sons; that is simply a saying of your mouths. But Allah speaks the truth and guides you to the (right way). Call them by their fathers' name that is more just in the sight of Allah. But if you do not know their fathers, they are your brothers in faith and your trustees. But there is no blame on you if you make a mistake therein. (What counts is) the intention of your hearts. And Allah is Oft-Returning, Most Merciful."

In this regard the famous Historian Haykal remarked:

"Who, among the Arabs, could implement this noble legislation and thereby openly repudiate the ancient traditions? The truth is, however, that Muhammad was the exemplar of obedience to God; his life was the implementation of that which he was entrusted to convey to mankind. His life constitutes the highest ideal, the perfect example, and the concrete instance of his Lord's command."

Muhammad Rashid Ridha states,

"Allah prohibited adoption in Islam and annulled all the judgments pertaining to adoption. The most important one of which was the prohibition of the wife of the adopted son to the fostering father as though he is the natural father. So Allah commanded his prophet to marry Zainab Bint Jahsh in order to abolish pagan custom."

However, from the above (33:4-5) Quarnic verse we can easily say that, the Qur'an gives specific rules about the legal relationship between a child and his/her adoptive family. The child's biological family is never hidden; their ties to the child are never severed. The Qur'an specifically reminds adoptive parents that they are not the child's biological parents. After this revelation, the marriage between Muhammad (s.a.w.) and Zaynab was completed. The lead of the Prophet (s.a.w) was once again established in the abolishment of old practices. And after this revelation Zayd was no longer known as Zayd ibn Muhammad. But was given the proper name; Zayd ibn Harithah. Then came a huge step that would not only shatter the taboos of the jahaliyya but also the taboos of today. Allah decreed:

"And when thou didst say to him who had received the favor of Allah and they favor Retain thy wife and fear Allah thou didst hid within thy self what Allah was made about to manifest; thou didst fear the people, but it is more fitting that thou shouldst fear Allah. Then when Zayd 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 difficulty to the believers in marriage with the wives of their adopted sons, when the latter have dissolved with the necessary (formality) with them. And Allah's command must be fulfilled."

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From the above discussion it becomes clear that adoption is not recognized in Islam on condition of pre-Islamic manner but it is not also prohibited by Islam from different perspectives. The guardian and child relationship has specific rules under Islamic law, which renders the relationship a bit different than what is common adoption practice today. It should be mentioned that, the Islamic term for what is commonly called adoption is *kafala*, which comes from a word that means “to feed.” In essence, it describes more of a foster-parent relationship. Some of the rules in Islam surrounding this relationship are as follows:

a. An adopted child retains his or her own biological family name (surname) and does not change his or her name to match that of the adoptive family.
b. An adopted child inherits from his or her biological parents, not automatically from the adoptive parents.
c. When the child is grown, members of the adoptive family are not considered blood relatives, and are therefore not *muhirim* to him or her. Essentially, members of the adoptive family would be permissible as possible marriage partners, and rules of modesty exist between the grown child and adoptive family members of the opposite sex.
d. If the child is provided with property or wealth from the biological family, adoptive parents are commanded to take care and not intermingle that property or wealth with their own.

They serve merely as trustees. These Islamic rules emphasize to the adoptive family that they are not taking the place of the biological family—they are trustees and caretakers of someone else’s child. Their role is very clearly defined, but nevertheless very valued and important. It is also important to note that in Islam, the extended family network is vast and very strong. It is rare for a child to be completely orphaned, without a single family member to care for him or her. Islam places a great emphasis on the ties of kinship—a completely abandoned child is practically unheard of. Islamic law would place an emphasis on locating a relative to care for the child, before allowing someone outside of the family, much less the community or country, to adopt and remove the child from his or her familial, cultural, and religious roots. This is especially important during times of war, famine, or economic crisis—when families may be temporarily uprooted or divided. Regarding this matter Allah has proclaimed that-

"Did He not find you an orphan and give you shelter? And He found you wandering, and He gave you guidance. And He found you in need, and made you independent. Therefore, treat not the orphan with harshness,"

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nor drive away a petitioner (unheard). But the bounty of the Lord - rehearse and proclaim!"16

So, the Quran is very clear on this matter. There is no adoption as we understand it in our day as like the pre-Islamic era. Does this mean that there is no adoption in Islam at all? The answer is no. There is adoption in Islam; it just has a different meaning. In reality Allah Ta’ala on many occasions calls for Muslims to take care of orphans: such as,

"It is not piety that you turn your faces towards the east or west; but piety is the one who believes in Allah, the last day, the angels, the book, the prophets, and gives his wealth, in spite of love for it, to the kinsfolk, to the orphans, and to the poor who beg, and to the wayfarer, and to those who ask."17

They ask you what they should spend. Say:

"whatever you spend of good must be for parents and kindred and orphans and the poor who beg and the wayfarers, and whatever you do of good deeds, truly Allah knows it well."18

Worship Allah and join none with Him in worship, and do good to parents, kinsfolk, orphans, the poor who beg, the neighbor who is near of the kin, the neighbor who is a stranger, the companion by your side, the wayfarer, and those whom your right hand possess. Verily Allah does not like such as are proud and boastful.19

And did He (Allah) not find you (Muhammad) an orphan and gave you a refuge? And he found you unaware and guided you? And He found you poor and made you rich? Therefore treat not the orphan with oppression.20

What Islam does in the case of adoption, as well as in other things, is to regulate the practice and correct what is wrong. In adoption before the restrictions were made it was much like the system of adoption that is known to most of us now. Where a child assumes the identity of an actual biological child of the adopters. Assuming all rights as a child proceeding from the couple naturally. The children’s names would be changed to the family name of the adopters, inheritance would result as in the case of a natural child and the natural parents and family of the adopted would be cut off from the child. Barriers of marriage would be assumed and non-related people would walk around in a relaxed way as if they are related. In Islam inheritance has been strictly laid out, so as to avoid family arguments and battles over money and properties of the deceased. Unfortunately the greed of people causes disruption in such matters. By promoting peace and strong ties within the family Islam has settled the dispute forever. Allah says:

Allah directs you as regards your children’s (inheritance) to the male, a portion equal to that of two females: if only daughters, two or more, their share is two thirds of the inheritance; if only one her share is half.21

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Our intent here is not to get into the reasons of why one gender's inheritance is more than another's, but rather the specifications of inheritance. As we have seen already the Qur'an is clear that those whom you adopt are not your true children, this is something that your mouth says. So in regards to inheritance, an adopted child will not inherit the amounts of one's natural children. This will automatically cut out any jealousy on behalf of any of those involved. What can be done, however, is that ¼ of one's assets can be divided as one chooses, so an adopted child could have this portion of inheritance, but no more can be given because it would upset the balance of what is to be divided and how.\(^{22}\)

There are some specific regulations also which should be maintained by any Muslim woman when she comes in front of an adopted son. Any Muslim woman has to cover, per Quranic order. Women are to cover in front of everyone except for the following:

...their husbands, their fathers, their husband's fathers, their sons, their husband's sons, their brothers or their brother's sons, or their sisters sons, or their women, or the slaves whom their right hands possess, or male servants free of physical needs, or small children who have no sense of the shame of sex.\(^{23}\)

From the above mentioned verses we can see that the name of an adopted son is not mentioned here. So if a couple brings an orphan in to their homes and if it is a male child, as soon as this male child reaches maturity every mature woman in the house would have to cover in front of him. For he is not Muhrim and is to be treated as such. No female in the household is to be alone with him, and this includes the woman who is raising him. Through the means of suckling a child by the woman care-giver a Muhrim relationship is formed between her, her immediate family i.e. mother, father, brother, sisters, daughters, and sons whatever the case may be. If a child is suckled by the woman until the child has gotten his full while he/she is under the age of two years old than a Muhrim relationship is established. This is based on the Quran and Sunnah (way) of the Prophet (s.a.w).

... (Prohibited in marriage are)...foster-mothers (who gave you suck), foster sisters; ...\(^{24}\)

The act of suckling a child under the age of two will set up a Muhrim relationship making marriage prohibited, and also make for a comfortable atmosphere within the home. A woman can uncover that are permissible to be uncovered, in front of her suckled adopted child as well can her female children she naturally has or also adopts and suckles.\(^{25}\)
Adoption under the Municipal Law of Bangladesh

Adoption of children is not permitted under Bangladesh law. However, Bangladesh citizens are permitted to apply for guardianship of children, effectively giving Bangladeshi prospective adoptive parents custody of children under the Guardianships and Wards Act 1890. A guardian may be a natural guardian, testamentary guardian or a guardian appointed by the court. In deciding the question of guardianship, two distinct things have to be taken into account - person of the minor and his property. Often the same person is not entrusted with both. The 1982 Guardianship and Wards Amendments Ordinances prohibit granting guardianship of Bangladeshi children to non-Bangladeshi parents. These restrictions have limited adoption of Bangladeshi children to only a handful each year. In Bangladesh the authority who is responsible of giving guardianship is the Family Court and Ministry of Home Affairs.

Requirements for Obtaining Legal Guardianship
1. Biological parent must sign an irrevocable release of the child before a Notary Public or Magistrate here in Bangladesh.
2. An application for legal guardianship must be made to the Family court. In Bangladesh, the Family Court has sole jurisdiction over family matters.
3. A 'No Objection Certificate' must be obtained from the Home Ministry.26

Process of Obtaining Legal Guardianship
1. If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides. If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly on conveniently by any other District Court having jurisdiction.27
2. The application should be done in a prescribed form stating all the required information.28
3. If the court is satisfied that there is ground for proceeding on the application, it shall appoint a guardian accordingly. If the minor is old enough to form an intelligent preference, the Court may consider that preference. The Court shall not appoint or declare any person to be a guardian against his will.29
Prospective adoptive parents must be at least 18 years old. A minor is incompetent to act as guardian of any minor except his own wife or child or where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

**Present Practice of Adoption in the World**

It has been mentioned earlier that adoption is a much famous and beneficiary for the childless parents. But nowadays this has been a matter of practice that the parents whose have much children are also adopting the babies. The practice is recently much observed among the Hollywood actress and actors even among some rich people whose grown-up children are not living with them.

For example, Madonna has adopted a 1-year-old Malawian boy on October, 2005 whose mother died a month after childbirth. The baby's father claimed that he was happy that his son was escaping poverty. Mentionable that, pop-star Madonna and her husband Ritchie have a son, Rocco, and also a daughter, Lourdes. Another Hollywood star Angelina Jolie adopted three children, Maddox, Pax, and Zahara, though she got a biological daughter named Shiloh.

Adoption is a much known matter in home and abroad, in fact. Especially in western countries it is very popular. According to the statistics, in 2000 and 2001, about 127,000 children were adopted annually in the United States. The majority of Americans are personally affected by adoption. In 2005 alone, U.S. families adopted over 22,700 children from other countries. The majority of internationally adopted children are young. In 2004, 40 percent were under 1 year of age and an additional 45 percent were between the ages of 1 and 4. In England, 3,300 children were adopted from care during the year ending 31st March 2007.

It will not be an increased comment if we say that taking babies as adoption from different countries have become a fashion for the celebrities of the world now. However, it cannot be commented as a bad practice because the babies they are adopting are either from vulnerable sections of the society or from and suffered section by any disability. Further, they supposed to take care of the adopted babies perfectly. But to speak about the purpose of this kind of adoption is neither spiritual nor material.

**Practices of Adoption in Different Muslim Countries**

The Muslim countries are also not backward for adopting children despite the fact that adoption has no strong legality in Islam. As the
Muslim world is very diverse, the following examples illustrate the fact that it is necessary to put any kafalah decision in its national context in order to understand its meaning. A special focus is put on the potential “international” aspect of a kafalah. a) Countries with strict application of a “non international kafalah” are Iran, Mauritania, Egypt.

They reject kafalah at the international level, based on a strict interpretation of the Sharia and rejecting all equivalence between kafalah and adoption. Thus, abandoned children only have limited possibilities to leave their country in order to benefit from a placement in abroad, except by relatives. At national level, child placements in non-biological families exist, but remain very limited or outside the legal framework (for example, traditional family placements). b) Countries with a “case-by-case” solution such as: Morocco, Algeria, Jordan and Pakistan.

They estimate that the situation of children deprived of family and the lack of national applicants for kafalah is such that it may be necessary to allow international kafalah, as long as the applicants respect some of the procedural conditions for a kafalah (for example, the conversion to Islam).

Morocco allows for international placements of abandoned children, in favor of nationals living abroad, but also by foreigners. In Pakistan, according to law, non-Muslim children may be adopted by non-Muslim applicants, whether nationals or foreigners. However, it is very difficult to find evidence of this practice and to know how the procedures are dealt with. Algeria and Jordan have systems, which privilege national candidates, but both countries allow for the placement of children abroad, either with nationals or with foreigners, under the condition that they have the same religion as the child, meaning that they are Muslim.

However, international placements remain rare and documented to a limited extent.

It is to be noted that in Jordan, the word kafalah refers to the monthly financial support granted to children living with a single parent (for the greater part the mother). c) Countries having legislation on adoption or on the “conversion” of kafalah: Tunisia and Indonesia.

Even though they are very much attached to Islamic values, these countries allow for adoption, with full legal consequences in relation to affiliations. However, by law (in Indonesia) or by practice (in Tunisia), adoption is limited to national applicants, living in the country or abroad, but of the same religion as the child.39

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Common Findings
In the great majority of these countries, national legislation explicitly prohibits adoption, with a particular emphasis on concordance of religion between the adults and the child. The concept based in the Quran is respected and is the basis of this choice. The reasons for abandonment are very similar from one country to another: children born out of wedlock are the first victims of abandonment, and may remain stigmatized throughout their life. The issues of secrecy of kafalah and the name of the abandoned child are direct consequences of the previous issue, but efforts are being made, in an increasing number of countries, to oppose this practice. With the exception of Morocco, the international placement of children under kafalah remains rare, or even inexistente, except for nationals living abroad. However, it seems that individual cases have been processed over the years, but it is very difficult to have them documented.40

Comparison of Law of Adoption between Islamic Law and Other Laws
Although there is no general law of adoption, yet it is permitted by a statute amongst Hindus and by custom amongst a few numerically insignificant categories of persons. Since adoption is legal affiliation of a child, it forms the subject matter of personal law. Muslims, Christians and Zoroastrians have no adoption laws and have to approach court under the Guardians and Wards Act, 1890. Muslims, Christians and Zoroastrians can take a child under the said Act only under foster care. Once a child under foster care becomes major, he is free to break away all his connections. Besides, such a child does not have legal right of inheritance.41

The Islamic concept of adoption is somewhat different from that of the modern concept. The Quran has clearly directed the Muslims to maintain for their adopted children the names of their real fathers and if their real fathers are not known, then they should be considered and called brethren in faith or the adopted children of the person concerned. This signifies that the declaration of the adoption consists of words having no corresponding objective reality. A mere pronouncement does not change realities, alter facts, or make a stranger a relative, or an adopted individual a son. A mere verbal expression or figure of speech cannot make the blood of a man runs in the veins for the adopted son, produce feelings of fatherly affection in the man’s heart or filial emotions in the heart of the boy, or transfer either the genetic characteristics or physical, mental, or psychological traits.42

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32. This baby was adopted from Cambodia and he initially lived in a local orphanage in Battambang. Jolie decided to apply for adoption after she had visited Cambodia twice, while filming Tomb Raider and on a UNHCR field trip in 2001.
33. This baby was from Vietnam, who was born on November 29, 2003 and abandoned at birth at a local hospital, where he was initially named Pham Quang Sang. Jolie adopted the boy from the Tam Binh orphanage in Ho Chi Minh City.
34. Zahara was adopted from Ethiopia and she was hospitalized for dehydration and malnutrition.
38. British Association for Adoption & Fostering <http://www.baa.org.uk/info/stats/england.shtml>  
40. International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC, December, 2007), Specific case KAFALAH <http://www.crin.org/docs/Kafalah.BCN.doc>  
42. <http://www.angelfire.com/la/IslamicView/Adoption.html>  
44. Adopting a Child in Islam-by Huda, islam.about.com/cs/parenting/a/adoption.htm

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