



Legal Discourse of Abandoned Children in Pakistani Law Analysis

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ABSTRACT

In Pakistan, the legal status of abandoned and parentless children is insufficiently addressed, leading to significant violations of their rights. Despite a substantial child population, existing legal frameworks lack comprehensive protections for these vulnerable individuals. Islamic law offers clear guidelines for the rights of abandoned children, but specific legislation in Pakistan is absent. Relevant laws are scattered across various Acts, creating a fragmented approach that fails to safeguard these children's interests. This gap highlights the urgent need to integrate Islamic principles into Pakistani law to enhance their legal standing and rights. The research Paper is an analytical approach, focusing on the comparison between Islamic law and existing Pakistani laws regarding abandoned children. It involves a thorough examination of the relevant provisions within Islamic jurisprudence that address the rights of foundlings, particularly concerning birth registration and citizenship. By assessing how these principles can inform and enhance legal frameworks in Pakistan, the study aims to identify gaps and inconsistencies within current legislation. The findings of the research indicate that Islamic law provides a strong framework for protecting the identity and rights of abandoned children, emphasizing the importance of registration and citizenship.

Keyword: Child Protection Units, Child Protection and Welfare Bureaus, Convention on the Rights of the Child, Non-Governmental Organizations.

INTRODUCTION

Status of Abandoned Child in Constitution of Pakistan

In Pakistan, statutory legislation, court rulings, and constitutional guarantees all influence the legal status of abandoned children. By guaranteeing that they get care, protection, and developmental opportunities, these legislative frameworks seek to safeguard the rights, legal status and welfare of abandoned children (Zaheer, et al., 2021; ul Haq, 2017; ul Haq, 2012).

The Constitution of Pakistan guarantees a range of fundamental rights to all citizens, including children, regardless of their circumstances. These rights, which guarantee their safety, well-being, and equal treatment under the law, are especially important for vulnerable groups, including abandoned children. Article 9 (Right to Life and Liberty), Article 25 (Equality of Citizens), and Article 35 (Protection of Family, Women, and Children) are important constitutional provisions that require the state to protect the rights of children who have been abandoned (Shah, et al., 2024; Yasmin, et al., 2020).

Article 9 states, *“No person shall be deprived of life or liberty save in accordance with the law.”* This provision establishes the fundamental right to life and personal liberty as inalienable. For abandoned children, this article is particularly significant as it obliges the state to take all necessary measures to protect their lives and ensure their well-being.

This implies that the government must offer sufficient care, including access to basic commodities, housing, and medical attention. In order to protect their right to a safe and respectable existence, the state must step in and protect abandoned children, who frequently face increased hazards such as malnourishment, abuse, and exploitation. By saving and rehabilitating abandoned children, organizations such as Child Protection Units (CPUs) and welfare groups play a vital part in carrying out this constitutional mandate.

Article 25 affirms that, *“All citizens are equal before the law and are entitled to equal protection of the law.”* In order to guarantee that abandoned children have the same legal protections and chances as other children, it also expressly forbids discrimination on any basis. The danger of institutional bias or societal neglect toward abandoned children is discussed in this article. It requires that these children be treated equally by the state and society in all spheres, including social assistance, healthcare, and education. For instance, their status cannot be used as a reason to deny abandoned children access to healthcare services or educational institutions. Their incorporation into society is guaranteed by the non-discrimination principle, which also fosters equality and lessens stigma (Ahmad, et al., 2021).

Article 35 asserts, *“The State shall protect the marriage, the family, the mother and the child.”* This provision underscores the state’s responsibility to safeguard the

welfare of children, particularly those who lack family support, such as abandoned children.

Article 35 requires the government to create and uphold systems that offer care and protection for abandoned children. To guarantee that abandoned children are put in secure, caring settings, shelters, child protection facilities, and foster care systems are established. The necessity of family reunification or alternative family-based care through adoption or *Kafala* (Islamic guardianship), when appropriate, is also emphasized in the text.

Statutory Framework for Protection of Abandoned Child

a. Guardian and Wards Act, 1890

Governs the appointment of legal guardians for minors, including abandoned children.

The court prioritizes the child's welfare when appointing a guardian.

b. Pakistan Penal Code (PPC), 1860

Section 328 Exposure and abandonment of child under twelve years by parent or person having care of it “Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for- a term which may extend to seven years, or with fine, or with both (Naseer, et al., 2024).

National Commission on the Rights of the Child Act, 2017

This was passed in compliance with the UN Convention on Rights of Child 1989 (CRC) for the rights of child in accordance with international obligation.

Section 2 (c) of the Act defines “*child rights*” to mean and include, but limited to, *rights of child in the United Nations' Convention on Rights of the Child and in any other domestic law;*

Section 2 (b) of the Act defines “*child*” to mean *any person below the age of eighteen years;*

As per Section 15 (b) of the Act, the functions of the National Commission on the Rights of Child formed under this Act include to “*liaise with provincial commissions set up under provincial laws and other concerned provincial organizations.*”

Article 2 of CRC provides that a child who is temporarily or permanently deprived of his/her family environment is entitled to special protection and assistance provided by the State. States Parties shall in accordance with their national laws ensure alternative care for such a child could include foster placement, *kafalah* of Islamic law, adoption or necessary placement in suitable institutions for the care of the child.

Article 20 of CRC defines *kafalah* as an institution to care for children deprived of their families. This Article mentions *kafalah* with adoption and foster placement.

c. Punjab Destitute and Neglected Children Act, 2004:

Provides for the rescue, rehabilitation, and care of destitute and abandoned children. Establishes child protection institutions for their welfare.

Section 3 (e) (e) “*child*” means a natural person who has not attained the age of eighteen years”

Section 3(k) (xi) “*destitute and neglected child*” means a child who is abandoned by the parents or guardian.

Section 24 “***Rescue of destitute and neglected children***” A child protection officer may take into custody a destitute and neglected child and produce him along with the complaint before a court within twenty four hours of taking the child into such custody.

Provided that a child protection officer may, before taking a child into custody examine the child to satisfy himself that he is a destitute and neglected child:

Provided further that where a destitute and neglected child is in the custody of his parent or guardian, the officer shall not take him into custody but shall in the first instance, make a report to the Court, unless the child is found begging or is a victim of an offence alleged to have been committed by his parent or guardian (Rana, et al., 2021).

Section 25, “Temporary custody”. Whenever a destitute and neglected child is taken into custody in accordance with section 24, he shall immediately be produced before the Court and if immediate production of the child before the Court is not possible due to any reason, shall immediately be taken to the nearest child protection institution for temporary custody till his production before the Court within the stipulated time.

Section 28. “Entrustment of the custody of destitute and neglected child”.

(1) If the Court is satisfied that the child brought before it, is a destitute and neglected child and that it is expedient to deal with him, the Court may order that he be admitted to a child protection institution or his custody be entrusted to a suitable person, who is able and willing to look after the child, until such child attains the age of eighteen years, or in exceptional cases for a shorter period.

(2) The Court which makes an order for entrusting a child in the custody of a suitable person may, when making such an order, require such person to execute a bond, with or without sureties, as the Court may require, undertaking to be responsible for the care, education and well-being of the child and for the observance of such other conditions as the Court may impose for ensuring welfare of the child.

(3) The Court that makes an order for entrusting the custody of a child to a suitable person under this section may order submission of periodical reports as to the welfare of the child to the Court by an authorized officer.

(4) The Court may from time to time during the custody of a child by an authorized person, compel the production of the child in the Court to satisfy itself that the conditions of such custody are being carried out.

(5) If on anytime it appears to the Court, from information received from any source that there has been a breach of any condition contained in the bond, it may, after making such inquiry as it deems fit, order the child to be admitted into a child protection institution or be entrusted to the custody of any other suitable person.

The Act also caters to a destitute and neglected child placed outside the jurisdiction of the court (Section 29) and warrant to search for such a child (Section 30).

d. Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010:

Criminalizes the abandonment and exploitation of children. Sets up mechanisms for their rescue and rehabilitation.

Section 2 (d) defines a “*child*” for the purpose of this Act means a natural person who has not attained the age of eighteen years;

Section 2 (e) provides that a "child at risk" means a child in need of protection 1 [and includes a child] who; (xi) is left abandoned by his parent or parents as the case may be, which will include a child born out of wedlock and left abandoned by his parent;

Section 20 provides that “Subject to section 19, a Child Protection Officer upon information or complaint, may take into protection a child at risk and shall produce him before the Court within twenty-four hours of taking the child at risk into such protection”.

Section 22 states that

(1) The Court before which a child at risk is brought under section 20 or is produced under section 27, shall examine on oath the person who has brought the child risk or made the report and record the substance of such examination and may order the admission of the child at risk to a Child Protection Institution pending any further inquiry, if any.

(2) On the date fixed for the production of the child at risk for the inquiry or on any subsequent date to which the proceedings may be adjourned, the Court shall hear and record substance of evidence which may be adduced and consider any cause which may be shown rendering admission of a child at risk necessary to Child Protection Institute

Section 25 caters to “*Entrustment of protection of a child at risk*: (1) If the Court is satisfied that the child at risk brought before it, is in need of protection and that it is expedient to deal with him, the Court may order that he be admitted to a Child Protection Institution or his protection be entrusted to a suitable person, who is able and willing to look after the child at risk, until such child at risk attains the age of eighteen years, or in exceptional cases for a shorter period.

Institutional Support and Welfare of Abandoned Child.

By providing a variety of services targeted at their protection, care, and rehabilitation, Pakistan's government and non-governmental organizations (NGOs) both play a crucial role in helping abandoned children. These programs guarantee that kids without parental guidance get the help they need to have secure and satisfying lives. Child Protection Units, Welfare Organizations, and Foster Care Programs are important services that deal with many aspects of a child's needs.

Child Protection Units (CPUs)

Child Protection Units are government-run centers established under provincial child protection laws, such as the Punjab Child Protection and Welfare Act, 2010. These units are responsible for rescuing and rehabilitating abandoned children

found in vulnerable situations. CPUs work closely with law enforcement agencies, healthcare providers, and social workers to ensure that children who are abandoned, neglected, or at risk of abuse are provided immediate protection.

Once rescued, children are placed in secure environments where they receive psychological support, education, and healthcare. CPUs also play a pivotal role in tracing the families of abandoned children, where possible, and facilitating reunification if it is in the child's best interest. In cases where reunification is not feasible, CPUs coordinate with foster care systems and adoption services to find a long term family based solution.

Welfare Organizations

Several NGOs in Pakistan, such as the Edhi Foundation and SOS Children's Villages, have been instrumental in providing comprehensive care to abandoned children.

- **Edhi Foundation**

One of Pakistan's largest humanitarian organizations, the Edhi Foundation operates orphanages, shelters, and hospitals across the country. It provides abandoned children with shelter, food, healthcare, and education. The foundation is widely known for its cradle program, which encourages parents unable to care for their newborns to leave them anonymously in cradles placed outside Edhi centers, ensuring the child's safety and care.

- **SOS Children's Village**

This organization focuses on providing abandoned and orphaned children with a family-like environment. Children live in small, community based homes under the care of trained caregivers, ensuring emotional and psychological well-being alongside education and healthcare. SOS also emphasizes vocational training, preparing children for independent adult lives.

- **Foster Care Programs**

Foster care is a crucial component of providing family-based care for abandoned children. While adoption is limited in Pakistan due to legal and religious considerations, foster care offers an alternative that aligns with Islamic principles under the concept of *Kafala*. In this system, families take on the responsibility of caring for abandoned children without changing their legal lineage or inheritance rights.

Together, these services form a comprehensive safety net for abandoned children in Pakistan. Through Child Protection Units, Welfare Organizations, and Foster Care Programs, the government and NGOs work to rescue, rehabilitate, and provide long-term care for children who have been abandoned. These efforts are crucial in ensuring that every child has access to a safe environment, education, healthcare, and the opportunity to thrive.

NADRA's Policy for Registration of Abandoned Children

Orphanage Registration Policy

In November 2024, NADRA introduced the Orphanage Registration Policy, which allows the head of an orphanage to become the legal guardian of an abandoned child by providing an affidavit. This policy eliminates the previous requirement of

obtaining a guardianship certificate from the court for each child, thereby streamlining the registration process.

Assignment of Parentage

For children with unknown parentage, NADRA's system assigns a randomly selected name from its database to fulfill the requirement of a father's name during registration. However, this practice has faced criticism due to potential issues related to inheritance and family lineage.

Role of Judiciary in Defining Legal Status of Abandoned Child

The legal framework for the care and protection of abandoned children in Pakistan has been significantly shaped by the judiciary. Courts' interpretations and applications of laws pertaining to the care, guardianship, and rights of abandoned children are influenced by following significant case laws:

1. Guardianship and Adoption of Child of Unknown Parentage

Before Muhammad Nawaz Abbasi, C.J., Syed Jaffar Shah and Muhammad Yaqoob, JJ

NADRA AUTHORITIES: In the matter of Suo Motu Case No. 12 of 2010, heard on 22nd June, 2011.

The Supreme Appellate Court of Gilgit-Baltistan issued comprehensive directives to address the issues surrounding adoption and guardianship in the region. It clarified that while adoption is permissible under Islamic teachings as per Surah Al-Ahzab, it must adhere to specific legal and religious requirements. Guardianship does not equate to adoption, and the latter requires a formal court declaration (Rooh, et al., 2025). The court restricted Guardian Courts from issuing guardianship certificates for children in orphanage centers without proper legal safeguards, especially for those whose **parentage is unknown**, and required prior permission from the Home Department. Custody of adopted children could not be taken out of the court's jurisdiction without special permission, and guardianship certificates were to be issued only after thorough verification of the applicant's background. Orphanages were mandated to notify the Home Department upon taking custody of any child, maintain proper records, and ensure children of **unknown parentage** are accepted only with verified undertakings about their origin. The court directed NADRA to register children based on guardianship certificates and required adoptive parents to provide undertakings to prevent unauthorized international relocation of the children. Welfare organizations and orphanages were ordered to obtain proper registration under the Voluntary Social Welfare Agencies Ordinance, 1961, or cease operations if unauthorized. Lastly, the court instructed government authorities to collaborate with the Ministry of Interior to legislate a comprehensive framework on adoption to ensure the protection of children's welfare and rights.

2. Adoption of Abandoned Child

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The Supreme Appellate Court found that the Guardian Judge and the Chief Court had failed to properly assess the case, as neither provided specific reasons nor identified any unfulfilled conditions from the *2011 GBLR 373* judgment. Their decisions lacked thorough analysis and were not self-explanatory. Emphasizing the

rights of the child, the court highlighted that a parentless child has a fundamental right to be adopted by genuine adoptive parents who can provide a good upbringing, education, and a fruitful life. It noted that adoption by capable individuals reduces the burden on care institutions and benefits society by transforming deserted children into honorable members of the community. The court further stressed that financially stable and sound individuals should be encouraged to adopt parentless children, rather than being discouraged by procedural hurdles, as such efforts promote societal prosperity and relieve welfare organizations. Consequently, the Supreme Appellate Court converted the petition into an appeal, granted the guardianship certificate to the petitioners, and acknowledged their ability to provide a better life for the child compared to the institution where the child had been living.

The case underscores the importance of judicial diligence in evaluating adoption cases, recognizing the rights of parentless children, and supporting genuine adoptive parents. The Supreme Appellate Court set aside the decisions of the lower courts and facilitated the adoption, highlighting the societal and individual benefits of empowering capable individuals to care for deserted children.

CONCLUSION

Abandoned children in Pakistan suffer tremendous risks, necessitating a diverse legal framework to safeguard their fundamental rights and give opportunities for care, protection, and rehabilitation. Pakistani law handles these children's special needs through a combination of constitutional provisions, statutory enactments, and religious beliefs, including criminalizing abandonment, mandating institutional support, and providing avenues for custody, guardianship, and adoption. The Pakistan Penal Code (Section 328), the Juvenile Justice System Ordinance, and provincial laws such as the Punjab Child Protection and Welfare Act, 2010, all serve as examples of legal mechanisms in place to protect abandoned children from neglect, abuse, and exploitation while also fostering opportunities for their development and integration into society. Despite the complete legal structure, there are still problems to efficiently applying these rules. The gap between legislation and on-the-ground implementation highlights the need for improved cooperation among government departments, international organizations, and civil society players. Addressing these concerns would necessitate a collaborative effort to strengthen institutional capacity, improve public awareness, and guarantee that resources are allocated to promote child welfare. Pakistan may work to provide abandoned children with a safe, nurturing environment that protects their dignity and promotes their future growth by building on current legislation and using community-based and religious approaches such as *Kafala*.

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