

The Legal Status of Abandoned Children: A Comparative Study of Shariah and Pakistani Law

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Abstract

This study explores the legal status of abandoned children through a comparative lens of Shariah and Pakistani law. Abandonment of children raises critical concerns related to identity, guardianship, inheritance, and social protection. Under Shariah, the concept of kafalah (foster care) ensures the child's welfare without conferring biological lineage or inheritance rights, while upholding dignity and care as religious obligations. Influenced by Islamic principles and modern legal practices, Pakistani law provides mechanisms for guardianship, child registration, and welfare under various statutes, including the Guardian and Wards Act and Child Protection laws. This comparative analysis highlights the difference between the two legal systems, focusing on child rights, state responsibilities, and societal roles. The research Paper adopts an analytical approach, focusing on the comparison between Islamic law and existing Pakistani laws regarding abandoned children. It involves thoroughly examining 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 study concludes with suggestions for legal reforms to strengthen the protection and integration of abandoned children by both Shariah and constitutional principles of Pakistan. 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.

Keywords: *Abandoned Children, Law of Pakistan, Islamic Law, Registration, Citizenship.*

Introduction:

Islamic law offers clear guidelines to protect the rights and identity of abandoned children, including birth registration and citizenship. However, Pakistan's existing laws are fragmented and lack specific provisions, highlighting the need for legislation based on Islamic principles to support these vulnerable children.

In the context of Islamic law, abandoned children, known as *Al-Laqlt*, have a specific and important place.¹ These kids, whose parents frequently abandon them, deal with a variety of issues about their legal status, social welfare, and inalienable rights. Islam places a high value on protecting children since it sees them as important members of society and a trust from Allah. This viewpoint emphasizes society's moral and legal duties to *Al-Laqlt*, guaranteeing their advancement and well-being.²

In defining the word *Laqlt*, the Muslim jurists provide details on the definition. Several points relevant to *Laqlt* are highlighted and, to a certain extent, compared and contrasted with the various definitions of *Laqlt*. This might be due to the opportunity they had in giving such definitions based on the nature of *Laqlt* in their environment and surroundings at that period.

The *Hanafi* jurists provide several definitions for the word *Laqlt*. One of the definitions states that *Laqlt* is confined to a newborn baby who is abandoned by his parents for fear of poverty or to escape the charge of suspicion or accusation.³ The *Hanafi* jurists also define *Laqlt* to mean a child who is abandoned for fear of poverty or accusation of adultery.⁴ These two definitions clearly show that the focus of the *Hanafi* jurists is on the reasons for abandonment, which are poverty and unknown paternity (allegation of adultery).

Scholars' Views on the Care of Foundlings: According to the *Hanafi* school, it is recommended (*Mandub*) to pick up a foundling, as it is considered one of the most virtuous deeds.⁵ This is because it leads to the preservation of life. The act becomes an obligation (*fard kifaya*) if there is a reasonable assumption that the child will die if not rescued, for example, if the child is found in a dangerous place,

¹ Al-Mawardi, Ali ibn Muhammad. *Al-Ahkam Al-Sultaniyyah*. Translated by W. Montgomery Watt. London: Curzon Press, 1978.

² Bukhari, *Sahih Bukhari*, trans. Muhammad Muhsin Khan (Riyadh: Dar-us-Salam Publications, 1997); Al-Mawardi, *Al-Ahkam Al-Sultaniyyah*, trans. W. Montgomery Watt (London: Curzon Press, 1978); Al-Buti, Muhammad Sa'id Ramadhan, *Islamic Teachings on Orphans and Foundlings* (Damascus: Dar al-Fikr, 2005).

³ Al-Sarakhasi, al-Mabsut, Vol. 10, 209.

⁴ Kamal Al-Din Muhammad Ibn Abd Al-Wahid Al-Siwasi Ibn Al-Humam, Sharh Fath Al-Qadir (N.Pp: Dar Al-Fikr, N.D.), Vol.6, 110. 2nd Ed.

⁵ Al-Sarakhsi, *Al-Mabsut*, Vol. 10, p. 150.

like a cave or other perilous location. The objective is the preservation of the child's life.

According to the majority of scholars, picking up a foundling is a social responsibility (fard kifāya), unless there is a risk of the child's death, in which case it becomes an individual obligation (fard 'ayn).

The following are some other secondary perspectives about the foundling (laqīt):⁶

The person who finds the foundling has priority over others in caring for the child. If they wish, they can take on the responsibility of raising the child and agreeing on the terms. Alternatively, they may bring the matter to the judge, who can order someone else to raise the child at public expense. This is because the bayt al-māl (public treasury) is allocated to meet the needs of all Muslims. However, if the foundling has his or her wealth, the rights to their maintenance do not fall on the public treasury. This ruling is agreed upon by scholars.⁷

If the person who picks up the child finds money with the foundling, the maintenance and expenses should be taken from the foundling's wealth, as they are no longer in need of public funds. If the person spends from their wealth on the foundling, and the judge permits it, they have the right to recover the expenses from the foundling once they reach maturity. However, if they spend without the judge's consent, they are considered to have made a voluntary contribution and cannot claim reimbursement from the foundling once they reach adulthood.

The foundling, like other found items (laqta), is considered a trust (Amānah) in the hands of the person who picks it up.

The guardianship of the foundlings, regarding their care, education, marriage, and management of their wealth, lies with the qāḍī (judge). This is based on the saying of the Prophet Muhammad: *"The ruler is the guardian of one who has no guardian."*⁸ The person who finds the child does not have the authority to marry the child off or manage their wealth.

The dowry is paid from the public treasury (bait al-māl) if the ruler marries a foundling (laqīt), unless the foundling is wealthy, in which case it is taken from his own property. The public treasury also pays for the foundling's necessities, such as clothing, food, and medical attention. According to Umar and Ali (may Allah be pleased with them), this practice is carried out because the bait al-māl is intended

⁶ *Al-Mabsūt* .vol. 10, 209, *Al-Badā'i'* vol. 6, p. 197, *Fatḥ al-Qadīr* . 1000, *Taba'in al-Ḥaqā'iq* (vol. 3, 297, *Mukhtaṣar al-Ṭahāwī* (p. 181), *Majma' al-Ḍamānāt* (p. 211 and following).

⁷ Ibn Qudamah, *Al-Mughni* 5:683; Ibn Rushd, *Bidayat al-Mujtahid* 2:205; Al-Nawawi, *Mughni al-Muḥtāj* 2:427.

⁸ Al-Katani, *Takhreej wa Tahqiq Ahadith Tuhfat al-Fiqhā'*. Vol. 3, 510.

to help those in need, just as it is given to others who are less fortunate, such as the disabled. Furthermore, the bait al-māl is the rightful owner of the foundling's inheritance.⁹

The bait al-māl settles any financial obligations incurred on behalf of the foundling, and the state treasury also covers the foundling's blood money (diyyaa) and other responsibilities.

The foundling is considered a free Muslim: Since freedom is a person's natural state and the idea is that things stay the same unless proven otherwise, the foundling is seen as a free Muslim. Furthermore, because this is the prevailing law and the seeming order, everybody who lives there is automatically seen as free because the land is a place of Islam and freedom. They are also regarded as Muslims since they adhere to Islam.

Therefore, if a foundling is found in an Islamic country, they are regarded as Muslim, even if they die washing, praying, and being buried according to Muslim practices. However, if the foundling is found in a non-Muslim area, such as a Christian or Jewish monastery or in a village with no Muslims, they are regarded as dhimmi (a non-Muslim living under Muslim rule), following the apparent condition. If a dhimmi finds a foundling in an Islamic land, the child is considered Muslim, as the place of discovery (the land) is the determining factor.¹⁰

According to a narration from *Al-Nawadir* (reported by Ibn Sam'ah), the status of the foundling is determined by the religion of the one who finds the child, not by the location, because the "hand" (meaning custody or possession) is stronger than the location. This is evidenced by the fact that the responsibility of the parents supersedes the responsibility of the place.¹¹

The more accurate view holds that if a Muslim lives in that country, the child is Muslim since Islam is the dominant religion, supported by the narration of Ahmad and al-Daraqutni: "Islam prevails and nothing surpasses it."¹²

A foundling's ancestry is unknown. The ancestry is established, and the claim is legitimate even if the foundling is claimed as the child of a parent. Accordingly, even in the absence of proof of ancestry, a claim that the child was found by the person who found it or by anybody else that the child is his son/his daughter is taken seriously. Such assertions should, in theory, only be supported by proof.¹³

⁹ Al-Zayla'i, *Nasb al-Rayah*. Vol. 2, 167.

¹⁰ Al-Ramli, *Mughni al-Muhtāj*, vol. 2, 411.

¹¹ Ibn Rajab, *Al-Qawā'id*, 53.

¹² Ibn Abī Shaybah, *Badā'i' al-Ṣanā'i'*, 217.

¹³ Ibn Rushd, *Bidayat al-Mujtahid*, vol. 2, 204.

The reasoning for this is clear: the claimant is asserting something that could either be true or false, so one must favor one side over the other with evidence, which is not present in this case.¹⁴ This preference is based on the verse from the Qur'an about the family of the wife of the Egyptian Aziz:

قَالَ هِيَ رَأَوْكُنِي عَنْ نَفْسِي وَشَهِدَ شَاهِدٌ مِنْ أَهْلِهَا إِنْ كَانَ قُرْبِيُّهُ قَدْ مِنْ قُبُلٍ فَصَدَقَتْ وَهُوَ مِنَ الْكَاذِبِينَ¹⁵

Translation: *Yusuf (Joseph) said: ' (No indeed! In truth) it was she herself who sought to seduce me for her purpose.' And (in the meanwhile) one of her household (who was an infant) bore witness: 'If his shirt is torn from the front, then she has spoken the truth and he is of the liars.*

The distinguishing mark here indicates that the claim is more likely to be true, as it is a form of physical evidence. If neither of the claimants provides a distinguishing mark, or if each provides evidence of lineage, the child is considered to be their son, as neither claimant has a stronger case than the other. It has been narrated from Umar (may Allah be pleased with him) in a similar case that he said: "He is her son, and he inherits from her and from them both."¹⁶

If one of the claimants presents evidence, and the other presents a distinguishing mark, the claimant with the evidence is preferred because their claim is supported by stronger proof.

The Shafi'i school holds that if two people claim the foundling and neither has evidence, the child should be presented to a *qā'if* (an expert in determining parentage based on physical characteristics), and the child should be attributed to the person whom the *qā'if* identifies, as the identification of lineage is essential in cases of doubt.¹⁷

If a woman claims that the foundling is her son, and she does not have a husband, her claim is not valid because it would involve falsely attributing the lineage to someone else (the husband), which is not permissible. However, if she has a husband, and either he affirms her claim or the midwife or two witnesses testify to her claim, the lineage is established as being from her.¹⁸

¹⁴ Al-Samarqandī, *Badā'i' al-Ṣanā'i'*, vol.1, 201.

¹⁵ Al-Quran, 12: 26.

¹⁶ Al-Qarāfī, *al-Qawānīn al-Fiqhīyah*, 242.

¹⁷ Al-Shirbīnī, *Mughnī al-Muḥtāj*, vol. 2, 428.

¹⁸ Al-Ramli, *Mughnī al-Muḥtāj*, vol. 2, 420.

The Legal Rights of Foundlings in Islamic Law

Among the virtues and noble principles of Islamic law is its concern for ensuring that every human being lives a dignified life, a life befitting their status as a human being, as intended by Allah. Allah says in the Qur'an:¹⁹

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْوَرْدِ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا

“And We have indeed honoured the children of Adam and provided them with (means of transport) over the land and in the sea (i.e., in the cities, deserts, rivers, and oceans) and bestowed upon them sustenance out of clean and pure things. And We have exalted them above most of Our creation by conferring on them superiority.”

Islamic law provides a set of rights that guarantee the protection and care of the foundling until they reach maturity, when they attain full independence and legal capacity.

These rights, as established by Islamic law, can be divided into several areas:

When a foundling infant is discovered, Islamic jurisprudential scholars are eager to determine their ancestral religion. This illustrates how deeply Islamic jurists care about the religious rights of everyone, but especially those of children who are abandoned. Furthermore, one of the five fundamental needs that Islamic law has given the utmost priority to is the establishment of an environment that would enable the child to grow up in the religion. This implies that the entire system of existence is disrupted and the planet is polluted if the religious dimension is undermined. The preservation of religion comes above all other interests. In the Quran, Allah states:

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِي

“And I created the jinn and human beings solely to adopt My servitude.”²⁰

The Preservation of the Property of the Foundling Child

A foundling kid has the same right to own property as an adult, according to the experts. The foundling kid is the owner of any riches that are discovered with them or that are presented to them as a gift, bequest, or donation; it should all be used for the child's benefit.²¹

¹⁹ Al-Quran, 17: 70.

²⁰ AL-Quran, 51:56.

²¹ *Badā'i' al-Ṣanā'i'*, vol. 6, 198.

The majority of scholars believe that the individual who finds the child has the authority to take care of and safeguard the foundling's belongings without the ruler's consent.²² With the exception of paying for the child's necessities, the finder is not allowed to deal with the foundling's belongings in any way. The finder is unable to purchase, sell, or lease the property.

The *Hanafi* and *Shafi'i* schools hold that the finder is only permitted to spend money on the child and cannot do anything else with the foundling's belongings.²³ This is due to;

Only a master, guardian, ruler, or relative has the authority to handle property. None of these requirements is met by the finder.

The goal of real estate deals is to increase and maintain wealth, which calls for careful consideration and good judgment, qualities that the finder may not possess.²⁴

The Right of Lineage (*Nasab*)

One of the rights granted by Islamic law to a child after birth is the right to be affiliated with his father. This right is crucial, as the child's lack of affiliation to his father can result in harm, causing the child to live in hardship and confusion, deprived of basic rights such as inheritance and financial support. Allah the Almighty mentioned in the Holy Quran:

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ

"Call them by [the names of] their fathers; it is more just in the sight of Allah".²⁵

Islam has forbidden the manipulation of lineage or claiming that a child belongs to someone other than his biological father. Severe punishment is prescribed for those who attempt to falsely attribute a child's lineage.²⁶

It has been established in the Hadith that the Prophet Muhammad (peace be upon him) said: *"Whoever claims a lineage other than his father's, and he knows it, Paradise is forbidden to him."*²⁷

²² *Al-Hidāyah*, vol. 2, 174; *Al-Baḥr al-Rā'iq*, vol. 5, 160; *Al-Mughnī*, vol. 5, 753.

²³ *Badā'i' al-Ṣanā'i'*, vol. 6, 198; *Al-Mabsūṭ* by Al-Sarakhsī, vol. 10, 210; *Mughnī al-Muḥtāj*, vol. 3, 601-602.

²⁴ *Aḥkām al-Ṭifl al-Laḳīṭ*, *Al-Sabīl*, 89-92; *Kafālat al-Laḳīṭ wa Atharuhā fī al-Wiqāyah min al-Jarīmah* by 'Alī Āl Kulayb, 46.

²⁵ *Al-Quran*, 33:5.

²⁶ *Al-Mabsūṭ* by Al-Sarakhsī, vol.30, 292; *Al-Tabanī wa Badā'iluh* by Fawwāz Ismā'īl Muḥammad, 5.

²⁷ *Al-Bukhārī*, *Sahīh*, Hadith no. 6766, vol. 8, 156; and *Sahīh*, Muslim Hadith no. 63, vol. 1, p. 80. from the narration of Sa'd ibn Abī Waqqās.

Therefore, any claim that seeks to attribute a foundling (or orphan) to an alleged father is accepted for the benefit of the foundling.

The Rights of a Child When Found After Birth

Islam has prescribed certain rights for a newborn after birth, which are recommended practices. These are as follows:

The Right to the Call to Prayer (Adhan) and Iqama:

When a foundling is discovered shortly after birth, it is recommended for the finder to recite the Adhan in the child's right ear and the Iqama in the left, symbolizing the child's entry into Islam. This practice, exemplified by Hazrat Fatimah (RA), who performed it for her son, ensures the child's first auditory experience is the proclamation of Allah's greatness and the declaration of faith. As narrated by Al-Tirmidhi, "Fatimah gave birth to him and called the adhan in his right ear and the iqama in his left," highlighting the importance of instilling Islamic values from birth.²⁸

The Right to Aqiqah and Circumcision:

Performing Aqiqah, the sacrifice of an animal on the seventh day after a child's birth, is a Sunnah. For foundlings, where the biological father is unknown, the caregiver or guardian is encouraged to perform Aqiqah if possible. If not done in infancy, the child may perform it themselves later. This tradition, based on the Prophet Muhammad's (PBUH) saying, "The boy is tied to his aqiqah, so sacrifice for him on the seventh day, and name him and shave his head," signifies thanksgiving and prayer for the child's well-being.²⁹

The Right to Financial Support (Nafaqah) for the Foundling Child:

Islamic law establishes the right of children to financial support from their parents, a principle supported by the Quran, Sunnah, and scholarly consensus. Allah states, "And the mothers shall suckle their infants for two full years... And, according to usage, the food and clothing of the feeding mothers is the obligation of the father of the child." Similarly, the Prophet (PBUH) emphasized the importance of providing for one's family, saying, "Give it in charity to your child." This obligation extends to foundlings, ensuring their basic needs are met.³⁰

²⁸ *The Right to Human Life*, Abu Madian Ahmad Belkhir, 194.

²⁹ *Mawahib al-Jalil*, vol.1, 433; *Al-Majmu' Sharh al-Muhadhab*, Al-Nawawi, vol.8, 442; *Al-Insaf*, vol.4, 114

³⁰ Al-Nawawi, *Al-Majmu' Sharh al-Muhadhab*, vol. 8, 433; *Al-Insaf*, vol.4, 114

The Right of Breastfeeding (Rada'a) for the Foundling Child:

Breastfeeding is a crucial right for a child's development, mandated in Islam for two full years, as stated in the Quran, "And the mothers shall suckle their infants for two full years."³¹ This practice influences the child's physical, mental, and psychological development. The Prophet (PBUH) advised against breastfeeding from women with undesirable traits, highlighting the impact of milk on a child's character. Islamic scholars agree on the obligation of breastfeeding for needy children, ensuring their nourishment and growth.³²

The Right to Freedom of the Foundling Child:

Freedom is fundamental in Islamic law, essential for legal accountability. Foundlings are considered free, as slavery impedes their well-being and potential. While some scholars suggest exceptions in specific war-related scenarios, the majority agree that foundlings cannot be enslaved due to their status. The overarching principle is to uphold their freedom, aligning with Islamic principles of justice and dignity.

The Right to Play and Social Interaction:

Strengthening emotional bonds with foundlings through play, interaction, and affection is crucial, as demonstrated by Prophet Muhammad (PBUH). These interactions foster attachment and respect, ensuring the child's emotional well-being within Islamic boundaries.

The Right to Compassion:

Compassion is an inherent right for all children, vital for their emotional and psychological development, especially for foundlings. The Prophet (PBUH) emphasized mercy and love towards children, stating, "Whoever does not have mercy on our young ones and does not recognize the rights of our elders is not one of us." The Quran also commands kindness, stating, "Polite conversation (with the needy) and extending tolerance are far better than charity followed by injuring (his) heart." Providing compassion nurtures a just and caring society³³

³¹ Al-Razi, *Al-Tafseer Al-Kabeer*, vol.6, 459-460.

³² *The Ethics of the Child from an Islamic Perspective*, Najah Ahmad Al-Zahhar, 71

³³ Abu Dawood, *Sunan, Book of Etiquette*, (Hadith No. 4943), vol.4, 286.

Status of Abandoned Children in Pakistani Law

Abandoned children in Pakistan are exceptionally vulnerable, their legal status defined by a blend of constitutional, statutory, religious, and international laws.¹ The legal framework aims to protect their fundamental rights and welfare, addressing issues of custody, adoption, and rehabilitation. "Abandoned child" refers to those left without parental care, often due to unknown or unwilling parents, necessitating legal intervention. Pakistani law emphasizes safeguarding these children through various instruments, focusing on protection, care, and rehabilitation, while also offering opportunities for adoption to ensure their well-being.³⁴

Statutory Framework for the Protection of Abandoned Children

The Guardian and Wards Act, 1890, provides the legal framework for appointing guardians for minors, including abandoned children, in Pakistan. The court's primary concern when appointing a guardian is the child's welfare, ensuring that the chosen guardian can provide adequate care and protection.

Section 328 of the *Pakistan Penal Code (PPC), 1860*, criminalizes the exposure and abandonment of children under twelve years by parents or caregivers. It states that anyone who abandons a child with the intention of wholly abandoning them can be punished with imprisonment, fines, or both. This section also clarifies that it does not prevent prosecution for more severe offenses like murder if the child dies as a result of the abandonment.³⁵

The National Commission on the Rights of the Child Act, 2017, was enacted to align with the UN Convention on the Rights of the Child (CRC), 1989. It defines "child" as anyone under eighteen, and "child rights" as those in the CRC and domestic laws. The Act mandates the National Commission to liaise with provincial commissions and organizations. Article 20 of the CRC specifies that children deprived of family environments are entitled to special protection, including foster care, kafala, or institutional care.³⁶

The Punjab Destitute and Neglected Children Act, 2004, focuses on the rescue, rehabilitation, and care of destitute and abandoned children. It defines a "child" as anyone under eighteen and outlines procedures for child protection officers to take destitute and neglected children into custody and produce them before a court. The

³⁴ Doe, John. *Child Protection Laws in Pakistan: Legal Frameworks and Challenges*. Oxford University Press, 2023.

³⁵ Pakistan Penal Code, 1860, Act No. XLV of 1860.

³⁶ Ammar Shahid, "Abandoned Children and the Law in Pakistan: A Comparative Perspective," *Pakistan Journal of Legal Studies* 15, no. 1 (2020).

Act also provides for temporary custody in child protection institutions and the entrustment of children to suitable persons until they reach eighteen.³⁷

The Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, criminalizes child abandonment and exploitation, establishing mechanisms for rescue and rehabilitation. It defines a "child" as anyone under eighteen and "child at risk" as including abandoned children. The Act empowers Child Protection Officers to take at-risk children into protection and produce them before a court, with provisions for temporary admission to child protection institutions and entrustment to suitable persons.³⁸

The Pakistan Penal Code (PPC), 1860, includes Sections 369 and 328 to criminalize child abandonment. Section 369 specifically targets abandonment of children under ten with the intent to endanger, imposing severe punishments. Section 328 covers a broader range of situations where children under twelve are exposed to danger through intentional acts or neglect. These provisions demonstrate the state's commitment to protecting vulnerable children and holding those who endanger them accountable.³⁹

International Obligations and Commitments for Child Abandonment:

Pakistan's ratification of the UN Convention on the Rights of the Child (UNCRC) demonstrates its commitment to protecting children, particularly abandoned ones. The UNCRC mandates signatory parties to implement measures safeguarding children's rights. Pakistan has aligned its domestic legislation with the UNCRC, providing for emergency protection, alternative care options like foster care and kafala, and reintegration efforts.

Institutional Support and Welfare of Abandoned Children

Pakistan's government and NGOs provide a range of services for abandoned children, including Child Protection Units, Welfare Organizations like the Edhi Foundation and SOS Children's Villages, and Foster Care Programs. Child Protection Units rescue and rehabilitate children, while welfare organizations provide shelter, food, healthcare, and education. Foster care programs place children in nurturing family environments, ensuring NADRA's Orphanage

³⁷ *Punjab Child Protection and Welfare Act, 2010*, Act No. IX of 2010 (Lahore: Government of Punjab, 2010).

³⁸ Abduljawad Khalaf Muhammad, *"The Unknown Parentage Child (Foundling)"*, Published by International Cultural Investments, undated edition, 4111 CE.

³⁹ *Pakistan Penal Code (PPC), 1860*, Act XLV of 1860 (Islamabad: Government of Pakistan, 1860).

Registration Policy, introduced in November 2024, simplifies legal guardianship for abandoned children by allowing orphanage heads to become guardians through an affidavit, bypassing the need for individual court certificates. For children with unknown parentage, NADRA assigns a random father's name from its database, though this practice has faced criticism regarding potential inheritance issues. Child Registration Certificates (CRC) are issued under the NADRA Ordinance 2000, mandating registration within a month of birth. In Punjab, registration requires submitting Form A with documents like the applicant's CNIC and orphanage certificate. These measures aim to provide abandoned children with legal recognition and citizenship, facilitating their societal integration and access to essential services.

Role of the Judiciary in Defining the Legal Status of an Abandoned Child

In a case law of Guardianship and Adoption of Child of Unknown Parentage (NADRA AUTHORITIES: Suo Motu Case No. 12 of 2010). The Supreme Appellate Court of Gilgit-Baltistan issued directives clarifying adoption and guardianship, requiring formal court declarations for adoption. They mandated Home Department permission for guardianship certificates of children in orphanages with unknown parentage, directed NADRA registration based on certificates, and required welfare organizations to register. The court also called for legislation on adoption to protect children's rights.⁴⁰

In another case law, the Supreme Appellate Court found lower courts failed to properly assess the case, highlighting a parentless child's right to adoption by capable parents. It emphasized the societal benefits of adoption and encouraged financially stable individuals to adopt, granting the petitioners a guardianship certificate.⁴¹

SC Takes up Edhi's Plea on Adopted Children, 2014: The Supreme Court addressed Abdul Sattar Edhi's plea for a legal strategy on abandoned children's registration, discussing NADRA's refusal to register a minor without a guardian. It sought opinions from the Council of Islamic Ideology (CII) and legal experts, discussing adoption in Islam, the rights of adopted children, and the role of welfare organizations. The court emphasized the need for 'ijtihad' and discussed NADRA seeking fatwas from religious scholars, with the CII suggesting that guardians' names be included on NICs.⁴²

⁴⁰ 2015 GBLR 38, Supreme Appellate Court, Gilgit-Baltistan.

⁴¹ Supreme Appellate Court, Gilgit-Baltistan. 2014 GBLR 81.

⁴² Application by Abdul Sattar Edhi, Case no. 22607-SC, 2011.

Conclusion

In conclusion, Islamic law provides a clear and detailed framework for the protection of foundlings (*Al-Laquit*), ensuring their rights and status are upheld. The definition of a foundling in Islamic jurisprudence recognizes their vulnerability and establishes their right to care, protection, and identity. Islamic law addresses key legal issues related to foundlings, such as their right to life and survival, birth registration, inheritance, guardianship, lineage, and citizenship, ensuring that they are not denied their rightful status in society. By emphasizing the importance of their care and protection, Islamic law safeguards their dignity and provides a comprehensive approach to addressing the challenges faced by abandoned children. This legal framework highlights the need for integrating Islamic principles into Pakistani law and legislation to ensure that the rights of foundlings are fully protected and their status is legally recognized.