

LEGAL RIGHTS OF ADOPTED CHILDREN IN SHARIA AND EUROPEAN LEGISLATIONS



By

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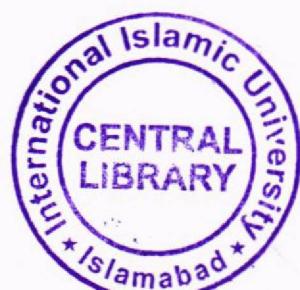
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**Legal rights of adopted children in Sharia
European legislations**

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**A thesis submitted in partial fulfillment of the requirements of the degree of
the master degree of law, LLM Muslim family law Faculty of Sharia and law,
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Abstract:

Adoption starts right from the era of Prophet Hazrat Muhammad (PBUH). Adoption of a child is controversial and disputed issues and much of the information on adoption remains anecdotal. Adoption is varying from state to state according to the laws of those countries because all countries have their own law. But In my topic it is discussed as per present scenario and the concept of child adoption discussed in different aspects. These aspects are Shariah views of child adoption and the concept of child adoption in Muslim countries. As well as compare it to European legislation. According to Shariah adoption of child is allowed but with some restrictions. Islam encourages the caring for orphans because it is a great act of worship. The word used in Islamic principles on adoption is termed as kafalah. When we discuss the issue of adoption of child we will start its history from where the concept of adoption evolves. Adoption of child originates before Islam.

In Pakistan the law which is follow based on Shariah so the Adoption of children should be according Quran and Sunnah. Now a day in Pakistan lack of proper Law and legislation no one can adopt the procedure. In Pakistan the concept of adoption is not governed by any law because Pakistan is a Muslim country and follows the concept of Sharia. That's why the courts in Pakistan have ruled that there is nothing in the Muhammadan law similar to adoption as recognized in Roman or Hindu legal systems. In Pakistan adoption of child is not unlawful but the child adopted by Muslims will not be able to enjoy the usual rights such as rights to his parents, name and inheriting their property. People who belong to other religions but citizen of Pakistan they can follow their own religion. They are not bound to adopt the Muslim law. And when we compare with UK and USA there is a huge difference in law and procedure. In my research I suggest that we should follow laws in our matters it does not mean that we follow the other counties law but as a Muslim we should know about the Shariah. Process of adoption of a child is totally different in U.S.A and UK, because these are the western countries and follow their own laws. When we study these laws of these countries then we examine that these laws governs a process through which the children come to be adopted. Adoptive parents make an assessment, called a home study. The purpose of this estimate is to identify families for adoption. Training, individual and family interviews and home safety inspections are held for the development of the process of adoption. American can also adopt children from other countries but adoption is governed by the laws children's home countries and the children must legally immigrate to the United State or any other place selected by the adopted parents.

Dedication

Acknowledgement

Maxims

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Chapter: 1

Introduction, history and an overall review regarding adoption of child:

1.1 Introduction

Simply my research work based on the Status of adopted children in Sharia, Pakistan and European legislations, it's different in Sharia and is not similar as compared to European legislation.

The meaning of the Quran by the ABUL A'LA MAUDUDI, vol.10, this book has thrown some light on the laws of adoption with reference of Surah Ehzab verse no 4-5. So we know the exact concept of adoption in Sharia because these verses make clear the status of adoption. The social laws of the Quran by Robert Roberts, this book are also relevant on the laws concerning adoption. Especially with reference to the adopted child of the Prophet (S.A.W) that is Hazarat Zaid. Tafseer ibn kathir, vol.7 abridged by a group of scholars under the supervision of Shaykh Safiur-rehman al- Mubarakpuri. In this book the writer analysis the status of an adopted child and discuss the issue that whether the adopted child can use the name of the person who adopt him/her as father.

The article related to adoption named as "the charter of adoptee rights". This article describes the rights of adopted child in European legislation. In this article the writer gives the full discussion of the right of adopted child under the European legislation and writer also suggested few recommendations for the improvement in the European legislation, which can help in improving the status of the adopted child. In another article we found the history of open adoption of a child in European society.

An article by American Academy of Adoption Attorneys (AAAA) named position on child rights in adoption. It is informative article related to the rights of adopted children especially the status of adopted children in America. An article on the website “Qaradawi.net” is found related to the rights of parents and children in Islam. And it gives the clear picture of the status of adopted child in Islam. And it prescribed that all the requirements must be fulfilled according to the injunctions of the Islam.

There is an article on child welfare information Getway published in 2009 related on the intestate inheritance right for adopted child. It is a very good article related to the adoptive parents and adopted children, which provides certain rights of adopted children. It has thrown some light about adopted children especially who are not included in a will. An article by Sayyed Muhammad Rizvi named the Islamic perspective on adoption, which has link about shia's sect. And many other books and article has been considered.

History:

In 1974 the world population plan of action of the world population conference called on countries to facilitate children adoption. So, the people who do not have their children they could adopt child. This action was called child adoption. It played a great role in biological parenthood of couples. Those couples who are unable to give birth to the child, there are some reasons for infertility for example delaying of marriage, the postponement of child bearing and high levels of divorces and another reason is acceptance of new family founds. Due to all the above mentioned reasons people are having recourse to adoption. There are some legal institutions from where people can adopt the children. Legislations recognized new forms of adoption by permitting

individual who were eligible to adopt a child. In some countries the multilateral and bilateral agreements have been ratified. Later on laws for adoption have been changing.

There are huge differences between previous and currents practices of adoption. Particularly there are different attitudes towards adoption in Sharia law. "Fostering and De-facto adoption is common in African, American and Oceanic traditional societies." There is different adoption procedure among different countries. They focus on the responsible for overseeing approving and granting adoption. Adoptive parents' adoptive children should meet including those relatives to age, sex, marital status, residency and citizenship. In such adoption residency and citizenship are compulsory.

In 1961 United Nation convention on the rights of child, the 1993 Convention on protection of children, in 2000 U.N optional protocol to the Convention on the rights of the child on the sale of children, whether child prostitution and child pornography, the 1967 European Convention on the adoption of children, the 1984 inter American Convention on conflict of laws concerning the adoption of minors, adoption was the major concern of the government. Adoption process involved (the adopted person, the adoptive parents and the birth parents) the age and sex of adopted persons and the differences with respect to inter country and domestic adoption (age, sex, marital status, relationship with adopted person of adopted parents) are analyzed at the time of adoption according to this law. Such adoptions rates are compared with the desired family size childlessness, presence of own children, mean age at marriage and total number of children per women.

1.2 Greek laws on the issue of adoption:

The ancient Greece and the Hammurabi's codes both the laws have same aim to provide heirs to adopted child. Persons who already had legitimate son were not permitted to adopt a child. According to the laws of Solan¹ and the law code of Gortyn,² only adult males who had no legitimate decadence and of sound mind were permitted to adopt.

1.3 Roman laws on adoption:

This form of adoption is multiple. The institutes of Gaius for example cites two forms, *adoptio* and *arrogatio* or *adrogatio* (from the Latin *rogare*: to ask) (Muirhead, 1880).³ Consisted up “ceremony by which a person who was in the power of his parent, whether a child or grandchild, male or female, was transferred to the power of the person adopting him.” Adoption was undertaken the authority of a magistrate in the capital or by the Governor in the provinces and could apply to children of any age and to daughters as well as sons. And those persons who were not under someone else's authority (*sui juris*), could be adopted by *arrogatio*⁴, since in this adoptive parents, the adopted person and the people were all asked to agree to the adoption (long, 1878). Arrogation had more far reaching effects than *adoptio*. The issue of religion is also involved in *arrogatio*. On the other hand *adoptio* had a lesser impact and has the same “right, privileges and duties” as arrogation and give up the family name and the *sacra* of the old family, “the ties of the

¹ City name (created in 1 September 1972)

² City name, **Gortyn, Gortys or Gortyna** (Greek: Γόρτυν, Γόρτυς, or Γόρτυνα) is a municipality and an archaeological site on the Mediterranean island of Crete, 45 km away from the modern capital Heraklion.

³ The protestant and orthodox churches also support adoption as a solution for the care of the children of a family and have traditionally promoted the placement of orphaned and abandoned children into the adoptive families. In this chapter, however, these positions and views are not discussed.

⁴ Act of adopting adult as son . *homo sui juris*, (vs. in *potestate parentis*)

blood relationship were not extinguished" and the rights which are required from *adoptio* were agnatic and not cognatic (Bechted, 1896, p, 79).⁵

Under the Byzantine emperor Justinian (reigned 527 to 565 A.D.) the practice of *adoptio* was amended by limiting full *adoptio* (*adoptio plena*) to natural ascendance such as a grandfather. And simple adoption process introduce for those adopter parents who were not blood relatives. (**See appendix A**). An irrevocable bound related in full adoption. An adopted person acquires the same right as the birth child in inheritance from the adopted parents. Roman law established specific guidelines regarding who was allowed to adopt. The adopted person should not be older then that person who would adopt him. Women were gradually not allowed to adopt unless they had received the special authorization of the emperor, because women did not have *potestas*⁶ over other free persons (Sandars, 1905).

Roman law also contains guidelines relating to the adopted person. Arrogation of persons who had not yet become adults was allowed only under ordinary circumstances. Roman law did not require that parents keep their birth children, and abandonment and ever infanticide were not punishable because the authority of father over his direct family members as well as his slave was absolute (Boswell, 1988). In English legal system adoption is a legal practice. In Byzantine law adoption gradually changed from the concepts set out in Justinian's institutes to a form of adoption similar to the Roman simple adoption (Pitsakis, 1999).

⁵ Some authors have argued that, with the establishment of Christianity, formal adoption declined. This argument is based on the fact that Christians did not emphasize the worship of deceased ancestors, thereby removing what had previously been one of the prime motivations for adoption (Verdon, 1988).

⁶ Power ability, authority/opportunity.

1.4 Hindu law of adoption:

Child adoption has been a common social practice in Hinduism since ancient times. According to the “Manu Smrti” an authoritative book of Hindu code for example which dates in its present from the 1st century B.C, “he to whom nature has denied a son can adopt one, so that the funeral ceremonies may not cease”. Hindu law recognized 12 different kinds of fictive son ship or filiations, the highest of which involved the adoption of a male grandchild by a man with no sons (Putrika Putra) (Mayne, 1892). Hindu law also stipulated various requirements for adoptive parents and children to meet and it was required from the adoptive father to have no male offspring. In India, traditional Hindu laws regulating adoption have been superseded by the Hindu adoptions and maintenance act, which came into force 1956 (Lilani, 1995). This act requires the adopted child should be of 15 years of age. In other countries customary Hindu practices have been incorporated into civil adoption law. In Myanmer, adoption is regulated by the registration of Kittima adoption act of 1941. The adoption of adults is permitted upon their consents.

1.5 Islamic law: (sharia)

The custom of adoption of children, especially sons was so common before Islam in Arabia, but with the establishment and development of sharia law, adoption as a legal institution was abolished and later on the concept of adoption convert in to kaffalah system. In 33rd surah (Ahzab) verse no 5th, the Quran clearly states that the adopted son shall be named after their birth father, not their adoptive father. The verse also explains the legitimacy of adopted person and prohibits the conferment of right of inheritance. The abolishment of adoption result from two principle: first, that “a male adulterer has no rights on a child born of an illicit relationship,” and

second, that “a stranger … cannot, by mere social convention, accede to the legal rights and responsibilities of the child’s legal father” (Pollack and others, 2004 p. 735). Countries, which follow the Islamic law prohibits the concept of adoption but some muslin countries also permit the child adoption. Among the 195 countries considered in this study, 20 all predominantly Muslim, do not recognize the institution of adoption. Six of the 20 countries are in Africa and in 14 countries in Asia, mostly in Western Asia. (See appendix B)

Some Muslim countries such as Indonesia, Tunisia and Turkey, allow the practice of adoption. According to Quran and Islam the concept of kaffalah is best for the orphaned and abandoned children to be placed with relatives. Muslim countries allow kafalah and kafalah does not give the right of inheritance from the adopted person, because according to Islamic law the adopted child can inherit through a bequest only. Many on the countries do not recognize. The institution of adoption, such as Bahrain, for instance, the cabinet has recently approved the fosterage⁷ Act, which regulates the procedure for the rights and obligations of children. Under the Islamic adoption of children order of 2001 of Brunei Darussalam, the right of inheritance from the biological parents is not prejudiced and the adopter parents under the kafalah may grant one third of their property. Adoption of non Muslim children’s by non Muslim is governed by the adoption of children order of 2001. Muslim children who are deprived of a family environment can be looked after under kafalah, in Sudan, and non Muslims can be adopted according the child welfare act of 1971. A similar provision just like Sudan exists in the United Republic of Tanzania.

⁷ To look after for a period of time, to bring up a child that is not one’s own.

1.6 De facto adoption and fostering in Oceania:

Among the traditional populations of Oceania de-facto adoption and fostering have been a common practice. Study shows that children are often raised by relatives and other then biological parents during their childhood. The practice of adoption of children is so common and different in different villages. In New Zealand the big reason of adoption is sharing the rearing of children between family members. Customary, such adoptions considered as a gift from the birth parents. And that child is often taken care in more than one home and also had access to their birth family. In formal adoptions often resume multiple forms in Oceania. In Hawaii⁸ for example de-facto adoption practices involved a wide range of arrangements, including some issues and cases where the adopted child becomes the adoptive parents. In that period adoption was customarily transacted via an oral agreement and if it is not clearly written about the inheritance then informally adopted children did not have the right to inherit from their adoptive parents.⁹

1.7 Adoption law in early modern era:

During this period it was very difficult to reconstruct the legal practice as the early modern era was highly fragmented. Gager (1996), for instance, notes that in the 16th century, “French jurist herald their period as the critical turning point marking the ‘disappearance’ of adoption in French laws” (p.51). Arrogation was viewed as “perfect adoption” in that the one adopted was placed under his or her new father’s parental power and made his necessary heir.” Under simple

⁸ Hawaii is one of the 50 states of the United State of America, however, geographically and historically, Hawaii is part of Polynesia. According to the geographical classification of the United Nations, Polynesia is a sub-region of Oceania. Consequently, the informal adoption practices of Hawaii are presented in the section of Oceania.

⁹ While formal adoption legislation has widely eroded customary Hawaiian practices, children are still entrusted to grandparents, other relatives or friends or an informal basis (ITO, 1999).

adoption the person remained “subject to his or her natural father parental power and had the right to share in the natural father’s estate, not that of the adoptive parents” (Pollack and others, 2004, p.722). Adoption of children in orphanage was constrained because French authorities could refuse request for adoption of abundant children on the grounds of that their “biological mother should have the right to reclaim them at any time”. Moscow foundling home indicates that that adoptions were infrequent, between 1810 and 1838 almost 1,000 children were adopted from the foundling home and over the 140,000 children were placed among these 40,000 survived the high mortality rates prevalent in the institution (Ransel, 1988).¹⁰

1.8 Modern adoption law:

In every era adoption was an essential and permanent reality. There was a king Gunthehramn of Burgundy being childhood adopted his nephew to inherit the throne in 577 A.D. (Gussen, 2000). Medieval interpretation of adoption differed from the classic Roman law. Germanic and Frankish law, for example recognized the custom of *adoptio* in *hereditate* or *affatonoc* to receive into the narrowest circle of kindred. In the late Middle Ages the jurist in Western Europe discovers ancient Roman law and reconstructed rules. According to Justinian’s institutes, some time introducing fundamental changes (Roumy, 1999). The difference between *adoptio* and *arrogatio* was recognized by the king Alfonso, in Roman law they was only arrogated person could be viewed as legitimate heirs.

1.9 History of modern adoption laws:

It was indicated that the practice of adoption was wide in many ancient societies. The purpose of adoption was to provide children deprived of parental care and to satisfy the desire of couples

¹⁰ Code of the canon law, book iv, part I, Title vii, chapter iii.

who were deprived of this blessing. In the ancient time the adoption of minors was not allowed. Later on it was allowed including the right to inheritance from the adoptive family. Adoption played an important part in ancient life by legal sources. Legal texts referred to adoption are the code of Hammurabi, e.g. the code established that adoption was a legal contract. There are so many provisions that differ from modern practices and the contract could be annulled if the duties of adopted child were not properly fulfill.

1.10 Adoption laws; present and future challenges:

In courts and policy circles in many countries number of issues relating to adoption was being debated. It provides a brief discussion of some of the aspect of debates. Governments have been encouraging the adoption of children living in foster or institutional care who cannot be reunited with their birth families. In United State for example President Clinton for doubling the number of adoptions of children placed in public care by the year 2002. In the United Kingdom Prime Minister Blair called for a concerted effort over haul and modernized the legal frame work for adoption. A white paper, "adoption: a new approach" established the target of increasing the number of adoptions looked after children by 40 % by 2004 to 2005 (o, Halloran, 2006). Other countries have also begun to promote adoptions a key strategy to meet the needs of children living in care. In New Zealand adoption is increasingly seen as only "one of the several ways in which permanent care can be provided for a child" (New Zealand, law commission, 1999, p. 28).

1.11 Key words regarding adoption of a child:

- There are over a quarter of a million of adoption every year. The population of U.N adopted 26,000 children each year. This estimate employee that 12 children are adopted for every 100,000 person under the age of 18. Adoption remains a rare event.

- Ratio of adoption in 2001 in few countries: There were 127,000 adoptions in 2001 in the U.S.A; it was the half of the total number of adoptions worldwide. Also in china there was large number of adoptions almost 46,000 in 2001 and in the Russian federation more than 23,000 in 2001.
- Purpose of adoption has evolved over time; in the ancient time adoption accrued to preserve and transmute the families or inheritance and its purpose was the gain political power and for the strength of the family. Adults and adolescent were usually adopted, who could guarantee of continuation of the family line.
- Over the 160 countries recognize the legal institution of adoption but 20 countries do not have legal provisions allowing child adoption. But as a guardianship or the placement of children under the care of relatives are permitted. Religion play a key role under such alternative practices may be pursued.
- In some countries informal adoption and fostering are perceived as preferable to formal adoption. Informal or de-facto adoption and fostering which was allowed by the parents of the children to put the children in the care of the others without having to cut all ties with their children.
- In the western context those practices markedly with the secrecy and finally that have come to characterized adoption.
- In some countries adopted children have the same right as birth children e.g. right to inheritance.
- In 81 countries adoption laws established the minimum age of the adopted children. Only married couple could adopt a child. Laws have been amended and allowed older person or single person to adopt a child.

- Almost 85% of all adoption; there were involved citizens or residents of the same country. It was necessary for the implementation of policies to encourage local residents to adopt.
- In recent years there were number of adoptions by step parents and other relatives has been declining. But in some countries legislation discouraging adoption by step parents. The informal parenting arrangements and declining remarriage rates are also contributing to that decline.
- Other countries such as Canada, Germany, Italy and Sweden there were large inflows of children adopted from abroad. They have record over one thousand formal adoption in recent years.
- Over 60% people like to adopt children under the age of one year. Adoption of children of five years old is tending to be rare.¹¹

¹¹ Child adoption trends and policies united nations, department of economic and social affairs, population division. United Nations publications. P.1 to 27
http://www.un.org/esa/population/publications/adoption2010/child_adoption.pdf Last access (06.8.2011)

Chapter 2:

Definition and description of adoption in sharia:

2.1 Introduction

In this chapter I will discuss the position of adopted child in sharia and describe the validity of kafallah in the light of the verses of Surah Ehzab and also in different *Tafaseer*'s on the issue of their basic rights.

This chapter will also articulate the right to an identity which is related issues that present serious repercussions for Kafalah children. And what kind of protection is available to children who have been placed in Kafalah. And I will also discuss the issue and the importance of surnames in Sharia and this will be discussed not only in the context of history and culture but also its position in the society.¹²

2.2 Literal meaning of adoption:

An adopted child has been legally taken by another family to be looked after as their own child. In general sense adoption mean to take a child of other parents into one's own family by legal process and bring it up as one's own child.

¹²Shabnam Ishaque, *Islamic principles on adoption: Examining the impact of Illegitimacy and inheritance Related concerns in context of a Child's right to an identity*" *International Journal of Law, Policy and the Family* 22, (2008), 393–420 doi:10.1093/lawfam/ebn009, Advance Access Publication 23 September 2008.P:400. Available at :<http://lawfam.oxfordjournals.org/content/22/3/393.abstract> (12.1.2011) last visited 12/1/2011

2.3 Technical meaning of adoption of child:

The concept of Adoption of a child described in **Black's law dictionary** as follows:

"The relationship created a parent child by judicial order between two parties who are not related naturally. Adoption creates a relationship between both parties with all the rights, privileges and responsibilities that attach to that relationship".

The term adoption and adopted child defined in **Oxford advanced learner's Dictionary** as

- ❖ "The act of adopting a child "
- ❖ "An adopted child has legally become part of a family in which he or she was not born."

2.4 The origin of adoption:

Adoption is a very old legal institution. In fact the concept of adoption has been originated at the time of Hazrat Moses (A.S) when he was placed among reeds on the bank of Nile in a basket, and where He was discovered by the Pharaoh's wife. And He was rescued and raised by her.¹³ So Moses was born to Hazrat Imran and youkabid A.S. He was raised by Pharaoh's wife and called by her name. Likewise the ancient law from other region of the world likes the law of the Hindus, Egyptians and Romans recognized adoption as a way to create a legal relationship when there were no family ties based on blood. When Islam came and introduces a well known exception from the principle of the universality. Islam allowed the adoption but with some restrictions regarding the surname and inheritance.¹⁴

¹³ Sendra Ferreira, *the origin of adoption in south africa*

¹⁴ Sabina Albrechi, *Intercountry adoption :A swiss perspective:*

http://www.publiclaw.uct.ac.za/usr/public_law/LLMPapers/albrecht.pdf last visit:27/03/2011

2.5 Classification of adoption:

In **Black's law dictionary** following are the kinds of adoption of a child.

❖ **Adoption by estoppels.**

An equitable adoption of a child by one who promises or acts in a way that precludes the person and his or her estate from denying adopted status of the child. An equitable decree of adoption treating as done that which ought to have been done. Such a decree is entered when no final decree of adoption has already been obtained, even though the principle has acted as if an adoption has been achieved.

❖ **Adult adoption:**

The adoption of one adult by another adult. Many jurisdictions do not allow adult adoption. Those do not often impose restrictions, as by requiring consent of the person to be adopted, but may not look too closely at the purpose for which adoption is sought.

❖ **Agency adoption:**

An adoption in which parental rights are terminated and legal custody is relinquished to an agency that finds and approves the adoptive parents. An agency adoption can be either public or private. In all states, adoption agencies must be licensed, and in most they are non profit entities. Parents who voluntarily place a child for adoption most commonly use private agency.

❖ **Black market adoption:**

An illegal adoption in which intermediary or an agent or broker receives payment for his or her services.

❖ **Close adoption:**

An adoption in which the biological parent relinquishes his or her rights and surrenders the child to an unknown person or persons; an adoption in which there is no discloser of the identity of the birth parents, adopting parent or parents, or child.

❖ **Cooperative adoption:**

A process in which the birth parents and adoptive parents negotiate to reach a voluntary agreement about the degree and types of continuing contact after

adoption, includes direct and visitation or more limited arrangements such as communication by telephone or mail, the exchange of either identifying or non identifying information, and other forms of contact.

❖ **De facto adoption:**

An adoption that falls short of the statutory requirements in a particular state.

❖ **International adoption:**

An adoption in which parents domiciled in one nation travel to a foreign country to adopt a child there, use in accordance with the laws of the child's nation.

❖ **Open adoption:**

An adoption in which the biological mother sometime with the biological father chooses the adoptive parents and in which the child often continues to have a post-adoption relationship with his or her biological family.

❖ **Private adoption:**

An adoption that occurs independently between the biological mother and sometime the biological fathers the adoptive parents without the involvement of an agency. A private adoption is used arranged by an intermediary such as a lawyer, doctor or counselor.¹⁵

All above mentioned kinds are the kinds of adoption of a child. Purpose of all classifications is almost same but procedure is different to some extent. Adoption by estoppels is an equitable decree of adoption treating as done that which ought to have been done. Most of the countries do not allow adult adoption. Agency adoption is non profitable and it can be public or private. And it's a kind in which custody is relinquished to an agency and parental right is terminated. And when a broker or agent receives payment for his services is called black market adoption. Close adoption in the words of black's law dictionary is, when there is no disclosure of the identity of the birth parents. In this adoption biological parents totally surrender their rights to the party who adopt their child. And open adoption has opposite status against the close adoption. In open adoption biological parents independently select the family or person without the involvement of

¹⁵ Bryan A. Garner Editor in chief, *Black's law dictionary 8th edition*. 2004, P. 52.53

any broker etc. etc. and the child also have a relationship with the adoptive and biological family. Cooperative adoption based on the process in which the biological and adoptive parents voluntary make an agreement through communication by either form of contact. Adoption in which parents domiciled in one country and the child domicile in another nation and the adopted laws must be of the child's nation. Private adoption in which biological and adoptive parents independently negotiate with each other without any other involvement, mainly all kinds of adoption are interlinked with each other. In United States step parent adoption is so common. The primary focus of all kinds of adoption is the well being of the child.

2.6 Concept of adoption in Sharia:

Islam encourages the caring for orphans because it is a great act of worship. The word used in Islamic principles on adoption is termed as kafalah.¹⁶ When we discuss the issue of adoption of child we will start its history from where the concept of adoption evolves. Adoption of child originates before Islam.

In the time of ignorance an adopted son was treated as a natural son, so that the same impediments of marriage arose from this supposed relation in the prohibition degrees as it would

¹⁶ Kafalah is basically a practice that has been sanctioned by Islamic injunctions for the care of children who were orphan, destitute, or abandoned. It can also be available for children who are taken up by childless couples from orphanages or even biological children of other family Members or friends. This practice is a combination of obligations that arise under fostering and Adoption but not in the same sense as these are practiced in western countries. A Kafil, who takes Parental responsibility within the mechanism of Kafalah, is essentially a guardian but a guardian whose responsibilities are far more onerous to the ones that foster or adoptive parents in their western Tradition may be under. It has a deeper and sacred basis, which provides guardianship, shelter, and Care to children within a family without changing a child's identity or absorbing his/her assets into that of the family providing the care. This form of childcare unlike legal adoptions also does not give such a child right of inheritance in the assets of the Kafil, rather his/her property rights are associated with those of his/her biological parents. Essentially, such a child's identity and property rights do not get absorbed in the identity and property rights of his/her Kafil. Thus, the primary objective of the practice of Kafalah is to provide nurturing and protection to a child who is in need of it.

have done in the case of a genuine son.¹⁷ In the early days of Islam the Holy Prophet had adopted Ziad bin Haritha as his son after making him free. The people according to the custom of those days began to call him Zaid bin Muhammad i.e. Zaid the son of Muhammad (be peace upon him). When the verse no 4-5 of Surah Ehzab came down they began to call him Zaid bin Haritha.¹⁸

The concept of adoption or “Tabnia ”¹⁹ as recognized in pre-Islamic tribal and present day western societies, is unacceptable within rules of Sharia’h, which do not allow the adopted child to be considered in any way related, by name or otherwise to the bloodline of the adopting family. Consequently, if one considers an adoptive child’s identity in the context of his/her name, in most Muslim countries according to Sharma ‘there is very limited law of adoption ’. Therefore the question of naming such a child is at best only hypothetical in most Muslim countries.²⁰

In contrast to these principles, the type of adoption practiced in pre- Islamic society was explained in the following narration attributed to Aisha,²¹ in which she is reported to have stated that:

¹⁷ Maulana Abdul Majid Daryabadi, *The Holy Qur'an* (karachi, lahore, rawalpindi: Publisher by the Taj company LTD), vol 2:p 410-A

¹⁸ Allama Shabbir Ahmad Usmani, *THE NOBLE QURAN, tafseer-e-Usmani, English translation* by Hazrat Maulana Ashfaq Ahmad(karachi: Published by Darul-Isha'at Urdu Bazar, pakistan 2003), vol.3 .p. 1823

¹⁹ Tabnia refers to the pre-Islamic equivalent of western form of adoption in which an adopted child was considered legally to be equivalent to a natural born child.

²⁰Shabanam Ishaque, “ *Islamic principles on adoption: Examining the impact of Illegitimacy and inheritance Related concerns in context of a Child's right to an identity*” *International Journal of Law, Policy and the Family* 22, (2008), 393–420 doi:10.1093/lawfam/ebn009,Advance Access Publication 23 September 2008.P:400

²¹ This narration also includes the persons of Abu Hudaifah ibn Utbah and Salim mawla Abu Hudaifa. Aisha was one of the wives of the Prophet to whom the most number of narrations are attributed in regards to the Prophet's life, ie Hadith.

Abu Hudhaifa, one of those who fought the battle of Badr, with Allah's Apostle adopted Salim as his son and married his niece Hind bint Al-Wahd bin 'Utba to him' and Salim was a freed slave of an Ansari woman. Allah's Apostle also adopted Zayd²² as his son.

In 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 from whom he could inherit as well.²³

2.7 Status of adoption in Islamic law:

Child adoption in Islam can be traced back to the era of the Prophet Muhammad SAW.²⁴ Islam encourages the concept of kafalah or the care of orphans and travelers.²⁵ An orphan himself, Hazrat Muhammad (P.B.U.H) paid special attention to the care of the children. In Islam there is no concept of legal adoption according to majority of scholars.²⁶

In other words we can say that in Islam the concept of adoption is allowed but with a restriction 'that you could not change the real name of the adopted child's father'. It is ordered that if you don't know who his parents are then call him as "my brother in faith". Legal

²² Zayd is said to have been captured in a war and sold as a slave. The Prophet was given Zayd as a present by his first wife Khadijah but was later freed by them and adopted as their son. Before the Quranic verses were revealed, he was known as Zayd ibn Muhammad or Zayd son of Muhammad and after the verse was revealed he changed his name to Zayd ibn Harithah. He has the distinction of being the only one of the Prophets companions to be mentioned by name in the Quran. (Quran verse 33:37)

²³ Shabnam Ishaque, " *Islamic principles on adoption: Examining the impact of Illegitimacy and inheritance Related concerns in context of a Child's right to an identity*" *International Journal of Law, Policy and the Family* 22, (2008), 393–420 doi:10.1093/lf/ebn009, Advance Access Publication 23 September 2008.P:400 Available at :<http://lf.oxfordjournals.org/content/22/3/393.abstract> (12.1.2011) last visited 12/1/2011

²⁴ Status of adopted children in Islam. International development law organization, organization international de droit du development.

²⁵ Anees jillani and zareena jillani, *Child rights In Pakistan* (islamabad: Published by SPARC (Society for the protection of the rights of the child,2000), p.53

²⁶ Asaf A.A Fyzee, 1955,163.

adoption of a child is totally prohibited.²⁷ Adoption in a technical sense is not allowed in Muslim laws.²⁸

No right of inheritance is allowed for adopted child in Islam but adopted child can get share in the property by way of gift. Foster parents are permitted to make a Gift in favor of their foster child up to one third.²⁹

In countries where adoption is recognized or allowed, it shall only be carried out in the best interests of the child and then only with the authorization of competent authorities and safeguards for the child.³⁰

2.8 Adoption of child in Quran:

Verse no; 4, 5 of Surah al Ehzab.

When we discuss the issue of adoption of child then Quran is our authentic source for guidance.

Allah has not assigned unto any man two hearts within his body, nor hath He made your wives whom ye declare (to be your mothers) your mothers, nor hath He made those whome ye claim (to be your son) your sons. This is but a saying of your mouths. But Allah sayeth the truth “proclaim their real parentage. That will be more equitable in the sight of ALLAH. And if ye know not their fathers, then (they are) your brethren in faith, and your clients. And there is not sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you). Allah is forgiving, Merciful.”³¹

²⁷ Tanzil-ur-Rehman, 1978,712.

²⁸ Abdullah Yusuf Ali, *The holy Quran*. Translated and commentary by Abdullah Yusuf Ali.p.1103

²⁹ Anees jillani and zareena jillani, *Child rights In Pakistan* (islamabad: Published by SPARC (Society for the protection of the rights of the child,2000), p.53

³⁰Anees jillani and Zareena jillani, *Child rights In Pakistan* (islamabad: Published by SPARC (Society for the protection of the rights of the child,2000), p 194

³¹ Al_Ahzab, 4:5.

According to these verses it is clearly mentioned that an adopted son could not become your real son. It is only words of your mouth. The verse no 5 is exactly related to our issue but we also discuss the verse no 4 because it gives example and support to this verse. Islam encourage look after of orphans and the children who don't know about their parents. But the person who adopts those children he can't change the father name. It is a sin if knowingly you change the father name but if it is done by mistake then it's unintentionally and it would be forgiving by Allah (S.W.T). Islam encourages the concept of Kafalah and allows adoption of child but the main issue is surname and inheritance. An adopted child could not get inheritance from his adopted father; he has the right of inheritance but only from his real father. Adopted father can Gift him 1/3 of his property and the surname is important for the purity of lineage.³²

2.9 Legitimacy of adoption of child in different *Tafaseer's*:

The holy Quran says about adoption of child:

*“...these are the words of your mouths ...” These are not any things but some falsehood, while the words of Allah.*³³

In the above lines and verses Allah Almighty said, that these are words of your mouth and these words not having any importance, these are not the words of Allah Almighty.³⁴

This is merely a word of mouth and the reality can never be altered by body's utterance. Allah reveals the truth and guides the people to the right path.³⁵ There are so many things

³² M.A.Haleem Eliasi, *The holy Qur'aan transation in roman script with original Arabic Text and English translation* by Muhammad.Marmaduke Pichhall (karachi:O'khai printing press,).

³³ Al_Ahzab, 33:4

³⁴ Mr. Sayyid Abbas Sadr-ameli, *an enlightening commentary into The Light of the Holy Quran, compiled by Ayatullah Sayyid Kamal Faghah Imani & A Group of Muslim Scholars*, (published by The Scientific and Religious Research Center Amir-ul-Mu'mineenAli (a.s) Public library, under the direction of Ayatullah Allama Mujahid Al-Haj Sayyid Kamal Faghah Imani,2008). parts 21.p.399,400.

³⁵ Amir Muhammad Akram A'wan, *Asrar At-Tanzil, Translation by A.Irfan*, (Chakwal: Published by Idarah-e- Naqshbandiah Owaisiah Dar-ul-irfan, munara, distt.chakwal), vol 4 :P 426

which can be uttered by the tongue and whose reality is not factually that is uttered in words.³⁶

These two preceding sentences are meant to support and emphasize the same points.³⁷

“... nor he has made your wives whom you divorce by zihar your mothers;...”³⁸ This is in refutation of the three false assumptions that were in the Pagan Arabs. If someone said to his wife that she was like the back of his mother, they held his wife to the prohibited for him forever like his mother.³⁹

They had a custom about their wives in which they would declare his wife to be like the back of his mother, or some other part of the body. They thought if a person who had done “zihar” with his wife, she becomes haram to him forever.⁴⁰

Zihar was a pagan formula of divorce. A person said to his wife you are to me like the back of my mother.⁴¹ It was thought that the woman was no longer lawful for him because he had compared her to his mother.⁴² The reprobated subject of zihar in the age of ignorance, or

³⁶ Allama Shabbir Ahmad Usmani, *THE NOBLE QURAN, tafseer-e-Usmani, English translation* by Hazrat Maulana Ashfaq Ahmad, (karachi-1: published by Darul-Isha'at Urdu Bazar, 2003), vol.3 .p. 1822

³⁷ S.Abul A'LA Maududi, *The meaning of Quran* (Lahore: Islamic publications (PVT) limited 13-E Shahalam Market, 1990), vol.10 p.81

³⁸ Mr. Sayyid Abbas Sadr-ameli, *An enlightening commentary into The Light of the Holy Quran, compiled by Ayatullah Sayyid Kamal Faghīh Imani & A Group of Muslim Scholars*, (published by The Scientific and Religious Research Center Amir-ul-Mu'mineenAli (a.s) Public library, under the direction of Ayatullah Allama Mujahid Al-Haj Sayyid Kamal Faghīh Imani, 2008). parts 21.p.398

³⁹ Mufti Muhammad Taqi Usmani, *The meaning of the noble Quran* (Karachi: published by Maktaba Ma'ariful Quran, 2007), Vol.2 : p.769

⁴⁰ Maulana Mufti Muhammad Shafi, *Ma'arifuk-Qur'an* Translated by Muhammad Shamim, Revised by Maulana Muhammad Taqi Usmani, (Karachi: publisher,Maktaba-e-Darul-uloom, 2007). p.91

⁴¹ Maulana Abdul Majid Daryabadi, *The Holy Qur'an* (Karachi: Publisher by the Taj company LTD Karachi,Lahore, Rawalpindi), vol.2 : p.410-A

⁴² . S.Abul A'LA Maududi, *The meaning of Quran* (Lahore: Islamic publications (PVT) limited 13-E Shahalam Market, 1990), vol.10: p 81

the subject of ‘adopted son’, which considerably ruined the rights of other children, was neither a concrete reality nor was it an agreement to protect the common interest.⁴³

If someone called his wife ‘mother’ she was separated from him for life.⁴⁴ This was an evil, Arab custom, by which the husband selfishly deprived his wife of her conjugal rights and yet kept her tied to himself like a slave without her being free to remarry.⁴⁵

“... nor has he made your adopted sons your (real) sons...”⁴⁶

They held an adopted son as a real son in all respects and attributed his parentage to the one who adopt him.⁴⁷ This is so-called adopted son used to be recognized in all rules and regulations as a ‘real’ son. He would be regarded as a sharer even in inheritance, like a real offspring. And they also took the divorced wife of the so-called or adopted son to be unlawful for that person.⁴⁸

⁴³ Mr. Sayyid Abbas Sadr-amelA\i, *An enlightening commentary into The Light of the Holy Quran, compiled by Ayatullah Sayyid Kamal Faghīh Imani & A Group of Muslim Scholars*, (published by The Scientific and Religious Research Center Amir-ul-Mu'mineenAli (a.s) Public library, under the direction of Ayatullah Allama Mujahid Al-Haj Sayyid Kamal Faghīh Imani, 2008), parts 21: p. 400.

⁴⁴ Allama Shabbir Ahmad Usmani, *THE NOBLE QURAN, tafseer-e-Usmani, English translation by Hazrat Maulana Ashfaq Ahmad*, (Karachi-1 Published by Darul-Isha'at Urdu Bazar, 2003), vol.3: p. 1822

⁴⁵ Abdullah Yusuf Ali, *The holy Quran, Translation and commentary by Abdullah Yusuf Ali*. P.1103

⁴⁶ Al_Ahzab, 33:4.

⁴⁷ Mufti Muhammad Taqi Usmani, *The meaning of the noble Quran* (Karachi: published by Maktaba Ma'ariful Quran, 2007), vol.2: p.769

⁴⁸ Maulana Mufti Muhammad Shafi, *Ma'arifuk-Qur'an*, translated by Muhammad Shamim, Revised by Maulana Muhammad Taqi Usmani, (Karachi : publisher Maktaba-e-Darul-uloom, 2007), p.91

In the time of darkness people adopt a child and after it they considered all the rights that a boy might have from his father for themselves. And they could inherit from his adopted father and the adopted father would be his heir.⁴⁹

He would be taken as a real son who would get a share from the inheritance, and all relationships, would be governed accordingly. So the Quran declares that the adopted sons do not become your real sons, nor do the injunctions pertaining to a real son apply to them. Law of Inheritance applicable on the basis of lineage and proximity.⁵⁰

These were empty saying, and it could not change the facts, because the relation between father and son is a natural relation and it can never be obtained by utterances, agreements and hollow claims.⁵¹

The truth is the truth and cannot be uttered by a man's adopting "son".⁵² If a person calls a believer a hypocrite or a hypocrite a believer, it will not change the reality. The true character of a person will inevitably remain the same.⁵³

"Call them after their true father, that is more equitable with Allah;"⁵⁴

⁴⁹ Mr. Sayyid Abbas Sadr-ameli, *An enlightening commentary into The Light of the Holy Quran*, compiled by Ayatullah Sayyid Kamal Faghah Imani & A Group of Muslim Scholars, (published by The Scientific and Religious Research Center Amir-ul-Mu'mineenAli (a.s) Public library, under the direction of Ayatullah Allama Mujahid Al-Haj Sayyid Kamal Faghah Imani, 2008), parts 21 : p.399

⁵⁰ Amir Muhammad Akram A'wan, *Asrar At-Tanzil* Translation by A.Irfan, (Chakwal: Published by Idarah-e-Naqshbandiah Owaisiah Dar-ul-irfan, munara, distt. Chakwal), vol.4: P.425,426

⁵¹ Mr. Sayyid Abbas Sadr-ameli, *An enlightening commentary into The Light of the Holy Quran*, compiled by Ayatullah Sayyid Kamal Faghah Imani & A Group of Muslim Scholars, (published by The Scientific and Religious Research Center Amir-ul-Mu'mineenAli (a.s) Public library, under the direction of Ayatullah Allama Mujahid Al-Haj Sayyid Kamal Faghah Imani, 2008), parts 21.p.399

⁵² Translated and commentary by Abdullah Yusuf Ali, *The Holy Quran*. p.1103

⁵³ S.Abul A'LA Maududi, *The meaning of Quran* (Lahore: Islamic publications (PVT) limited 13-E Shahalam Market, 1990), vol.10: p 81

⁵⁴ Al_Ahzab, 33:5

If you call them by adopted fathers' names it is just and by their real fathers' names is more equitable.

“But if you do not know their fathers, then they are your

Brethren in faith and your friends,...”

That is, the lack of knowing their fathers is not a reason for this that you put the name of another person as their father, but you can address them as your brethren in religion or as your friends.⁵⁵

If their fathers are not known then after all they are your brothers in religion and your comrades.⁵⁶ It is not objectionable because “brotherhood” is used in a wider sense than “fatherhood” and is not likely to be misunderstood.⁵⁷ After the revelation of this verse it was forbidden that a person should assign his parentage to any other man than his own real father.⁵⁸ The holy Quran strictly refuted all such customs and adoptions in order to distinguish between this verbal and artificial relation from the real and natural relation.⁵⁹

⁵⁵ . Mr. Sayyid Abbas Sadr-ameli, *An enlightening commentary into The Light of the Holy Quran*, compiled by Ayatullah Sayyid Kamal Faghah Imani & A Group of Muslim Scholars, (published by The Scientific and Religious Research Center Amir-ul-Mu'mineenAli (a.s) Public library, under the direction of Ayatullah Allama Mujahid Al-Haj Sayyid Kamal Faghah Imani, 2008), parts 21: p.401, 402.

⁵⁶ Allama Shabbir Ahmad Usmani, *THE NOBLE QURAN, tafseer-e-Usmani*, English translation by Hazrat Maulana Ashfaq Ahmad, (Karachi-1: Published by Darul-Isha'at Urdu Bazar, 2003), vol.3 .p. 1823

⁵⁷ Translated and commentary by Abdullah Yusuf Ali, *The Holy Quran*, p.1103

⁵⁸ S.Abul A'LA Maududi, *The meaning of Quran* (Lahore: Islamic publications (PVT) limited 13-E Shahalam Market, 1990), vol.10: p.84.

⁵⁹ Allama Shabbir Ahmad Usmani, *THE NOBLE QURAN, tafseer-e-Usmani*, English translation by Hazrat Maulana Ashfaq Ahmad, (Karachi-1: Published by Darul-Isha'at Urdu Bazar, 2003), vol.3 : p. 1822

Call the adopted sons by the name of their real fathers as this is the most appropriate and fair with Allah keeping an adopted son unaware of his real father is not correct. If someone has adopted a child, he must call the child by his father's name.⁶⁰

“... and there is no blame on you concerning that in which you made a mistake,”⁶¹

After the revelation of this ordinance you oppose it intentionally and optionally and call persons by other then the name of their fathers, so that you continue the wrong custom of 'adopted son' and 'adopted father' Allah will not forgive you.⁶²

There is sin in anything done by mistake or by forgetfulness. Of course sin is proved when there is intention, in that too God may forgive if He will.⁶³

There is no harm if a person is called a son out of love. But if such a thing is said with the intention that the one being called so will be accorded the same status and position and the rights and privileges as actually belong to these relation, it would certainly be objectionable and one will be held answerable for it.⁶⁴

If a man deliberately calls another his son or father, who is not his son or father, out of politeness or affection. "God is returning most merciful". It is the action of mischievous parties which is chiefly reprehended, if they intend false insinuations. A mere mistake on their

⁶⁰ Amir Muhammad Akram A'wan, *Asrar At-Tanzil* Translation by A.Irfan (Chakwak: Published by Idarah-e-Naqshbandiah Owaisiah Dar-ul-irfan, munara, distt. Chakwal), vol.4 : P.426

⁶¹ Al-Ahzab, 33:5.

⁶² Mr. Sayyid Abbas Sadr-ameli, *An enlightening commentary into The Light of the Holy Quran*, compiled by Ayatullah Sayyid Kamal Faghah Imani & A Group of Muslim Scholars, (published by The Scientific and Religious Research Center Amir-ul-Mu'mineenAli (a.s) Public library, under the direction of Ayatullah Allama Mujahid Al-Haj Sayyid Kamal Faghah Imani, 2008), parts 21: p.403.

⁶³ Allama Shabbir Ahmad Usmani, *THE NOBLE QURAN, tafseer-e-Usmani*, English translation by Hazrat Maulana Ashfaq Ahmad, (Karachi-1: Published by Darul-Isha'at Urdu Bazar, 2003), vol.3 : p. 1823

⁶⁴ S.Abul A'LA Maududi, *The meaning of Quran* (Lahore: Islamic publications (PVT) limited 13-E Shahalam Market, 1990), vol.10: p.84.

part does not matter.⁶⁵ If someone call his adopted son 'my son' just for the sake of sake of happiness or of reference he says father'. The Quran negates the real applications in this field, not the metaphorical ones.⁶⁶

If someone adopts a son he cannot really become his true father. The main idea is that there should occur no confusion in genealogical relations and their commandments.⁶⁷ Allah does not call a people to account for actions done unintentionally. He will not punish a person for doing something which he did not do intentionally although it resembled a forbidden act apparently.⁶⁸

2.10 Legitimacy of adoption of child in the light of Ahadith

The Holy Quran and the Sunnah are the basic sources of the Islamic law when we discuss the concept of the adoption in the Holy Quran we should study the Sunnah for the better understanding of this concept because the Sunnah interpret the verses of the Holy Quran in proper way. The Holy Prophet (S.W.A) described the adoption in His Ahadith and removes all the misconception about the concept of the adoption.

There are some following Ahadith related to the issue of adopted child:

1. Bukhari, Muslim and Abu Da'ud have related on the authority of hazrat Sa'ad bin Abi Waqqas that the holy prophet said:

⁶⁵ Translated and commentary by Abdullah Yusuf Ali. *The Holy Quran*, p.1103

⁶⁶ Mr. Sayyid Abbas Sadr-ameli, *An enlightening commentary into The Light of the Holy Quran*, compiled by Ayatullah Sayyid Kamal Faghah Imani & A Group of Muslim Scholars, (published by The Scientific and Religious Research Center Amir-ul-Mu'mineenAli (a.s) Public library, under the direction of Ayatullah Allama Mujahid Al-Haj Sayyid Kamal Faghah Imani, 2008), parts 21 : p.403.

⁶⁷ Allama Shabbir Ahmad Usmani, *THE NOBLE QURAN, tafseer-e-Usmani*, English translation by Hazrat Maulana Ashfaq Ahmad, (Karachi-1: Published by Darul-Isha'at Urdu Bazar, 2003), vol.3: p. 1823

⁶⁸ S.Abul A'LA Maududi, *The meaning of Quran* (Lahore: Islamic publications (PVT) limited 13-E Shahalam Market, 1990), vol.10: p.84.

***“Paradise is forbidden for the one who called himself son
of another person then his own father.”***

Other traditions bearing on the subject have been related in hadiths, which have regarded this as a heinous sin.⁶⁹

2. On the point of mehram Sahlah Bint Suhayl, the wife of Abu Hudhayfah, may Allah be pleased with them both, said: “O Messenger of Allah we used to call Salim our son, but Allah has revealed what he has revealed? He used to enter upon me, but I feel that Abu Hudhayfah does not like that. The prophet said

“Breastfeed him and he will become your mehram”

A ‘foster’ son through breastfeeding is the same as a son born from one’s own loins, from the point of view of shariah because the Prophet said in the two sahih’s;

“Suckling makes unlawful as lineage does.”⁷⁰

To Islam belongs the glory of abolishing this wide spread foolish custom. The right of adoption was not limited to the legitimating of the offspring of a free tribesman by a slave girl ... To preserve the doctrine of tribal homogeneity it was feigned that the adopted son was veritably and for all effects of the blood of his new father.⁷¹

After discussion on the issue of the legitimacy of adoption according to the Quranic verses and in different Ahadith’s we come to know and we can say that the status of adopted

⁶⁹ S.Abul A’LA Maududi, *The meaning of Quran* (Lahore: Islamic publications (PVT) limited 13-E Shahalam Market, 1990), vol.10: p.84.

⁷⁰ *Tafsir ibn kathir, Abridged by Agroup of muslim scholars under the supervision of Shaykh safiur-Rehman al-mubarakpuri* (Lahore: published by Darussalam Riyadh, Houston, newyork, Lahore, 2000), vol .7 : p. 636.

⁷¹ Maulana Abdul Majid Daryabadi, *The Holy Qur'an* (Karachi: Publisher by the Taj company LTD Karachi, Lahore, Rawalpindi) Vol.2 : p.410-A

child is legal to some extent but with some restriction. We can say that it's not totally prohibited nor totally allowed.

2.11 Views of fuqha on adoption:

As above mentioned, that in Islam there is no concept of legal adoption according to majority of scholars.⁷² There are some scholars who are the opinion that adoption is not prohibited, it is mubah.⁷³ But most of the jurists, as mentioned earlier, don't agree with them. In all Muslim countries opinion of the majority of the jurists is followed.⁷⁴ This can be seen in Muslim countries reports to the CRC, in which they all say that in Islam institution of adoption does not exist.⁷⁵

2.12 Derived rules

1. In pre Islamic era adoption was permitted but for the purity of lineage it was prohibited
2. In Islamic law, the concept of "kafalah" is prevailing instead of adoption.
3. Adopted child enjoys a different status from biological child according to Sharia.

⁷² Asaf A.A.Fyazee,1955,163.

⁷³ David Pearl,1987,89

Mubah is an act, with reference to the doing or omission of which there is no demand. It is just a recommendation. Abdurahim , 1911,61; Sadr-ul-Shariah, 1996,vol.11,258.

⁷⁴ Same is followed in Pakistan. This can be seen in Supreme court's judgement in Sher Afzal v. Shamim Firdaus,PLD 1980 SC 228.

⁷⁵ Nyazee,'A', ILR 2003, 88-98.

An Islamic state cannot conclude a treaty which permits any prohibited act or which has immoral objectives or these objectives are against principles and purposes of Islam. Same is the case where a treaty is prohibiting an act which is obligatory in Islam. Besides the stand took on the un-Islamic provisions of CRC a demonstration of this approach by Muslim States can also be seen at the 40th and 41st sessions of the General Assembly where draft declaration on 'Social and legal Principles Relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and internationally' was discussed. As a result of this difficulty of Muslim states that they cannot sign or ratify any treaty which entails any act prohibited by Islam, Islamic principle of Kafalah was introduced in preambular paragraphs 6 and 7 and article 22. For detailed discussion see Jamshed A. Hamid, Status of Treaties in Islam: A Comparison with Contemporary Practice, (Islamabad: Shari'ah Academy International Islamic University, 2001), 130. [Hereinafter Jamshed A. Hamid, 2001]

4. Adopting parents do not assume the status of biological parents but become guardians and trustee.

5. An adopted child should be named after his real father.

6. According to Sharia'h a Muslim cannot call a godchild or foster child his own child, he has permitted call him brother in faith.

7. According to Quran adopted son do not become real son so that they cannot get share from your property as a real son. You will not gift him more than one third of your property.

8. It is forbidden for a Muslims they cannot behave their adopted son just like their real sons.

Out of love a person can call him son but truth remains truth.

Chapter: 3

Concept of adoption in Islamic States and its implication

3.1 Introduction:

Most of the Muslim countries adopted the law which is given by the Islam, and Islam has given the rules and regulation regarding every issue which we face in our life and given the solutions of that issue because it is a complete code of life and given us proper ways for living a better life. So Islam has also given the concept of the adoption and discussed it, in Surah AHZAB in detail. This time most of the Muslim countries laws are silent on this issue and do not give any protection of the adopted child. This issue is very important in the present time when some unseen events occurred and most of the children are helpless and lost their families and living their life in orphan houses, people adopted them from that orphan houses but they did not treat them in good manners. They treated them as servant in their houses etc. When we have some legislation on that issue we have a proper channel to protect that child and he should be able to become a good citizen for our country. But in this time most of the Muslim countries are ignoring this issue except Tunis who has made the legislation on that issue and protected the adopted child's right, Adoption is allowed in Islam although there are some restrictions but there are some rights which given the adopted child by the Islam. In this chapter we will examine the different countries views on that issue and if there is any legislation regarding that issue we will examine as well.

3.2 Practice of Adoption in Islamic States:

In Islam the concept of Adoption of child is known as KAFALAH. The main purpose of adoption is to recognize of the child, his religion, and the ultimate object is to protect the child.⁷⁶

We can never say that Islam does not give a process similar to legal adoption. When a person or guardian acknowledges paternity to an orphaned child it is seen as a form of adoption⁷⁷.

Adoption is not prohibited, but it is an “act towards which religion is indifferent”.⁷⁸

The Holy Prophet (S.W.A) said in this way:

“I and one, who takes care of an orphan, whether related to him or a stranger, will be like these two in paradise;” and the narrator raised his forefinger and middle finger to illustrate this.”⁷⁹

In Islam adoption is not prohibited but there are some restrictions which imposed by the Allah Almighty on the adopter which he should be followed because if he ignored that restrictions he will be committed a wrongful act instead of a right one. So in Islam adoption is allowed but with some restriction.

There is a big issue that is the difference in adoption ratio between the male and female. The adoption rate of male is much more than the adoption of the female⁸⁰.

⁷⁶ Shabnam Ishaque, *Islamic principles on adoption: Examining the impact of illegitimacy and inheritance related concerns in context of a child's right to an identity*. *International Journal of Law, Policy and the Family* 22, (2008) Published by Oxford University Press, 2008 Vol. 22, No. 3.

<http://lawfam.oxfordjournals.org/content/22/3/393.full.pdf>. last visited (26.1.2011)

⁷⁷ Alexander D. Gonzalez, *The Hague Inter country adoption act and its interaction with Islamic law: can an imperfect enforcement mechanism create cause for concern?* (2007)

<http://www.gonzagajil.org/pdf/volume10/Gonzalez/Gonzalez.pdf> last accessed (10.2.2011)

⁷⁸ This concept is known as “Mubah”

⁷⁹ (Recorded in the Authentic Collection of Sayings of the Prophet by Imam Muslim)

www.muslimpersonallaw.co.za/Inheritance%20and%20Islamic%20Law.pdfm

⁸⁰ Rupert Rushbrooke, *The proportion of adoptees who have received their birth records in England and Wales*. p.32. http://www.statistics.gov.uk/articles/population_trends/adopteerbirthrec_pt104.pdf last access (10.2.2011)

There is a reason behind that behavior or difference the adoption ratio between the male and female. In a family a male is necessary for the continuity of the generation so the adoption ratio of male is more than a female. But in Islam that is not allowed to continue your generation from your adopted son.

According to Holy Quran:

“Call them after their true fathers, that is more equitable with Allah”

So in Islam that is the restriction imposed by Allah Almighty they are not your real son so they are not eligible to continue your next generation.

In many countries there are complete forms of ‘adoption’ the adopted child retains some legal rights with the birth parents, for example the right of succession in the property of his/her natural parents and some other rights retains from adoptive parents.⁸¹

The adopted child is entitle to get his/her rights from both side but in Islam he is not entitle to get property right from his/her adoptive parents and do not use adopter name as his/her father’s name.

3.3 Legislation on adoption in different Islamic States:

In Muslim countries the adoption is allowed and adoptee having some rights on that person who adopted him and the adopter have some obligation which imposed by Islam on that person. Here we discuss the legislation of different Muslim countries in detail.

⁸¹ Adoption Law: The case for reform, April 2000 p. 33 section 2
http://www.lawsociety.ie/Documents/Law_reports/adoption.pdf last visited (12.2.2011)

3.4 MALAYSIA:

Adoption is not a common practice in Malaysia because the procedures of adoption in Malaysia are very difficult and time consuming. The adoptive parents may be required to remain in Malaysia for two or more years during the process. And in Malaysia the non Muslims are not. In Malaysia the concept of adoption has been allowed and having the legislation on the adoption. The Adoption Act 1952 gives the procedure of adoption and determines the rights and duties of the adoptee and the adopter. There are two types of adoption which we discuss here in detail.

3.4.1 Domestic adoption.

Domestic adoption means that adoption which is within the country where the adoptive parents living in the same country where the child live. This type of adoption is allowed in the Malaysia.

3.4.2 Inter country adoption.

The inter country adoption where the absence of the biological parents the child sent from his own country to another developed world for the better care. These are the two type of the adoption which is allowed in the Malaysia and the adoption of child is not a common practice but when someone wants to adopt a child then he should choose between these two types.

3.5 Adoption of a Muslim and non-Muslim child:

In Malaysia there is a different approach regarding the adoption of the Muslims and non-Muslims children.

(A) Muslim adoption.

The Muslim children may be adopted by the Muslim parents. In Malaysia the adoption of a Muslim child is governed by the Registration of adoption Act 1952 and Sharia rules. For the adoption the adoptive parent applies to the National Registration department through that specific document the child as his/her adopted child. . For the adoption the adoptive parent must be resided and had continuous custody of the child not less than two years. The adoptive parent should ensure or present evidence with the application relating to the care, maintenance and education of the child during that specified two years. If the national registration department is satisfied with the evidence submitted by the adoptive parent then an entry made in the register and a certified copy delivered to the adoptive parent. And in the care where the registration department is not satisfied with the evidence then the department conduct an investigation into the well being of the child.⁸²

(B) Non-Muslim

Adoptions

The adoption of a non-Muslim child in Malaysia is governed by the Adoption Act of 1952 (Act 257) Here a question is that who can adopt a non Muslim child? The married couple can adopt both the male and female and the single mother can also adopt both male and female but the signal father can adopt only the male children. The age requirement if the adoptive parents in a non Muslim adoption are not related to the children must be 25 years old and in case of relation then one of them must be 21 years old. But the non Muslim adoptive parent can never adopt a Muslim child.⁸³

⁸² *International adoption in Malaysia*
<http://www.ipn.gov.my/en/faq-adoption> last visited (11/04/2011).

⁸³ <http://ukinmalaysia.fco.gov.uk/en/help-for-british-nationals/living-in-malaysia/general-advice/adoption> last visited (11/04/2011).

3.6 Procedure of adoption in Malaysia:

In the registration of Act of Adoption 1952 had provided the procedure of Adoption in detailed: Under this Act the Registrar has all the chargers and supervision to register the Adoption, The ruler of the state appointed many public officers by the name of the office as a Registrars of Adoptions for the state or for such area specified in the appointment for the purposes of this Act there is also a Deputy who will perform the Registrar's duties in the absence of the registrar from the office. Every Registrar who appointed under this Act shall keep a register and it's called Registrar's note book in which he shall record all the proceeding regarding the registration of any adoption with the details of the identity of the adopted child and the name of the person who is adopting it and all evidence taken by him. At the date when application is made of any child under the age of eighteen years who has brought up, maintained and educated by any person, or by two spouses jointly as his or her own child any *de facto* Adoption and has the period of not less than two years continuously , the Registrar shall register the Adoption and for this purpose the child and the Adopting person shall appear before the Registrar and produce the evidence either oral or documentary in case of the death of the parents or one of the parents then the guardian will appear before the Registrar and express the consent of an Adoption. After that if the Registrar is satisfied with the circumstances and he consider that the welfare of the child with an Adopting parents then he will allow an Adoption with the consent of the child's parents or custodian who shall be signified his consent by statutory

declaration. And the prescribed fee shall be paid with an Application then the Registrar shall register an Adoption.⁸⁴

3.7 Adoption in Pakistan:

Although adoption is found in many societies, like ancient and modern, primitive and civilized, and is recognized by the common law.⁸⁵

Adopted children do not have the same status in all Muslim countries because of their statutory laws. In countries where adoption is allowed it shall only be carried out in the best interest of the child. And this reorganization must be for the protection of child and it should be by the competent authorities. In Pakistan the concept of adoption is not governed by any law because Pakistan is a Muslim country and follows the concept of Sharia. That's why the courts in Pakistan have ruled that there is nothing in the Muhammadan law similar to adoption as recognized in Roman or Hindu legal systems. In Pakistan adoption of child is not unlawful but the child adopted by Muslims will not be able to enjoy the usual rights such as rights to his parents, name and inheriting their property. People who belong to other religions but citizen of Pakistan they can follow their own religion. They are not bound to adopt the Muslim law.

Section 17 of the Guardian and Wards Act covers some of the concerns relating to adoption. It says that:

- In appointing or declaring the guardian of a minor, the court shall subject to the provisions of this section, be guided by what, consistent with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

⁸⁴ *Laws of malaysian253, Registration of adoptions act 1952*, Incorporating all amendments up to 1 January 2006 <http://www.agc.gov.my/Akta/Vol.%206/Act%20253.pdf> last visited (11/01/2011).

⁸⁵ Bryan, A. Garner. Black's law Dictionary, 8th edition. Edition in chief.

- In consideration what will be for the welfare of the minor, the court shall have regard to the age, sex and religion of the minor, the character and the capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.
- 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.⁸⁶

Although the concept of adoption is not allowed in Pakistan but the government run the adoption agencies and there are so many private organizations which work on the adoption because there are lot of people are waiting to adopt the child. There is a lawyer Mr. Anees jillani who belong to Islamabad describe the adoption as:

*“Adoption is one of the best thing it fulfill the need of the parents. And child also get love from the parents they not feel that they are orphan”.*⁸⁷

Adoption is not an adventure. It's a way to of family formation; a couple could save their married life for adopting a child. Because the main purpose of the adoption is to make the family. The rate of adoption in Pakistan becoming high with the passage of time but there is not actively participation of the governmental institutions, on this concept government should take some steps for the adoption although there are some private organizations those are working for

⁸⁶ Anees jillani, zareena jillani, *child rights in Pakistan 1st edition* (Islamabad: published by SPARC (Society for the Protection of the Rights of the child, 2000), p.194-195

⁸⁷ Alefia T. Huassain, *A child of their choosing* . p.2-3

<http://www.pakistanadoption.com/publications/achildoftheirchoosing.pdf> last access (10.2.2011}

the adopted child's welfare. No doubt Pakistan is a Muslim state and adoption is not prohibited in Islam there are some restriction on the adopter parents but it is allowed for the orphans.⁸⁸

3.8 Some restrictions on the adopter parents:

➤ 3.8.1 Right of the adopted child in inheritance:

When we define the issue of inheritance, it means the transformation of the property from the one generation to next generation that is the most common way of acquiring land or access of land. In Islam the right of inheritance has been explained by the law in rigid form and in uncompromising terms. Every child of a family is entitled to gain his/her share in the property of his/her father. But that child should be the legal and biological child of that person.⁸⁹

➤ 3.8.2 Islamic law of Inheritance:

The Islamic Law gives the Right of Inheritance to both male and females and share for each of them is explained in Holy Quran.⁹⁰

In Islam there are some rules regarding the inheritance which explained as:

- The percentage share of the beneficiary should be predetermined.⁹¹
- And we should give the same share of every beneficiary which determined by the Islam.

⁸⁸ Ibid:

⁸⁹ *Autosomal recessive inheritance – Traditional Patterns of Inheritance* Ifact sheet 8 p. 1
<http://www.genetics.com.au/pdf/factsheets/fs08.pdf> last access (10.2.2011)

⁹⁰ Janet Nasambu Kassilly Barasa and Kennedy Onkware , *The influence of Islam on Bantu indigenous beliefs and practices relating to inheritance, Kenya*. International Journal of Sociology and Anthropology Vol. 2(7), pp. 155-161, August 2010 : p. 158

<http://www.academicjournals.org/ijsa/PDF/pdf2010/August/Barasa%20and%20Onkware.pdf> last visited (20.1.2011)

⁹¹ Islam, land & property research series, paper 6: *Islamic inheritance laws and systems* 2005. P. 9
http://www.unhabitat.org/downloads/docs/7348_36488_IslamicInheritanceLawsAndSystems%20.pdf last access (20.1.2011)

- The property of the deceased person disposed is only one third of his net asset.⁹²
- Finally, the inheritance right cannot be generally taken away the rules which given by the Islam is facilitate the person at the time of the distribution of the property. Every person share has been determined the right of the wife in 1/8 in her husband's property and in case of when she has child she is entitle to get 1/6 from her husband's property. same rule applies on the husband he is entitled to get half of what his wife left when they have no child and in the case when they have child then the share of the husband is 1/4.⁹³

➤ **3.8.3 Inheritance of adopted child from adopted parents:**

Basically, the rights of inheritance are only for the legal heirs of the deceased person, not any one is allowed to demand the share from the property of the deceased.⁹⁴ The main focus of Islamic law in the adoption is inheritance, because the Islamic law is based upon, sunni and shiah and they don't give the inheritance right of the adopted child in the property of the kafil.⁹⁵

Most of the countries like Brazil, Myanmar and Turkey that permit full adoption and also adopted person have same right of inheritance from the adoptive parents just like the biological

⁹² *The Law of Inheritance in Islam.* p. 1
<http://www.muslimpersonallaw.co.za/inheritancedocs/Learn%20Inheritance%20in%20Islamic%20law.pdf> last access (10.2.2011)

⁹³ Janet Nasambu Kassilly Barasa, and Kennedy Onkware, *The influence of Islam on Bokusu indigenous beliefs and practices relating to inheritance*, Kenya. International Journal of Sociology and Anthropology Vol. 2(7), pp. 155-161, August 2010 : p. 158
<http://www.academicjournals.org/ijsa/PDF/pdf/2010/August/Barasa%20and%20Onkware.pdf> last access (15.2.2011)

⁹⁴ Peter Wendel, *Inheritance rights and the step-partner adoption paradigm: shades of the discrimination against illegitimate children*, 2005 p. 1 and 2 vol 34:351
http://law.hofstra.edu/pdf/Academics/Journals/LawReview/lrv_issues_v34n02_CC1.Article-Wendel.final.pdf last access (29.6.2011)

⁹⁵ Shabnam Ishaque, *Islamic principles on adoption: examining the impact of illegitimacy and inheritance related concerns in context of a child's right to an identity*. International Journal of Law, Policy and the Family: First published online , September 2008, page 407 <http://lawfam.oxfordjournals.org/content/22/3/393.full.pdf> last access 10.2.2011)

child. In the republic of Moldova the law declares that the adopted children who are not able to do any work they were entitled to inherit at least two third of the share that would have been due to them in the case of legal succession. Most of the countries allow the adopted person to inherit from their birth parents. In Swaziland, for instance, section 6 (3) of the adoption of children Act of 1952 provides that the right of inheritance of adopted child from his or her parents is *ab intestato* and relatives is not effected by an adoption order just like in Philippines, article 189 of the family code declares that the adopted child or person has an intestate heir of the biological parents and other blood relatives.⁹⁶

Dr Salahuddin Mahmudan says about the adopted child:

"The adopted child is not taken the inheritance property from the portion of the adoptive parent. They only take the property if parent give willingly and that share is only one third share".⁹⁷

The concept of adoption is not recognized under Islamic law that's why the adopted child is not allowed to take the right in the inheritance of his/her adoptee parents..⁹⁸

➤ **3.8.4 Inheritance of adopted child from biological parents:**

The adoptee child is entitled to get his/her right of inheritance from his/her natural father and natural mother property and the natural parents are liable to give the right of inheritance from the

⁹⁶ Child adoption trends and policies united nations, department of economic and social affairs, population division. United Nations publications. P.46 http://www.un.org/esa/population/publications/adoption2010/child_adoption.pdf Last access (06.8.2011)

⁹⁷ *International development law organizations, Status of adopted children in Islam* p. 3 <http://www.idlo.int/DOCNews/204DOC.pdf> last access (10.3.2011)

⁹⁸ *Islamic inheritance laws and systems* UN-HABITAT, 2005: p. 10 http://www.unhabitat.org/downloads/docs/7348_36488_IslamicInheritanceLawsAndSystems%20.pdf last access (16.6.2011)

property.⁹⁹ The share of the male is double as the share of the female that's the rule of Islam. It does not mean that Islam discourages the women in fact the share of male is twice than female the reason behind that the male have responsibility to fulfill the desire of the child or wife. The male have so many responsibility like to give education to his child that is the main reason the share of the male is double than the female.¹⁰⁰

*"Allah commands you regarding your children. For the male a share equivalent to that of two females. " [Quran 4:11]*¹⁰¹

Once the wife of saad b. al-Rabi came to the prophet with her two daughters and said that her husband has died in the martyr's beside you in the battle. And their uncle takes saad's property and they cannot marry their daughter unless they have property. Then the verse of inheritance is revealed and prophet (P.B.U.H.) tells him. "Give the two daughters of saad's two third of the estate, give their mother one-eighth and keep the remainder yourself."¹⁰²

*"If (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half." [Quran 4:11]*¹⁰³

If biological parents have no son and they have two or more daughters or granddaughter the share is two third and if biological parents have one daughter their share is half. The adopted child is not denied rights in the property of his/ her biological family. It is the right of the child to

⁹⁹ Peter Wendel, *Inheritance rights and the step-partner adoption paradigm: shades of the discrimination against illegitimate children*, 2005 p. 359 Vol:34 : 351
http://law.hofstra.edu/pdf/Academics/Journals/LawReview/lrv_issues_v34n02_CC1.Article-Wendel.final.pdf last access (20.6.2011)

¹⁰⁰ *Law of inheritance in Islam* p. 5
<http://www.muslimpersonallaw.co.za/inheritancedocs/Learn%20Inheritance%20in%20Islamic%20law.pdf> last access (20.1.2011)

¹⁰¹ Quran Surah 4-11(al-Nisa)

¹⁰² *The law of inheritance in Islam* p. 3
<http://www.muslimpersonallaw.co.za/inheritancedocs/Learn%20Inheritance%20in%20Islamic%20law.pdf> last access (20.1.2011)

¹⁰³ Quran 4:11

get the inheritance from biological parents. And adopted child also get if biological parents willingly give some portion of the property and that share must be equivalent to one third of the property. Not exceed than one third of the property.¹⁰⁴

➤ **3.8.5 Rights of adopted child:**

The adopted child has the right to keep his/her own property when they reach at the age of puberty:

In the Quran describe as:

“You shall hand over to the orphans their rightful properties. Do not substitute the (your) bad things for the (their) good ones, and do not consume their properties by combining them with yours. For this is indeed a great sin.”¹⁰⁵

In this ayah the Allah SWT say that you can give the share of the orphans. And do not give the bad things to orphan give them the good things, and don't use their property.

This is not your property. This is the property of the orphan you give this property to the orphans.

“You shall test the orphans when they reach puberty. As soon as you find them mature enough, give them their property. Do not consume it extravagantly in a hurry, before they grow up.”¹⁰⁶

In this ayah ALLAH SWT say that when the adopt child or orphan reach at the maturity give them their share. Don't sale the property of the adopt child.. In other word we can say that this is the Amana.

¹⁰⁴ Dr. Abid Hussain, *The Islamic laws of inheritance*, <http://www.hoor-al-ayn.com/articles/Misc/The%20Islamic%20Laws%20of%20Inheritance.pdf> last access (10.2.2011)

¹⁰⁵ Al- Quran Surah number 4 (al-Nisa) and ayah number 2

¹⁰⁶ Al- Quran Surah number 4 (al-Nisa) and ayah number 6

The adopted child has the right to have the complete name of his natural parent.¹⁰⁷ In the history we have the example of the Zaid Bin Haristah who adopted by the Holy prophet (SAW) that adopted child called by the name of his real father they are not called as Zaid Bin Mohammad.

There are some rights of the adopted child mentioned as under:

- The adopted child has the right to live in the family and also have the right to live in the institution.¹⁰⁸ The adopted child has the right to meet his real parents.¹⁰⁹
- The adopted child has the right to know the reality of his genetic history. The basic reason behind that when a person stands in the front of the mirror they resemble their face features with his parents. But the adopted child can never match their feature with his parents unless he reconnects with his biological parents.
- If the adopted have the sufficient understanding about the process of the adoption then the consent of the adopted child must be there. The law of the country will determined the age of the adopted child whose consent required in the process of the adoption.¹¹⁰
- The adopted child is entitled to know about their family's origin and culture heritage and know about their biological parents.¹¹¹

¹⁰⁷ *International development law organizations, Status of adopted children in Islam.* p. 1
<http://www.idlo.int/DOCNews/204DOC.pdf> last visited (13.3.2011)

¹⁰⁸ Sara Dillon, Suffolk, Center for Adoption Policy: *Adoption and Children's Rights: Getting it So Very Wrong* University School of Law in June 2004), p. 2
<http://www.adoptionpolicy.org/pdf/4-28-05CAPSaraDillonadoptionarticle.pdf> last access (20.2.2011)

¹⁰⁹ Sara Dillon, Suffolk , Center for Adoption Policy: Adoption and Children's Rights: Getting it So Very Wrong University School of Law June 2004), p. 7 <http://www.adoptionpolicy.org/pdf/4-28-05CAPSaraDillonadoptionarticle.pdf> last access (20.2.2011)

¹¹⁰ European convention on the adoption of the children. council of Europe p. 2
http://www.coe.int/t/transversalprojects/children/pdf/AdoptionPlaquette_en.pdf last access (20.1.2011)

¹¹¹ policy for the adoption of children July 2003 p. 2
<http://www.dcp.wa.gov.au/Resources/Documents/Policies%20and%20Frameworks/Adoption%20of%20Children%20Policy%202003.pdf>

- When the adopter adopted a child then the adopted child have the right that the adopter shall not have the alternative child in the family.¹¹²
- The adopted child has the right to get all the facilities like medical, education. There is so many places where the adopted child have the poor mentality because the adopter good take care of the adopt child.¹¹³
- The adopted child shall have the right to choose between the adopter family and the real family of the adopted child.

3.9 REASONS OF THE ADOPTION:

In Pakistan the basic reason of the adoption is that when a married couple not having the child after the five years of their marriage then they started thinking that they have to adopt a child for the successful married life. When a woman have a daughter and not having the son then she want to adopt a boy because the boy will take care of the parents in the old age of the parents and also take care of the sisters as well.¹¹⁴ The other reason is that the children will take care the family after the death of the family business.¹¹⁵ There is another concept in the adoption is the step parent adoption that make a relationship between the child and the step parent. In the step

¹¹² Policy for the adoption of children June 2003 p.4

<http://www.dcp.wa.gov.au/Resources/Documents/Policies%20and%20Frameworks/Adoption%20of%20Children%20Policy%202003.pdf>

¹¹³ Susan Livingston Smith & Jeanne Howard, a *Comparative Study of Adopted Children from Different Adoption Types and Birth Children.* <http://www.uea.ac.uk/swp/icar2/pdf/smith81.pdf> last access (20.2.2011)

¹¹⁴ Tazeen S. Ali, Neelofer Sami, *Adoption practices among couples with secondary infertility in Karachi: a triangulation study design.* Department of Community Health Sciences, (Karachi: The Aga Khan University, February 2007), Vol: 57 no 2 p. <http://www.jpma.org.pk/PdfDownload/1006.pdf> last visited (10.2.2011)

¹¹⁵ By Alefia T. Hussain, *A child of their choosing*
<http://www.pakistanaadoption.com/publications/achildoftheirchoosing.pdf>

parent adoption the child can demand inheritance right from the step parent property and the step parent can get inheritance right from the child's property as well.¹¹⁶

There are so many reasons of the adoptions in the Pakistan and that concept is allowed in Islam but in the Pakistan which is a Muslim country not having any legislation on the concept of the adoption that is very serious and our government should take some step on that issue and make some rules for the adoption which are becoming very famous in our society.

¹¹⁶ Peter Wendel, *Inheritance rights and the step-partner adoption paradigm: shades of the discrimination against illegitimate children*, 2005 p. 365 and 2vol 34:351
http://law.hofstra.edu/pdf/Academics/Journals/LawReview/lrv_issues_v34n02_CC1.Article-Wendel.final.pdf
last access (29.6.2011)

Chapter 4: legal rights of the adopted child and legislations with reference U.K & USA

Part: 1

4.1 Legal rights of adopted child in U.S.A

4.1.1 What is adoption of a child?

Adoption is still highly emotive and important factor of the society and one of the oldest social institutions. Adoption of a child must be in the best interest of the child and the role of governments in relating such decisions are frequent subjects of debate. Adoption of a child is controversial and disputed issues and much of the information on adoption remains anecdotal. Adoption is varying from state to state according to the laws of those countries because all countries have their own law. Every country has different procedure of adoption but the most important adoption is on the domestic level but in the USA the data on the number of children adopted domestically are rarely available and when they are, they tend to be out-of-date.

4.2 Adoption of a child in U.S.A

Adoption is intended to help children who have been permanently and legally separated from their birth parents become permanent members of a new family. Studies show that adoptive parents provide more love and healing environment and loving ties and emotional security for their children. They provide better educational and social outcome and financial support for their

children throughout childhood into adulthood then those who remain in foster care. The government encourages families to adopt children with special needs. Adoption assistance is a federal and state funded program which includes medical assistance and financial assistance paid on behalf of an eligible child to adoptive parents. It's not a payment for the child's special need it's a support to help adoptive families meet their children's needs.¹¹⁷

Adoption is the permanent legal transfer of full parent's rights from biological parents to adoptive parents. This transfer ensures that adoptive parents provide all rights and the child get all social legal and emotional benefits. Each state has its own laws regarding the various aspects of adoption and has laws regarding timeframes for relinquishing the child and rescinding parental rights, as well as specifications on allowable birth parent expenses. Adoption agreements till now arranged in one state to another state and the laws both states are understood and followed.¹¹⁸

4.2.1 History of adoption in U.S.A

In 1851, an act passed by the Massachusetts state who first pass a modern law in which is based on child's welfare and as a social and legal contract. That act marked a significant turning point because it directed judges to ensure that adoption is a proper law and have its own significance. The adoption Assistance and Child Welfare Act was passed in 1980. In 1997 the Adoption and Safe Families Act is for the betterment and welfare of the adopted child.¹¹⁹

¹¹⁷ Oregon adoption assistance handbook .p 1.
<https://apps.state.or.us/Forms/Served/de9050.pdf> last visited (06 June 2011)

¹¹⁸ Chapter 1, *Adopting in the United States*. P.1.
http://lyceumbooks.com/pdf/AdoptionInUS_Chapter_01.pdf last visited (06 June 2011)

¹¹⁹ Chapter 1, *Adopting in the United States*. P.4. http://lyceumbooks.com/pdf/AdoptionInUS_Chapter_01.pdf last visited (06 June 2011)

4.3 THE ADOPTION PROCESS:

Adoption is a process by which a child legally joins a family and become an important part of that adoptive family. In last 50 years the concept of adoption was taken as a shameful secret but now a day's its widely recognized way of society.¹²⁰

Adoption establishes a relationship between child and non biological parents. Adoption affords adoptive parents rights and responsibilities identical to those of biological parents. . Adoptive parents also share common experiences such as having a judge legally establish the adoptive placement. Adoption is little bit a complex process, there are various processes of adoption by which parents can adopt, and the laws govern the processes through which the children come to be adopted. Adoptive parents make an assessment, called a home study. The purpose of this estimate is to identify families and readiness for adoption. Training, individual and family interviews and home safety inspections and reviews of records are held for the improvement of process of adoption. Americans can also adopt children from other countries but adoption is governed by the laws of children's home countries and the children must legally immigrate to the united state or any other place selected by the adoptive parents.

April 1, 2008, the Hague Convention on Protection of Children and Co-operation In Respect of Inter country Adoption governs adoptions from approximately 75 countries That, like the United States, is parties to it. The purpose of Hague convention is to determine the eligibility for adoption and immigration and also provides protection for children and to ensure that placements made are in the best interests for them. For adoptions from countries not party to

¹²⁰ Laurie C. miller, *Adoption and foster family care*. P.134
<http://www.us.elsevierhealth.com/media/us/samplechapters/9781416033707/Chapter%2013.pdf> last visited (06 June 2011)

the Hague Conventions U.S law prefer the orphans for immigration into the United States.

Orphans mean a child whose parents have died or whose single parent cannot care.

Among all adopted children in 2007, with the exclusion of those living with at least one biological parent. One out of four was adopted from other nations; of the remaining children adopted domestically, half were adopted from foster care and half from private sources.¹²¹

4.4 Process of application for the adoption:

In united nation the process of adoption starts with a detailed application process, and then followed by a home study which takes several months to complete. After the fulfillment of the all requirements and after the home study is completed and approved, adoptive parents wait for a referral of a child from their agency and this referral also accepted by the parents. The procedure of adoption continues till the ultimate event of adoption. This process starts with the post placement period and this period is long enough to ensure that the adoption is going well. And the parties, adoptive children and parents accept their new family and new environment of life. The final step of adoption is the legal recognition of the family's formation that creates the permanent legal relationship between the child and his or her adoptive parents.¹²²

4.5 International adoption:

International adoption is a very important part of the total adoption picture.¹²³ Various nations develop the different rules governing the international adoption. There are two camps for

¹²¹ Sharon Vandivere and Karin Malm, *Adoption USA, a chart book based on the 2007 national survey of adoptive parents*. P.2,3. <http://aspe.hhs.gov/hsp/09/NSAP/chartbook/index.PDF> last visited (06 June 2011)

¹²² C h a p t e r 1, *Adopting in the United States*. P.10. http://lyceumbooks.com/pdf/AdoptionInUS_Chapter_01.pdf last visited (06 June 2011)

¹²³ See ELIZABETH BARTHOLET, FAMILY BONDS: ADOPTION AND THE P, RnNn'INO (1993). See also Elizabeth Bartholet, International Adoption: Overview, in ADOPTION LAW AND PRACTICE 10-1 (Joan Hollinger, ed., 1988, Supp. 1995) [hereinafter Bartholet, Overview]. For an excellent discussion of the history and current nature of international adoption, see J.H.A. van Loon, Report on Intercountry Adoption, The Hague Conference on Private International Law, Prel. Doc. No. 1 (Apr. 1990) [hereinafter Hague Report] (on file with author).

adoption purpose, one consisting of countries with low birthrates and small numbers of children in need of homes, and the other consisting of countries with high birthrates and huge numbers of such children. In United Nations a large number of babies surrendered by birth parents have been limited in recent decades by birth control. Because of all factors there are very few children available for adoption. Economic circumstances play an important role in poorer countries of the world. Some countries have their own adoption system. International adoption is advantageous for the children. Only international adoption provides opportunity for permanent families for the welfare of most of the homeless children. International adoption of a child is a controversial topic but it is a particularly form of adoption. Prospective parents reach out to children in need, rather than fighting over the limited number of healthy infants available for adoption in United States. These families are built across lines of racial and cultural difference and the members of these families must learn to appreciate one another's differences. The tensions between the different visions of international adoption are evident in recent developments. During the past few decades adoption of children increased and also children placed for adoption across national borders. Before the 2nd world war adoption of children was not so common but in 1990s the adoption become so common and in various countries in western Europe have opened, closed and reopened international adoption programs in response to the variable political winds.¹²⁴

Rough estimation of international adoption is one sixth of all non relative adoptions in this country.¹²⁵ And worldwide estimation of per year international adoption is 15,000 to

¹²⁴ The number dropped in the early 1990s, in part because S. Korea significantly reduced its foreign adoption program, and in fiscal year 1992 there were only about 6,500 adoptions of children from abroad to the United States. See Briefing Paper on 1993 Hague Convention on Intercountry Adoption, U.S. DEPT OF STATE, June 1993, at 1; Peter H. Pfund, Intercountry Adoption: The 1993 Hague Convention: Its Purpose, Implementation and Promise, 28 FA. L.Q. 72 (1994) [hereinafter Pfund, Intercountry Adoption]. By fiscal year 1995, the number had risen to 9,234, reflecting an increase in adoptions from China and various countries in Eastern Europe and the former Soviet Union. See U.S. IMMIGRATION AND NATURALIZATION SERV., STAT. DIV., IMMIGRANT ORPHANS ADOPTED BY AMERICANS (1995).

¹²⁵ See Adoption Factbook, supra note 3, at 61 (one-sixth of all unrelated adoptions in 1986).

20,000.¹²⁶ Increasing interest in international adoption becomes great force with a new hostility to such adoption. Political forces condemning the incensement of adoption and says that there is something shameful in sending homeless children abroad rather than taking care of the children in country itself. International adoption might be getting higher and lower it is unclear and controversial. The interest of the children always said to be the determinative issues by the countries. When children cannot get their rights from their birth parents then their interests and rights are quite clearly served by their adoptive parents, whether in their own country or abroad.

Opposition to international adoption is rooted in a political misunderstanding of children as belonging to their racial, cultural and national groups of origin and these groups will be weekend by loss of these resources. The article reconsider barriers and developments in international law and bring recommendations for reform looking to a system of law which would facilitate rather than impede the placement of children who need homes with the parents who want to provide them.¹²⁷

4.6 History of International Adoption:

Adoption is a process of care of orphans by which societies are responsible for orphans. International adoption was ground breaking because it sent children across borders and continents to live with new family. After the 2nd world war of Europe and Japan in 1945 when many children were orphaned, abandoned or separated from their parents because of war, American start adopting children at international level. The purpose of international adoption is a

¹²⁶ See Hague Report, *supra* note 1, at 62 n.96. See also Dave Todd, *Children. New Commodity in Red-Hot World Market*, V.NCOUVER SUN, Oct. 1, 1991, at F4.

¹²⁷ ELIZABETH BARTHOLET. *Journal of the American Academy of Matrimonial Lawyers. A Journal and Digest of Family law*. International adoption: propriety, prospects and pragmatics. Volume 13 Winter 1996 Number 2. P. 181 to 184. <http://www.law.harvard.edu/faculty/bartholet/propriety.pdf> last visited (06 June 2011)

humanitarian effort for those abandoned children and families in many nations, especially the United States. International adoption became possible in the United States with the attribution and efforts of Harry and Bertha Holt and the biggest surge in international adoption came after the Korean War. The removal of the children from developing nations has been observed by some critics and they suggest in different ways that wealthy nations use their power to exploit women living in poverty in order to satisfy their own needs for adoption. International adoption has been criticized for what could be seen as the commodification of children. Even though there were a lot of criticism, but International adoption remains very popular. The most exponential growth of international adoption has occurred over the past twenty years.

The ratio of international adoption became double in U.S between the period of 1991 to 2001 and the ratio of female children was more than male 64% female and 50% male. International adoptions of child reached a peak in 2004 and total of 22,884 adoptions have been on a steady decline since 2004. And in 2008 the numbers of children adopted internationally is still significant totaling 17,438. Child adopted internationally mostly arrives from institutions and they are at risk for attachment disturbances and other problems. Actually attachment is a mutual corresponding relationship between the parents and child that is built over time. Attachment is an interchangeable relationship between adopted child and parents and a foundation on which many aspects of later developmental, emotional and behavioral growth are built. Early attachment in adoption shows the impact of family factors.¹²⁸

¹²⁸ Lindsey Grey Houlihan, *Child attachment at adoption and three months*. August, 28, 2009. P. 7, 8. 1, <http://msass.case.edu/downloads/vgroza/dissertationhoulihanfinal162010a.pdf> last visited (06 June 2011)

4.7 United States Laws and Policies:

Most of the countries regulate their laws of Adoption, immigration, and citizenship as a primary functions to accommodate the realities of international adoption. These laws create a lot of difficulties in the process of foreign adoption. At federal level parents face series of hurdles in accomplishing a foreign adoption. Parents also satisfy the laws and policies of their home state and of the United State government in addition to those of the foreign country at issue. And at state level prospective parents must fulfill all the requirements of their home state and satisfactory home study is under federal law for all international adoption.

At the federal level parents should satisfy the immigration officer and follow the rules. In United States these rules allow the issuance of the “preferential visas” that permit the immediate entry of foreign born adoptee.¹²⁹ The adoptive parents ensure the authorities that they have fulfilled all requirements. In 1994 INS regulations were revised to impose more requirements for adoptive parents to provide appropriate home and parenting.¹³⁰ In INS regulation the specific check be made that the adoptive parents are not involved in any social crime because there is a evidence of child buying activity.¹³¹

4.8 Unnecessary Adoption and Citizenship Requirements:

In United States after the adoption of child, additional steps are required for the protection of child and regularize the relationship of new parents and child. If the child has not been adopted abroad then a United State adoption is necessary. A format entitled according to a decree issued by courts within the United States.

¹²⁹ Without the preferential visa the foreign-born adoptee would be subject to the regular quota system limiting immigrants and would typically not be eligible for entry for many years.

¹³⁰ 8 C.F.R. 204 (1996)

¹³¹ 8 C.F.R. 204.3(i) (1996).

The adopted child is fully protected in U.S.A and gets legal status as an adoptee and also gets a United States birth certificate. As a practical matter it can be very important for adoptees to have their all adoption documents which are issued by United States agencies. And the language and style will be familiar to the other United States. Second adoption is just a formality. Only a few states have designed their adoption laws to facilitate recognition of foreign adoption decrees.¹³²

Foreign adoptee must apply for citizenship and this process takes time from six month to a year. The goal is not to determine which of foreign born children are fit to become United States citizens but they can get citizenship status who applies. In International adoption a dozen of documents must be accumulated. Certified, Stamped copied and translated. International adoption can be accomplished for the prospective parents with sufficient resources.

United States adoption agencies are doing a lot of programmed with foreign agencies for the betterment of children, because domestic adoption is difficult than foreign adoption. And the range of expenses upwards of \$10, 000, with many international. Adoption costing \$15, 00 to \$30, 00 even when no more major obstacles arise. The process provides less protection because of complexities. The lack of coordination between different jurisdictions creates hurdles for the children and these difficulties of the process provide courage to find ways to take short cuts around the legal system.¹³³

¹³² See Richard R. Carlson, Transnational Adoption of Children, 23 TULSA L.J. 317, 355-70 (1988).

¹³³ See Hague Report; *supra* note 1, at 188 (noting the connection between irrational legal barriers and abusive adoption practices. The report argues that internationally agreed to standards ensuring "straight forward and well-structured procedures for inter country adoption" should contribute to combating child trafficking, and further asserts that "if prospective adoptive parents are offered an alternative which provides them with guidance, avoids needless costs and minimizes bureaucratic procedures, they will be less tempted to have recourse to dubious intermediaries."). *Id.*

4.9 International Law and the Hague Convention:

There is very international law on adoption across borders. General Assembly has taken some significant actions approving a declaration on social and legal principles related to adoption of children nationally and internationally in 1986¹³⁴, and the convention on the rights of the children in 1989.¹³⁵ These documents recognize the legitimacy of international adoption for example; there should be guarantees of citizenship and other legal status for the children when adopted. For the processing of international adoption these documents do not establish standards and put down the lower position with the preferred options of the suitable care in the child's country of the origin.¹³⁶

In the past few decades some countries have developed bilateral agreements governed adoption between a particular sending and receiving country.¹³⁷ The Hague Conference by the unanimous vote of 55 countries on "convention on Protection of Children and Co-operation in Respect of Inter country Adoption" designed all adoption matters between countries that become party to it.¹³⁸ In the realm of international adoption law this is very important development.

¹³⁴ Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, G.A. Res. 41/85, U.N. GAOR, 41st Sess. (1986), reprinted in 26 I.L.M. 1096 (1987) [hereinafter U.N. Declaration].

¹³⁵ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 61st plen. mtg., Annex, reprinted in 28 I.L.M. 1448 (1989), with corrections at 29 I.L.M. 1340 (1990) [hereinafter U.N. Convention]. Articles 20,21 and 35 deal with the protection of children without families, adoption nationally and internationally, and the sale, trafficking, and abduction of children.

¹³⁶ See U.N. Declaration, *supra* note 20, Art. 17 at 1101 ("If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, inter country adoption may be considered as an alternative means of providing the child with a family."); U.N. Convention, *supra* note 21, Art. 21(b) at 1464 (States recognizing adoption shall "recognize that inter-country adoption .may be considered as an alternative means of [a] child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.").

¹³⁷ See Hague Report, *supra* note 1, at 174-78 (describing agreements between governments, and between governments and nongovernmental organizations, that exist between the Philippines on the one hand, and Australia, Sweden, the Netherlands, and Norway on the other, between Sweden on the one hand and Ecuador and Greece on the other, and between El Salvador and Canada).

¹³⁸ Convention on the Protection of Children and Co-operation in Respect to Inter country Adoption, The Hague Conference on Private International Law, 17th Sess., Final Act (1993), reprinted in 32 I.L.M. 1134 (1993) and in 40

As of July 5, 1996 including United States 26 countries have signed the convention. And the countries support and approve this convention and total eleven countries approve as of this date. For international adoption convention represents a new level of endorsement by virtue of language indicates that abroad adoption is more preferable than all other problem because child should grow up in a family environment. The convention establishes some certain procedures governing international adoption between approved countries. For example, each country establishes a central authority directly or indirectly for the responsibility of certain functions to other appropriate bodies.

This convention suggests a model for international adoption and this Hague effort has already focused new attention on ways in which our citizenship, immigration matters and state adoption laws should be changed to make international adoptions works better. The Hague Convention makes the international adoption process better and effective for the treaties between countries.¹³⁹

4.10 children adopted from international sources:

There are different kinds of adoption and they vary from country to country, and typically the adoption is facilitated by private adoption agency, but in some country domestic adoption is also available and according to 2007 NSAP report private adoption is smaller than either of the domestic adoption group. According to this article in 2008, international adoptions have been

Nm'HERt.,rDS Ir,rr'. L. REv. 292 (1993/2) [hereinafter Convention]. See generally Pfund, Inter country Adoption, *supra* note 4. The final text of the Hague Convention was the product of an extensive process. In April 1990, a comprehensive report on inter country adoption was disseminated, prepared by Hans van Loon of the Permanent Bureau of the Hague Conference. See *supra* note 1. A number of negotiating sessions at The Hague followed, concluding with a three-week session of the Hague Conference itself, at which 66 nations participated along with 18 mostly nongovernmental international organizations.

¹³⁹ ELIZABETH BARTHOLET. *Journal of the American Academy of Matrimonial Lawyers*. A Journal and Digest of Family law. International adoption: propriety, prospects and pragmatics. Volume 13 winter 1996 Number 2. P. 190 to 196 <http://www.law.harvard.edu/faculty/bartholet/propriety.pdf> last visited (06 June 2011).

steadily decreasing to below 18,000, but in 2004 adoptions had increased from 15,000 to over 22,000.

4.11 Theoretical Framework:

When a person adopt a child he must know that legal responsibility and he should act as a rational agents and the foster parents will consider both the emotional and financial impacts because adoption must be for the best interest of the child. When a foster child is legally adopted than many financial benefits and the duty of parents are altered.

In many states, adoptive parents will receive a reduced monthly subsidy when they adopt their foster child (Barth, 1997). There are also legal costs of adoption although some states provide subsidy but adoptive parents become financially responsible for the child's expenditures and may be liable for any damages caused by the actions of the child. In all components to the cost of adoption, monthly foster care subsidy and adoption subsidy are the specific components in this paper. After the Adoption Assistance and Child Welfare Act of 1980 states provide adoption subsidy.

With the start of the Act of 1980 which is called as Adoption Assistance and Child Welfare Act many states and the federal government have activity encouraged adoption by lowering the cost of adoption by offering a monthly adoption subsidy. In 1998 by examining AFCARS data they find that because of lowering the cost of adoption, adoption increased through two channels. First, lower the cost of adoption gives incentive to parents for their foster child. Secondly, it changes the characteristics of foster parents. By examining this data one thing come to in our knowledge that the difference between the monthly foster care and adoption payments, rather the levels of either, that foster parents respond to. Lowering the cost of adoption has a greater impact on the adoption rate and also has an impact on some children than the

others. Overall adoption rate is same for girls and boys but due the fact that lowering the cost of since 1980 has had a largest impact on the ratio of boys. And it is also a greater impact on the ratio of older children as compared to younger children. And the adoption rate of white children has increased as compared to the black children. The overall effect may be larger than the estimate suggests on the adoption ratio of black children. Reducing the cost of adoption has the largest impact on the adoption rates of children placed with single foster parents and with relatives.¹⁴⁰

4.12 General over view of data Guidelines for improving data on child Adoption:

In this scenario the adoption rate is high and increasing worldwide. The report entitled “Child Adoption Trends and Policies” is great for the estimation of the total number of adoptions worldwide. Inter country adoption and domestic adoption is different from each other inter country means one country to another country. There is not any specific definition of domestic adoption but in simple word it does not involve an inter country procedure. Out of 195 countries adoption of a child is allowed in 173 countries of the world and in 22 countries where the children can be adopted through the concept of kafalah.¹⁴¹

¹⁴⁰ Laura Argysa and Brian Duncana, *, *Economic Incentives and Foster Child Adoption* A Department of Economics, University of Colorado Denver, Campus Box 181, Denver, CO 80217-3364, USA p. 8 to 10, and 221, 22. http://econ.au.dk/fileadmin/site_files/filer_oekonomi/dokumenter/Konference-10/immigration/bduncan.pdf last visited (06 June 2011)

¹⁴¹ Kafalah is basically a practice that has been sanctioned by Islamic injunctions for the care of children who were orphan, destitute, or abandoned. It can also be available for children who are taken up by childless couples from orphanages or even biological children of other family Members or friends. This practice is a combination of obligations that arise under fostering and Adoption but not in the same sense as these are practiced in western countries. A Kafil, who takes Parental responsibility within the mechanism of Kafalah, is essentially a guardian but a guardian whose responsibilities are far more onerous to the ones that foster or adoptive parents in their western Tradition may be under. It has a deeper and sacred basis, which provides guardianship, shelter, and Care to children within a family without changing a child's identity or absorbing his/her assets into that of the family providing the care. This form of childcare unlike legal adoptions also does not give such a child right of inheritance in the assets of the Kafil, rather his/her property rights are associated with those of his/her biological parents. Essentially, such a child's identity and property rights do not get absorbed in the identity and property rights of his/her Kafil. Thus, the primary objective of the practice of Kafalah is to provide nurturing and protection to a child who is in need of it.

There is different procedure regarding the data on the adoption of a child, 88 countries have information on both procedures, domestic and inter country adoptions. Some countries have data only on inter country and some do not allow the inter country adoption like 9 countries have data only on inter country adoption. 23 countries have data only on the overall number of adoptions and 8 countries have data only on domestic adoption and seven countries do not allow inter country adoptions.

The estimate ratio is that in every year almost 260,000 children are adopted, so there are a quarter of a million adoptions. There are some countries where the adoption rate is high like **United States** of America in year of 2001 adoption ratio is 127,000 and this accounts nearly half of the total number of adoptions worldwide. In 2001 the large number of adoption in china almost 46,000 and more than 23,000 in Russian federation. Adoption socially and emotionally bond between child and the parents historically, adoption occurred primarily to preserve and transmit family lines or inheritance, to gain political power to forge alliance between families. For the continuation of strong family lines the adopted person was usually adult person. The purpose of adoption is to promoting the child's welfare and to ensure the best interest of the child is served through adoption.

4.13 There is considerable variability in the legal requirements for adoption among countries:

In most of the countries religion often plays an important role in determining the conditions regarding adoption procedure. In countries where adoption of a child is not possible then they adopt an alternative practice may be pursued, like guardianship etc 20 countries do not have legal provisions for child adoption but 160 countries recognize the adoption of a child.

In some countries procedure of adoption is different, some countries prefer the fostering system and that practice allows parents to put their children in the care of their relatives and remain concerning and don't cut all ties with their children.

The rights of adopted child are varying from country to country and according to the laws of that country. In some countries adopted child acquire all rights but in some countries adopted child couldn't acquire all rights as birth children, including the right to inheritance as well. Some time adopted children break all relations with their parents and in some countries this terminated tie is not culturally unacceptable.

Requirements are also considered for the process of adoption and these requirements for prospective adoptive parents based on the law of the country. In some countries only married couple can adopt a child but in some countries single parents can also adopt a child. Criteria of the countries are differing from each other. Currently adoption by the step parents discouraged in several countries because of the potentially detrimental effects that such adoptions are deemed to have on the child's relationship to his or her non-custodial biological parent.

The study of United Nations provides research on child adoption and there are many obstacles to the determinations of adoption because of lack of data on adoption and limitations. Only some countries in the world report some data on adoptions. Only 88 countries provide information's on both inter country and domestic adoption and also provide information about the characteristics of adoptive parents and persons. When countries do not publish information on the issue of adoption then there are many obstacles in understanding how adoption is changing and the factor leading to those changing.¹⁴²

¹⁴² *Guidelines for improving data on child adoption. Department of Economic and Social Affairs Population Division. United Nations publication, Copyright © United Nations 2010. P. http://www.un.org/esa/population/publications/adoption2010/Guidelines_ImprovingData.pdf last visited (06 June 2011)*

4.14 Directions for the Future:

There should be an agreement that children needs protection and they are entitled a loving, nurturing environment. The world should take seriously the sentiments of the children and make amendments or laws for their best interest. In international adoption receiving countries need to take action to build trust and make developed mechanisms which provide regular report and feedback about the treatment in their new adoptive homes with adoptive children to sending countries that, what has happened to the children sent to other countries for adoption.

In international adoption good faith and regular feedback and regular and proper information related to adopted child helps assure the sending countries that the children are in better position in their new home.

A legal framework is necessary for international adoption. The model should be one and made carefully by a responsible agency and then differed to by all others. All duplicated process should be eliminated. There are several agreements between countries which provide examples of how the law of two nations (sending and receiving countries) can be coordinated and facilitate the adoption process. Receiving countries should revise their process and also remove the impediments and insure the protection of all foreign adoptees.

For the United States this would mean the following:

- Development of agreements with other nations on a legal framework facilitating international adoption. This could be done either under the auspices of the Hague Convention or apart from it.
- Recognition in such agreements of the principle that children's best interests require that children in need of homes be placed for adoption as expeditiously as possible. Children deserve nurturing homes now and not

simply at some distant point in the future. Delay hurts and may do permanent injury.¹⁴³

- Elimination of the immigration law provisions that now restrict the children available for adoption by United States citizens to those satisfying the narrow "orphan" definition.
- Qualification for entry into the United States of all children that appropriate sending country authorities designate as being available for adoptive placement.
- Revision of United States laws to ensure that foreign agency decisions releasing children for adoption and foreign adoption decrees are honored by United States agencies and courts. This would help ensure fully protected adoptive status to children adopted from abroad and would eliminate the necessity for duplicative adoption proceedings.¹⁴⁴
- Development of simple procedures to ensure that every foreign adoptee receives an English-language birth certificate from a United States agency upon submission of a foreign adoption decree.
- Revision of United States citizenship laws to make citizenship automatic upon completion of a foreign-born child's adoption by United States citizen, just the way citizenship is now automatic upon birth of a child to United States citizens whether they are living here or abroad.¹⁴⁵

¹⁴³ The adoption studies demonstrate uniformly that delay in placement is a key factor negatively affecting adjustments. See studies cited in *supra* note 48.

¹⁴⁴ See UNIF. ADOPTION ACT, *supra* note 38. A variety of proposed and existing laws dealing with the registration, recognition, and enforcement of judgments entered by foreign jurisdictions could be looked to as models. New Hampshire has legislation which specifically provides for recognition of a "Foreign Decree of Adoption."

A decree of court terminating the relationship of parent and child or establishing the relation by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this state and the rights and obligations of the parties shall be determined as though the decree was issued by a court of this state.

N.H. REV. SWAT. Ay.", 170-B: 23 (1973). See also UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT (1964 Revised Act) (providing for filing and enforcement of judgments entered by other courts within the U.S.); *Urgir. FOIEIGN MONEY JUDGMENTS RECOGNITION Act* (19.62) (providing for recognition and enforcement of judgments entered by non-U.S. courts). See generally Carl

¹⁴⁵ ELIZABETH BARTHOLET. *Journal of the American Academy of Matrimonial Lawyers. A Journal and Digest of Family law. International adoption: propriety, prospects and pragmatics.* Vol. 13 Winter 1996 Number 2. P. 208 to 210 <http://www.law.harvard.edu/faculty/bartholet/propriety.pdf> last visited (06 June 2011)

Part: 2 Adoption of a child in U.K

4.15 Introduction:

Generally says that children will be raised by the birth family. Family is a strong unit of our society. **The procedure of adoption** achieved through a formal legal procedure. It's a legal transferring from one family to another family. And this change of family is not for the time being it is intended to be permanent. (**See appendix C for details of the adoption process**)

Although the adoption of a child is a legal procedure but it relates with very human problems and it should be for the best interest of the child like, the needs and rights of the child. Important point is this, that procedural and legislative arrangements for adoption should be best for the rights of the children and adoption practice as well as modern values of their families.

4.16 Background:

Historically adoption starts when the babies born out of wedlock and socially it was unacceptable and it's a way of providing a secure future for those babies. And when the parent's circumstances did not allow for bringing up of child and they feel that, they did not able to provide care of their infant. While this may still reflect the circumstances for some children placed for adoption, it has become a relatively rare occurrence for infants to be relinquished.

4.17 Adoption Today:

Adoption is important for those children who cannot live with their birth parents. Some time foster care and residential care is not possible or suitable for the children than adoption play

a significant part in the best interest if the children. Adoption procedure is not for the time being it is legal form of permanence for children.¹⁴⁶

In recent years, there has been more formal recognition of the valuable role of adoption in meeting the needs of 'looked after'¹⁴⁷ children, many of whom spend significant periods in care, often made up of several placements. Children needs safe and secure family environment and where this is not possible then as soon as possible alternate and permanent family must be provide to the child. The Department's circular 'Permanency Planning for Children: Adoption – Achieving the Right Balance' issued in May 1999.¹⁴⁸

4.18 The Welfare of the Child is Paramount:

In all decisions relating to adoption the welfare of the child is most important than all other matters. Legislations related to adoption will provide a welfare checklist, modeled on section 1 of the Adoption and Children Act 2002, which courts and adoption agencies will be required to apply in all decision making to secure the child's welfare.

4.19 Placement Orders in England and Wales:

Adoption is made in respect of the child. Placement order can be apply if the authorities believe that, it is in the child's best interest and the placement order is a court order and only local authorities can apply for placement orders. Placement is the basic thing in adoption of a child and placement can be by the parent's consent or the child's own consent. Placement order is a court order and without any guardian or parents a court may not make a placement order.

¹⁴⁶ *Adopting the future*, June 2006. Department of Health, Social Services and Public Safety, p, 17 to 22, http://www.dhsspsni.gov.uk/adopting_the_future_16-6-06pdf.pdf last visited (06 June 2011)

¹⁴⁷ A child is looked after by a Health and Social Services Trust if he or she is in their care or provided with accommodation for a continuous period of more than 24 hours in exercise of its Social Services function.

¹⁴⁸ *Adopting the future*, June 2006. Department of Health, Social Services and Public Safety, p, 17 to 22, and 9 to 11 http://www.dhsspsni.gov.uk/adopting_the_future_16-6-06pdf.pdf last visited (06 June 2011)

In the procedure of placement parental responsibility of the child is given to the agency and after the process of adoption responsibility is given to the prospective adopters. The new legislation in England and Wales requires courts to consider contact when making an adoption order. New legislations regarding adoption of child guide and set out the system and duties of the agencies which must be for the child's welfare.¹⁴⁹

4.20 Adoption policy in UK and international context:

In initiative for the promotion of adoption has been taken at political level in UK for the care of those children who cannot reside with their birth families, so that a permanent solution is obtained for the care of such children. It is not equally applicable for all the children as older children find it difficult to adjust in families who adopt them. Increasing trend of adoption has not only provided better placement to welfare of adopted children but also has reduced expenditure of the State on the "in care" population. Spotter of adoption also argues that a better long-term and quality foster and resident anal care can be provided to the each individual child. New studies are being made for the placement choices and expediting the process. Some intensive support also helps the child to live with their birth families. These include concurrent planning and family group conferences. Such efforts have helped some children to return to their own families and other kith and kins instead of living with non relative families. In this regard, European and international attitudes and efforts are proving very beneficial. An obvious difference has been seen in use of adoption as in UK 3,100 children has been adopted at March 2001 compared with 2,700 in 1999/ 2000 and in US 51,000 more than any other country. Different countries have different opinion and policies towards adoption of children, revealed in

¹⁴⁹ *Adopting the future*, June 2006. Department of Health, Social Services and Public Safety, p, 9 to 11
http://www.dhsspsni.gov.uk/adopting_the_future_16-6-06pdf.pdf last visited (06 June 2011)

recent seminars founded by Nuffield foundation. Some countries believe in family preservation and don't terminate the right of parents in regarded the placement of child for example in Sweedan parental permission is essential for adoption of child. But it is difficult to evaluate the result of the adoption in different countries because not all the countries have proper framework regarding studies and research in this matter because of different cultural and religious heritage. However the situation can be changed by better studies and by comparison of data from different outcome.

In the UK there exists a serious risk of multiple admissions to care. Care centers are also a cause delay in adoption in middle of child-hood. And this delay cause many difficulties in developmental process. In countries like England and Wales adoption process is being motivated by additional funding up to 40% (via the quality protects programs in England and similar initiatives in Wales).

To strengthen and improve adoption support and to reduce delay a new law adoption and children act is published in November, 2002 and aligned it with children act 1989. A number of steps are taken in adoption through "adoption and permanence project" like providing assistance the local authorities for the improvement of their performance to establish adoption register and other adopt other good practices in adoption. This scoping will progress step by step by section to the placement of child and will suggest further improvement in adoption policy.¹⁵⁰

¹⁵⁰ Alan Rushton, *knowledge review, the adoption of looked after children, a scoping review of research* (Great Britain: First published in Great Britain by the Social Care Institute for Excellence (SCIE) November 2008), p 3 to 6 <http://www.scie.org.uk/publications/knowledgereviews/kr02.pdf> last visited (06 June 2011).

4.21: Recruitment, assessment, matching, preparation and placement of children:

Recruitment: The new adoptive parents successful recruitment can be considered the “*sin qua non*” of adoption policy. To facilitate the matching and to achieve the Governments targets for an increase in number of children from care, the all procedure is necessary. A British association is running national adoption week for adoption and fostering. But due to publicity and interest aroused, the thing which is written above it shows that only eleven percent of enquirers were still involved in this process a year later, while it was a major recruitment drive. To know the cost effectiveness of this form of recruitment inquirers recruited finally gain and adoption order. It was publicized by shop fronts, market stalls, by local and national TV programs and by information media. The thing which is important to know is weather these Recruitment campaigns are reaching black and minority ethic families, whether adoption is positive by them and the level of subsequent placement is achieved. There are number of aspects of recruitment that could be researched, the initial contact with the agency should be investigated, its purposes to discover which factors are associated with follow through, for example, time to talk, appropriate amount of information etc. If there is a lack of such information, it can hamper the derived to engage all those inquirers who find adopters and show serious interest and who could potentially meet the need of children. There are so many couples who wish to adopt the kids from abroad the local authorities may also hope for younger children. Traditionally, most of the families prepared to talk on the large number of older children or sibling groups. However the tradition is extending and the traditional criteria led to dispute about the suitability of number of groups.

Assessment of the applicant:

To aim of improving the fairness, transparency and consistency of assessments across agencies is reviewed by the Government for the adopter assessment process. Some factors were also discussed like age, sex, education religion etc of the adopters. By all those procedures of government it was shown that positive or negative patterns of interaction developed between new parents and the child it was a nature of relationship. The implication is that, from the pre placement assessment it can be a harmful and relationship can run into difficulties. A research group at caron family/ great Ormond Street is trying to establish whether the attachment style of the new carers contributes or not to the child's growth of attachment.

Assessment of the children:

In this paragraph, it is mentioned that how saved the children from the hardship of life and how to look after the children. Kirby and Hardesty have given guidance on conducting detailed assessments of the history, cognitive well-being and look after the children and the health of the children. Others also have to accept "about to care the children". Without this it is hard to plan specialist intervention services. The assessment of the problems "readiness for placement" it is the practitioner concept of investigation it can settle the recruitment, assessment, matching, preparation and the placement of children, The new placement initially, and the success of the family in the longer term.

Matching:

Matching is "the match of the adoptive children with the adopters from all the sides" for example, financial position of the adopters, the society around them and the community, because children get the experience from the society and community. The arguments are summarized, Rushton and Minnis in these two topics the research is comprehensively reviewed. Society and

community are important because children have to face the challenges for these agencies should try to make the perfect match whenever possible.

Preparation of the new family:

Recruitment and modes of pre-placement preparation have not always changed in the population of children to be placed.

Special needs: They should be known of experience to bring up the child. It is important for the adoptive parents to learn how to understand the child and how to react.

Preparation of the children to be placed:

The preparation of child "life story work" has been described by practitioner but studies are now lacking on about the child's development and placement. There are so many unresolved therapeutic concerns are raised. Rushton and Colleagues investigated about the progress of the placement even they found high quality of area for the child, but to research such area's are extremely difficult. Agencies should find such areas in their recruitment, assessment, preparation and it would be considered benefit.

From Placement decision to Adoption:

In the case system new permanency time frame is being introduced through the national adoption standers. The purpose is to make adoption as a possible placement child at easy stage and shortened the wait. It is decision making recruitment and assessment, court procedure. In England and Wales there are new specialist adoption centers, they designed to make the processes of cases by using adoption specialist. In some area's recruitment, assessment, matching and preparation we still need to know the differential consequences for conducting the

work in one way rather than another, but recruiter users views are that it is of course important but not equal ant.¹⁵¹

4.22: Adoption Out Comes:

The 40 years of research in establishing the rates causes and some of the consequences of the adoption disruption. There is a vital intersection of policy related research and studies of the child development in US- UK- based studies, health is involved in it. The most important topic in adopting the younger children was neglectful or abusive parenting. They should focus in placement in middle childhood because it's necessary in order to investigate the group known to be at high risk. All the researches reviews conducted to give attention to outcome to cover all forms of temporary and permanent family placement. Sellick and Thoburn conducted a research review on studies up to the mid 1999s. It was written for practitioners and managers.

Adoption now: Department of health commission's research was for the awareness of key question like preparations and deliver messages for policy and management organizations such as research in practice at Dartington and Hadley center in Bristol have researched finding with pointers for good practice. All these researches have shown the rates of about 20% with the range of between 10 and 50 % depending on rising with age of placement. Adoptions work well for most in middle childhood, as a government also does a lot in adoption work.

Meaningful measurement of outcomes:

According to adoption researchers outcome is a challenging proposition and it's becoming problematic as well. Now a day's new developments are taking place in assessing outcome, but there are some different kinds of placement, including adoption. The Maudsley team has attempted a classification of placement progress that goes beyond placement survival.

¹⁵¹ Alan Rushton , *knowledge review The adoption of looked after children, A scoping review of research* (First published in Great Britain in November 2003 by the Social Care Institute for Excellence (SCIE), 2003), p: 7-18 <http://www.scie.org.uk/publications/knowledgeresviews/kr02.pdf> last visited (06 June 2011)

They found the average age at follow 17 up 14.5 years. There is some group of parents which were swearing tested by developmental and behavioral problems, aggression destructiveness and over activity.

The importance of longitudinal research designed:

Only in the UK there is a new adoption follow up study initiated. The study of children placed for adoption between three to eight years in Avon or engaged by Selwyn, Sturgess, Baxters and Quinton. And it is followed up in the parental interviews; with its help we can find important new evidence on predictors, because important epidemiological data will be available on the child pre care experiences. Valuable data is non separated sample whether the psychological status of the adopted people differs from the general population. There are so many important questions remain about the adoption of certain groups for example the fewer placement changes of the children. The level and type of support is necessary to maintain the placements like the placement of adolescents who want to adopt. There is a lack of detailed outcome on placement hampers the assessment of adoption policy.

Monitoring disruption:

For the adoption disruption/ survival rates, nationally by checking the children re enter care and the reasons for re admission are considering the ways of establishment by the department of health. To establish the more reliability detailed interview is necessary, whether the placement has irretrievably broken down in many cases, this is not straight forward.

Comparison of adoption with long term fostering outcomes:

Late placement and foster care of adopted children discussed in this topic. This is not important that how adoption turn out but the important is how they compare with other placement plans. Despite making plan for children to remain on a long term in a foster home they

moved with uncertainty over hanging their future placement. Despites deficiencies in the foster care system some children and young people do nevertheless find a “family for life” through fostering. They continue these relationships and when they leave in home they become independent. The advantages which are shown for adoption in young adulthood but late is not known, although one could speculate that adopted people may do better because of their parents financial circumstances. It is complicated to research the differences between adoption and fostering outcomes. The adoption from care should be considered “worth the risk” on the basis of late placement studies, but this is emerged that adoption clearly do not work for the minority, it all would be reasonable. Furthermore it is necessary for the outcomes to judge against that what might have happened to these vulnerable children, that had they not been adopted.

Now the question is what if late adoptions from care result in a minority doing poorly, now what should be alternative for this?

Arguments: Some arguments are to return the use of residential care. On the other hand, there is a hope that effective support for the adoptive families can help to reduce the difficulty in placement. After all these arguments still confusing and hard to decide that the start of the placement to foretell whether it will lose. Adoption research is probabilistic not deterministic.¹⁵²

The **Children and Adoption Act 2006** gives courts more flexible powers to facilitate child contact and enforce contact orders when separated parents are in dispute.¹⁵³

¹⁵² ibid

¹⁵³ NSPCC inform the online child protection resources *Child protection fact sheet. An introduction to child protection legislation in the UK*. October 2010. Adoption and Children Act 2002.

<http://www.hmso.gov.uk/acts/acts2002/20020038.htm>. Last visited (06 June 2011) for details please see appendix III

4.23 European convention on the adoption of children (revised):

Preamble:

The aim of the council of the Europe is to achieve the unity between all members. And the institution of the adoption of children exists in the law of all state members. And this council differs the views regarding adoption and adoption procedure.

4.23.1 Part I – Scope of the Convention and application of its principles:

Article 1 – Scope of the Convention:

1. This Convention applies to the adoption of a child who, at the time when the adopter applies to adopt him or her, has not attained the age of 18, is not and has not been married, is not in and has not entered into a registered partnership and has not reached majority.
2. This Convention covers only legal institutions of adoption which create a permanent child-parent relationship.

Article 2 – Application of principles

Each State Party shall adopt such legislative or other measures as may be necessary to ensure the conformity of its law with the provisions of this Convention and shall notify the Secretary General of the Council of Europe of the measures taken for that purpose.

The criteria of this convention is different and article 1 is the scope of the convention and it applies to the minor child who are under the 18 year and has not been married and not reached the age of majority and not get any registered partnership with anyone else, at the time when the adopter person applies for adoption. This convention covers all legal matters related to permanent child parent relationship. Part 2 of this convention is basically the procedure of adoption according to this Act.

Article 2 of this convention is related to the process. All state members shall adopt all necessary legislations to conformity of its law and shall notify the Secretary General of the European council.

4.23.2 Part II – General principles:

Article 3 – Validity of an adoption:

An adoption shall be valid only if it is granted by a court or an administrative authority (hereinafter the “competent authority”).

Article 4 – Granting of an adoption

1. The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the best interests of the child.
2. In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a Stable and harmonious home.

Article 5 – Consents to an adoption

1. Subject to paragraphs 2 to 5 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:
 - a. the consent of the mother and the father; or if there is neither father nor mother to consent, the consent of any person or body who is entitled to consent in their place;
 - b. the consent of the child considered by law as having sufficient understanding; a child shall be considered as having sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years;
 - c. The consent of the spouse or registered partner of the adopter.
2. The persons whose consent is required for adoption must have been counseled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin. The consent must have been given freely, in the required legal form, and expressed or evidenced in writing.
3. The competent authority shall not dispense with the consent or overrule the refusal to consent of any person or body mentioned in paragraph 1 save on exceptional grounds determined by law. However, the consent of a child who suffers from a disability preventing the expression of a valid consent may be dispensed with.
4. If the father or mother is not a holder of parental responsibility in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.
5. A mother’s consent to the adoption of her child shall be valid when it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.

6. For the purposes of this Convention “father” and “mother” mean the persons who according to law are the parents of the child.

Regarding validity of the adoption this article says that, an adoption should be authorized by the court or administrative authority and the validity of adoption only by the competent authority.

Article 4 of this convention is related to the granting of an adoption and in this convention adoption of child shall be grant by the competent authority on the grounds if it is in the best interest of the child. For importance of adoption competent authority shall pay particular attention in all cases and providing the child with a stable home having pleasant atmosphere for the adopted child.

Article 5 is about the consents which are necessary in the procedure of adoption. Subject to paragraphs 2 to 5 of this article, an adoption shall not be granted unless following grounds or consents are not fulfilled. Consent of parents and in case when there are neither parents nor father neither mother then anybody who is entitled to consent in their place. Consent of the child considered by law as having sufficient understanding and the age of the child shall not be more than 14 years and the consent of registered partner of the adopter's spouse. The process of consents is necessary. The consent of those persons in adoption is required should be duly informed the effects of their consent. That should be determined whether the adoption will ceased the legal relationship between the adopted child and his/ her family. The consent which is given by the adopted child should be freely and expressed in writing. The authority should not overrule the consent of any person mentioned in paragraph1. When the parents are not fulfilling the parental responsibility in that case the consent of adopted child's parents is not required in the law. The consent of the mother is required in adoption after the six weeks of birth that rule

prescribed by the law, if the time is not determine in that case the opinion of the authority will be preferred. In this convention the words of “father” “mother” means the persons who are parents of the child according to the law.

Article 6 – Consultation of the child

If the child’s consent is not necessary according to Article 5, paragraphs 1 and 3, he or she shall, as far as possible, be consulted and his or her views and wishes shall be taken into account having regard to his or her degree of maturity. Such consultation may be dispensed with if it would be manifestly contrary to the child’s best interests.

Article 7 – Conditions for adoption

1. The law shall permit a child to be adopted:
 - a. by two persons of different sex
 - i. who are married to each other, or
 - ii. where such an institution exists, have entered into a registered partnership together;
 - b. By one person.
2. States are free to extend the scope of this Convention to same-sex couples who are married to each other or who have entered into a registered partnership together. They are also free to extend the scope of this Convention to different-sex couples and same-sex couples who are living together in a stable relationship.

Article 6 describes the consultation of the child that the consent of adoption should be for the best interest of the child. According to paragraphs 1 and 3 of article 5, whether the child’s consent is not necessary but the child must be consulted and views and wishes of the child must be considered. According to article 7 there are some conditions of adoption and it’s all about for the betterment of the child. The law shall permit a child by the two married persons of opposite sex and they have registered partnership with each other. Secondly a child can be adopted by one person. This convention shows the status and stability of same sex couples or different sex couples.

Article 8 – Possibility of a subsequent adoption

The law shall not permit an adopted child to be adopted on a subsequent occasion save in one or more of the following circumstances:

- a. where the child is adopted by the spouse or registered partner of the adopter;

- b. where the former adopter has died;
- c. where the adoption has been annulled;
- d. where the former adoption has come or thereby comes to an end;
- e. Where the subsequent adoption is justified on serious grounds and the former adoption cannot in law be brought to an end.

Article 9 – Minimum age of the adopter

- 1. A child may be adopted only if the adopter has attained the minimum age prescribed by law for this purpose, this minimum age being neither less than 18 nor more than 30 years. There shall be an appropriate age difference between the adopter and the child, having regard to the best interests of the child, preferably a difference of at least 16 years.
- 2. The law may, however, permit the requirement as to the minimum age or the age difference to be waived in the best interests of the child:
 - a. when the adopter is the spouse or registered partner of the child's father or mother; or
 - b. By reason of exceptional circumstances.

The possibility of a subsequent adoption is in article 8. And the law shall not permit on a subsequent occasion. When adoption is made by the any registered partner of the adopter or spouse then the adoption of child has been annulled and former adopter has died and when the adoption has comes to an end. Where the former adoption cannot in law be brought to end and subsequent adoption is justified.

Article 9 told about the age of the adopter person. The minimum age of adopter prescribed by the law and it is neither less than 18 nor more than 30 years. According to law the age difference of 16 years between adopter and child is better for the child. For the betterment of child in exceptional cases the age difference can be waived.

Article 10 – Preliminary enquiries:

- 1. The competent authority shall not grant an adoption until appropriate enquiries have been made concerning the adopter, the child and his or her family. During such enquiries and thereafter, data may only be collected, processed and communicated according to the rules relating to professional confidentiality and personal data protection.
- 2. The enquiries, to the extent appropriate in each case, shall concern, as far as possible and *inter alia*, the following matters:

- a. the personality, health and social environment of the adopter, particulars of his or her home and household and his or her ability to bring up the child;
- b. why the adopter wishes to adopt the child;
- c. Where only one of two spouses or registered partners applies to adopt the child, why the other does not join in the application.
- d. The mutual suitability of the child and the adopter, and the length of time that the child has been in his or her care;
- e. the personality, health and social environment of the child and, subject to any limitations imposed by law, his or her background and civil status;
- f. The ethnic, religious and cultural background of the adopter and of the child.

3. These enquiries shall be entrusted to a person or body recognized for that purpose by law or by a competent authority. They shall, as far as practicable, be made by social workers who are qualified in this field as a result of either their training or their experience.
4. The provisions of this article shall not affect the power or duty of the competent authority to obtain any information or evidence, whether or not within the scope of these enquiries, which it considers likely to be of assistance.
5. Enquiries relating to the suitability to adopt and the eligibility of the adopter, the circumstances and the motives of the persons concerned and the appropriateness of the placement of the child shall be made before the child are entrusted with a view to adoption to the care of the prospective adopter.

Article 10 and the sub sections of this convention are about the inquiries which are made before the adoption. Inquiries about the concerning adopter, child and family must be completed before the adoption and the competent authority shall not grant adoption until it is completed, and the data which is collected during inquiries by the competent authority, it is communicated according to the rules relating to professional confidentiality and personal data protection. Inquiry is necessary and concerning and the matters which is discussed may be related to the adopter and his or her home, social environment, his personality, health, his ability to bring up the child and the atmosphere of his home whether it is suitable for the child or not. And why the person wants to adopt the child or there any reason behind the adoption. Why the one person among two spouses applies for adoption and why the other does not join. The inquiries like,

mutual stability between the adopter and the child and religious and cultural background and civil status of the adopter recognized for that purpose by the competent authority or law. Section 4 of this article says that, the power and duty of the competent authority shall not be affected by the provisions of this article. And section 5 about the eligibility of the adopter and the placement of child shall be made before the child is entrusted.

Article 11 – Effects of an adoption

1. Upon adoption a child shall become a full member of the family of the adopter(s) and shall have in regard to the adopter(s) and his, her or their family the same rights and obligations as a child of the adopter(s) whose parentage is legally established. The adopter(s) shall have parental responsibility for the child. The adoption shall terminate the legal relationship between the child and his or her father, mother and family of origin.
2. Nevertheless, the spouse or partner, whether registered or not, of the adopter shall retain his or her rights and obligations in respect of the adopted child if the latter is his or her child, unless the law otherwise provides.
3. As regards the termination of the legal relationship between the child and his or her family of origin, States Parties may make exceptions in respect of matters such as the surname of the child and impediments to marriage or to entering into a registered partnership.
4. States Parties may make provision for other forms of adoption having more limited effects than those stated in the preceding paragraphs of this article.

Article 11 is about the effects of an adoption of this convention. It says that when a child is adopted then that child become a full member of the adopter family and has the same right. And the adopter must have parental responsibility and the obligations as a child of the adopter whose parentage is legally established. When a child has been adopted then adoption shall terminate the legal relationship between the child and his or her family of origin. If the adopted person have their own child after the adoption of the child, In spite of that, the rights of the adopted child shall continue to have unless the law otherwise provides. When the legal relationship terminates between the child and his family the member states of the convention make exceptions regarding

the surname of the child and prevents to any registered partnership or marriage. The member states of the convention have more effects and make provisions regarding the other forms of adoption.

Article 12 – Nationality of the adopted child:

1. States Parties shall facilitate the acquisition of their nationality by a child adopted by one of their nationals.
2. Loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.

Article 13 – Prohibition of restrictions

1. The number of children who may be adopted by the same adopter shall not be restricted by law.
2. A person who has or is able to have a child shall not on that account be prohibited by law from adopting a child.

Article 14 – Revocation and annulment of an adoption

1. An adoption may be revoked or annulled only by decision of the competent authority. The best interests of the child shall always be the paramount consideration.
2. An adoption may be revoked only on serious grounds permitted by law before the child reaches the age of majority.
3. An application for annulment must be made within a period prescribed by law.

Article 15 – Request for information from another State Party

When the enquiries made pursuant to Articles 4 and 10 of this Convention relate to a person who lives or has lived in the territory of another State Party, that State Party shall, if a request for information is made, promptly Endeavour to secure that the information requested is provided. Each State shall designate a national authority to which a request for information shall be addressed.

Article 12 is about the nationality of the adopted child so, the member States of the convention shall facilitate about the acquisitions of nationality by one of their nationals. According to this convention when a child acquire the another nationality then the adopted child shall bear the loss of prime nationality.

According to the article 13 of this convention law cannot restrict the adopter for more adoption. According to law it's a ability of the person whether he can adopt more child or not.

Revocation and annulment of an adoption is in article 14. This article says that adoption of child can be revoked but only by the competent authority but during this revocation or annulment the interest of the child should be at the prime level. According to this article when revocation of adoption is necessary then it must be before the age of majority and it should be on serious ground and application must be within the time period which is prescribed by law. Article 15 about the information from another State party when the person who lives in another State party. And when request for information is made delivered to the other territory. Then each State party shall appoint an office to which a request for information shall be addressed.

Article 16 – Proceedings to establish parentage

In the case of pending proceedings for the establishment of paternity, or, where such a procedure exists, for the establishment of maternity, instituted by the putative biological father or mother, adoption proceedings shall, where appropriate, be suspended to await the results of the parentage proceedings. The competent authorities shall act expeditiously in such parentage proceedings.

Article 17 – Prohibition of improper gain

No one shall derive any improper financial or other gain from an activity relating to the adoption of a child.

Article 18 – More favorable conditions

States Parties shall retain the option of adopting provisions more favorable to the adopted child.

Article 19 – Probationary period

States Parties are free to require that the child has been in the care of the adopter before adoption is granted for a period long enough to enable a reasonable estimate to be made by the competent authority as to their future relations if the adoption were granted. In this context the best interests of the child shall be the paramount consideration.

Article 20 – Counseling and post-adoption services:

The public authorities shall ensure the promotion and proper functioning of adoption counseling and post-adoption services to provide help and advice to prospective adopters, adopters and adopted children.

For the proceeding to establish parentage article 16 of this convention is for the establishment of paternity. The adoption of a child is not completed until the paternity or maternity of the child is not determined. According to this article if the parentage is not determined the process of adoption shall be stopped. Article 17 of this convention prohibits the adopter for improper gain. According to law when a person adopts a child, the adopter cannot use that child for improper gain or any other benefit. Article 18 says that the State party shall make provisions for the betterment of the child. Article 19 describes the requirement of the adoption. The adopter must prove that he should take care of the adopted child before taken the adoption. The competent authority will determine the relationship after that period. The main purpose of this article is the care of the child. According to article 20 the post adoption services provide help and advice to the adopter and the adopted child and the competent authority should explain the proper function of the adoption.¹⁵⁴

European convention on the adoption of children 1967:

The convention entered into force in April 1968 and in January 2007, it had been ratified by 18 of the 46 member states of the council of Europe, while three member states were signatories but had not yet ratified it. This convention calls for common practices to promote the welfare of the adopted child and regulate some principles related to adoption, effecting procedures and its legal consequences. The convention only applies to legal adoption involving unmarried minors.¹⁵⁵ Article 10 of the convention stated that adoption terminates all rights and

¹⁵⁴ *Joint Council of Europe and European Commission Conference Challenges in adoption procedures in Europe: Ensuring the best interests of the child* 30 November - 1 December 2009 – Strasbourg, Palais de l'Europe - Room 1.p.82 t0 103

http://www.coe.int/t/dghl/standardsetting/family/Adoption%20conference/Brochure%20conf%C3%A9rence%20Adoption_LR.pdf last visited (06 June 2011)

¹⁵⁵ A minor is defined in the convention as a person who has not attained the age of 18 at the time when the adoptive parent applies for the adoption.

obligations between the adopted child and birth parents and adopted child also have the same right and obligations including the right to inheritance just like as legitimate offspring.¹⁵⁶

4.22 Adoption and children act 2002:

Adoption and children act 2002, that acts made by the UK for the Scotland because Scotland works under the British Government. This act is made by the U.K law for the Scotland because Scotland works under the British government. This act is related to the adoption of child and the process etc but these four chapters are relates to my research topic. Chapter 1 is introductory, chapter 2 is Adoption service, chapter 3 is placement for adoption and adoption orders and chapter 4 is Status of adopted children. Chapter 1st of this act is the introductory part in which the child's welfare is the paramount consideration. The court and adoption agency must have regarded the child's wishes and feelings and the child's particular needs. The court or agency must check the child's problem regarding the original family and as an adopted person, his age, sex and character must be relevant. The court consider the willingness of any of the child's relatives or any other person who is interested and can provide to the child a secure environment and fulfill all needs. During the adoption process the court must check the cultural and racial background and specially the religion of the child and the court always consider the range of powers in the case of the child and cannot make any order under this act or the children Act 1989 unless it is for the best interest of the child. According to this introductory chapter during the preceding the court can revoke some issues and can make an order on the place of that issue.

Chapter 2 of this Act is about the Adoption Service and under the act of 1989 the role of adoption society is to make arrangement for the adoption of child. According to this act they

¹⁵⁶ Child adoption trends and policies united nations, department of economic and social affairs, population division. United Nations Publications. P. 57

give advices, information's and participating in arrangement within their area, for those people who wishing to adopt the child and children who may be adopted their parent and guardian. They also give some social services within their area. At the request of any person that they need adoption support services, local authority preparing a plan and then give services to them under the prescribe description by regulation. The plan direction is given by the appropriate minister. Minister have a right to cancellation of registered adoption society relating to children and other transitional matters under the care standard act 2000 (c.14) The management of adoption support agencies are fit for working, management keeping all information and control all operations. A person who is not registered to it, not work in the agency unless he registered in the agency.

The adoption support agencies give facilities and services, they keeping the account, make the arrangement when the manager is absent and requiring arrangement for dealing with complaint on behalf that manager or receiving any of service providers by the agency. The adoption agency must charged fee for provided services under section 9, facilities to the people. And people are liable to pay that fee. The adoption agency give all general information to the appropriate minister about its performance and the magistrate court, country court, high court also give the general information to the appropriate minister and the appropriate minister may publish from time to time abstract of the information given to him. The appropriate ministers can inquiry of the adoption agency in any matter. In the private inquiry minister does not give any direction Subsection (2) to (5) of section 250 of the local government act 1972 (c.70) under this section minister can do local inquiry.

If appropriate minister have a reason that local agency are not working well. He may declare that authority to be default in respect of that duty. The child is living with that people who adopt the child or the adoption agency gives the right the adoption agency give the

authenticated document showing his authority. The person who adopts the child they visit that child to the adoption agency in any reasonable time and the treatment of the child which he thinks fit in that agency.

Chapter 3 of this act is about the **placement for adoption and adoption orders** and the adoption and children Act 2002 is based in the procedure of the adoption of a child. It is the duty of the adoption agency that they place the child with prospective adopter to any person who want to adopt the child. Under the section 20 the parent or guardian of a child is willing to placed his child for the adoption by adoption agency. Adoption agency is satisfy that any parents or guardian are willingly to place his child for adoption at any time with prospective adopter identified in the consent or who may be choose by the agency and not withdraw the consent. Person give his consent to the adoption agency at any time that person is not liable to informed this adoption order to state. Placement order is given by the court and court give authority to the local authority to place the child for the adoption with prospective adopter who may chosen by the authority. Court gives the placement order when the parent is willing to give his child to the adoption agency. And the placement order is continues till the child marries or attain the age 18. When the placement order is in force no other order made unless an application is made for an adoption order. Appropriate local authority must apply to the court for the placement order. If the court is allowed then the adoption agency placed the child for adoption. Before make a placement order the court must see the arrangement which made by the adoption agency. If the child or agency or a named placed in the order, they give application to the court and the court revoke the placement order, so the child is not placed for adoption by the authority. Child is placed for adoption under section 19 and the adoption agency is authorized to place the child for adoption. Parental responsibility for the child is given to the agency. When the child is given to

the adopter the parental responsibility is also transferred to them. Child is placed for adoption by an adoption agency only when the child is less than six week old or the agency has no time being authorized to place the child for adoption. The child who is not the time being placed for adoption they give accommodation to the child. Only local authority has a right to remove the child from prospective adopter or provided the accommodation. Under this section the court make an order in which it is mention whom the child is live and child is allow to visit or stay with a person whose name are mention in the court order. If an application is made for an adoption order, the guardian of the child not applies for the special guardianship unless the court leaves. Any parents or guardian of the child inform the agency that they wish to return the child, the parent give notice to the agency and the agency give notice to the prospective adopter and the prospective adopter must return the child to agency within 7 or 14 days . The prospective adopter gives the child to the authority only when the court gives order.

Recovery orders are discussed in section 41 of this act and according to this, orders can be recover and these recovery orders applies when it appears to the court. A child can live with adopters before application but with some conditions which is discussed in section 42. That the child must have had his home with the applicant, during the period of ten weeks preceding the application and if the applicants is the partner of the child then six month and if the applicants are local authority foster parents, then the condition of time is one year and in any other case the time period not less than three years, whether this period is continuous or not during the period of 5 years preceding the application. The adoption orders may not be made if the court is not satisfied regarding the best opportunities for the child. The process of adoption cannot be completed without giving notice to the appropriate local authority of their intentions. And this notice must be given not more than two or less than three months before the date of application

for the adoption order is made. After the intention notice the court must investigate the proposed adopter and relevant matters of the child. An adoption orders are the orders made by the court for extinguish the parental responsibility of the adopted child. And there are **three conditions for adoption order**, the first condition is on the issue of concept of each parent or guardian the adopter should satisfy the court. Consent of parent or guardian is compulsory for making the order of adoption but they have the right to withdraw the consent before the adoption order has been made. Parent or guardian could not oppose the adoption order without the permission of court. And second condition is, the child can live with prospective adopter but with the consent of parent and the consent of biological mother can be given when the child has attain the age of six week. The second condition will not be opposed by the parents without the consent of court. At the third condition, child is free for adoption by virtue of any order made, in Scotland, under section 18 of the adoption (Scotland) act 1978 (c.28) or in northern island, under article 17 (1) 18 (1) of the adoption northern Ireland order 1987 (S.I 1987 (S.I 1987/ 2203 (N.I.22)).

There are some restrictions on making adoption orders when the application for adoption is made by the same person who was refused by any court except when the circumstances are change or any other reason. An application may be made by a couple or by a one person but they have domiciled of British island and have been habitually resident in British Island not less than one year, and adopter must attain the age of 18 years before the preceding conclude. A couple can be adopt a child both of them attained the age of 21 years and if adoption by one person then the person must attain the age of 21 years and one partner of the spouse also adopt a child. The concept of biological parents of the child is necessary in the procedure of adoption and a court cannot dispense the consent of biological parents unless the court is satisfied that the parent cannot be found or have been died or incapable. Then it's discretion of the court, make an order

for the best interest of the child. Adoption agency must keep all information's related to adoption process and related to the child and can disclose the prescribed information to the prescribed person. The adopted person who has attain the age of 18 years he has a right to get any information related to him.

Status of the Adopted children is discussed in chap 4 of this act. The adopted person is treated in law as the child of the adopter. If the child is adopted by the step father so the children have no right to claim the property of step father. Child have right to claim property only his real parents. Adopted child is the actual child of the adopter and according to law adopted child is treated as the child of the adopter. Under the section 51(2) if the child is adopted by the one person or by the couple so according to law they not consider that child, child of any other person other than the adopter. They consider as the child of one person who adopt that child.. This act does not affect the natural parents. Under the section 67 once the woman attained at the age of 55 then she will not allow adopting the child after completion of property. Under the section 67 the person who adopt the child, his relatives are consider as the adoptive relatives. Under the section 67 (1) and (2) The adopted child had been born on the date of adoption. Trustee are not liable to any person by reason of distribution of property and trustee don't say anything if adoption has effected or revoked before the distribution of property. If the child is adopted whose natural parents purchase the insurance for the death of his child. After the adoption of child the right and liabilities of this policy also transferred to the adoptive parents and adoptive parent are treated as the person who took this policy.¹⁵⁷

¹⁵⁷ *Adoption and children Act 2002*, chapter 38. P.1 to 43.

http://www.legislation.gov.uk/ukpga/2002/38/pdfs/ukpga_20020038_en.pdf last visited (05 June 2011)

Conclusion:

Findings:

The issue regarding adoption of child is being debatable yet. And the practice of adoption was wide in many ancient societies. Countries have their own procedures and laws regarding adoption of child. The custom of adoption was so common in Arabia before Islam, especially for sons. But after the establishment of Islam the concept of adoption convert into kaffalah system. Islam encourages kaffalah system and the caring for orphans. Before the Islam an adopted son was treated as a natural son. But after the development of Islam it converts into kaffalah. Kaffalah is basically a practice has been sanctioned by Islamic injunctions for the care of children who were either orphans, destitute or abandoned. And the Kafil is a person who takes parental responsibility with the mechanism of kaffalah.

In Islam there is no concept of legal adoption according to the majority of the scholars. There are some scholars who are the opinion that adoption is not prohibited, it is mubah. And mubah is an act, with reference to the doing or omission of which there is no demand. It is just a recommendation. To some extent we can say that the concept of adoption is allowed in Islam but with restrictions that you can't change the real name of the adopted child's father on any condition. You can call him as a "brother in faith" but can't change father name, because the sir name and inheritance is the main issues in adoption of child. In the time of darkness people considered as a real son and the adopted son could inherit from his adopted father and the adopted father would also be his heir. So the Quran clearly declares that the adopted son do not become your real son.

Most of the Muslim countries adopted the laws which are given by the Islam. And we can never say that Islam does not give a process similar to legal adoption. The concept of adoption in Malaysia is not so common because the Malaysian procedure is very difficult and time consuming. According to Malaysian laws the adoptive parents may be required to remain in Malaysia for two or more years during the process of adoption. The procedures are different regarding adoption of the Muslim and non Muslim children. Muslim children may be adopted by the Muslim parents and under the registration of adoption act 1952 and according to Sharia rules. The adoption of non Muslim child is also governed by the adoption act of 1952 (act 257). A single mother can adopt both the male and female but the single father can't adopt both, he can adopt only the male children but the married couples can adopt both the male and the female. Muslim countries have their own statutory law that's why the status of adopted children's is not same in all Muslim countries. In Pakistan the concept of adoption is not governed by any law because Pakistan is a Muslim country and follows the concept of sharia. In the issue of inheritance every biological child of a family is entitled to gain his or her share in the property but it is not apply when the child is not biological child. The concept of adoption is not recognized under Islamic law that's why the adopted child is not allowed to take inheritance from adoptive parents. Adopted child can get right inheritance from his or her biological parents only. Adopted parents can gift only 1/3 of their property.

Process of adoption of a child is totally different in U.S.A and UK, because these are the western countries and follow their own laws. When we study these laws of these countries then we examine that these laws governs a process through which the children come to be adopted. Adoptive parents make an assessment, called a home study. The purpose of this estimate is to identify families for adoption. Training, individual and family interviews and home safety

inspections are held for the development of the process of adoption. American can also adopt children from other countries but adoption is governed by the laws children's home countries and the children must legally immigrate to the United State or any other place selected by the adopted parents.

The current tendency to glorify group identity and to emphasize the importance of ethnic and cultural roots combines with nationalism to make international adoption suspect in this country as well as in the world at large. But restricting international adoption does not promote the interests of children or of their countries of origin. It does not put poor countries in a better economic or a better power position with respect to foreign governments. It is simply a symbolic gesture "for" the nation and "against" the foreigners that is easy and cheap to make, the children themselves have little political influence. Their voices are not heard.

The nations of the world should move beyond political hostilities and symbolic acts to focus on the real needs of children. If they did, they would accept international adoption as a good solution for at least some group of the world's homeless children and could begin to restructure their laws and policies so as to facilitate rather than impede such adoption. One side benefit would be that many more of the infertile who want to parent would be given the opportunity to do so through adoption.

These people now feel under significant pressure to pursue biological parenthood through high-tech infertility treatment or complicated surrogacy arrangements pressure that makes little sense in a world suffering in myriad ways from overpopulation. Another side benefit would be enrichment of our understanding of the meaning of family and community.

❖ **Recommendations with reference to legislation of child adoption in Pakistan:**

- ❖ Pakistan is a Muslim country so that the law which is applicable in Pakistan purely based on sharia. In Pakistan, there is no law that governs adoption. This does not mean that adoption is illegal; it simply means that there is no law to regulate this beautiful exercise. Like planting a garden in your own territory or engaging in the sale of silk, breathing and being are not regulated, but are legal. Similarly, adoption per se is not illegal.
- ❖ However, the law that regulates the process of adoption itself is the Guardians and Wards Act, 1890. Although this act itself does not institutionalize adoption, it has sensitized our courts to adoption in Pakistan. The courts recognize that adoption provides a very important function in our society and has existed for a very long time. Although traditionally, it was restricted to within the family and by couples who could not have children, now it has extended to multi-faceted families, including single parents. Our courts have never stopped a single person from adopting a child, as long as the court has established the person's good character and financial ability. The fact is, with the kind of poverty and over population we have and the average number of infants being abandoned at birth rising weekly (if not daily), courts will have no moral foundation to deprive a child who has been abandoned on the street of a caring, loving and secure environment. What we do not have are scrutiny agencies, institutionalized NGOs and robust systems in place, thereby pushing adoption processes to be strictly private affairs. If the courts can make a robust analysis, we are still fine.

- ❖ **So this is how adoption is undertaken:** Through the guardianship route. Once an individual is granted the guardianship of a child, the next natural step would be to get the child a Form B, so that the child can integrate into civil society. Here is where the travesty of justice takes place.
- ❖ **NADRA's failure to protect children:** Our central agency, NADRA, which is solely responsible for granting Form Bs to children, does not recognize guardianship. It refuses to acknowledge wards as legitimate and refuses to register adopted children under the name of the guardian, thereby forcing many to seek false birth certificates, marriages and fake parents to legitimize their children. According to NADRA, if a child does not have any known parent, the child cannot be registered. NADRA has proven itself to be an agency which wants abandoned and destitute children to remain unregistered, unprotected and unable to exercise their fundamental rights, because they had the ill fortune to be abandoned by their natural parents.
- ❖ **Contempt of the court:** Our children are our most cherished hope and asset. It should be the responsibility of the government and all its agencies to support and protect them. Millions of children can be taken off the street by caring, responsible adults who could protect them from exploitation. Failing to recognize many honorable court orders pushes NADRA further into contempt. Adoption and guardianship has to be recognized by NADRA so that they can assist, rather than hinder, programmers that support the development and protection of children. All children in any case have a right to equal opportunities for development, growth and civic amenities, all of which are denied to them because of their inability to get a Form B. NADRA has exposed itself to suo moto or a class-action lawsuit, for acting against the constitution (Article 25, equality before

the law). It should act now and create a process that allows the registration of wards and adopted children; otherwise it will be guilty of serious contempt of court.

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Appendix:

Appendix A

SELECTED ARTICLES OF LAW RELATED TO ADOPTION IN THE INSTITUTES OF JUSTINIAN, 533 A.D.

1. Adoption takes place in two ways, either by imperial rescript or by the authority of the magistrate. The imperial rescript gives power to adopt persons of either sex who are *sui juris*; and this species of adoption is called *arrogation*. By the authority of the magistrate we adopt persons in the power of an ascendant, whether in the first degree, as sons and daughters, or in an inferior degree, as grandchildren or great grandchildren.

2. But now, by our constitution, when a *filius familias* is given in adoption by his natural father to a stranger, the power of the natural father is not dissolved; no right passes to the adoptive father, nor is the adopted son in his power, although we allow such son the right of succession to his adoptive father dying intestate. But if a natural father should give his son in adoption, not to a stranger, but to the son's maternal grandfather; or, supposing the natural father has been emancipated, if he gives the son in adoption to the son's paternal grandfather, or to the son's maternal great-grandfather, in this case, as the rights of nature and adoption concur in the same person, the power of the adoptive father, knit by natural ties and strengthened by the legal bond of adoption, is preserved undiminished, so that the adopted son is not only in the family, but in the power of his adoptive father.

4. A younger person cannot adopt an older; for adoption imitates nature; and it seems unnatural that a son should be older than his

Father. Any one, therefore, who wishes either to adopt or arrogate a son, should be the elder by the term of complete puberty, that is, by eighteen years.

8. He who is either adopted or arrogated is assimilated, in many points, to a son born in lawful matrimony; and therefore, if any one adopts a person who is not a stranger by imperial rescript, or before the praetor, or the *praeses* of a province, he can afterwards give in adoption to another the person whom he has adopted.

9. It is a rule common to both kinds of adoption that persons, although incapable of procreating, as, for instance, impotent persons, may, but those who are castrated cannot adopt.

10. Women, also, cannot adopt; for they have not even their own children in their power; but, by the indulgence of the emperor, as a comfort for the loss of their own children, they are allowed to adopt.

2. Cato, as we learn from the ancients, has with good reason written that slaves, when adopted by their masters, are thereby made free. In accordance with which opinion, we have decided by one of our constitutions that a slave to whom his master by a solemn deed gives the title of son is thereby made free, although he does not acquire thereby the rights of a son.

Appendix B

COUNTRIES THAT DO NOT RECOGNIZE THE INSTITUTION OF ADOPTION

<i>Africa:</i> Algeria Djibouti Egypt Libyan Arab Jamahiriya Mauritania Morocco	<i>Asia:</i> Afghanistan Bahrain Iran, Islamic Republic of Iraq Jordan Kuwait Maldives Oman Pakistan Qatar Saudi Arabia Syrian Arab Republic United Arab Emirates Yemen
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Appendix C

The Adoption Process

Adoption of Relinquished Babies

1.1 Whilst this is now quite a rare occurrence, there are still parents who for a range of reasons do not feel able to provide care for their infant children and wish to have them adopted. As child development is dependent on a child's ability to attach to a primary care-giver, agencies must move swiftly to secure a lasting placement for the child. Having counseled the parents, explaining the legal implications of adoption, the child is voluntarily accommodated by the HSS Trust. The Trust prepares a report on the child and refers the case to its Adoption Panel for a recommendation on whether adoption is in the child's best interests. (Appendix I illustrates the process in a flowchart).

Adoption of Looked After Children

1.2 A child may become looked after through the following routes:

- The child is voluntarily accommodated by a HSS Trust under Article 21 of the Children (NI) Order 1995;
- The child is subject of an emergency protection order under Article 63 of the Children (NI) Order 1995
- The child is subject of an interim care order under Article 57 of the Children (NI) Order 1995;
- The child is subject of a care order under Article 50 of the Children (NI) Order 1995;
- The child has been freed for adoption under Article 17 or 18 of the Adoption (NI) Order 1987.

1.3 Where any child is looked after, social services inform parents and provide written information from the outset, of its policy to achieve permanence for all children, outlining the forms (including adoption) that this might take. In most cases, families are supported to remain together. However, agencies have a statutory duty to monitor children in accordance with the Arrangements for Placement of Children (General) Regulations²⁸ and the Review of Children's Cases Regulations²⁹, through Looked after Children (LAC) Reviews. As outcomes for children who remain looked after in the longer-term are comparatively poor, where it is evident that the child will not be able to return home, agencies must move quickly to secure an alternative plan for permanence.

1.4 Where LAC Review members think adoption should be the plan for a child, the child's case is referred to the agency's Adoption Panel for a recommendation on whether it considers adoption to be in the child's best interest. If adoption is recommended, the Panel also recommends whether a freeing order should be sought. A senior person within the agency, independent of the case, makes the final decision. Where adoption is not thought to be in the child's best interests, the agency considers other options for the child.

1.5 If the agency decides it would be in the child's best interests if he was "freed" for adoption, it prepares a report on the child and applies to the court for a freeing order. Where the child's parent/s agrees that the child should be adopted, the application can be jointly submitted by the

agency and the parent/s. On receipt of the application, the court appoints a Guardian ad Litem (see below). If the child's parents do not agree that the child should be freed for adoption, the court must be satisfied that parental consent should be dispensed with. The legislation identifies 6 grounds on which the court may dispense with their agreement at this stage in the process, prospective adopters for the child may or may not have been identified. **Appendix I also illustrates this process.**

Guardian ad Litem:

1.6 Guardians ad Litem (GALs) are qualified Social Workers with considerable experience of child care matters and a sound understanding of family law. They are appointed by the Courts in proceedings specified under the Children Order and in all adoption proceedings, including step parent adoptions. GALs are called upon to make careful assessment of complex family relationships and, based upon these, to determine what is likely to be the best future option for a child.

1.7 There will frequently be conflict and immense stress within the family with whom the GAL is working. There may be differences in perception between the GAL and the various professionals responsible for the welfare of the child, as to where the best long term interests of the child lie. However, the fundamental role of a GAL is to represent the child before the court on what is in his or her best interests and to ensure that the child's wishes and feelings are made clear to the court.

Prospective Adopters

1.8 Where a person expresses an interest in adoption, they should contact an adoption agency. A qualified member of staff provides written information and may visit the applicant to discuss what is involved. Where the applicant is legally eligible under the Adoption Order and preliminary police and medical checks are satisfactory, the applicant is invited to attend a preparation course. If the applicant wishes to proceed, the agency obtains references and further relevant information before considering an application for assessment.

1.9 If both the agency and applicant are content to proceed, the agency conducts a thorough assessment of the applicant's suitability to adopt either a specific child or a child within a specific age range. It compiles a report and refers the case to its Adoption Panel for a recommendation on the applicant's suitability to adopt. The agency decides whether to accept the Panel recommendation and informs the applicant accordingly. The applicant's approval is reviewed by the agency on an annual basis or following the identification of any significant changes. **(Appendix ii illustrates this process in a flowchart).**

Matching: Domestic Adoption:

1.10 When a child is freed for adoption, parental responsibility for the child rests with the local HSS Trust. The agency seeks to identify a suitable prospective adoptive placement for the child. It prepares a report and refers it to the agency's Adoption Panel for a recommendation on the suitability of the match. In certain circumstances, the Panel may make this recommendation at the same meeting where it makes a recommendation regarding the best interests of the child. It may also make a recommendation on whether an adoption allowance should be paid in respect of the child. The agency decides whether to proceed with the match

1.11 Where the agency is content with the proposed placement, it approaches the prospective adopters regarding the placement. If they are content to proceed, the child is introduced to the family and subsequently placed. As it is important that children experience stability, the child may already have been placed with careers that are dually approved as both foster careers and prospective adoptive careers.

Where the proposed adoptive placement is with careers that are already caring for the child in a foster care capacity, the placement changes from a foster care placement to an adoptive placement.

1.12 The prospective adopters apply to the court for an Adoption Order and a GAL is appointed (usually the same GAL who was involved during freeing). The Adoption Agency monitors the placement until an Adoption Order is granted and offers ongoing support to both the adoptive and birth families as required. If the court deems that the adoption application is in the child's best interests and grants an adoption order, it notifies the Registrar General who makes an entry into the Adopted Children Register. The child's long birth certificate cites the parent/s as adoptive parent/s. (**Appendix iii illustrates this process in a flowchart**).

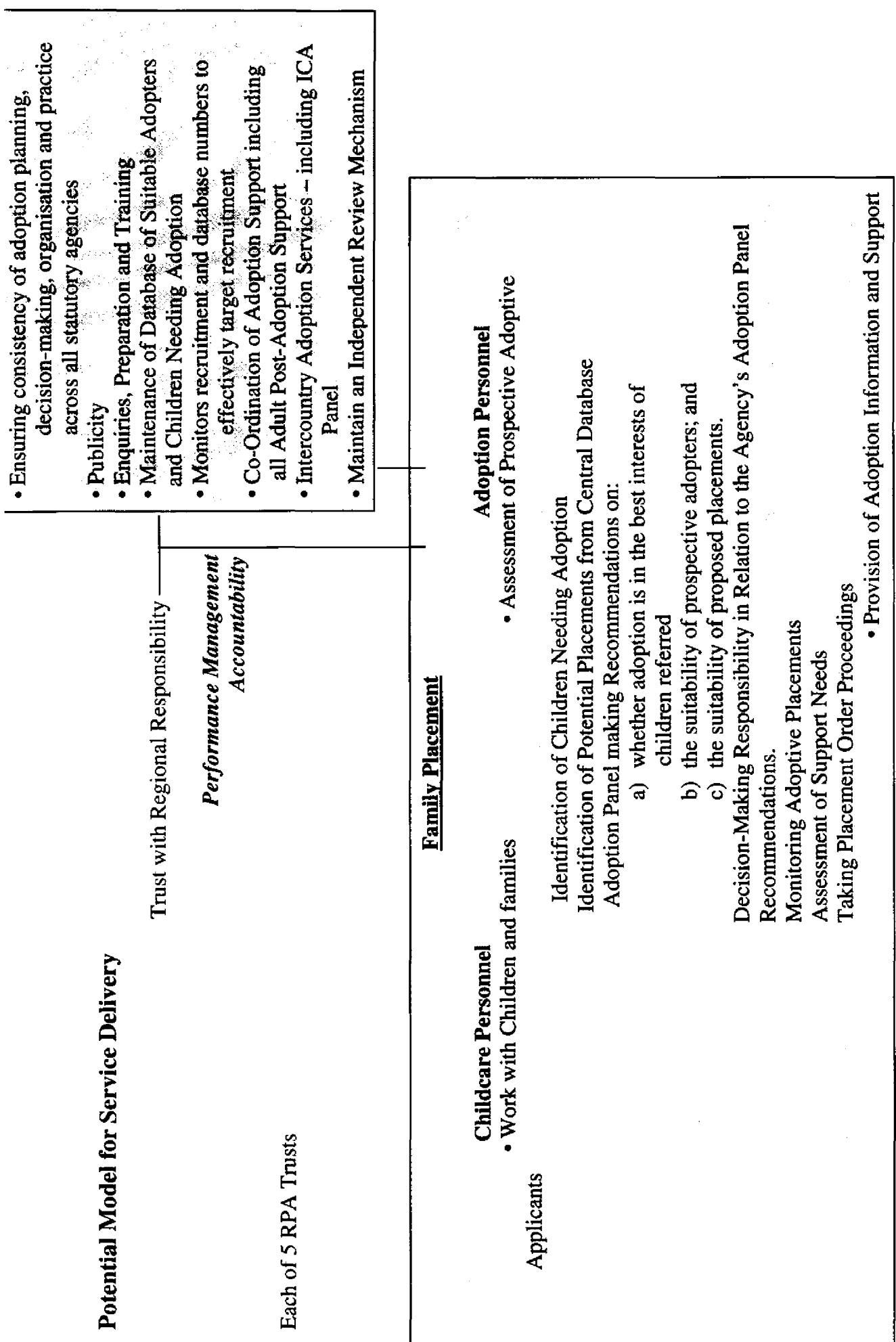
Step-Parent Adoption:

1.13 New marital partners often wish to cement the creation of a new family by acquiring full parental responsibility for children of a previous relationship. Children in these circumstances are normally living in a stable family unit, being cared for by two parental figures, one of whom is a birth parent. Whilst there is not the same need, therefore, for the State to intervene, it is equally as vital to establish that any adoption is in the child's best interests.

1.14 Under the Adoption Order, it is only possible for a married couple to adopt jointly.

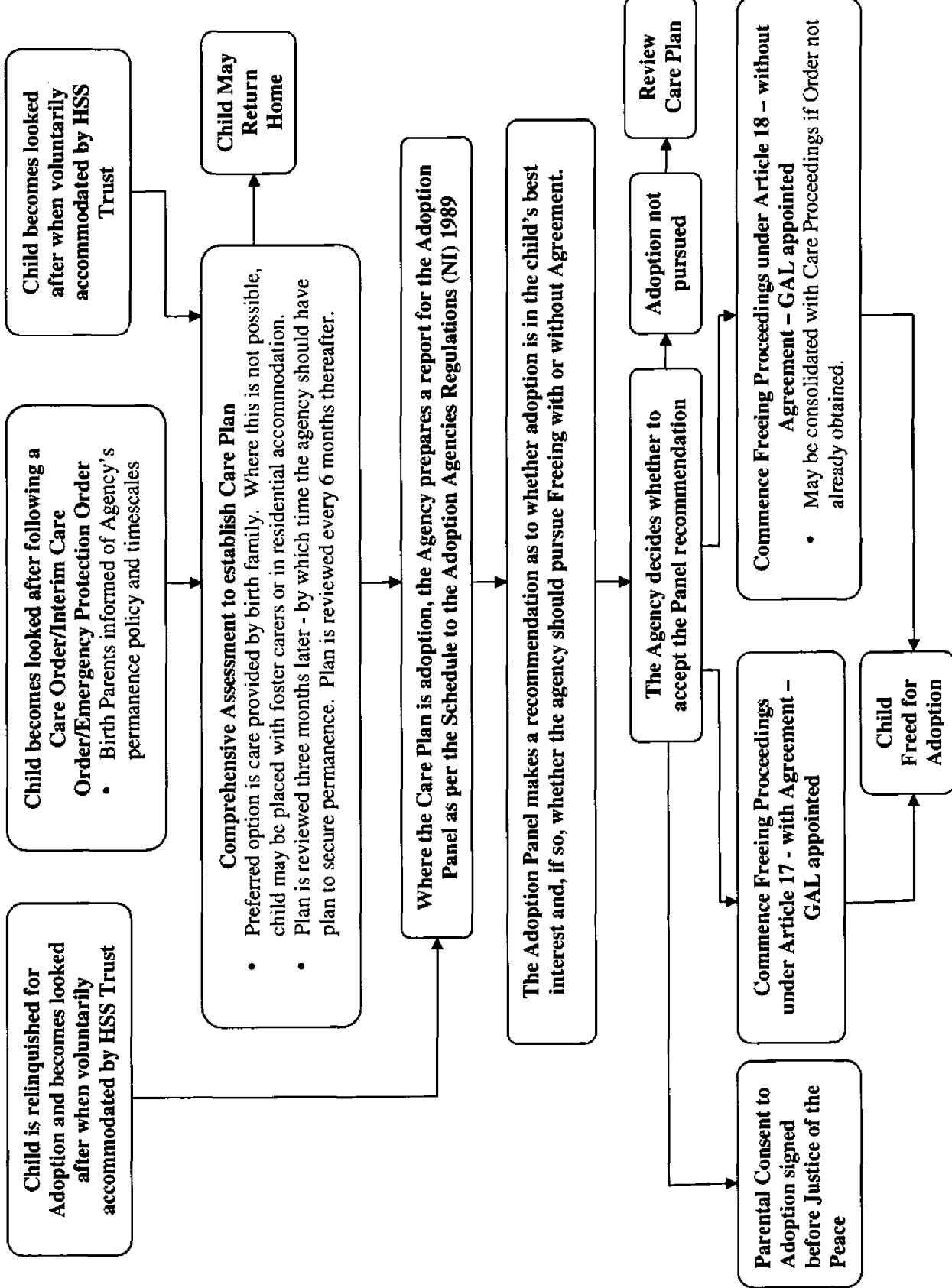
This means that under existing legislation the natural parent within the married couple must apply to adopt their own child along with their spouse. To do so, they must serve a 'Notice of Intention to Adopt' on their local HSS Trust under Article 22 of the 1987 Order and the child will become a "protected child" under the Adoption Order. The couple must, within two years, apply to court to adopt the child. The Court appoints a Guardian ad Litem and asks the Trust for a report.

Any other person with parental responsibility is a party to the proceedings. Where another natural parent does not have parental responsibility, he is notified of events. In either case, the Reporting Officer and the GAL Endeavour to seek his/her views. If the court deems that the adoption application is in the child's best interests, it grants an adoption order. The court notifies the Registrar General who makes an entry into the Adopted Children Register. The child's long birth certificate cites both parents as adoptive parents. (**Appendix v illustrates this process in a flowchart**).



The Adoption Process: Children

Appendix i



Initial Enquiry:
Applicant contacts adoption agency expressing interest in adoption. Agency takes a note of basic details, forwards written information and arranges a counselling interview.

Counselling Interview:
A Social Worker visits the applicant and discusses issues relating to adoption.

Preliminary Checks:
If the applicant wishes to proceed, Social Worker obtains consent to conduct criminal records and medical checks. Agencies also ascertain whether the applicant is known to Social Services and obtains information from any other agency to which the applicant may previously have applied.

Preparation Course:
If checks are satisfactory, the applicant is invited to attend a preparation course, designed to allow prospective adopters to acquire knowledge and skills in relation to behaviour management strategies, child protection, discipline and control issues.

Assessment:
If the agency accepts a formal application to adopt, the assessment process will commence. This will include a number of home visits by the social worker to build up a comprehensive profile of the applicant and to determine the type of child(ren) whose needs he will best meet. The Social worker will complete a report to this effect which will be shared with the applicant prior to being presented to Panel.

Adoption Panel:
The Panel considers the Social Worker's report and makes a recommendation to the agency on whether the applicant is a suitable prospective adopter.

Decision:
The Agency decides whether to accept the Panel recommendation and informs the applicant in writing

Prospective Adopter Approved:
Prospective Adopter is reviewed by the Social Worker every 6 months. The agency conducts a Review annually.

Applicant Not Approved:
Agency notifies prospective adopter in writing, inviting applicant to submit any representations within 28 days. Following receipt of representations, the Agency may refer the application back to Panel for a fresh decision or decide not to approve the applicants.

Change of Circumstances/Range of Approval:
Following the identification of significant changes in the prospective adopter's circumstances, the Agency may refer the case back to Panel

