

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT
SMC No.12/2010
(Original Jurisdiction)
(NADRA Authorities)

Advocate General for Gilgit-Baltistan
Mr. Saqib Jamal, Manager Legal, NADRA Headquarters, Islamabad.

Date of hearing :22.06.2011.

Judgment

Muhammad Nawaz Abbasi, CJ: The Chairman NADRA, Government of Pakistan through Manager Legal has filed this direct application under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 before this Court seeking declaration that notwithstanding, the adoption of orphan, deserted and parentless children from CEENA orphanage Centers or otherwise, the registration of every childborn in Gilgit-Baltistan is necessary with NADRA in accordance with the provision of NADRA Ordinance, 2000. The application is read as under: -

“IN THE SUPREME APPELLATE COURT OF Gilgit-Baltistan

To

The Chief Justice
Supreme Appellate Court
Gilgit-Baltistan

Subject: **Application for Suo-Moto Action.**

It has been observed with great concerned by Chairman NADRA being Registrar General of Pakistan that the custody of large no of minors belonging to Gilgit-Baltistan has been given by the Guardian and Wards Courts to the foreigners (with even no Pakistan Origin) by issuing Guardianship Certificate applied under Section 7 of Guardian and Wards Act 1890 on the basis of Judgment of Chief Court in CFA No.1 of 2006 and CFA No. 13 of 2007 (Copy of CFA No.1 & 2 of 2006 is Annexed) while as per Guardian and Wards Act 1890, the Court may only permit to move the ward outside it Jurisdiction i.e. outside the concern district only by an application made to it under Section 26 of Guardian and Wards Act 1890. Whereas there is no provision exists in Guardian and Wards Act 1890 under which the Guardian and Wards Courts may permit the movement of ward outside the country. While the prevailing practice is viz. versa in Gilgit-Baltistan as presently a large numbers of minors whose custody have been given to the foreigners by the Guardian and Wards Courts of various Districts of Gilgit-Baltistan (Copies of few Guardianship Certificates issued by Courts of Gilgit-Baltistan are annexed). It is further elaborated that the Pakistan citizenship Act, 1951.(Act,II-1951) vide notification No. NA-20/06/1979 dated 13th September, 1981 (Copy annexed) has been extended to Gilgit-Baltistan. as per PLD 1957 Karachi page 50 the Karachi High Court refuse to appoint a Jew mother as Guardian of her Pakistani children because she was an Indian national. As per AIR 1955 MADH P Page 3097 “a person residing outside the county cannot be appointed as Guardian of Minors person, as over such a guardian the Court cannot exercised its proper control.

It is submitted that it is mandatory for NADRA to register every citizen who has not attained the age of 18 years through a parent or guardian under sub section 1 of section 9 of NADRA Ordinance 2000 (Copy annexed) and thus on the basis of this section NADRA is registering the minors citizens of Pakistan through their guardian appointed by the Courts although they are foreigners.

Undersigned is deputed by Chairman NADRA to assist the Guardian and Wards Courts of various Districts of Gilgit-Baltistan in issuance of Guardianship Certificates under Guardian and Wards Act 1890 and after a thorough discussion on the issuance of Guardianship Certificates with all the Districts and Sessions Judges of Gilgit-Baltistan, it has been revealed that as per the information of all the Districts and Sessions Judges all the cases of abounded children belonging to Gilgit-Baltistan has been dealt by Ceena Welfare Organization (Basically a private Registered Orphanage Centre) and the minors have been adopted by the foreigners through the above said Organization.

It is further submitted before this apex Court of Gilgit-Baltistan that the issuance of Guardianship Certificate to the foreigners is against the Articles i.e. Article 3,5,12,14 and 17 of Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 and also against the provisions of Guardian and Wards Act 1890 as per the judgments quoted in Para No.1

It is further submitted that Government of Pakistan through Pakistan Baitul Mall established and Orphanage Center situated in Mirs Lodge Domial Gilgit for the welfare of orphanage of Gilgit-Baltistan. The same may be utilized on the direction of this apex Court for the welfare of abandon children of Gilgit-Baltistan instead of giving them in the hands of foreigners.

On the basis of above it is therefore respectfully prayed that the matter may be intervened by this Apex Court

so that the future of abandoned children of Gilgit-Baltistan may be saved in the larger interest of State.

Chairman NADRA
Through
Manager Legal
NADRA HQs”

This Court Keeping in view the importance of the matter proceeded to take cognizance in the case for pronouncement an authoritative judgment on the subject and vide Order dated 28-03-2010 formulated the questions of law for consideration in the following manner: -

“ORDER DATED 28-03-2011.

Chairman, CEENA Health and Welfare Services producing record pertaining to the adopted children in custody of adoptive parents abroad states that welfare organization was registered in 1990 under Volunteer Social Welfare Organization Act, 1961 and is functioning strictly in accordance with law for the welfare of deserted and destitute person as well as parentless, poor, orphan and abundant children.

Having examined the matter in detail with the assistance of learned Advocate General and learned Senior Counsels, we formulate the following questions of public importance relating to the enforcement of Fundamental Rights of people for determination: -

What is the concept of adoption in Islam and what are the rights of adopted child and whether adoption of a Muslim child without the consent of his parents is permissible under the law.

Whether a Muslim Child can be adopted by a non Muslim and guardian Judge in special jurisdiction is authorized to grant guardianship Certificate a Muslim or non-Muslim to take the child out of its territorial jurisdiction.

In case of parentless/deserted Child, whether, a Muslim state is not responsible for welfare of the Child and permission is not required for adoption of such a child by any state authority.

What are the aim and object of welfare Organization Registered under Volunteer Social Welfare Organization Act, 1961 and whether the custody of a child can be given by such an organization to the Muslim or non-muslim nationals or non-nationals.

The official of local office of NADRA states that due to the non-availability of flight the Legal Advisor of NADRA has not been able to reach from Islamabad. The Deputy Attorney General for Pakistan as was directed in the Order dated 15/03/2011 also in not present. This Court in absence of proper representation of Federal Government, is struck up to proceed further in the matter. Therefore, the Attorney General for Pakistan may ensure representation of the Federal Government by a Deputy Attorney General for Pakistan on the next date and DG NADRA should also ensure that an officer well conversant with the matter should assist the Court. The Attorney General for Pakistan may also take up the matter of appointment of Gilgit base Law Officer of the Federal Government to represent the federation before this Court and Chief Court Gilgit-Baltistan.

There is as such no enacted law on adoption of child in Pakistan but as we understand, the adoption is not prohibited in Islam, therefore, we would like to have the views of different Muslims sects in Gilgit-Baltistan on the concept of adoption in Islam and the right of an adopted Child in Islam. We, therefore, request Anjuman-e-Imamia Gilgit, Tanzeem Ahl-e-Sunnat Waljamat, Gilgit and Ismaili Regional Council Gilgit for their views on the subject adoption in Islam and the welfare and custody of parentless, poor, orphan and abundant children, widows, distarted and destitute woman in Islam. Mr. Tariq Asad Advocate Islamabad may if possible assist the Court on the next date on state expense.

Mr. Abdul Samad Khan Advocate representing CEENA Health and Welfare Services has re-agitated the objection regarding the locus standi of NADRA to file a petition under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 that NADRA is not aggrieved person and provision of Article 61 supra can only be invoked by an aggrieved person. The objection has already been disposed of on the last date with observation that in a matter of Public Importance relating to the enforcement of Fundamental Rights, any person can invoke the jurisdiction of Court under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009. The Court of its own can take notice of such matter without a formal application therefore, the objection is overruled.

Initially the application was filed by NADRA for determination of the question relating to the issues of Guardianship Certificate of abundant Children at the instance of CEENA Health and Welfare Services and the Court in view of public importance of the matter issued notice to the concerned parties. Chairman, CEENA Health and Welfare Services present in person submitted that in consequence to the proceedings of this court, press has criticized the activity of the welfare organization a registered body which is functioning strictly in accordance with law, therefore, the proceedings in the matter with reference to CEENA Health and Welfare Services may be dropped. This Court Vide Order dated 15-03-2011 having dealt with question of locus standi has held that notwithstanding the technical objection the Court can proceed in any matter of public importance and observed that Mr. Anwar Aziz Advocate who appeared to watch the interest of an adopted child abroad may or may not appear as no adverse Order to the interest of an adopted child will be passed behind the back

of adoptive parents. The CEENA Health and Welfare Services may or may not attend the proceedings and Mr. Abdul Samad Khan Advocate also may not assist the Court on behalf of welfare Organization but if he chooses to assist the Court on behalf of the welfare Organization or otherwise in this matter of public importance we appreciate his assistance. The welfare organization has no right to object to the continuation of proceedings in the matter of public importance.”

The learned counsel for the parties and learned Advocate General Gilgit-Baltistan have addressed the Court at length Mr. Muhammad Aslam Khaki, Consultant in Sharia Law has submitted an exhaustive research papers on the subject and Mr. Saqib Jamal Law Officer of NADRA has filed written argument duly supported by the verses of Holy Quran and views of Muslim Jurist on the subject of adoption in Islam.

We consider it appropriate to reproduce the views expressed by Mr. Aslam Khaki, Consultant in Sharia Law and the ‘Draft Policy of Adoption’ introduced by NADRA with the material provided on the concept of adoption in Islam and also in practice in Saudi Arabia for the benefit of better understanding and appreciation of the proposition of law. The views of Mr. Muhammad Aslam Khaki, Consultant in Sharia Law are as under:-

ADOPTION: SHARIAH AND LAW.

With the increased rate of adoption in the Muslim world as well as in the Europe especially in Pakistan, the adoption issue has taken a status of one of the sensitive issues. The concept of adoption has caught the attention of the general masses mainly due to the shift in the social paradigms and the Laws governing it, it can also be due to the rising interest of the European Immigrants adopting Pakistani children. A sizable literature has been developed to clarify the concept as per Islamic Shariah but unfortunately it ended up confusing the minds rather than clearing the idea.

The concept of adoption is not a new one, it is prevalent since the time unknown as it was the part of the dogmatic laws. In Islam there was no prohibition on adoption since it was found to be in the greater interest of humanity and also to the Muslim community of the world.

Few glorious examples of adoption from Islamic history can be traced as the practice of adoption was the continuation of the prevalent custom in the Arab peninsula.

The Holy Prophet (PBUH) continued the practice by declaring Zaid bin Harisa, who was a slave gifted to the holy Prophet by His wife Hazrat Khadija (R.T.A), as his adopted son and he was generally known as Zaid-bin-Muhammad.

The Holy Prophet (PBUH) ordained to handover the daughter of Hazrat Hamza in the custody of Hazrat Jaafar (R.T.A).

Hazrat Abu Huzifa Bin Atba bin Rabeea Bin Abd Shams, a companion of the Prophet (PBUH) adopted on child Salim bin Ma'qal and gave his niece in Salim bin Ma'qal's wedlock.²

The Holy Prophet (PBUH), himself was an orphan, was adopted and raised by his uncle Hazrat Abu Talib.

Hazrat Ali, a cousin of Prophet (PBUH) was in the custody of the Holy Prophet himself even during the life time of his father Abu Talib.

The Holy Virgin Mary (PBUH) was adopted by her uncle Holy Zakaria (PBUH) as stated by the Holy Quran:-

ذَلِكَ مِنْ أَنْبَاءِ الْغَيْبِ نُوحِيهِ إِلَيْكَ وَمَا كُنْتَ لَدَيْهِمْ إِذْ يَقُولُ

أَقْلَمَهُمْ أَيُّهُمْ يَكْفُلُ مَرْيَمَ وَمَا كُنْتَ لَدَيْهِمْ إِذْ

يَخْتَصِمُونَ

This is a part of the news of the unseen we reveal to you (O Prophet). You were not with them when they were casting their sticks (to decide) who, from among them, should be the guardian of Maryam, nor were you with them when they were quarrelling.

The Holy Moses (P.B.U.H) was adopted by Pharaoh and his wife Aasiya, the Holy Quran states it in these words:-

إِذ تَمْشِي أُمَّتُكَ فَنَقُولُ هَلْ أَدُلُّكُمْ عَلَىٰ مَن يَكْفُلُهُ ۖ فَرَجَعْنَاكَ إِلَىٰ أُمِّكَ كَيْ تَقَرَّ عَيْنُهَا وَلَا تَحْزَنَ ۗ وَقَتَلْتَ نَفْسًا فَنَجَّيْنَاكَ مِنَ الْغَمِّ وَفَتَنَّاكَ فُتُونًا ۚ فَلَبِثْتَ سِنِينَ فِي أَهْلِ مَدْيَنَ ثُمَّ جِئْتَ عَلَىٰ قَدَرٍ يَمْوَسَىٰ ﴿٤٠﴾

(Remember) when your sister was going (to the family of Pharaoh) and was saying, Shall I lead you to one who nurses ? Thus We brought you back to your mother, so that her eyes might have comfort and she might not grieve. And you had killed a person, then we brought you out of the trouble; and we tested you with a great Madyan. After all this, you came O Musa, to a destined point of time.
 ROLE OF SOCIETY FOR ADJUSTING THE ADOPTED CHILDREN:

In this modern era, the responsibility of the Adopted Children falls on the Society as well as on the State, which work together for the welfare of its people and especially the children. Islamic society works on the principle of;

“Cooperate in the matters of piety and good deeds”

The adopted children can broadly be classified into three main classes on the basis of how they are raised/ adopted in a society are as follow.

Unclaimed Babies:

Children who are usually the product of culturally unaccepted or illicit relationships fall under this category. These are usually abandoned in unattended areas by their parents to conceal their sins of guilt. In Northern areas of Pakistan like Gilgit, Baltistan such children are called ‘NALBU’ (illegitimate children) and are thrown into a NULLAH (n.A water course, especially a dry one) to meet their fate of death. One of a such kind of Nullah in Skardu is known as Nalbu’ Nallah ‘(meaning the Nullah of illegitimate children) labeled after the way it is utilized that is to get rid of illegitimate children .

Organizations such as ceena and Edhi are working in order to stop such kind of killings through introducing a scheme known as ‘Jhola Scheme’ which focuses on raising these unclaimed children and afterwards handing them over to desiring adoptive parents.

Adoption of the orphans on the basis of need:

In this type of adoption, the children are adopted by their own blood relatives with a promise of providing them with better living conditions. These children are usually adopted at the initial stages of their lives so they can adjust to the life style of adoptive family and can get better education and quality of life. In most of the cases, such children are adopted by the educated, financially sound blood relatives living either in big cities or in European countries. They may or may not be childless.

Adoption of the orphans on the basis of need:

In this type of adoption, children are adopted at very early stages of their lives on welfare cum utility basis. The adoptive parents are usually childless so they raise these children as their own. These children get homes and in return they are beneficial to them as they assist them in the work or house hold works.

Quran repeatedly emphasizes the good conduct for the upbringing of the orphans as the rights of such orphan children have been made the duty of the society.

Quran states;

فَأَمَّا الْيَتِيمَ فَلَا تَقْهَرْ ﴿٩١﴾

And treat not the orphans with harshness. (93/9)

أَرَأَيْتَ الَّذِي يُكَذِّبُ بِالذِّينِ ﴿٩١﴾ فَذَلِكَ الَّذِي يَدْعُ الْيَتِيمَ ﴿٩٢﴾ Seest thou one who denies the Judgment (to come)? Then such is the (man) who repulses the orphan with harshness

وَيُطْعَمُونَ الطَّعَامَ عَلَىٰ حُبِّهِ مِسْكِينًا وَيَتِيمًا وَأَسِيرًا ﴿٨٠﴾

And they (the righteous people) feed for the love of God the indigent, the orphan and the captive. (76/8)

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي

بُطُونِهِمْ نَارًا وَسَيَصْلُونَ سَعِيرًا ﴿١٠﴾

Those who unjustly eat up the property of orphans indeed they eat up a fire into their own bellies, they will soon be enduring a blazing fire. (4:10)

يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلْوَالِدَيْنِ
وَالْأَقْرَبِينَ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ

اللَّهُ بِهِ عَالِمٌ ﴿٢١٥﴾

They ask thee what they should spend (in charity), say: whatever ye that is good, is for parents and kindred and orphans and those in want and for way farer. (2:215)

Prophet Muhammad (PBUH) who himself was an orphan said:

I AND THE SUPPORTER OF THE ORPHANS would be in the Paradise like this, The Prophet demonstrated it by combining his two fingers.

In Quran a part from the names of the prophets, no other name of any individual has been mentioned except that of Zaid Bin Haris adopted son of prophet Muhammad (PBUH) However, it to be taken into account that the word "yateem" Orphan in Arabic language is not confined to the children who have lost their parents but also to the people without a guardian like widows or the disadvantaged children. The debatable issue in adoption not only involves getting the physical charge of the child but also determining the rights of such child: These rights can broadly be classified as;

Financial Rights:

The adoptive parents should be bound to provide maintenance to the adopted child considering him/her as of their own.

Through legally the adopted child is not entitled for the inheritance like the legal heirs however, he /she is entitled to get the proper in form of the gift by his/her guardian in his own life time.

The adopted child is also entitled for his /her share in the inheritance of the adoptive parents through a will which can be executed up to one third of the total property of the adoptive parents as the time of their death.

Prohibited Degrees:

Unlike the real child, the adopted child does not share the same status in the matter of prohibited degree (Maharam). The ideology and the custom of treating the adopted child as a real child in the matter of marriage and to determine the prohibited degree relations was totally rejected by Quran (the Holy prophet (PBUH) was married to a the ex-wife of his adopted son, Zaid-Bin-Haris . On criticism by Maccans, Quran explained the situation and law as follows:-

Translation: The Holy Prophet (PBUH) is not father of your men but he is the messenger of Allah and the last of all the prophets.6

Identity of the adopted Children:

The identity of the adopted child is a sensitive issue and lot of debate has been done on it that whether the adoptive parents should be declared or presumed to be the real parents of the adopted child for sake of the Child's recognition in the society as well as in the official records. This issue can be further diverged by classifying the adopted children into the classes of children with known parentage and that of unknown

parentage /abandoned children.

As far as adopted child of known parentage is concerned, according to Islamic concept, he/she must be recognized through his /her natural biological parents, the evidence emerges from the following versus of Quran;

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّن قَلْبَيْنِ فِي جَوْفِهِ ۖ وَمَا جَعَلَ أَزْوَاجَكُمُ اللَّائِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ ۚ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ ۗ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ﴿٤﴾

Allah has not made for any man two hearts in his chest cavity, nor did he make your wives whom you subjected to Zihar, your mothers, nor did he make your adopted sons your (real) sons. That is (merely) a word uttered by your mouths. And Allah says the truth and He shows the (right) way. (33/4)

ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِن لَّمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوْلَاكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ ۚ وَلَٰكِن مَّا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا

رَحِيمًا ﴿٥﴾

Call them by (the name of) their (real) fathers; It more equitable in the sight of Allah. And if you do not know their fathers, then they are your brothers in faith and your friends. There is no sin on you in the mistake you make, but in that which you do with intention of your hear; and Allah is Most-Forgiving, Very-Merciful. (33/5)

The above mentioned versus clearly distinguish between the adopted children of known as well as of unknown lineage. It clearly orders for relating the identity of the adopted children with their biological parents if known but for those with the unknown parentage, it permits rather prescribes that they may be treated and identified as your brothers and associates.

This issued of lineage was again emphasized in the last Sermon of the holy Prophet in which he categorically warned that no one should change his lineage, In Islam , lineage is very important as it is the basis for determination of rights and duties of an individual and due to the reason adultery has strongly been condemned and is punishable crime in Islam.

Shia Law

According to the Shai jurists, the responsibility falls on the society as on the Government to rear and maintain the abandoned child, These jurists acknowledge this duty as Farz-e-Kifayah. For the determination of the faith of the adopted child, they believe that before adolescence the child shall be treated as Muslim if found in the territory of Islam. When such child become major/adult, he himself shall decide about the religion he wants to practice.

NADRA REGISTRATION:

According to the NADRA (National Database and Registration Authority)

Registration procedure, the parentage of the adopted child with known parentage must be entered as that of natural/biological parents. Whereas parentage of the children with unknown parentage can be entered with some fictitious names to avoid social stigmas but at the back ground record of NADRA, there must be an evidence provided by the adoptive parents that the child is with unknown parentage to avoid any confusion or controversy over the rights or duties of the adopted child as biological child.

In case of parentless child, whether a Muslim State is responsible for welfare of the child?

Answer:

In case of parentless/deserted child, a Muslim state is definitely obliged to look after his/her welfare and take full care of his/her all rights which are available to him/her by Shariah and by the Constitution of Islamic Republic of Pakistan 1973.

If we look into Quran and Sunnah we will come to know that there are a number of verses which lead us in this direction.

يَأَيُّهَا الَّذِينَ ءَامَنُوا لَا تُحِلُّوا شَعَائِرَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا
الْهَدْيَ وَلَا الْقَلَائِدَ وَلَا ءَامِينَ الْبَيْتِ الْحَرَامِ يَبْتَغُونَ فَضْلًا مِّن رَّبِّهِمْ
وَرِضْوَانًا وَإِذَا حَلَلْتُمْ فَاصْطَادُوا وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ أَن
صَدُّوكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ أَن تَعْتَدُوا وَتَعَاوَنُوا عَلَى الْبِرِّ
وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ
الْعِقَابِ ﴿٢﴾

O you who believe, do not violate (the sanctity) of the Marks of Allah, nor of the sacred month, nor of the sacrificial animal, nor of the garlands, 6 nor of those proceeding to the sacred House, seeking the grace of their lord and (His) pleasure. When you are our of Ihram, you may hunt. Malice against a people for their having prevented you from al-Masjid-ulHaram, should not cause you to cross the limits. Help each other in righteousness and piety, and do not help each other in sin and aggression. Fear Allah. Surely. Allah is severe at punishment.

There are also a number of references found in Quran that directs us (the Muslims) to cooperate with each other in the matter of welfare and the good deeds. It has been commanded in Quran that to own the child that one decides to bring into this world.

وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ نَّحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ
كَانَ خَطِيئَةً كَبِيرًا ﴿٣١﴾

Do not kill your children for fear of poverty. We provide sustenance to them and to you, too. Killing them is a great sin indeed. (17/31)

Quran says that no body and particularly the children cannot be deprived of their right to the life. It has been written clearly in the Article No.9 of the Constitution of Islamic Republic of Pakistan 1973 that the security of life is one of the fundamental right of the citizens of Pakistan.

“No person shall be deprived of life or liberty saves in accordance with law”

Quran has strict laws against killing of a human being so much so that killing of a man is considered as the killing of the whole humanity.

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا
 بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ
 جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ
 جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعَدَ ذَلِكَ فِي
 الْأَرْضِ لَمُسْرِفُونَ



For this reason, We Decreed for the children of Isra'il that whoever kills a person not in retaliation for a person killed, nor (asa punishment) for spreading disorder on the earth, is as if he has killed the whole of humankind, and whoever saves the life of a person is as if he has saved the life of the whole of humankind. Certainly, our messengers have come to them with clear signs. Then, after all that, many of them are there to commit excesses on the earth. (5/32)

Whereas saving of one life is considered as that of saving of whole humanity.

“And who saves the life of a person is like saving the lives of the people...”

Therefore, throwing away or abandoning the child by the biological parents is like killing him/her as usually he/she dies unattended or killed. Whereas, through adoption of such their life and ultimately saving the humanity.

In Islam there is no concept of seeking the permission of government to adopt a parentless child as it is considered as the duty of every individual as well as of the society to save the life and support the abandoned children, However keeping in view the public interest and to safeguard the interest of the child, permission of the government is must which will examine the genuineness and credibility of the adoptive parents and will also have a following up, of the adopted child.

“The authority of the government over its citizens must be exercised in public welfare.
(AL-Majallah: Maxim No.58)

It is legal as well as Islamic requirement that the adoption must be procured through state authority as the state is the guardian of the public, especially, of those who have no guardian.

CONCLUSIONS

ISLAMIC IDEOLOGICAL COUNCIL

Islamic Ideological Council in Pakistan, a Constitutional body, with advisory position in its meeting held in 2011, recommended that the word unclaimed or abandoned (Arabic word: Laqeet) should not be entered in the National Identification {ID} Card, as it will stigmatize the child instead there should be the name of adoptive parents entered as guardian.

Though the recommendation seems impressive but it does not serve the purpose to save the abandoned child from the social stigma of being illegitimate as non-entry of parents and entry of adoptive parents as guardian will reveal the same story of being illegitimate. So the entry of the name of fictitious father may be the only solution.

DEFINITIONS OF ADOPTION IN SECULAR LAW:

Secular law defines the process of adoption in different way. Some of the major definitions are as follow:

Black's Law Dictionary defines adoption

“Legal process pursuant to state statute in which a child's legal right and duties toward his natural parents are terminated and similar rights and duties toward his adoptive parents are substituted.” Or

To take into one's family the child of another and give him or her, the rights, privileges, and duties of a child and heir. 12

Stroud's Judicial Dictionary;

According to the U.S – Adoption Act 1950, Section 4- mean de facto adoption, defines adoption as an 'Adoption order' that has the effect of removing a child once and for all and entirely from the parents"

As per Hindu Law

Adoption has been thought as a new birth which is a term sanctioned by the theory of Hindu Law. The theory itself involves the principle of a complete severance of the child adopted from the family in which he is born and complete substitution into the adoptive family, as if he were born in it. The fundamental idea is that the adopted child gives up the natural family and every thing connected with it as he is civilly dead or as if he had never been born in the family for all the purposes correct or logically applicable. Every male Hindu can lawfully take a son in adoption provided he is of sound mind and has attained the age of discretion and has no son, grandson or great grandson, natural or adopted, living at the time of adoption. The existence of a son who has renounced his Hindu religion or is deprived of his caste is no bar to the father taking another son in adoption.

Doctrine of Relation Back is applicable in Hindu adoption where it is well established that an adopted son acquires all the rights of a son and those rights relate back to the date of the death of the adoptive father. 14

Dubai Law and Practice Regarding Adoption:

According to the practice in UAE, when an abandoned child is found, it is taken to the police to report the case. The Criminal Intelligence Department investigates to trace the parents of the child while the child is looked after by the social workers. If the parents cannot be found, then the case is transferred to the public prosecutor who studies the applications for fostering, the case is then sent to the Shariah Court for decision.

In Dubai, "Word 16 of Al Wasl Hospital is a mechanism to deal with this issue which provides the facility to look after and cares for children of unknown parents until such time as these children find homes. This process involves a very thorough study of the adoptive family and their home environment by the social workers which takes about 2-3 months. This process does not end here as the social workers keep the follow-up for a number of years after the legal fostering process has been completed.

Adoption in United Kingdom Law:

In United Kingdom, Adoption and Children Act 2002, deals with this issue. Its chapter 6: 'Adoptions With a Foreign element', clearly explains the process of bringing children into out of the United Kingdom.

HAGUE ADOPTION CONVENTION:

The Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption is an international convention dealing with international adoption, child laundering and child trafficking. It was concluded on 29 May 1993 and entered into force on 1 May 1995.

The main objectives of the convention are:

To establish safeguards to ensure that inter-country adoptions take place in the best interest of the child and with respect for his or her fundamental rights as recognized in international law:

To establish a system of co-operation amongst Contracting states to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

To secure the recognition in Contracting State of adoptions made in accordance with the Convention.

DIFFERENCE BETWEEN EUROPEAN AND THE ISLAMIC CONCEPT OF ADOPTION:

The Islamic concept of adoption is totally different and is legally in conflict with the secular of European concept of Adoption. The European concept shifts almost all the legal rights and duties of an adopted child from his natural or biological parents to the adoptive parents whereas in Islam it is only confined to the maintenance and care (Kifala) of the child by the adoptive parents, However, it does not exclude the power of adoptive parents to compensate the adoptive child by way of gift or the will.

Concept of Adoption in west	Concept of Adoption in Islam
1-Identificaton of adoptive child is done through his Adoptive parents and the biological identity is hidden. Recently a trend has been set in Europe to give the adopted child right to discover his biological	1-Identification is done through his/her biological parents. Identification is done on the basis of blood and lineage and not by adoption or fosterage. 2-Inheritance is not done automatically. Inheritance from the adoptive parents ins not

parents. 2-Inheritance is done automatically. 3-Real parentage is kept private so that the adopted child should not feel divided.	provided however the child can be benefited from the will of the gift deed of the adoptive parents. Kifalah is only provided in the life time of the Adoptive parents this is done to ensure that on doesn't take the will of this Adoptive parents to inheritance 3-Real parentage is not kept secret so that the child should know about his/her lineage and due to ignorance might not end up marrying his/her own sister/brother.
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DIFFERENCE BETWEEN ADOPTION AND GUARDIANSHIP

Unfortunately this issue has been negated in Islamic law and there is no specific law on Adoption in Pakistan, the adoption is carried out in the name of guardianship through the provision of Guardians and wards Act 1890. In guardianship, there is no financial obligation upon the guardian of person/ custodian (e.g. mother or friend) to maintain the child/ward out of his/her own pocket. The maintenance will be paid by the real/natural father. Even according to Section 22 of the supra Act, the guardian of the person can charge for the care of the child/ward. Is there any law for adoption in Pakistan?

Until now there is no law in Pakistan that addresses the issue of adoption. Such word is alien to the law books of Pakistan. However, the process of adoption is carried out in the name of custody of the person of the child under Guardian and Ward Act 1990. The adoptive parents apply to the court under section 7 of the said Act and in case of child with known parentage, make the biological parents of the child as respondent who usually give consenting statement in favor of the applicant adoptive parent.

Some of the questions regarding the process of adoption have, time and again, been highlighted are discussed below in relation to the process of adoption

Question:

Are the Non-Muslims or Non citizens entitled to apply for the adoption? Whether can they take the adopted child out of the country?

Answer:

Though there is no legal bar for the non-citizens or non-Muslims to adopt or to apply for the custody of a Muslim baby, however, under Guardianship and War Act 1890, the 'welfare of the ward (child)' is the main factor that is to be considered in granting custody of the child by the Pakistani court. The court may prefer that the adopting parents should be Muslims. At the same time, it is the environment and the level of religiosity of the adoptive non-Muslims parents which may actually decide the issue. Generally in Islam there is no bar for a non-Muslim mother to be the guardian/custodian of her baby from her Muslim husband, hence it can be said that there is no bar for a non-Muslim to adopt a child of a Muslim lineage. However in such case, the court may appoint supervisors to look in to the fact that the ward(Child) is not put to religiosity of the religion other than that of Islam. Usually the guardian courts have parental jurisdiction, they must have supervision over the ward (child).

In the above mentioned circumstances, the removing of the ward (child) without the permission of the court would be unlawful. The guardian is also bound to produce the ward (child) periodically or on the order of the court before the guardian court. So that, until and unless safety valves and firm guarantees are provided, the guardianship should not be given to the foreigners or non-citizens. However if some understanding in this regard has been agreed upon between the countries, then it would be safer.

Question

It can be said that the process of adoption is not a simple and easy one as it may appear. It involves a lot of requirement pre and post guarantees from the individual and also from the state. All the above discussion leads us to certain inferences which are as follow:-

Adopting a child is commendable act in Islam and is given the status of one of the supreme act of piety.

There is a major difference between the Islamic law and Secular law when it comes to the rights and duties of the adopted child.

In Secular law, the adopted child enjoys the status of that of the biological child and, therefore, he/she has a right to the maintenance, car, inheritance, marriage prohibition, identity etc whereas in Islam it is only restricted to the provision of maintenance and care (Kifalah) by the adoptive parents as the concept of adoption in Islam is that of Kifalah and patronage but not of the real parentage.

In Secular law, the adopted child has to serve his/her relationships and identified with his/her adoptive parents whereas In Islam it is not the case. The adopted child maintains the identity with the real/natural parents. He/ she inherits from his/her natural parents and is also benefited form the property and inheritance of his/her

adoptive parents by way of gift and' will'.

Basically there is no bar in adoption of a Muslim baby by Non-Muslim parents, but it is subject to some precautionary measures. The environment of the home does not play any decisive role in selection of the faith. Holy Moses was brought up in Pharos home.

There is no explicit law on adoption in Pakistan. Adoption is done in the name of Guardianship though application under section 7 of the Guardian and ward Act 1890. The Guardian and Ward Act 1890 bars the non-citizens to adopt a child as it is done to ensure the welfare of the child. However it is required that, in case of adoption, the child must be produced before the court periodically as the parental jurisdiction and authority continues to vest with the court which can overview its decision even after the issuance of guardian-ship certificate to the adoptive parents.

The Concept of Guardianship is not synonymous to that of the concept of adoption in Islam. It also varies from the secular/European concept and law of adoption as the adoptive parents living in UK or European countries have to go through the registration of the adopted child again according to the required law of that country.

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Author.Title of Book.Edition. City of Publication: Publisher, Year.

1. (Abu Daud-KajmooaSihaSitta Vol. 2 Page 236)
2. (Nailul-Autar, Vol. 6/137+Supra Vol. 6 Page 190)"

Prophet Muhammad (PBUH) who himself was orphan said:

I am the supporter of the orphans would be in the Paradise like this. The Prophet demonstrated it by combining his two fingers.

In Quran , apart from the names of the prophets, no other name of any individual has been mentioned except that of Zaid bin Haris the adopted son of Prophet Muhammad (PBUH). However it is to be taken into account that the word 'yateem' orphan in Arabic language is not confined to the children who have lost their parents but also to the people without a guardian like widows or the disadvantaged children.

The Manager Legal NADRA has submitted the following 'Draft Policy on Adoption' :-

"DRAFT POLICY ON ADOPTION OF CHILDREN

PREAMBLE

NADRA role in the resolution of various social issues/problem of the society is vital in socio/economic development of this Country. Among such problems, the issue of adoption of socially destitute persons who are being nourished in various orphan centers has become critical as such grown up children are facing problems in various walk of life in the absence of any identity at all. The Authority has adopted a proactive approach to help and sort out this issue and this can be gauged from the fact that since 2006, when the issue of indentification of such children surfaced, NADRA has at every level i.e. both at policy level or technical shown its presence.

In policy formulation process, the most hampering issue of naming the parents of the children with unknown parentage has been tackled. By this way, Orphan children have been grouped into following 2 categories.

- (1). Children with "Biological known Parentage"
- (2). Children with "Biological unknown parentage".

C.To name parentage for the children with unknown parentage, guidance from the Islamic Ideological Council and Futwas from Saudi Arabia & Iran has been sought to keen out this interring issues once for all that explicitly stated that any "Unspecified Guardian" for Non-National and National has been dealt separately.

D.For those non-adopted children who are residing in different Orphanages, a separate proceeding mechanism has been suggested.

E.In some unique cases, where an unmarried applicant wanted to become the guardian of the child (in cases where elder brother or sister wants to become the guardian but he/she is not married) an effort has been made to cover this issue in the subject policy as well

2. Current status of adoption in Pakistan:

In Pakistan adoption is being made through Court under Guardian and Wards Act, 1890. Adoption is not regulated till the time a Guardian Court issues a Degree/Guardianship Certificate in favour of a person. Therefore, without Court Degree/Guardianship Certificate no one can claim to be guardian under the law.

3. Under the Provision of NADRA Ordinance, 2000:

Sub. Section 1 of Section 9 NADRA Ordinance, 2000 states that "every citizen in or out of Pakistan who has attained the age of eighteen years shall get himself and a parent or guardian of every citizen who has not attained that age shall, not later than one month after the birth of such citizen, get such citizen registered in accordance with the provisions of this Ordinance".

To tackle the above mentioned issues and help NADRA in compliance of relevant rules and Court orders, an adoption policy has been formulated, salient features of the policy are as Under:-

Adoption of Children with Biological known parentage:

There are two broad categories under this head:-

a. **Child Adopted by Pakistani National.** A complete who adopts a child after getting Guardianship Certificate from the Court can process **CRC/NICOP.**

Guardianship Certificate from Pakistani Court is mandatory in all Cases.

Case will only be processed if the Guardian in CRC holder.

Names of Father & Mother are mandatory and in cases if they have been issued CNICs, their number will also be entered.

Anyone Male or Female can adopt the child as orphaned.

Name of the Guardian to be pointed on CNIC/CRC.

CNICs remain valid till the age of 21 year.

b. **Child adopted by Foreign National (Muslim or Non- Muslim).** Under this category, only NICOP will be issued under the following rules.

(1) Guardianship Certificate from Pakistani Court is mandatory.

(2) Names of Father & Mother are mandatory and in cases if they have been issued CNICs their number will also be entered.

(3) Anyone, Male or Female can adopt the child as a

(4) Name of the Guardian to be pointed on NICOP.

(5) NICOP issued will remain valid till the age of 21 years.

5. Adoption of Children with Biological Unknown parentage.

There are two broad categories and such adoption cases will be deal under the following fules.

a. **Child Adopted by Pakistani National.**

A couple or individual who desires to adopt a child, the process CRC/CNIC/NICOP under following conditions:-

(1) Guardianship Certificate from Pakistani Court is mandatory in all cases.

(2) Case will only be processed if the Guardian is CNIC holder.

(3) Any name (not specified name like Abdullah, Adam or Hawa) can be suggested by the guardian to be pointed as the parents of child which will remain unchanged throughout his/her whole life.

(4) Anyone, Male or Female can adopt the child as a head.

(5) Name of the guardian (male /female will be pointed on the CNIC/CRC.

(6) Their CNICs remain valid till the age of 21 years.

b. **Child Adopted by Foreign National (Muslim or Non-Muslim).** Under this category only NICOP will be issued under the following Rules:-

(1) Guardianship Certificate from Pakistani Court is mandatory in all Cases.

(2) Anyone from Male or Female can be the head of child.

(3) Any supposed name (not specified name like Abdullah, Adam or Hawah) can be given to the parent of child that may remain unchanged throughout his/her whole life.

(4) Name of the Guardian will be pointed on NICOP.

(5) Their NICOP remain valid till the age of 21 years.

6. Majority Age Clause-Section 3 of Majority Act, 1875:

On attaining the majority age i.e. 21 years, CNICs/NICOPs of the adopted child will only be processed in in modification of "father name" for both categories i.e. known and unknown parentage and their CNICs/NICOPs will be modified in following procedures: -

The father Name as populated in the back end of the database will be reflected/updated in the Father Name field, mother name will remain unchanged at the back end.

In support of the case, Original Court Order by the applicant may be produced (if available).

Surrendering of the original CNIC/NICOP.

7. Unmarried Guardian.

In case, where Court Orders in favour of un-amended male/female for adoption of child, NADRA will

process such cases for issuance of CRC/CNIC or NICOP on the production of the Original Court Order. As NADRA data structure does not support proceeding of unmarried applicant as head for these necessary amendments in the existing date capturing system will have to be introduced. In order to process such cases of CRC/CNIC/NICOP following procedure will be adopted: -

Guardianship Certificate from Pakistani Court is mandatory in all cases.

Case will only be processed if the Guardian is CNIC Holder.

Name of Father & Mother are mandatory and in case if they have been issued CNICs, their numbers will also be entered.

In case of biologically unknown parentage, any supposed name (not specified name like Abdullah, Adam or Hawah) can be given to the parents of child that may remain unchanged through out his/her whole life.

Anyone from Male or Female can be the head of Child.

Name of the Guardian will be printed on CNIC/CRC.

Their CNICs/NICOPs remain valid till the age of 21 years.

8. Children residing in different Orphanage.

Registration of such children with NADRA for the issuance of CRC/CNIC/NICOP will help them start their practical life in a respectful manner many orphan children in these Institutions are those who know the names of their biological parents, but there are thousands of orphan children where parentage is not known.”

The opinion expressed by the official agencies of Saudi Arabia and the Fatwas of renowned Ulmas with reference to Surah Al-Ahzab in Holy Quran are reproduced hereunder:-

ذیل میں چند وہ قواعد و ضوابط بیان کئے جا رہے ہیں جن پر سعودی عرب میں عمل ہو رہا

ہے:-

☆ نظام شہریت جو کہ کابینہ کے فیصلہ نمبر ۲ بتاریخ ۲۵-۱-۱۳۷۳ ہجری کو

صادر ہوا

اور شاہی آرڈیننس نمبر ۲۰ بتاریخ ۱۲-۱۱-۱۳۹۶ ہجری کے ذریعے جس میں ترمیم

ہوئی، کی شق نمبر سات میں وارد ہوا ہے کہ:- سعودی وہ شخص ہوگا جو یا تو سعودی عرب میں پیدا ہوا ہو یا بیرون ملک کسی سعودی باپ یا سعودی ماں اور باپ نامعلوم یا جس کی کوئی شہریت نہ ہو یا وہ پیدا تو سعودی عرب میں ہوا لیکن والدین اس کے نامعلوم ہوں۔ گرا پڑا بچہ مملکت ہی میں پیدا سمجھا جائے گا جب تک کوئی بات اس کے برعکس ثابت نہ ہو۔

☆ اس نظام کی شق نمبر آٹھ کے مطابق پیدا ہونے والے اس بچے کو غیر ملکی سمجھا جائے گا جب وہ پیدا تو مملکت میں ہوا لیکن والدین اس کے غیر ملکی ہوں یا باپ غیر ملکی ہو اور ماں سعودی ہو۔ اور جو بیرون ملک کسی معلوم شہریت کے حامل باپ اور سعودی ماں کے ہاں پیدا ہوا لیکن اس بچے کو بالغ ہونے پر یہ اختیار ہوگا کہ وہ کون سی شہریت کا انتخاب کرتا ہے بشرطیکہ اس میں شرائط پائی جاتی ہوں۔

☆ شہری سٹیٹس کا نظام جو کہ شاہی آرڈیننس نمبر سات بتاریخ ۲۰-۳-۱۳۰۷

ہجری کو صادر ہوا اور جس میں ترمیم بذریعہ شاہی آرڈیننس نمبر ۲۵ بتاریخ ۱-۶-۱۳۲۲ ہجری کو ہوئی، کی شق نمبر سات جو کہ گرمے پڑے بچے کی تربیت اور رجسٹریشن کے بارے میں ہے کہ مطابق ایسے بچے کے برتھ سرٹیفیکیٹ میں یہ نہیں درج کیا جائے گا کہ وہ گرا پڑا بچہ ہے اور اگر اس کے والدین میں سے کسی ایک کے بارے میں بھی معلوم ہو گیا تو پانچ کمیٹی کے فیصلے سے ریکارڈ کو درست کر دیا جائے گا۔

☆ شہری سٹیٹس کے نظام کی شق نمبر ۳۹ میں وارد ہوا ہے کہ جس شخص کو کوئی بھی گرا پڑا بچہ ملے تو وہ فوراً شہروں میں موجود قریبی پولیس سٹیشن یا گناؤں میں موجود انتظامیہ کو اطلاع دے تاکہ وہ واقعہ کی رپورٹ درج کریں جس میں جگہ، وقت اور کیس کی نوعیت کے بارے میں تفصیل وغیرہ درج کی جائے گی۔

☆ شیخ محمد بن ابراہیم رحمۃ اللہ علیہ نے بھی ایک فتویٰ صادر کیا ہے جس کا نمبر ۱۰۸۰ ہے اور وہ ۲۳-۸-۱۳۷۹ ہجری کو صادر ہوا۔ اس فتویٰ میں ان کا کہنا ہے کہ زنا کی وجہ سے پیدا ہونے والے بچے کی نسبت اس کی ماں کی طرف درست ہے اور اس سے حرمت اور محرم ہونا ثابت ہوتا ہے۔ شرعی ولایت، خاندان اور وراثت وغیرہ کے بیٹا ہونے سے متعلق تمام احکام اس پر جاری ہوں گے۔

☆ گرے پڈے بچے کی تربیت کے بارے میں بائب وزیر داخلہ کی طرف سے بھی ایک حکمنامہ جاری ہوا ہے جس کا نمبر ۵۴۳۵/۱۶ ہے جو کہ ۱۳۹۲/۷/۲۳ ہجری کو صادر ہوا۔ اس حکم کے مطابق معاشرتی اُشور کی دیکھ بھال کا ادارہ گرے پڈے بچے کو سنبھالنے کا ذمہ دار ہے اور وہی اس بچے کی تربیت کے لیے کوئی مناسب سعودی خاندان تلاش کرنے کا انتظام کرے گا۔ پاسپورٹ آفس کو اس خاندان کے نام کی اطلاع دی جائے گی جس کی طرف یہ بچہ منسوب ہوا ہے۔ اس حکمنامے میں یہ بھی آیا ہے کہ اسی بارے میں ایک شرعی فتویٰ بھی صادر ہو چکا ہے کہ ایسے بچے کو کسی دوسری جگہ منتقل نہیں کیا جائے گا کیونکہ اسی جگہ رہنے سے اس کا نسب معلوم ہونے کے زیادہ امکانات ہیں۔ ایسے بچے کو کسی صورت بیرون ملک سفر کی اجازت نہیں دی جائے گی۔ اور اس بچے کی رجسٹریشن اس کے باپ کے نام یا اپنے رب کا بندہ ہونے سے کی جائے گی۔

☆ میڈیکل ڈائریکٹر جنرل کی جانب سے بھی سرکلر نمبر ۵۷/۲۳۰۳/۳۹۷ بتاریخ

۱۳۹۵/۶/۱۳ ہجری کو جاری ہوا جس کی بنیاد کابینہ کے فیصلے نمبر ۶۱۲ بتاریخ ۱۳۹۵/۵/۱۳ ہجری پر ہے۔ اس سرکلر میں کہا گیا ہے کہ نامعلوم والدین والے بچے کو کسی ہسپتال کے کیا جائے گا اور حوالے کرتے وقت پولیس کو بھی اطلاع دی جائے گی جو اس کی تمام معلومات کو درج کرے گی۔

☆ وزیر داخلہ کی جانب سے خط نمبر ۳۲۶۳ بتاریخ ۱۳۰۳/۱۲/۱۸ ہجری کو وزیر صحت کی طرف لکھا گیا جس میں یہ کہا گیا ہے کہ نامعلوم نسب والے بچوں کے وزارت صحت کی جانب سے صادر ہونے والے برتھ سرٹیفیکیٹ میں پیدائش کے رجسٹر میں والدین کے خانے کو خالی چھوڑا جائے گا۔ جب وہ بچہ بڑا ہو جائے گا اور تربیت کرنے والے خاندان سے اسباب دریافت کرے گا تو اس وقت اسے مشکل کا سامنا کرنا پڑے گا۔ شیخ بن باز رحمۃ اللہ سے جب اس بارے میں استفسار کیا گیا تو آپ نے اپنے خط نمبر ۱/۳۳۱-س بتاریخ ۱۳۰۳/۱۱/۱۶ ہجری میں جواب دیتے ہوئے فرمایا کہ ان کے نزدیک نامعلوم نسب والے بچوں کے برتھ سرٹیفیکیٹ یا رجسٹر پیدائش میں والدین کے خانے کو پُر کرنے میں کوئی حرج نہیں ہے۔ اس خانے کو ایسے ناموں سے پُر کیا جا سکتا ہے جیسے عبداللہ اور عبدالرحمن باپ کے لیے رھبتہ اللہ، عطیتہ اللہ اور امۃ اللہ وغیرہ نام ماں کے لئے۔

☆ سکریٹری داخلہ نے ایک خط نمبر ۶۱۳۱۲ بتاریخ ۱۳۰۶/۹/۵ ہجری کو امارت ریاض کے سکریٹری کو لکھا جو کہ زنا کے نتیجے میں پیدا ہونے والے بچے کی اپنی ماں کے ساتھ ڈیپورٹیشن کے بارے میں تھا۔ اس میں کہا گیا ہے کہ ایسا کوئی مانع نہیں ہے کہ بچی کو ماں کے ساتھ سفر نہ کرنے دیا جائے اگر ① ن اس بات کی خواہشمند ہو۔ لیکن اگر وہ اسے چھوڑنا چاہے تو معاملے دارالحضائفہ کے سپرد کر دیا جائے گا جو ہدایات کی روشنی میں اس معاملے کے قبول ہونے کے امکانات پر غور کرے گا۔

☆ سکریٹری داخلہ نے اپنے خط نمبر ۷۱۲۲۷ بتاریخ ۱۳۰۶/۹/۱۵ ہجری میں لکھا۔

ڈیپورٹیشن کے وقت اگر غیر ملکی عورت زنا کے نتیجے میں پیدا ہونے والے بچے کو ساتھ لے جانے سے انکار کر دے اور اس بچے کا باپ معلوم شہریت والا غیر ملکی ہو تو اس صورت میں معاملہ عدالت کے سپرد کیا جائے گا تاکہ یہ طے کیا جاسکے کہ کون اس بچے کو وصول کریں گا۔

☆ وزیر داخلہ نے ۱۴/۱۰/۲۳ ہجری کو سرکلر نمبر ۴۰۶۸۵ جاری کیا کہ حج

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حضرات غیر ملکیوں کے تعزیری کیسز میں ان کی جیل بندی میں تخفیف کریں اور کوڈے بڑھا دیئے جائیں کیونکہ انہیں ڈیپورٹ کر دیا جاتا ہے۔ جہاں تک غیر ملکی کنواری حاملہ عورت کا تعلق ہے تو اس پر اس کی حالت کے مطابق حد قائم کی جائے گی جس میں تخفیف کو ملحوظ رکھا جائے گا تاکہ وہ حمل پر اثر انداز نہ ہو۔

☆ ڈی جی جیل نے ۱۴/۸/۱۳ ہجری کو سرکلر نمبر ۱۱۰ جاری کیا جو کہ غیر ملکی ماؤں یا سعودی عورتوں کے ان ناجائز بچوں سے متعلق تھا جنہیں ان کی ماؤں نے چھوڑ دیا ہو۔ ایسے بچے کو ہسپتال میں رکھنے کے بعد تاکہ ناسعلوم والدین والے بچوں کے رجسٹر میں ان کی رجسٹریشن کا اندراج ہو سکے، اسکی رپورٹ درج کی جائے گی اور اسکی تصویر وزارت لیبر کی قریبی برانچ میں بھیجی جائے گی پھر اس کی میڈیکل رپورٹ لکھی جائے گی جس میں پیدائش کی اطلاع بھی درج کی جائے گی اور حقیقی ماں کا نام لکھا جائے گا۔ پھر اسے وزارت لیبر کی قریبی برانچ میں جمع کرایا جائے گا۔ اگر ماں بچے کی تربیت کرنا چاہے تو وہ وزارت کی اس برانچ میں درخواست دے گی جہاں بچہ موجود ہے تاکہ بچہ اس کے حوالے کرنے کے بارے میں غور کیا جاسکے اگر اس میں تربیت کی صلاحیت ثابت ہو جائے۔

☆ وزیر داخلہ نے ۱۴/۹/۲۹ ہجری اپنے سرکلر نمبر ۱۶/س/۹۱۹ میں جو کہ معلوم

شہریت کی غیر ملکی ماں اور ناسعلوم باپ کی ناجائز اولاد کے بارے میں تھا، لکھا کہ ناجائز بچوں کو برتھ سرٹیفیکیٹ جاری کرنے، ماں کے پاسپورٹ میں ان کا اندراج کرنے یا ماں کے ملک کے سفارت خانے کی طرف سے سفری ٹکٹ مہیا کرنے کے بعد اپنی ماں کے ساتھ ڈیپورٹ کر دیا

جائے گا کیونکہ وہی اس کی تربیت اور دیکھ بھال کرنے کی سب سے زیادہ حقدار ہے۔ اگر ایسے بچے کی ڈیپورٹیشن میں رکاوٹ ہو یا وہ اپنی ماں کے ساتھ نہ جا سکا ہو تو اس صورت میں معاشرے میں اس طبقے کو شامل کرنے کے لئے انہیں امارت کے مشورے کے ساتھ برتھ سرٹیفیکیٹ مہیا کر دیا جائے گا۔ انہیں بالغ ہو جانے تک استثنائی اقامہ بھی دیا جائے گا پھر انہیں کچھ شرائط کی معافی کے ساتھ شہریت دے دی جائے گی۔

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☆ نائیب وزیر داخلہ کی طرف ۱۴۱۰/۴/۲۹ ہجری کو جاری ہونے والے سرکلر نمبر ۱۷۶۵ میں یہ بتایا گیا ہے کہ مملکت میں کچھ ایسے ناجائز بچوں کو سعودی پاسپورٹس دینے کی منظوری بھی ہوئی ہے جن کی ماں معلوم شہریت والی غیر ملکی تھی اور باپ نامعلوم تھا۔ ☆ نائیب وزیر داخلہ کی طرف سے ۱۴۱۹/۳/۱۰ ہجری کو سرکلر نمبر ۲۳۶۶/۱۶ جاری ہوا جس کی کاپی انویسٹی گیشن اتھارٹی اور پبلک پراسیکیوشن کو بھی دی گئی اور جو کہ اعلیٰ عدلیہ کے چیئرمین کے ۱۴۱۹/۹/۱۵ کو جاری ہونے والے خط نمبر ۳۱۱/۱ کی بنیاد پر صادر ہوا۔ یہ سرکلر لیبارٹری ٹیسٹ نہ کرنے اور زنا کو ثابت کرنے میں شبہ کے بارے میں تھا اور یہ کہ اس طریقے سے اس کو ثابت کرنا درست نہیں ہے۔ ایسے بچے کا نسب ویسے ہی ہوگا جیسے نامعلوم باپ والے بچے کا نسب ہوتا ہے۔

☆ برازیل کے پاس چیئرمین انویسٹی گیشن اتھارٹی اور پبلک پراسیکیوشن کی طرف سے ۱۴۲۱/۳/۲۳ ہجری کو جاری ہونے والا خط نمبر ۱۵۹۶/۱۲ بھی آیا ہے جو کہ ناجائز طور پر پیدا ہونے والے ایسے بچے کی اپنی ماں کے ساتھ ڈیپورٹیشن کے بارے میں ہے جو کہ ایک غیر ملکی خاتون ہوا اور اس نے برتھ سرٹیفیکیٹ بھی حاصل کر لیا ہو، ماں کے پاسپورٹ پر اس کا اندراج بھی ہو چکا ہو اور ماں کے ملک کی ایمبیسی کی طرف سے اسے ٹکٹ بھی مہیا کیا جا چکا ہو۔ اس خط میں یہ بھی لکھا گیا ہے کہ ماں کی بچے کی پرورش نہ کرنے کی خواہش سببوری کے حالات میں نہیں ہے۔ برازیل کے خط میں مذکور فرضیات جیسے ماں کے ملک کی

ایمبیسی کا ماں کے پاسپورٹ میں بیچے کا اندراج کرنے سے انکار کرنا یا اسے ٹکٹ سپہیانہ کرنا وغیرہ باتوں کے بارے میں کہنا تھا کہ تو یہ فرضی باتیں ہیں جو کہ واقعہ نہیں ہوتیں اور اگر واقعہ ہو جائیں تو متعلقہ ادارہ اس وقت مناسب اقدام اٹھائے گا۔ برانچ کو چاہیے کہ وہ وزیر داخلہ کے ہجری کو جاری ہونے والے سرکلر نمبر ۹۱۹ جس کا ذکر اوپر ہو چکا ہے، کے مطابق عمل کرے۔

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بِسْمِ اللّٰهِ، وَالْحَمْدُ لِلّٰهِ، وَالصَّلَاةُ وَالسَّلَامُ عَلٰی رَسُوْلِ اللّٰهِ وَبَعْدُ :-

شیخ ڈاکٹر یوسف قرضاوی کی طرف سے صادر ہونے والے فتویٰ میں آیا ہے جس کا خلاصہ یہ ہے کہ تبنی یعنی کسی شخص کا کسی بیچے کو اپنے نسب کے ساتھ ملا لینا، اسے اپنے بیٹے کی طرح بنا لینا اور اسے اپنا نام اور لقب عطا کر دینا ایسا آمر ہے جسے اسلام نے حرام قرار دیا ہے۔ اور اس کے حرام ہونے میں بڑی سختی کی ہے۔ اس مفہوم کے ساتھ تبنی کا عمل حقیقت کو کبھی بھی نہیں بدل سکتا اور نہ وہ اس شخص کا منہ بولا بیٹا بن سکتا جس نے اسے بیٹا بنایا ہے۔ اس کا نسب اپنا رہے گا اس کا نسب اپنا رہے گا۔ جہاں تک ایسی تبنی یعنی منہ بولا بیٹا بنانے کا معاملہ ہے جس میں نام اور لقب دیئے بغیر بیچے کی پرورش کی جائے تو یہ جائز ہے۔ فتویٰ کا نص درج ذیل ہے:-

تبنی یعنی منہ بولا بیٹا بنانا جیسا کہ ہم سب کو معلوم ہے اسلام نے اور قرآن نے حرام قرار دیا ہے کیونکہ یہ بات حقیقت کے خلاف ہے۔ قرآن کے نص کا ترجمہ یہ ہے: (اور تمہارے منہ بولے بیٹوں کو تمہارا (سچ سچ کا) بیٹا نہیں بنا دیا، یہ تو صرف تمہارے منہ سے کہنے کی بات ہے، اور اللہ حق بات فرماتا ہے اور وہی سیدھا راستہ بتلاتا ہے) (الاحزاب: ۴)

منہ بولے کو اللہ نے بیٹا نہیں بنایا نہ شریعت نے اور نہ قدر نے۔ (یہ تو صرف تمہارے منہ سے کہنے کی بات ہے) یعنی یہ تو صرف زبان کی بات ہے۔ یہ حقیقت کو تبدیل کر سکتا ہے نہ کوئی حقیقت قائم کر سکتا ہے۔ کسی بھی صورت میں تمہارا خون اس منہ بولے بیٹے کی رگوں میں نہیں دوڑ سکتا۔ نہ یہ تمہاری جسمانی، عقلی اور شخصی صفات کا کوئی حصہ حاصل کر سکتا

ہے۔ صرف یہ کہنا کہ یہ سیرا بیٹا ہے دراصل حقیقت کو جھٹلانا ہے اس لئے قرآن نے اس بات کو
 مانتے سے انکار کر دیا ہے اور کہا ہے:
 (تم ان کو ان کے باپوں کی طرف منسوب کیا کرو، یہ اللہ کے نزدیک راستی کی بات ہے، اور اگر
 تم ان کے باپوں کو نہ جانتے ہو تو وہ تمہارے دین کے بھائی ہیں اور تمہارے دوست
 ہیں) (الاحزاب: ۵)

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وہ لوگ اپنے ساتھ کبھی معروف النسب کو اور کبھی مجہول النسب کو جوڈ لیا کرتے تھے۔
 جیسے حضرت زید بن حارثہ کے اہل خانہ معروف تھے اس کے باوجود وہ (زید بن محمد) کہلاتے
 تھے جب
 انہوں نے اپنے گھر اور قبیلے کے لوگوں کے ساتھ واپس جانے کے بجائے حضور ﷺ کے پاس رہنے
 کو ترجیح دی۔

اسلام نے اس بات کو قول و فعل دونوں سے باطل قرار دیا ہے۔ قول سے تو باطل ان آیات
 کریمہ سے جو اوپر سورۃ احزاب کی گزریں۔ اسی مفہوم میں اللہ تعالیٰ کا ان عورتوں کے بارے
 میں ارشاد بھی ہے جو ان عورتوں کے بارے میں وارد ہوا ہے جن سے نکاح کرنا حرام ہے۔ (اور
 تمہاری ان بیٹوں کی بیویاں جو کہ تمہاری نسل میں سے ہوں) (النساء: ۲۳) اس کا مفہوم یہ ہے
 کہ تمہارے منہ بولے بیٹوں کی بیویاں وہ عورتیں نہیں ہیں جن سے شادی کرنے کو اللہ تعالیٰ نے
 حرام قرار دیا ہو۔

پھر اللہ تعالیٰ نے اسے قول کی تاکید میں فعل کے ذریعے بھی باطل قرار دیا جب اللہ
 تعالیٰ نے اپنے رسول ﷺ کو اس بات کا مکلف بنایا کہ وہ حضرت زیدؓ کی بطلقہ (زینب بنت حجش)
 سے شادی کریں۔ یہ بات آپ ﷺ پر بہت بھاری تھی۔ (اور آپ اپنے دل میں وہ بات چھپائے ہوئے
 تھے جس کو اللہ تعالیٰ ظاہر کرنے والا تھا، اور آپ لوگوں سے اندیشہ کرتے تھے اور ڈرنا تو آپ کو
 خدا ہی سے زیادہ سزا وار ہے) (الاحزاب: ۳۷)

اس معاملے نے مدنی معاشرے میں ایک بڑا طوفان برپا کر دیا یہاں تک کہ یہ خیال کیا
 جانے لگا کہ پوری سورۃ احزاب اسی بارے میں نازل ہوئی ہے۔ پس کے شروع سے: (اے نبی اللہ سے

ڈرتے رہئے اور کافروں کا اور منافقوں کا کہنا نہ سائے، بے شک اللہ تعالیٰ بڑا علم والا بڑی حکمت والا ہے۔ آپ کے پروردگار کی طرف سے جو حکم آپ پر وہی کیا جاتا ہے اس پر چلئے، تم لوگوں کی سب اعمال کی اللہ تعالیٰ پوری خبر رکھتا ہے۔ اور آپ اللہ پر بھروسہ رکھئے اور اللہ کافی کار ساز ہے) (الاحزاب: ۱-۳)

یہ آیات نبی ﷺ کا دل مضبوط کرتی تھیں اور سعائشے کا دباؤ برداشت کرنے کی ہمت پیدا کرتی تھیں۔ اس کے بعد کی آیات: (جو اللہ کے احکام پہنچایا کرتے تھے اور اللہ ہی سے ڈرتے تھے اور اللہ سوا کسی اور سے نہیں ڈرتے تھے اور اللہ حساب لینے کے لیے کافی ہے۔ محمد ﷺ تمہارے مردوں میں سے کسی کے باپ نہیں) (الاحزاب: ۳۹-۴۰) یہ بات نبی ﷺ کے دل پر بہت بھاری تھی لیکن منہ بولے بیٹے کے موضوع کو باطل قرار دینے کے لئے اللہ نے نبی ﷺ کو اس بات کا مکلف بنایا کہ وہ اس بھاری اور شاق کام کو سرانجام دیں۔ قرآن نے بھی اس بارے میں صراحت کی ہے کہ: (پھر جب زید کا اس سے جی بھر گیا ہم نے آپ سے اس کا نکاح کر دیا تاکہ مسلمانوں پر اپنے منہ بولے بیٹوں کی بیویوں کے نکاح کے بارے میں کچھ تنگی نہ رہے جب وہ منہ بولے بیٹے ان سے اپنا جی بھر چکیں اور اللہ کا یہ حکم تو ہونے ہی والا تھا) (الاحزاب: ۳۷) واللہ اعلم۔

ڈاکٹر عادل مبارک مطہرات کہتے ہیں:

منہ بولے بیٹے کا معاملہ شریعت میں حرام ہے اس لئے کہ انسان کوئی بچہ لے کر اپنی طرف منسوب نہ کر دے۔ قرآن میں آیا ہے: (اللہ تعالیٰ نے کسی شخص کے سینے میں دو دل نہیں بنائے، اور تمہاری ان بیویوں کو جن سے تم اظہار کر لیتے ہو تمہاری سائیں نہیں بنا دیا، اور تمہارے منہ بولے بیٹوں کو تمہارا

(سچ سچ کا) بیٹا نہیں بنا دیا، یہ تو صرف تمہارے منہ سے کہنے کی بات ہے، اور اللہ حق بات فرماتا ہے اور وہی سیدھا راستہ بتلاتا ہے۔ تم ان کو ان کے باپوں کی طرف منسوب کیا کرو، یہ اللہ کے بزیدک راستی کی بات ہے، اور اگر تم ان کے باپوں کو نہ مانتے ہو تو وہ تمہارے دین کے بھائی ہیں اور تمہارے دوست ہیں، اور تم کو اس میں جو بھول چوک ہو جائے تو اس سے تم پر کچھ گناہ نہ ہوگا لیکن ہاں دل سے ارادہ کر کے کرو اور اللہ تعالیٰ غفور و رحیم ہے)

سنن ابن ماجہ میں حجرت ابن عباس سے یہ بات ثابت ہے کہ رسول ﷺ نے ارشاد فرمایا کہ:

جس

شخص نے اپنی نسبت اپنے باپ کے علاوہ کسی اور سے کی یا اپنے موالی کے علاوہ کسی اور کی تولیت کی تو اس پر اللہ تعالیٰ، فرشتوں اور تمام لوگوں کی لعنت ہے۔ ایک اور روایت میں ہے کہ: جو شخص اپنے باپ کے علاوہ کسی اور کے نام سے پکارا جائے اور اسے معلوم بھی ہو کہ

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وہ اس کا باپ نہیں ہے تو جنت اس پر حرام ہے۔

جہاں تک اپنا نسب دیئے بغیر کسی بچے کو تربیت کی غرض سے لینے کا تعلق ہے تو اس میں کوئی حرج نہیں بشرطیکہ اس کے بڑے ہونے پر شرعی ضوابط کا لحاظ رکھا جائے۔ واللہ اعلم۔

شیخ ابن ثقلیمین کا کھلے دروازے کی ملاقاتوں کے بارے میں فتویٰ:

شہریت وغیرہ حاصل کرنے کے لئے کسی شخص کا اپنے باپ کے علاوہ کسی اور سے

نسبت کرنے کے بارے میں حکم:

سوال: آج کل ایک معاملہ خصوصی طور پر خلیجی ممالک میں بہت زیادہ پیش آرہا ہے۔ وہ یہ ہے کہ ان ممالک کا کوئی فرد کسی دوسرے خلیجی ملک کی شہریت حاصل کرتا ہے لیکن اپنے باپ کے نام سے نہیں بلکہ اپنے چچا، ماسوں یا کسی اور رشتہ دار کے ساتھ اپنی نسبت کر کے۔ اس طرح سے وہ اس ملک کی شہریت بھی حاصل کر لیتا ہے اور اس سے ملنے والی تنخواہیں اور فوائد بھی۔ صرف اس کے پاس شہریت ہے اور اس کے پاس پیپرز ہیں۔ اسے کوئی مشکل نہیں تھی مگر وہ صرف کچھ مادی فوائد حاصل کرنے کے لئے ایسا کرتا ہے۔ حضرت پر، اپنے باپ کے علاوہ کسی اور سے نسبت کرنے کے معاملے کی سنجیدگی کی مخفی نہیں ہے اور اس معاملے میں خطرناک ممانعت آئی ہے۔ اس عمل کے بارے میں کیا حکم ہے؟

جواب:- یہ عمل حرام ہے۔ کسی انسان کے لئے یہ حلال نہیں ہے کہ وہ اپنا نسب اپنے باپ کے علاوہ کسی اور سے جوڑے کیونکہ یہ جھوٹ ہے۔ اسی پر وراثت، محرم اور نسب کے تمام

احکامات مترتب ہوتے ہیں اسی لئے اپنے باپ کے علاوہ کسی اور سے نسبت کرنے پر عرو و عیدین آئی ہیں۔ یہ عمل کبیرہ گناہوں میں سے ہے بلکہ اس میں دو کبیرہ گناہ جمع ہیں۔ باطل طریقے سے مال کھانے کے لئے جھوٹ اور باپ کے علاوہ کسی اور سے نسبت جوڑنا انسان کو چاہئے کہ وہ اس معاملے میں حق بات کی طرف لوٹے اور اس شہریت کو پہاڑ دے جو کہ جھوٹی ہے اور یہ اس پر واجب ہے۔ مجھے حیرانگی ہو رہی ہے کہ کوئی انسان دنیا کی حرص کی خاطر ایسا حرام کام

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کریے۔ اللہ تعالیٰ کا ارشاد ہے کہ: (جو شخص دنیا کے نفع کی نیت رکھے گا ہم ایسے شخص کو دنیا میں جتنا چاہیں لے جس کے واسطے چاہیں گے فی الحال ہی دے دیں گے، پھر ہم اس کے لئے جہنم تجویز کریں گے وہ اس میں بلحال راندہ درگاہ ہو کر داخل ہوگا) (الاسراء: ۱۸) میں آپ سے درخواست کرتا ہوں کہ آپ اس بھائی کو بتا دیں کہ وہ اس جھوٹی شہریت کو پہاڑ دے۔ اللہ اسے معاف فرمائے۔ اس شہریت کے ذریعے جو دراہم اس نے لئے ہیں اس بارے میں اللہ تعالیٰ کا ارشاد ہے کہ (پھر جس شخص کو اس کے رب کی طرف سے نصیحت پہنچی اور وہ باز آگیا تو جو کچھ پہلے لینا ہو چکا ہے وہ اسی کا رہا اور باطنی معاملہ اس کا اللہ کے حوالے رہا) (البقرہ: ۲۴۵) اللہ تعالیٰ نے یہ بات سود خور کے بارے میں ارشاد فرمائی ہے اس بیچے کی باتیں تو باب والی اس میں شامل ہیں۔ لیکن اس پر لازم ہے کہ اس جھوٹی شہریت کو ضائع کر دے۔

سائل: یا شیخ نہ اگر اس پر مجرم ہونے اور وراثت ہونے کے اثرات مترتب نہ ہوں تو؟
شیخ نے شرعی طور پر اس پر مترتب ہوں گے۔ مثلاً اگر میں اپنی نسبت اپنے چچا سے کولوں کہ وہ میرا باپ ہے تو اس کے بچے میرے بھائی بن گئے۔ یہ تو لازمی امر ہے۔ سائل: لیکن شاید لوگوں کو اس وقت حقیقت معلوم ہو؟
شیخ نے اگر انہیں اس وقت حقیقت معلوم ہے تو مستقبل میں معلوم نہ ہو گی۔ پھر یہ ایک جھوٹ ہے جو کہ کبیرہ گناہوں میں سے ہے۔ کوئی انسان کیسے جھوٹ کبیرہ گناہ پر ہمیشہ رہ سکتا ہے۔ یہ اس مسئلے میں علماء کے فتاویٰ ہیں۔ اور آخر میں یہ ایک علمی فائدہ ہے نہ اگر بیٹا اپنے باپ کی رضا مندی کے بغیر یا اس کے فوت ہو جانے کے بعد اپنے باپ کا نام تبدیل کرتا ہے تو یہ جائز نہیں ہے کیونکہ یہ غیر باپ سے نسبت ہے۔ سنن ابن ماجہ میں حضرت ابن عباسؓ سے یہ بات ثابت ہے کہ رسول ﷺ نے ارشاد فرمایا کہ: جس شخص نے اپنی نسبت اپنے باپ کے علاوہ کسی اور سے کی یا اپنے موالی کے علاوہ کسی اور کی تولیت کی تو اس پر اللہ تعالیٰ، فرشتوں اور تمام لوگوں کی لعنت ہے۔ ابو عثمان النہدی کی ایک اور روایت میں ہے کہ میں نے سعد اور ایوب کو سنا اور ان میں سے ہر کوئی یہ کہ رہا تھا کہ میرے کانوں نے سنا اور میرے دل اس کو سمجھا کہ محمد ﷺ یہ فرما رہے تھے:
جو شخص اپنے باپ کے علاوہ کسی اور کے نام سے پکارا جائے اور اسے معلوم بھی ہو کہ وہ اس کا باپ نہیں ہے تو جنت اس پر حرام ہے۔ واللہ اعلم۔

Having gone through the valuable research work of Consultant in Sharia Law and the material placed on record by the Law Officer of NADRA with reference to the official version of Government of Saudi Arabia and also opinion of the renowned Ulama-e-Deen in Saudi Arabia on adoption, we have examined the matter in depth in the light of the dictate of Holy Quran in Surah Al-Ahzab which provides as under: -

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّنْ قَلْبَيْنِ فِيْ جَوْفِهِ ۗ وَمَا جَعَلَ اَزْوَاجَكُمْ اَللّٰهِ
تُظَاهِرُونَ مِنْهُنَّ اُمَّهَاتِكُمْ ۗ وَمَا جَعَلَ اَدْعِيَاءَكُمْ اَبْنَاءَكُمْ ۗ ذٰلِكُمْ
قَوْلُكُمْ بِاَفْوَاهِكُمْ ۗ وَاللّٰهُ يَقُوْلُ الْحَقَّ ۗ وَهُوَ يَهْدِي السَّبِيْلَ ﴿٤﴾

Allah has not made for a man two hearts in his interior. And He has not made your wives whom you declare unlawful your mothers. And he has not made your adopted sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] way.

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ
فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوْلَاكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا
أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا
رَحِيمًا

Call them by [the names of] their fathers; it is more just in the sight of Allah . But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you. And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful.

There is no prohibition of adoption of a child in Islam. However, as ordained in Holy Quran in Surah Al Ahzab, the change of parentage of an adopted child is strictly prohibited, because he is not natural child of adoptive parents, but he may have the right and privileges of his adoptive parents. The adopted child may have all affection and love of adoptive parents for all worldly consideration and purposes and also may be entitled to all financial and other benefits from her/his adoptive parents. In Islam an adopted child has no right of inheritance in the property of his/her adoptive parents but, the adoptive Parents may willingly during their life time give their property to their adoptive child by way of gift or will. The adopted child on attaining the age of majority is at liberty to opt for the nationality of the country of his/her adoptive parents or real parents as the case may be, if the nationality of adoptive parents is different to that of the nationality of his/her natural parents or country of origin.

The adoption of a child of unknown parentage born in a Muslim society may not be possible by a non-Muslimas this is general presumption that a Child born in Muslim society belong to a Muslim family and unless it is specifically proved that a child was not born out of Muslim wed lock or his father was not Muslimby faith, the child shall be treated a Muslim Child. The above presumption is rebuttable and without rebuttal of the presumption by evidence, the custody of a Muslim child of unknown parentage cannot be given to a non-Muslim. The adoption of a child by a non-Muslim without the proof that child was born in a non-Muslim family may result conversion of a child into non-Muslim and such conversion in the childhood is by compulsion being without consent. The presumption that parentless child in a Muslim society was born in Muslim family is rebuttable through evidence of parentage before the Court of competent Jurisdiction, and if it is proved that child was not born in Muslim family, the Court may decide the question of Custody of child accordingly. The net result is that a non-Muslim cannot be given custody of a deserted or parentless child or a child whose parentage is not known from an orphanage center or otherwise, though adoption without proof of parentage of child, whereas on the contrary a child born in non-Muslim family can be adopted by a Muslim and his custody is to be regulated accordingly.

The custody of a Muslim or non-Muslim Child in absence of his/her mother or father can be given to a person in prohibited degree on paternal or maternal side as his/her guardian on the basis of guardianship certificate to be issued by the Court of competent jurisdiction but in a Muslim state, the custody of a parentless or a deserted child or a child whose parentage is not known cannot be given by the Guardian Court to a stranger without the permission of the concerned state authorities, because the custody of parentless, deserted or children of unknown parentage is always considered with the state and the custody of such a child cannot be given by the Court to any person either Muslim or non-Muslim by adoption or otherwise without the permission of state.

The scheme of law under NADRA Ordinance, 2000 is that all citizen of Pakistan must be registered with the official agency of NADRA and every child born in the country should be registered within the specified period with the name of natural parents and if the parents are not known, with the name of adoptive parents as his/her guardian and in absence of natural or adoptive parents, the registration of a child must be made with a common name of parentage in the society.

There is difference between adoption and guardianship of a child, the custody of a male or female child can be given to the relative son paternal or maternal line in the order of relationship in prohibited degree under Muhammadan law and a person having relation with a child in prohibited degreemay act as guardian of the Child without a formal order of the court but there is nothing to prevent a person from applying to the Court

under the Guardians and wards Act, 1890 for his appointment as a guardian or declare him to be the guardian of a Child but a person is not bound to wait to seek such declaration until his/her title or fitness to act as guardian of a Child is disputed by another person. The application for the appointment of a guardian may be made not only by a person desirous of being or claiming to be, the guardian of the minor, but also by any relative or friend of the minor, and in some cases by the Collector of the District.

The right of custody of a Child in case of boy under the age of seven years, and of a girl before attaining the puberty, belongs to the male and female relatives in the order of prohibited degree in the paternal and maternal line of child.

The consideration for guardianship is based on the welfare of minors and his/her interest rather than the interest of parents. In Muhammadan Law, there is a presumption that the welfare of the minor lies with the party entitled to the *hizanat*, but this presumption is rebuttable and if in a given case the circumstances justify to deprive a party otherwise entitled to the custody under Muhammadan Law the court may pass an order accordingly.

The adoption on other hand has different consideration. The adoption of child has no legal effect in Shariah rather it is for emotional and psychological satisfaction. The adoptive parents may treat an adopted child as their natural child in the matters of love, affection and general behavior. The adoption of a child with the purpose to provide shelter to him is virtuous which carries much reward in welfare of the Child but adoption in Islam has no legal consequence. The child should be attributed to the natural parents, and not to the father or mother who have adopted him and marriage of adopted children with natural children of adoptive parents are not prohibited unless, they relate to each other in prohibited degree. In short, adoption does not create a new legal relationship which did not exist before adoption.

The above rules are inferred from the principle laid down by the Holy Qur'an in Surah Al-Ahzab. The people in Jahiliyyah used to treat an adopted child in all respect as the real one and the Allah Almighty in Holy Qur'an condemned this practice in the above Surah in the following manner: -

“And Allah did not make your adopted children your sons. That is only your words coming out from your tongues. And Allah says the truth and He guides you to the right path. Call them with reference to their (real) fathers. It is more just in the sight of Allah.” (Surah 33;V4)

However, it should be remembered that although an adopted child cannot inherit from his adoptive father or mother, but it is permissible, rather advisable, for adoptive parents that they in their lifetime may make a will in favour of their adopted child and through such a will one can bequeath upto one third of his property to his/her adopted child who cannot otherwise share his/her inheritance.

There is no codified law on adoption in Pakistan as adoption in Muslim society is based on the concept in Surah Al-Ahzab and no law to the contrary can be enacted. The adoption in Islam is not prohibited and an adopted child subject to the dictate of Holy Quran in Surah Al-Ahzab for all intend and purpose, is like a natural child. In non-Muslim societies, particularly, in USA and European countries, adoption is regulated by statutory law and an adopted Child has all legal rights of natural Child and same is the case of adoptive parents. We may hereunder quote the status of adoption in USA.

Montana

An adopted individual is the child of an adopting parent or parents and not of the birth parents. Adoption of a Child by the spouse of either birth parent has no effect on.

The relationship between the child and that birth parent.

The right of the child or a descendant of the child to inherit from or through the other birth parent.

Nebraska

After an adoption decree has been entered, the birthparents of the adopted child shall be relieved of all parental duties toward and all responsibilities for such child and have no right to the adopted child's Property by descent and distribution.

Naveda

Birth Parents in Relation to Adopted Person

After an adoption decree is entered, the birth parents of an adopted child shall be relieved of all parental responsibilities for such child, and they shall not exercise or have any rights over an adopted child's property. The Child shall not owe his or her birth parents or their relatives or any legal duty nor shall he or she inherit from his or her birth parents or family.

Adoptive Parents in Relation to Adopted Person

By virtue of an adoption, an adopted person shall inherit from his or her adoptive parent(s) or their relatives as though he or she were the birth child of such parent(s).

If an adopted person dies interstate, the adoptive parents and their relatives shall inherit his or her estate.

New Hampshire

Upon the issuance of a final decree of adoption, all reciprocal rights of inheritance between the adopted person and the adoptive parents(s) and their respective collateral or lineal relatives shall contemporaneously begin.

New Mexico

Birth Parents in Relation to Adopted Person

Adoption of a child by the spouse of either birth parent has no effect on the relationship between the child and that birth parent or the right of the Child or a descendant of the Child to inherit from or through that birth parent.

Adoptive Parents in Relation to Adopted Person

The adopted person and adopting parent(s) shall have all rights and be subject to all of the duties of the parent-child relationship upon adoption, including the right of inheritance from the through each other. For purposes of interstate succession, an adopted individual is the child of his or her adopting parent(s).

New York

After the making of an order of adoption, the birth parents of the adoptive child shall be relieved of all parental duties toward and of all responsibilities for and shall have no rights over such adoptive child or to his or her property by descent or succession. The right of an adopted child to inheritance and succession from and through his or her birth parents shall terminate.

North Carolina

After the entry of a decree of adoption, the birth parents or previous adopted parents are relieved of all legal duties and obligations due from them to the adopted person and are divested of all rights with respect to the adopted person.

However, neither an adoption by a stepparent nor a readoption pursuant to § 48-6-102 has any effect on the relationship between the child and the parent who is the stepparent's spouse.

North Dakota

A final decree of adoption creates the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance.

Oklahoma

After a final decree of adoption, the birth parents of the adopted child, unless they are the adoptive parents(s) or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and shall have no rights over the adopted child or to the property of the child by descent and distribution.

Virginia

For the purpose of determining rights to property or to determine succession by, through, or from a person, an adopted person is the child of the adopting parent(s).

Washington

A lawful adopted child shall not be considered an heir of his or her natural parents.

An adopted person shall be, to all intents and purposes, and for all legal incidents, the child, legal heir, and lawful issue of the adoptive parents, entitled to all rights and privileges, including the right of inheritance.

West Virginia

From and after the entry of the order of adoption, a legally adopted child shall inherit from and through the parents by adoption and their kindred."

The difference in the law of Islam on adoption and the law in the non-Muslim societies is obvious. In Islam an adopted child cannot claim right of inheritance in the property of adoptive parents and similarly adoptive parents cannot claim share in the property of their adopted son or daughter whereas in non-Muslim societies, the adopted child has all rights of natural child including inheritance. In Islam adoption do not create natural relationship whereas in other religion, adoption may create natural relationship of child with adoptive parents. The law in Pakistan subject to the dictate of Holy Quran in Surah Al-Ahzab acknowledges the official recognition of a adopted child on the basis of a declaration made by adoptive parents and also recognize the right of an adopted child of entitlement of all privileges of his/her adoptive parents as of right. The relationship of adoption inter se the adopted child and his/her adoptive parents is also accepted by public and private social organizations in the society and acknowledge the right and privileges in such social organization and clubs etc. including membership of organization or club as the case may be, of an adoptive child on the basis of membership and rights of his/her adoptive parents subject to the By-laws of the Club or social organization. There is no prohibition for an adopted child in law from availing the facility and privileges of his/her adoptive parents in the society in a lawful manner, rather on adoption a child in Muslim societies, except the right of inheritance has all rights of natural child of adoptive parents and an adopted child is entitled to all privileges and facilities of his/her parents as of right, so much so, in Islam, in absence of any legal heirs of a Muslim in nearer or remote degree an adopted child may also get the property of his/her adoptive parents. In short subject to the exception mentioned in Surah Al-Ahzab referred above, an adopted Child in Islam may have all other rights of natural child and may also avail all facilities of life available to his/her adoptive parents under law as of right. It was held in **RABIA KHATUN versus AZIZUDDIN BISWAS AND OTHERS** (PLD 1965 SC 665 at Page 668) as under: -

"an adoptive father taking place the position of defacto guardian of an adopted child is regarded as guardian de jure and rule of making gift of property in favour of such child is the same as in the case of gift by real father/

mother to his/her son/daughter”.

In the light of foregoing discussion, we hold as under: -

Adoption subject to the dictate of Holy Quran in Surah Al-Ahzab is not prohibited in Islam.

The Guardianship by itself is not adoption of a child and adoption would require a proper declaration before the Court of competent Jurisdiction.

The Guardian Courts in Gilgit-Baltistan in their respective jurisdiction may exercise power under Guardian and Wards Act, 1890, but may not appoint a person as Guardian of a Child in the Custody of an Orphanage Centre, who is not otherwise entitled to Guardianship of the Child.

The adoption and appointment of adoptive parents as Guardian of a Child with the consent of natural parents/ Guardian is permissible but a stranger to a parentless child in custody of Orphanage Center or a child whose parentage is not known cannot be appointed as Guardian without adoption of the child the permission of Home Department Government of Gilgit-Baltistan.

The custody of an adopted child on the basis of Guardianship certificate issued by a Guardian Court of Gilgit-Baltistan cannot be taken out of the Jurisdiction of Court in Gilgit-Baltistan without the special permission of Court and the custody of such child also cannot be taken out of the Country, without prior permission of Ministry of Interior Government of Pakistan.

The Orphanage Centres in Gilgit-Baltistan following the Control of Orphanage Act, 1958, may get guardianship certificate in the name of natural or adoptive parents as the case may be and in case of unknown parentage of a child in the common Muslim name and may obtain registration accordingly from NADRA on the basis of Guardianship Certificate to be issued by the Court of Competent Jurisdiction.

The Guardian Courts in Gilgit-Baltistan will not issue Guardianship Certificate of a child in the name of a person out of the prohibited degree without proper declaration on Oath by the person intending to adopt a child before the Court concerned and without prior registration of child with the concerned NADRA authorities in accordance with law.

The Guardianship Certificate of a Parentless child will not be issued without proper verification of the antecedents of the person seeking Guardianship of the child and NADRA authorities may make registration of Child on the basis of Guardianship Certificate.

The adoptive parents have to give undertaking before NADRA authorities of Pakistan in the Country, to which the custody of Child is required to be taken that adopted child shall not be taken to any other country without prior intimation to the NADRA Authorities in the country of adoptive parents and also to the concerned department of the said country.

Before conclusion of the proceeding in the matter, we passed the following interim order in a miscellaneous application which shall be treated part of this Judgment and direction contained therein shall be followed accordingly:-

“M/S Zahra Bhola and Shelina Saleh Mohammed have moved a joint application through Mr. Muhammad Shafi, Sr. Advocate Supreme Appellate Court assisted by Mr. Muhammad Abbas, AOR for permission to adopt two infant babies namely Ziyad and Areez, from CEENA Child Welfare Centre Gilgit. The applicants having contacted with the management of CEENA Centre arranged for the custody of the babies on adoption on the basis of Guardianship Certificate to be obtained from District Judge Gilgit but due to the restrained order passed by this court in the matter regarding issue of guardianship certificate to strangers and non citizen in respect of a deserted child by the guardian judges in Gilgit-Baltistan without the intervention of official agencies of Government of Gilgit-Baltistan and Government of Pakistan, the applicant have not been able to get legal custody of infants.

The precise question involved in the matter relates to the jurisdiction of the guardian Judges in Gilgit-Baltistan to issue guardianship certificate of a deserted child in favour of a non citizen or a stranger to take the custody of Child beyond the territorial jurisdiction of Court. There is yet another question as to whether a Muslim or a non Muslim stranger or a non citizen can be given custody of a Muslim or non Muslim deserted child without the intervention of official agencies of Government of Gilgit-Baltistan and Government of Pakistan.

The applicants having not been able to get the Guardianship Certificate have filed this application for permission of adoption of above named two infants. The learned District Judge Gilgit was directed to hold an inquiry into the circumstance under which the CEENA Child Welfare Center obtained custody of two infants and report submitted by the learned District Judge is of no use to ascertain the factual position in the background.

The learned counsel for the applicants on instruction from organizer of CEENA Child Welfare Centre states that infants are deserted as per official record of concerned police and are not in illegal custody of CEENA Child Welfare Centre. The learned counsel submitted that in Islam there is no prohibition of adoption of a Muslim or non Muslim child by a Muslim and there is also no provision in any law in Pakistan that a Pakistani Child either deserted, orphan, parentless or otherwise cannot be adopted by a non citizen Muslim and since applicants are Muslim by faith who are childless and intend to adopt a Muslim Child, therefore, on coming to know about the CEENA Child Welfare Centre Gilgit through their friends in Canada approached CEENA Child Welfare Centre Gilgit for adoption of Child. The applicants are prepared to provide adequate guarantee of maintaining the

infants as their natural Child and subject to the necessary verification about their credentials, they may be allowed to adopt the infants in accordance with law with permission to take them to their Home Land (Canada).

The learned Advocate General on the basis of official version of Kingdom of Saudi Arabia and with reference to a Fatwa given by an authorized forum in Saudi Arabia has submitted that a Child of Saudi Origin is not allowed to be taken out of Saudi Arabia either on adoption or otherwise by a non citizen and Saudi Government is under obligation to establish the social organization for welfare of deserted children within the country, therefore, in absence of an express law on the subject in Pakistan, the law enforced in Saudi Arabia may be followed as precedent. The Order of the Government of Saudi Arabia is confined to the extend of territory of Saudi Arabia whereas in Pakistan, neither there is a codified law on adoption nor there is any such official arrangement for protection of deserted Children. In Islam there is no prohibition on adoption except that a non muslim cannot adopt a Muslim Child but a non citizen Muslim may not be able to adopt a deserted Child from a Welfare Centre without the registration of Child with NADRA and permission of the concerned official agencies as in Islam Government is custodian of its Citizen. Consequently, in pursuance of Order Dated 03-11-2006, it shall be mandatory for a non citizen Muslim to fulfill the following legal requirement for adoption of a deserted/ parentless Child from the custody of parents or a welfare center/organization.

In absence of specific proof to the contrary a deserted/parentless child in custody of welfare center or organization is considered a child of Muslim Faith and the custody of Muslim Child cannot be given to a non muslim.

If the Parents of Child are known, the consent of parents in writing with full particular and declaration of adoption by adoptive parents before the District Judge of the concerned District.

If the child is deserted and is in the custody of welfare organization as parentless child subject to the Police verification and undertaking of the Center or organization that child was genuinely in their lawful custody which was not obtained in an illegal and unauthorized manner with declaration on oath before the District Judge of the concerned District that organization shall be responsible for legal consequence of the concealment of any material fact.

In case of adoption of child from a Welfare Centre or Organization in Gilgit-Baltistan in addition to the declaration on oath, the adoptive parents whether citizen or non citizen, must fulfill the following requirements. The proof of origin and faith of child and the origin and faith of adoptive parents with their full particulars with declaration of adoption supported by an affidavit of facts before the District Judge concerned.

The verification certificate of Home Secretary Gilgit-Baltistan regarding the desertion of child and genuineness of adoptive parents and the welfare organization.

The NOC of Interior Division, of Government of Pakistan to be issued on the basis of verification certificate of Home Secretary, Government of Gilgit-Baltistan and verification of credentials of the adoptive parents by the Foreign Office through High Commission/Consulate of Pakistan in the Country of adoptive parents.

The Interior Division Government of Pakistan before issued of NOC will direct registration of Child with NADRA Islamabad.

The adoptive parents may on the basis of above documents obtain Guardianship Certificate with permission to take the Custody of Child out of Pakistan from District & Sessions Judge, Islamabad.

The NADRA Office in the country of adoptive parent shall maintain the record of registration of child.

The adoptive parents shall give undertaking before the High Commission/consulate and also NADRA authorities in the country of which they are citizen to maintain the child as their natural child in accordance with Muslim faith and will not hand over the custody of child to any other person or take the Child to any other country without prior permission of above authorities.

The Copy of the verification certificate, NOC, the declaration of adoptive parents and the Guardianship Certificate issued by the District Judge Islamabad shall be transmitted to the Registrar of this Court. The Miscellaneous Application is accordingly disposed of.”

24. In consequence to the above conclusion, declaration, and directions, we hereby further direct as under:

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The Orphanage Centers immediately on taking a child into custody will intimate the Home Department of Government of Gilgit-Baltistan and will maintain the record of all children in the custody of Orphanage Centre under intimation to the Home Department.

The welfare Organization or Orphanage Centre, as the case may be will not accept the custody of a child of unknown parentage without obtaining undertaking of the person who brings the child to an Orphan Centre about the origin of child.

The Welfare Organizations registered under the Voluntary Social Welfare Agencies Ordinance 1961, may not run Orphan Centre without proper authorization and registration, with controlling authority of welfare Organization.

25. The Chief Secretary Government of Gilgit-Baltistan and NADRA Authorities will take up the matter with

Ministry of Interior Government of Pakistan for initiation of the process for the enactment of law on adoption.
26. The matter on the question of adoption stands disposed of accordingly.

Chief Judge

Judge

Judge