



## KAFALAH, GUARDIANSHIP, AND THE ABSENCE OF FORMAL ADOPTION LAWS IN PAKISTAN - A CRITICAL ANALYSIS

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### **Abstract**

*In Pakistan, there are no formal adoption laws, which has posed a major problem in terms of welfare and legal awareness of abandoned and orphaned children. Rather, cultures of Kafalah (sponsorship) and Islamic law and statutory guardianship are the major mechanisms of childcare. Although these systems are in tandem with the religious and cultural values, they raise very important questions on identity, inheritance, and entitlement of the child to be integrated into the family. Another legal avenue to caretaking is guardianship under the Guardians and Wards Act, 1890, which does not offer inheritance and lineage rights but does offer a legal avenue to caretaking. The paper is a critical analysis of the intricacies of Kafalah, guardianship, and policy vacuum in formal adoption laws in Pakistan. The article holds that, whereas Islamic jurisprudence supports the safety of children, it does not have a well-developed legal adoption system to ensure that Pakistan meets the global standards of child rights. Policy reforms are also discussed and provided.*

**Keywords:** challenges, historical context, laws, opportunities, theoretical context

### **Introduction**

The welfare of orphaned and abandoned children in Pakistan has been a controversial field that has been influenced by Islamic jurisprudence and statutory laws. In contrast to the West, where adoption is a legal institution, Pakistan practices *Kafalah* (sponsorship) as its main system of child



welfare (Masud, 2022). *Kafalah* also makes sure that children are treated without any distortion of their biological lineage, as this is the main principle of Islam, which asserts preservation of *Nasab* (lineage). But this shortcoming begs the question of the long-term security and identity of children (Finden, 2024; Gulzar & Safdar, 2023). *Kafalah* is supportive but does not extend to the social and legal benefits of adoption. It has been a biological and societal affiliation conflict in the delivery of the right to a child (Anjum et al., 2025).

In Pakistan, the legal power over the guardians, but not necessarily heirs, and total assimilation to the family, is controlled by the Guardians and Wards Act of 1890 (Batool, 2024). It is important to note that this structure is also consistent with the teachings of Islamic tradition, except that there is a loophole regarding securing the rights of those children who were abandoned (Winter, 2022). The problem of illegitimacy and inheritance still undermines the act of a consistent adoption system in Islamic law. It goes further to explain how the issue of child protection in Pakistan is usually compromised by the lack of legislative intervention, which exposes vulnerable children to exploitation (Hilal et al., 2023).

The state has a central role to fill in closing the gap between religiously informed systems of guardianship and international child rights concerns. The argument by Khaliq et al. (2024) is that the meaning of *Nasab* remains the focus of state policies; however, other models of care become harder. According to Beaugrand and Thiollet (2023), there are transnational impacts of *Kafalah*, most especially in migration governance. The first principle to consider in harmonizing the norms of Islamic and international family laws is the best interests of children and especially when there is an international border involved (Amir et al., 2025).

### **Research Justification**

In Pakistan, there is a big gap in the provision of welfare and rights of the orphaned and abandoned children, due to the lack of formal adoption laws. It makes the strategy of Pakistan different from most countries, where adoption guarantees both legal and social protection to children. Note that the current system of guardianship by the Guardians and Wards Act, 1890, despite the necessity, is insufficient to secure the holistic rights of vulnerable children.

Besides, researchers point out that the state is confronted with the two-fold problem of upholding Islamic injunctions and adhering to the international laws, including the UN Convention on the Rights of the Child reports that the fact that the state is part of the *Nasab* construction complicates the reforms and emphasizes what the state should do to balance traditional and modern welfare requirement also claims that poor legislative measures of protecting children continue serving as exploitation and marginalization. This study is therefore warranted since it aims at critically examining the dynamic between *Kafalah*, guardianship, and the lack of adoption law in Pakistan, and providing a point of view on possible policy changes.

### **Research Objectives**

1. To discuss the historical context of *Kafalah*, guardianship, and adoption in Pakistan
2. To highlight the theoretical context of *Kafalah*, guardianship, and adoption in Pakistan
3. To analyze the laws regarding *Kafalah*, guardianship, and Adoption in Pakistan
4. To identify the key challenges regarding *Kafalah*, guardianship, and adoption in Pakistan
5. To explore the opportunities for *Kafalah*, guardianship, and adoption in Pakistan



6. To propose effective prevention and intervention strategies.

### **Research Methodology**

This study employed a systematic review methodology, with research objectives established accordingly. A comprehensive literature review was conducted (Komba & Lwoga, 2020). Research findings were categorized based on their content (Hiver et al., 2021; Petticrew & Roberts, 2006), and classified information was incorporated into the study by organizing it into headings (Gan et al., 2021; Pawson et al., 2005). The evaluation of classified information and titles formed the basis of the study (Page, 2021; Rahi, 2017), ensuring the integrity of the research subject and its contents (Egger et al., 2022; Victor, 2008). The criteria for selection are listed.

1. **Relevance:** Research that directly addressed the questions posed by this study is included.
2. **Quality:** Studies that meet a certain quality threshold (e.g., methodological rigour, bias risk) are included. Most of the research is from Scopus-indexed and Clarivate Analytics journals and reputed publishers.
3. **Recency:** Consideration of the publication date to ensure that the review reflects the most current evidence. Most of the studies are from the last three years.
4. **Language:** Only studies published in English are included.
5. **Data Completeness:** Previous studies must provide sufficient data on outcomes of interest for practical synthesis; this is also ensured in this research.

This study did not use primary data from human participants; therefore, no ethics clearance letter from the ethics committee was required.

### **Literature Review**

Abandoned and orphaned children and their welfare have been a major issue (Finden, 2024) in both Islamic jurisprudence and Pakistani law (Shahid, 2022). *Kafalah* is a Muslim form of adoption and offers children care and support without a break of their biological ties. This model guarantees that the prohibition of full adoption in Islamic law is followed and limits the rights, like inheritance and family integration, according to Winter (2022). *Kafalah* was created in a way that preserves the welfare of children without violating the idea of *Nasab*. Khaliq et al. (2024) also contends that the conflicts between biological and societal affiliation usually place children in an in-between position when it comes to identity. In the same manner, as observed, the states with a Muslim majority are struggling to balance the traditional understanding of child care with the international practice of adoption (Batool, 2024).

In Pakistan, a legal framework on custodianship is available in the form of guardianship, mainly as stipulated in the Guardians and Wards Act, 1890, but which is inadequate to meet the requirements of long-term child welfare (Amir et al., 2025). This Act has the right values of Islam, but it does not defend the right of children to identity and inheritance adequately. Beaugrand and Thiollet (2023) point out that issues of illegitimacy and lineage are other barriers to reforming child care systems. Hilal et al. (2023) also point out that due to law loopholes, there are a lot of vulnerable children that end up exploited, highlighting the vulnerability of current welfare systems.

The state plays a significant part in the harmonization of the Islamic traditions with the international standards of human rights (Masud, 2022). Anjum et al. (2025) show that *Kafalah* also overlaps with migration governance, which makes it more difficult to place children across



borders (Gulzar & Safdar, 2023). Scholars also emphasize the principle of the best interests of the child and the need to keep it at the focus of the policies that transform the Islamic norms to the requirements of international family law.

### **Historical Context of Kafalah, Guardianship, and Adoption in Pakistan**

*Kafalah* and guardianship in Pakistan have a deep history in the Islamic legal school and colonial law. Pakistan received many British colonial laws, such as the Guardians and Wards Act of 1890, the source of all the advice on custodial relationships, since its independence in 1947 (Batool, 2024). It is more of a guardianship rather than a full adoption. It is not inconsistent with Islamic principles, which forbid adopting a child and altering their parentage. Gulzar and Safdar (2023) believes The legal system during the early Islamic period was aimed at preserving and legitimizing the family because of moral and religious interest in *Nasab*. With Islamic injunctions within Sharia law offering care and not rights of inheritance or identity, the concept of *Kafalah* was reinforced further (Finden, 2024; Shahid, 2022). Hilal et al. (2023) suggest that these religious roots contributed to the opposition to the adoption of the West form in Pakistan, which is a different system that relies on moral responsibility rather than legal parenthood.

Family law, according to the Sharia principles, gradually became an integral part of the legal system of Pakistan due to the policy of Islamization that began in the late 1970s and 1980s (Beaugrand & Thiollet, 2023). It was also through this movement that *Kafalah* became the approved alternative to adoption. However, there was a clash between the international norms of child welfare and the religious teachings in 1990 when Pakistan ratified the UN Convention on the Rights of the Child (Winter, 2022). These inconsistencies highlight the influences of historical backgrounds, colonial laws, and Islamic doctrines in having contributed to the existing absence of adopted laws in Pakistan (Masud, 2022).

### **Theoretical Context of Kafalah, Guardianship, and Adoption in Pakistan**

*Kafalah* is, in essence, a statement of Islamic moral philosophy, which is based on compassion, justice, and communal responsibility. It supports the idea that children whose care is required must be safeguarded and nurtured without damaging their birth rights or rights of inheritance.

The principle of guardianship, in turn, is based on the legal obligation of the caretaker instead of the establishment of a new familial identity. This guardianship/adoption distinction is an example of the wider theoretical conflict between social welfare and legal identity. Western theories of adoption emphasize the psychological and social acceptance of the child in a new family, whereas the Islamic one emphasizes family continuity and moral responsibility. Through these theoretical aspects, the study shows the tension that Pakistan wants to strike between religious allegiance, the law, and the new demands of child protection.

### **Legal Analysis of Kafalah, Guardianship, and Adoption in Pakistan**

1. **The Guardians and Wards Act 1890:** This is a colonial law, which is still the main law of guardianship in Pakistan. It permits the courts to assign guardians to the minors, but not the rights that biological parents have. Notably, it does not allow inheritance rights, and so, the lineage and *Nasab* are not lost.



2. **Majority Act, 1875:** This Act stipulates the age at which a person can be legally called of age. In guardianship cases, it serves to demarcate the time during which a child is under legal protection and control of a guardian.
3. **The Muslim Personal Law (Shariat) Application Act, 1962:** This law was enacted in 1962 and included Islamic principles in the Pakistani family law, which strengthened the ban on full adoption and the introduction of *Kafalah* and guardianship as an alternative.
4. **The Child Protection and Welfare Acts (provincial):** Child protection laws have been passed by each province, such as Punjab and Sindh, but without the change in the lineage and inheritance rights, giving a mechanism for shelter, custody, and welfare of foundlings.
5. **International Commitments:** Pakistan is a member of the UN Convention on the Rights of the Child (CRC). Although there is no adoption law, Pakistan must provide the welfare, identity, and protection of all children within its jurisdiction.

#### **Challenges for Kafalah, Guardianship, and Adoption in Pakistan**

1. **Lack of Adoption Legislation:** The greatest obstacle is the unofficial adoption law in Pakistan. Although guardianship is a legal procedure that offers a legal means of care, it does not confer a child with an inherent familial identity and hereditary rights.
2. **Problems of Lineage and Inheritance:** Islamic doctrine puts special stress on the maintenance of *Nasab* so that guardians or sponsors will not be able to bestow the right to inheritance. It leaves one unsure of the financial stability of the child and the prolonged inclusion of the child in a family.
3. **Identity and Social Stigma:** Orphaned and abandoned kids have identity crises because they cannot legally adopt the name of their guardians. Illegitimacy stigmatization further alienates such children and makes it difficult to be accepted in society.
4. **Poor practice of Child Protection Laws:** Despite the existence of provincial child welfare acts, there is inadequate enforcement of the laws. Insufficient monitoring and the inadequacy of resources still perpetuate the deprivation of education, health, and security for many children.
5. **Tension between Islamic and International norms:** Pakistan is torn between Islamic and international obligations on children. Such conflict restricts policy change and does not allow the application of the practices that can meet the best interests of children.

#### **Opportunities for Kafalah, Guardianship, and Adoption in Pakistan**

1. **Legal Reforms:** The fact that no formal adoption laws are in place makes it possible to formulate new legislation that can reconcile Islamic injunctions and child welfare requirements. Extensive changes would make guardianship laws more powerful and have more explicit safeguards for children.
2. **Incorporation of Islamic concepts:** *Kafalah* and guardianship may further be elaborated into a legal framework that honors religious faith, even as it protects the rights of children. Such integration would enable Pakistan to develop a culturally acceptable yet internationally relevant model.
3. **Enhancing Child Protection Institutions:** Child protection bureaus should be extended to more provinces and must be properly funded to increase access to shelter, healthcare, and



education services for abandoned children. The bigger institutions are able to take out deeper exploitation and offer security in the long run.

4. **Public Awareness Campaigns:** Stigmatization can be minimized, and more families willing to support orphaned and abandoned children can be motivated by educating the whole society about *Kafalah* and guardianship. Community-based care solutions can also be encouraged through awareness campaigns.
5. **Global Cooperation:** Pakistan can cooperate with other countries to streamline its child welfare practice in accordance with international standards. Cooperation would bring technical skills, money, and examples of other Muslim states that have invented new methods of guardianship and childcare.

### **Discussion**

The lack of formal adoption laws in Pakistan brings to the fore the conflict between religious and modern values and the demands of child welfare. Although *Kafalah* and guardianship offer some basic care and protection to children, they are not sufficient to give them permanent status, the right to inheritance, and full acceptance as part of families. Such an insufficiency leaves orphaned and abandoned children vulnerable in the long run, as this group continues to rely on scarce legal protections. The issue is further complicated by social stigma and identity issues that leave many children disenfranchised both legally and culturally.

These issues are also supported by the fact that the existing child protection mechanisms are not fully enforced, with the majority of the welfare facilities being understaffed and unmonitored. At the same time, it is possible to reform the system, paying more attention to the enhancement of guardianship law, consistency of policies with Islamic principles, and institutional support. The moderate approach will enable Pakistan to retain the religious customs and, at the same time, advance the best interests of children and their fundamental rights.

### **Conclusion**

The lack of formal adoption laws and the practice of *Kafalah*, guardianship in Pakistan, also demonstrates a convoluted view of religion, law, and child welfare. Current structures only offer partial care but do not cover other underlying issues like inheritance, identity, and long-term security of children. Many orphans and abandoned children are exposed to social exclusion and the uncertainty of the law due to the absence of legislation on adoption. The possibility of reforming the guardianship system and combining the Islamic concepts and principles with the child protection policies can serve as an opportunity to develop a system that could help to protect the best interests of children and preserve the cultural and religious values.

### **Recommendations**

1. **Enact adoption laws:** Prepare explicit laws addressing adoption according to the Islamic provisions and safeguarding the rights of children.
2. **Amend guardianship legislation:** Revise the Guardians and Wards Act, 1890, to offer more security and protection to children under the care of the guardians.
3. **Protect the intellectual property of the impoverished:** Establish legal protections that promote economic security among children under *Kafalah* or guardianship.



4. **Proffer legal assistance:** Deploy free legal aid to offer guardians and families maneuvering through child custody and welfare proceedings.
5. **Promote community-based treatment:** foster care and family services should be developed as an alternative to institutionalization.
6. **Increase surveillance:** Intensify supervision to bring accountability in child protection centers and welfare institutions.
7. **Increase child protection institutions:** Child protection bureaus should be strengthened through increased funding and resources.
8. **Ensure social enlightenment:** There should be campaigns on eradicating the stigma of abandoned children and mobilization of families to join guardianship services.
9. **Develop in line with international norms:** Islamic values should be ensured with the assistance of the UN.
10. **Foster intellectual discussion:** Supporting intellectual and religious dialogues about adoption can really help.

#### **Research Limitations**

This study has some limitations that should be noted. Firstly, there is a lack of primary sources. Although these offer useful information, they might not reflect the realities of children and families facing guardianship and *Kafalah*. Second, this is because adoption and lineage are sensitive matters in Islamic societies and restrict empirical research. A lot of issues have not been researched well because of cultural and religious sensibilities, and it is therefore hard to have a detailed analysis.

Third, the differences in provincial child protection law make it difficult to bring out a coherent framework. The levels of implementation and institutional capacity vary across the provinces, and they influence the uniformity of discoveries. Lastly, due to the fast-evolving socio-legal context of Pakistan, any reform or change of policies can soon render a section of this research outdated and, hence, needs constant updates to be relevant.

#### **Research Implications**

1. **Policy Development:** According to the results, there is an immediate need to implement legislation grounded on the adoption issues, which will be compatible with Islamic values and will safeguard the rights of children. It can educate policymakers so that they make balanced policies.
2. **Legal Reforms:** Results obtained in this study can be applied to strengthen the guardianship acts in place and to close gaps in the legislation that open children to exploitation.
3. **Child Welfare Practices:** The paper demonstrates the topicality of institutional changes, which could increase the quality of services offered by child protection agencies.
4. **Religious Discourse:** This paper can open the eyes to the current debates about adoption within the Islamic world by discussing how it is connected to the law.
5. **International Standards:** The commentary outlines how Pakistan can balance its religious values with the international needs and adopt reforms that support cultural identity and children's rights.



6. **Academic Contention:** The research expands the scholarly discussion of child welfare legislation in Pakistan, which can be applied in the future to carry out research.

#### **Future Research Directions**

Future studies on *Kafalah*, guardianship, and the lack of adoption legislation in Pakistan may concentrate on various issues. The first course of action is to undertake empirical research that reflects the experiences of children and families directly impacted by guardianship, as most of the current research uses legal and theoretical research. A comparative study of how other Muslim-majority nations have dealt with the balance between religion and modern child welfare practices is another key area that can offer Pakistan models is also important.

The role of provincial child protection institutions, their effectiveness, issues, and possible reforms should also be investigated further. Studies also seek the views of religious scholars and policymakers to interpret obstacles to change and avenues to agreement. And lastly, interdisciplinary approaches to the study of law, sociology, and human rights can guide us through a complex vision of child welfare where the reforms are both culturally sensitive and mindful of the needs of the international community.

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