

PROTECTION OF THE RIGHTS OF ORPHANS IN PAKISTAN: CHALLENGES AND LEGAL REFORMS

BY

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ABSTRACT

This study examines the rights and protections available under the legal framework for the welfare and security of orphans in Pakistan, focusing on aspects such as education, healthcare, religion, and inheritance. The insistence to investigate this subject stem from the growing number of orphaned children in Pakistan and the critical need to ensure their survival, development, and dignity within society. Orphans represent one of the most vulnerable groups, often lacking family support, economic stability, and social recognition, which makes legal protection essential for safeguarding their fundamental rights. The research argues that the current legal framework in Pakistan is inadequate for ensuring the protection and welfare of orphaned children. It highlights that existing laws and policies fail to effectively address their specific needs due to significant legal and structural discrepancies. The research methodology encompasses both doctrinal and non-doctrinal approaches. The doctrinal component involves an analysis of relevant legal texts, Islamic principles, statutory frameworks, and international conventions. The non-doctrinal component includes both qualitative and quantitative analysis. Data was gathered through structured questionnaires administered to orphaned children to assess the real-life challenges they face, and through interviews with officials from government departments responsible for child welfare. Comparative insights from Egypt, Malaysia, and Morocco demonstrate how more structured and inclusive legal frameworks can effectively safeguard the rights of orphans. In light of these findings, the study concludes that immediate legislative, judicial, educational, health and social reforms are necessary to establish a coherent, enforceable, and child- centered framework that recognizes orphans as a vulnerable group and guarantees their fundamental rights, dignity, and long-term well-being.

ملخص البحث

تتناول هذه الدراسة الحقوق والحماية المتاحة ضمن الإطار القانوني لرعاية الأيتام وضمان أمنهم في باكستان، مع التركيز على مجالات التعليم، والرعاية الصحية، والدين، والميراث. وتنبع أهمية البحث من تزايد أعداد الأطفال الأيتام في باكستان والحاجة الملحة لضمان بقائهم ونموهم وصون كرامتهم داخل المجتمع. إذ يُعد الأيتام من أكثر الفئات ضعفًا، حيث يفتقرون في الغالب إلى الدعم الأسري، والاستقرار الاقتصادي، والمكانة الاجتماعية، مما يجعل الحماية القانونية أمرًا أساسيًا للحفاظ على حقوقهم الجوهرية.

وترى الدراسة أن الإطار القانوني القائم في باكستان غير كافٍ لضمان حماية الأيتام ورعايتهم، إذ تكشف عن قصور القوانين والسياسات الحالية في تلبية احتياجاتهم الخاصة بسبب فجوات قانونية وهيكلية واضحة. وتعتمد المنهجية البحثية على مزيج من الأساليب النظرية والتطبيقية؛ حيث يشمل الجانب النظري تحليل النصوص القانونية ذات الصلة، والمبادئ الإسلامية، والأطر التشريعية، والاتفاقيات الدولية، بينما يتضمن الجانب التطبيقي تحليلًا نوعيًا وكميًا. وقد جُمعت البيانات عبر استبيانات منظمة وُجّهت إلى الأطفال الأيتام لرصد التحديات الواقعية التي يواجهونها، بالإضافة إلى مقابلات مع مسؤولين من الجهات الحكومية المعنية برعاية الطفل.

كما تقدّم الدراسة مقارنة مع تجارب دول مثل مصر وماليزيا والمغرب، التي تُظهر أن الأطر القانونية الأكثر تنظيمًا وشمولًا قادرة على حماية حقوق الأيتام بفاعلية أكبر. وفي ضوء هذه النتائج، خلصت الدراسة إلى ضرورة إجراء إصلاحات عاجلة في المجالات التشريعية والقضائية والتعليمية والصحية والاجتماعية، من أجل إرساء إطار شامل وملزم يتمحور حول الطفل، ويعترف بالأيتام كفئة ضعيفة، ويكفل لهم حقوقهم الأساسية وكرامتهم ورفاههم على المدى الطويل.

الكلمات المفتاحية: الأيتام، الحقوق الأساسية، التحديات، الإصلاح القانوني، باكستان.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Munazza Razzaq

Signature

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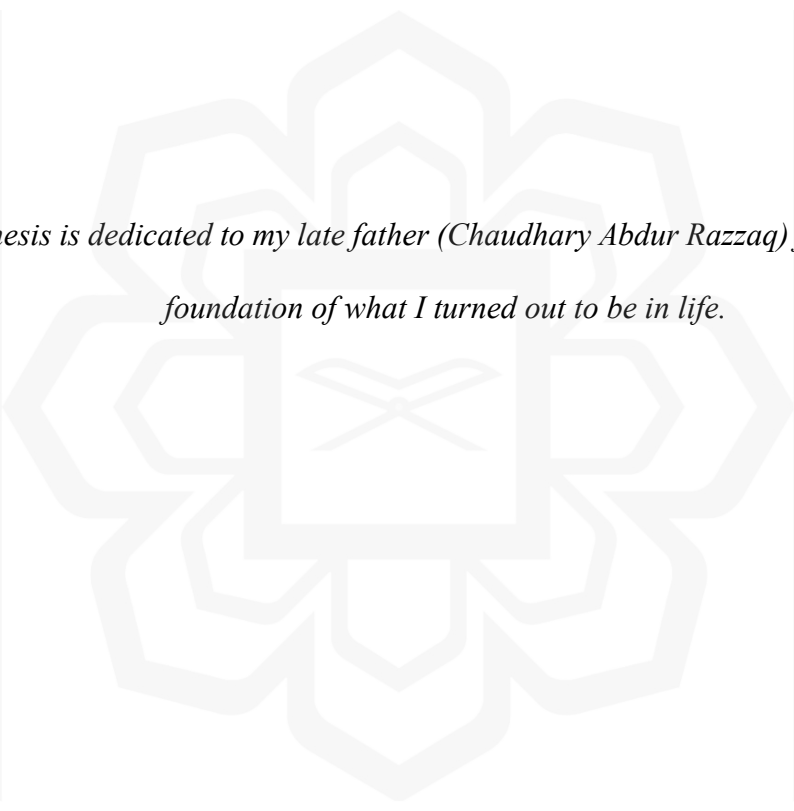
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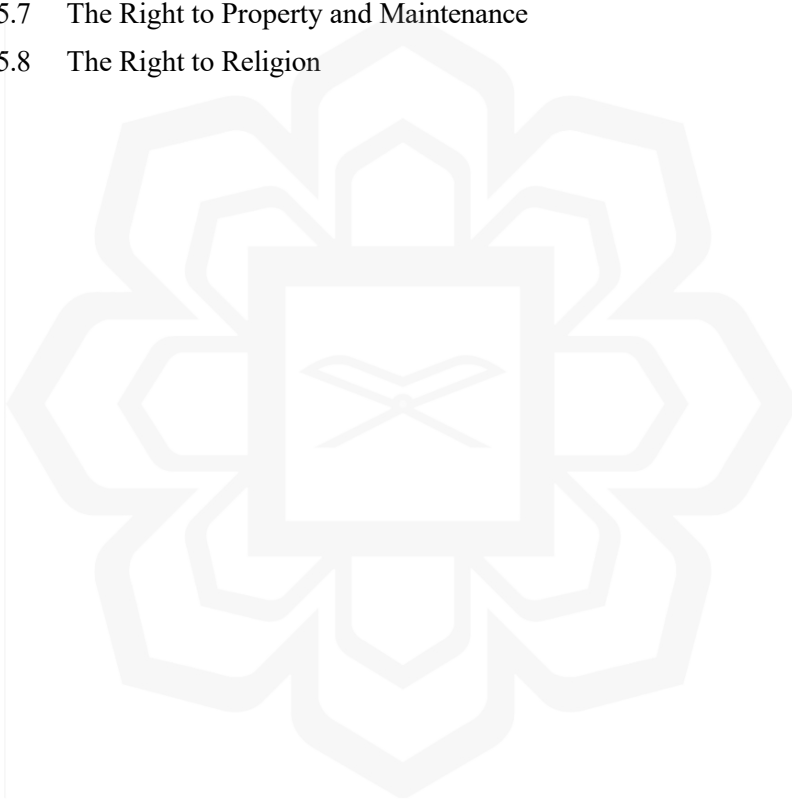
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CHAPTER ONE

INTRODUCTION

1.1 INTRODUCTION

The protection of orphans' rights is a critical issue within the broader human rights framework, particularly pertinent to Pakistan, where socio-economic challenges intersect with legal and cultural systems. Orphans in Pakistan constitute a vulnerable and often neglected segment of the population. Multiple factors contribute to the growing number of orphans in the country, including poverty, natural disasters, terrorism, armed conflicts, domestic violence, and the absence of effective family planning. Pakistan's socio-political instability and poor healthcare infrastructure also result in high mortality rates, especially among male breadwinners, leaving children parentless or with a single struggling guardian.

Pakistan is situated in South Asia, occupying a strategic position at the intersection of the Middle East, Central Asia, and East Asia. The nation shares borders with India, Afghanistan, China, and Iran. Pakistan is administratively divided into five units: four provinces (Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan) and one federally administered territory (Islamabad). Pakistan is the fifth most populous country in the world. According to the 2023 census of Pakistan, its population was 241,499,431,¹ and nearly half (45%) of the population is under 18. The population doubles every 29 years, with an annual growth rate of 2.4 percent.² The percentage of orphans in Pakistan is alarming; a UNICEF report highlighted that Pakistan is home to 4.5 million orphaned children.³ The study examines that children are the most vulnerable

¹ *Pakistan Bureau of Statistics*, "Table 1: Households, Population, Household Size and Annual Growth Rate," <<https://www.pbs.gov.pk/sites/default/files/population/2023/Pakistan.pdf>> (accessed 13 August, 2024).

² *UNICEF*, "Pakistan's Annual Report 2020," <https://www.unicef.org/pakistan/media/3631/file/Annual_Report_2020.pdf> (accessed 23 September, 2023).

³ Government of Pakistan, "Poverty Alleviation and Social Safety Division Press Release: A Strategy in the Pipeline for Pakistan's Orphans," <<https://tinyurl.com/244kk4xk>> (accessed 09 March, 2023).

individuals worldwide, often suffering the worst effects of crises and conflicts. The child population makes up 2.3 billion of the 7 billion world population. Moreover, in 2013-2014, 143–210 million children were orphans.⁴ These facts and figures indicate that the population of orphaned children is increasing worldwide.

Children in Pakistan become orphans due to a range of interrelated social, economic, and environmental factors. Armed conflicts and terrorism, particularly in the tribal and border regions, have claimed the lives of many parents, leaving children without caregivers. Natural disasters such as earthquakes, floods, and other climate-induced calamities also contribute significantly by displacing families and causing the death of one or both parents. Widespread poverty, poor health infrastructure, and limited access to medical care result in preventable deaths, especially among young adults who are often the primary breadwinners. In addition, domestic issues such as parental separation, abandonment, imprisonment, and incidents of domestic violence may leave children without adequate care, even when one parent is still alive, thus rendering them functionally orphaned.

Pakistan's child protection framework reflects the country's cultural diversity and regional autonomy, resulting in a decentralized legislative approach. This allows provinces to tailor child welfare policies to local contexts. Key legislative instruments at the national level include the Constitution of Pakistan (1973), which, under Articles 9, 25(3), and 37(e), affirms the state's responsibility to safeguard the rights of children. The Juvenile Justice System Act, 2018, the Zainab Alert, Response and Recovery Act, 2020, and the National Commission on the Rights of the Child Act, 2017 signify important progress in aligning domestic frameworks with international obligations such as the UN Convention on the Rights of the Child (UNCRC). At the provincial level, laws such as the Punjab Destitute and Neglected Children Act, 2004, Sindh Child Protection Authority Act, 2011, Balochistan Child Protection Act, 2016, and Khyber

⁴ Hafize Zehra Kavak, "Report on World's Orphans July 2014," Humanitarian Relief Foundation (IHH), <https://www.academia.edu/7765230/Report_on_World%20s_orphans> (accessed on 09 March, 2023).

Pakhtunkhwa Child Protection and Welfare Act, 2010 further demonstrate efforts to institutionalize child protection.⁵

However, the diversity of legal regimes across provinces, while responsive to regional contexts, has led to a fragmented system with varying levels of protection and service delivery. The absence of a harmonized national child protection framework presents challenges in ensuring uniform rights and safeguards, particularly for vulnerable groups such as orphans. Furthermore, while legislation exists, implementation mechanisms often require greater inter-agency coordination, capacity-building, and resource allocation to translate legal protections into practical outcomes. Additionally, the prevailing approach views orphans primarily as recipients of charity rather than as rights-holders entitled to legal protections and social inclusion.

Institutional capacity is also a significant concern; government-run shelters and child protection bureaus are typically underfunded, overcrowded, and lack proper oversight. Furthermore, legal ambiguities, particularly concerning inheritance rights for orphans under guardianship or those without documented parentage remain unresolved, leaving many children vulnerable to legal exclusion. Orphans are also largely absent from mainstream policy agendas, as national child protection frameworks and social welfare programs seldom recognize them as a distinct and vulnerable group requiring targeted attention and long-term support.⁶ By strengthening institutional linkages and promoting cohesive standards across all jurisdictions, Pakistan has the opportunity to enhance the efficacy and inclusivity of its child protection system.⁷

Child protection experts across the globe have concluded that children need protection from physical harm, exploitation, gender-based violence, emotional distress, coercion into armed factions, family separation, abuses related to forced displacement, and denial of access to quality education. The UNCRC was explicitly enacted to protect

⁵ Tahira Jabeen, "Child Protection Legislation in Pakistan: Bringing International Child Rights Obligations and Local Values Together," *Pakistan Journal of Criminology*, vol. 8, no. 3 (2016): 16-33.

⁶ Hafize Zehra Kavak, "Report on World's Orphans July 2014," Humanitarian Relief Foundation (IHH), <https://www.academia.edu/7765230/Report_on_World%20s_orphans> (accessed on 09 March, 2023).

⁷ Pulla, V. R. and et al, "Child Protection System and Challenges in Pakistan," *Space and Culture, India*, vol. 5, no. 3 (2018): 54-68.

children's rights, particularly in times of crisis. Additionally, the UNCRC plays a crucial role in addressing child protection issues.⁸

Orphans living in Pakistan lack necessities, including life essentials, shelter, healthcare, education, and security. Orphans are often observed as a vulnerable group and passive recipients of charity despite the state's commitment to providing fundamental rights equally to all its members. Orphans in Pakistan primarily encounter social, economic, and psychological challenges. Besides critical problems such as poverty, lack of access to education, inadequate healthcare, and social stigma, orphans often face exploitation, including child labor and trafficking, and mental health struggles due to trauma and lack of emotional support.⁹ According to UN reports, "the more challenging issue Pakistani children face is economic problems and working as child laborers. Nearly 28 percent of children aged between 5 and 11 years and 35 percent of children aged between 12 and 14 years in child labor are out of school."¹⁰

Limited empirical research exists on the enforcement and efficacy of child protection laws. Additionally, comparative regional studies are sparse, hindering insights into local disparities. Longitudinal analyses are also needed to examine the long-term socio-economic impacts of inadequate child rights protections on Pakistan's development route. However, the existing literature emphasizes the need for targeted policy interventions, backed by data-driven research, to address these socioeconomic disparities and promote equitable development for children.¹¹

For the welfare of the children, Pakistan established the National Commission for Child Welfare and Development (NCCWD) in 1979 to safeguard the rights of

⁸ Zahid Javaid, Muhammad Arshad, and Aaliya Khalid, "Child Protection in Disaster Management in South Asia: A Case Study of Pakistan," *South Asian Studies*, vol. 26, no. 1 (2011): 191–202, <<https://pu.edu.pk/images/journal/csas/PDF/12-Dr.%20Zahid%20Javaid%20&%20Mr.%20Arshad.pdf>>

⁹ Asif Mahmood, Farhat Ullah, and Syed Faisal Hyder Shah, "Problems of Orphan Children in State-Sponsored Orphanages of Khyber Pakhtunkhwa, Pakistan," *Liberal Arts and Social Sciences International Journal (LASSIJ)*, vol. 4, no.1 (2020): 102–113. <<https://doi.org/10.47264/idea.lassij/4.1.10>>

¹⁰ *United Nations Pakistan*, "One UN Pakistan: Annual Report 2021," <<https://pakistan.un.org/en/197948-one-un-pakistan-annual-report-2021>> (accessed 23 November 2022).

¹¹ Manzoor Ahmad, Muhammad Zubair, and Muhammad Rizwan, "Children Rights Situation in Pakistan," *Global Regional Review (GRR)*, vol. III, no. I (2018): 343 – 352. <[http://dx.doi.org/10.31703/grr.2018\(III-I\).25](http://dx.doi.org/10.31703/grr.2018(III-I).25)>

minors. Initially, it was under the Ministry of Health and Social Welfare, but it has been operating under the Ministry of Human Rights since 2011. The NCCWD advises the government, implements the UN Convention on the Rights of the Child (UNCRC), and submits periodic reports to the UN. Furthermore, in 2020, the National Commission for the Rights of the Child (NCRC) was created under the 2017 National Commission for the Rights of the Child Act to enforce child rights reforms. It operates under the Ministry of Human Rights and monitors national child protection policies.

Additionally, the government of Pakistan established welfare homes for orphans and other abandoned children. According to UNICEF, Pakistan is a country with 4.6 million orphans.¹² It is important to note that many orphans live in orphanage homes and welfare homes. Table 1.1 below shows the data on orphans in Pakistan.

Table 1.1 Orphans and Institutional Care in Pakistan

Category	Statistic	Year
Total orphan population in Pakistan	Approximately 4.6 million ¹³	2021
Number of orphanages	35	2017
Capacity of orphanages	Approximately 3,500 children ¹⁴	2017
Children sheltered by Alkhidmat Foundation's Aghosh Homes	Approximately 1837 ¹⁵	2024
Edhi Foundation	Approximately 1200 ¹⁶	2020
Non-institutional care for orphans	The majority are cared for by family/community	N/A

¹² Amir Murtaza, "The Evolution of Alternative Care in Pakistan over the Last Decade and Way Forward," *Institutionalised Children Explorations and Beyond*, vol. 10, no. 2 (2023): 173-186, <<https://doi.org/10.1177/23493003231187213>>

¹³ Noman Awan, "Homing the Country's Orphans," *The Express Tribune*, 28 April, 2021, <<https://tribune.com.pk/story/2297149/homing-the-countrys-orphans>>

¹⁴ Ibid.

¹⁵ *Alkhidmat Foundation Pakistan*, "Alkhidmat Foundation's Orphan Care Program," <<https://alkhidmat.org/orphan>> (accessed on 15th August, 2024).

¹⁶ Ali Ousat, "Carrying Forward Edhi's Legacy," *Dawn*, 26 April, 2020, <<https://www.dawn.com/news/1551962>>

This data highlights the scale of the orphan population in Pakistan and the limitations of institutional care, with most orphans relying on informal care networks even though the government and private non-profit organizations work together for the protection of orphans. Pakistan Bait-ul-Mal (PBM), a federal government organization established under the Pakistan Bait-ul-Mal Act of 1991, devises and executes policies to cater to the needs of the poor, destitute, widows, orphans, and needy. With this mandate, PBM takes the initiative in establishing Pakistan Bait-ul-Mal Dar ul Ehsas/Sweet Homes/Orphanages to protect orphans better.¹⁷ This home provides basic facilities such as food, shelter, education, and healthcare in the best possible manner. It is noteworthy to mention here that, under the management of Sweet Home, the cadet college for orphans was established in Sohawa Gujar Khan, with the cooperation of Sidique Public School.¹⁸ While Sweet Homes provides excellent facilities, many orphans are unable to access them due to various challenges and hardships.¹⁹

Furthermore, the Social Welfare Department of Punjab manages 12 children's homes, one for male children and one for female children, in the province of Punjab. These children's homes are designed to accommodate 50 children at a time.²⁰ Likewise, the Sindh Social Welfare Department oversees male and female children through its Darul Atfal and Darul Al Binat centers. These orphanages are governed by the Sindh Orphanages (Supervision and Control) Act, 1976, which was amended in 1984.²¹ Several non-governmental organizations (NGOs) take responsibility for orphans, including Edhi Homes, SOS Village, Faiz-ul-Islam, Saba Trust, Bint E Mariam, Agoush Trust for Orphanage, and Dar-e-Yateem. Moreover, Edhi Homes branches were established throughout Pakistan.²²

Pakistan has several institutions that protect the rights of orphans. However, no effective legislation on the subject has been made so far to protect orphans from the

¹⁷ Amir Murtaza, 181.

¹⁸ *Pakistan Sweet Home*, "Cadet College, Sohawa," <https://www.pakistansweethome.org.pk/our_projects> (accessed 20 November, 2021).

¹⁹ Hardships include orphans living in far-flung areas, unable to get awareness about orphan homes, etc.

²⁰ *Social Welfare Department, Government of Punjab*, "Model Children Homes (Orphanages)," <https://swd.punjab.gov.pk/model_children_homes> (accessed 11 April, 2023).

²¹ The Sindh Orphanages (Supervision and Control) Act, 1976, <http://sindhlaws.gov.pk/setup/publications_SindhCode/PUB-15-000349.pdf> (accessed on 11 April, 2023).

²² Edhi Foundation, "Major Features of Edhi Foundation Which Make It Unique," <<https://edhi.org/major-features-of-edhi-foundation/>> (accessed 12 April, 2023).

injustices of society. General child protection laws are available at the federal and provincial levels.²³ They are aimed at protecting the rights of children and ensuring the provision of facilities for them, including education, healthcare, protection from abuse and exploitation, guardianship, maintenance, and many more, but they are still insufficient.

The challenges faced by orphaned children in Pakistan are deeply rooted in both systemic vulnerabilities and legislative inadequacies. While Pakistan has adopted several laws and policies aimed at protecting general children's rights, it lacks a clear and dedicated legal framework that addresses the unique circumstances and specific needs of orphans. As discussed, children become orphans through a variety of causes—including conflict, natural disasters, disease, and domestic breakdowns—leaving them exposed to social, economic, and emotional hardships. These children often face deprivation of education, healthcare, legal identity, inheritance rights, and protection from abuse. Despite the existence of provincial child protection laws and welfare programs, the lack of uniform implementation, legal clarity, and institutional capacity renders these efforts largely ineffective. Orphans remain to be considered through a charitable lens rather than as rights-bearing individuals, and their exclusion from mainstream policy frameworks further marginalizes them. State-level legislators and policymakers have failed to prioritize minor orphans, and where they are mentioned in broader child rights discourse, no concrete enforcement mechanisms are provided. As a result, the existing legal system does not provide sufficient protection for orphaned children or ensure their proper care, rehabilitation, and integration into society. This gap underscores the imperative need for comprehensive, enforceable reforms that specifically address the rights of orphans within Pakistan's legal and social policy frameworks.

Children, including orphans, are the future of Pakistan, for which the Pakistani state is collaborating with UN agencies and becoming a part of international conventions and treaties. These international instruments include the United Nations

²³ Guardians and Wards Act, 1860; Muslim Family Law Ordinance, 1961; The Sindh Children Act, 1955; The National Commission on the Child Rights Act, 2017; The Islamabad Capital Territory Child Protection Act, 2018; and many others.

Convention on the Rights of the Child (UNCRC), the Universal Declaration of Human Rights (UDHR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which affirm the dignity and rights of every human being, including orphans, and are under obligation to implement measures that protect the fundamental rights of orphans, ensuring their well-being and integration into society.²⁴

Notably, the United Nations and its organizations, including UNICEF, started working on child rights and discussed orphans in their reports. For example, in one report, the authors mentioned that "an estimated 153 million children worldwide are classified as orphans,"²⁵ which is an alarming situation. Therefore, it is imperative to prioritize the well-being of orphans and protect them from injustices and exploitation, including child abuse, child labor, and child trafficking.²⁶ These dreadful situations invoke the state's liabilities and responsibilities. In this digital, mechanical, and materialistic era, every state must take concrete and comprehensive steps to protect the rights of children, especially orphans.

Hence, while following the international obligations, Pakistan legislated laws regarding children's rights and established regulatory authorities to ensure the implementation of all relevant rules and regulations. Unfortunately, Pakistan's legislative system has not paid proper attention to orphans' rights. The Senate of Pakistan passed a bill in 2016, precisely titled "Unattended Orphans (Rehabilitation and Welfare) Act 2016,"²⁷ but unfortunately, the parliament did not pass the bill. Furthermore, although legislation exists to protect children without parental care, institutional mechanisms and support are severely limited.²⁸

²⁴ United Nations, "The Core International Human Rights Instruments and Their Monitoring Bodies," <<https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>> (accessed 30 October, 2023).

²⁵ SOS Children's Villages, "Our Impact on Advocacy Movement and Children's Statistics," <<https://www.sos-usa.org/our-impact/focus-areas/advocacy-movement-building/childrens-statistics>> (accessed 24 November, 2021).

²⁶ UNICEF, "Country Office Annual Report 2023 Pakistan," <<https://www.unicef.org/media/152706/file/Pakistan-2023-COAR.pdf>>. UNICEF supported 7,271 children (3,471 girls, 3,800 boys) at risk and survivors of child protection violations through ongoing support to the government and Civil Society Organization (CSO) partners to expand and strengthen case management and referral services, including via 25 District Child Protection Units (CPU) and the deployment of PRIMERO in four provinces.

²⁷ Iftikhar A. Khan, "Senate Passes Bill to Protect Rights of Unattended Orphans," *Dawn*, 21 May, 2016, <<https://www.dawn.com/news/1259726>>

²⁸ Amjad Nazeer and Siraaj Khurram, "Causes and Circumstances of Children Enrolment in Child Care

This research aims to highlight the challenges faced by orphans and underscore the shortcomings in Pakistan's current legislation regarding the rights of orphans. Moreover, the global challenge regarding the rights of orphans and the insufficient provision of proper care necessitates an immediate and coordinated effort to uphold their right to safety, growth, well-being, education, and healthcare.

Adhering to the principles of Islamic law and international law, which emphasize reformation and the proper enforcement of rights, can guide the Pakistani state in legislating and enforcing laws to address the challenges related to orphans' rights. This research proposes legal reforms to enhance the lives of orphans in Pakistan, drawing on both Islamic principles and international legal frameworks, to ensure their rights are effectively upheld.

1.2 STATEMENT OF THE PROBLEM

The absence of adequate and comprehensive child protection laws and policies in Pakistan significantly hinders the safeguarding of orphaned children. The lack of robust legal enforcement of fundamental rights generates a gap that leaves orphaned children vulnerable to exploitation, deprivation, or marginalization. To effectively address these challenges, Pakistan must undertake legislative and policy reforms that are explicitly aimed at protecting orphans. Such reforms should be informed by a holistic approach that integrates principles from the Islamic law, the United Nations Convention on the Rights of the Child (UNCRC), and other relevant international legal instruments. By aligning domestic laws with both Islamic and international standards, Pakistan can develop a strong, rights-based legal framework that ensures the welfare, protection, and rehabilitation of orphaned children.

Centers and Orphanages,” *Secours Islamique France*, 2017, <https://www.academia.edu/35992083/Causes_and_Circumstances_of_Childrens_Enrolment_in_Child_Care_Centers_and_Orphanages> (accessed 20 October, 2024).

1.3 OBJECTIVES OF THE RESEARCH

In line with the primary goal, the specific objectives of this research are:

1. To examine the legal framework regarding the protection of orphans' rights.
2. To identify the strengths and weaknesses of this legal framework.
3. To compare this legal framework with those in selected countries, namely Malaysia, Egypt, and Morocco.
4. To offer recommendations for potential legal reforms related to the protection of orphans' rights in Pakistan.

1.4 RESEARCH QUESTIONS

Based on the above discussion, the following research questions are developed:

1. What are the prevailing legal frameworks related to the protection of orphans' rights?
2. What are the strengths and weaknesses inherent within the prevailing legal systems regarding the protection of orphans' rights?
3. Which legal and institutional frameworks have been adopted by countries such as Malaysia, Egypt, and Morocco for the protection of orphans' rights, and how can these models apprise the development of a comprehensive and culturally appropriate orphan care system in Pakistan?
4. What legal reforms are required to safeguard orphans' rights in Pakistan based on *Sharī'ah* principles, relevant benchmarks, and international laws?

1.5 HYPOTHESIS

This research is based on the hypothesis that Pakistan has no specific statutory provision to protect orphans' rights despite various regulations on child rights in general. Meanwhile, Islamic law provides extensive guidance and requirements for protecting

children's rights, including orphans. Therefore, this research aims to study and propose a legal framework for safeguarding orphans' rights in Pakistan based on Islamic and international laws.

1.6 SCOPE AND LIMITATION OF THE RESEARCH

This research undertakes a comprehensive examination of the child protection legal framework in Pakistan, with a specific focus on the rights and welfare of orphaned children. While the broader legislative and policy environment governing child rights is acknowledged—including national and provincial laws—this study narrows its scope to analyze the legal provisions, institutional mechanisms, and practical implementation related explicitly to orphans. Given the extensive geographic distribution of orphaned children across Pakistan, the study focuses empirically on the regions of **Punjab and Islamabad**, which were selected due to their significant population size, administrative capacity, and accessibility for field research. These regions provide a representative sample for understanding the lived experiences of orphaned children within the existing legal framework.

Although this study does not cover every province, the findings offer valuable insights into the strengths and limitations of current laws and practices as they pertain to orphans. By focusing on these two regions, the research aims to evaluate the adequacy of legal protections, identify policy gaps, and propose reforms that could be adapted at the national level. The study thereby contributes to the broader discourse on child welfare by addressing the specific vulnerabilities and legal recognition of orphaned children within Pakistan's child protection system.

The findings aim to inform policy recommendations for improving the legal and institutional frameworks that govern the protection and rehabilitation of orphaned children. Expanding future studies to include orphans with diverse backgrounds and needs could provide a more comprehensive understanding of the issues affecting this group.

1.7 LITERATURE REVIEW

There is abundance of literature on child rights. However, the rights and welfare of orphaned children represent a critical yet underexplored area, particularly within the Pakistani context. The existing body of literature on orphans' rights is both limited and fragmented, offering only a cursory treatment of the subject in domestic legal discourse. Despite the increasing relevance of this issue, especially in developing countries like Pakistan, academic engagement with the legal and policy frameworks surrounding orphans remains untouched. While some journal articles, legal commentaries, and institutional reports address the rights of orphans under international human rights instruments, such as the United Nations Convention on the Rights of the Child (CRC), these sources often fail to provide region-specific analyses that reflect the socio-legal realities of Pakistan.

In contrast, Islamic jurisprudence offers a more established yet doctrinally diverse foundation on the rights and treatment of orphans, drawing from the Qur'ān, the Sunnah of the Prophet Muḥammad (P.B.U.H.), classical jurisprudential texts, and modern interpretations by contemporary Muslim scholars. These sources will serve as the primary doctrinal references for this research, particularly in evaluating the normative frameworks for orphan care and protection within Sharī'ah.

This literature review adopts an exhaustive approach, surveying and synthesizing relationships from three major domains: the domestic law of Pakistan, the international legal framework, and the Islamic legal tradition. By systematically examining the contributions and gaps within each of these domains, this review aims to establish the gap on research relating to orphans in Pakistan. It aims to add to the existing literature by exploring the legal, ethical, and policy dimensions of orphan rights, thereby highlighting the urgent need for legal reforms and better implementation mechanisms in Pakistan.

1.7.1 Domestic Law of Pakistan

In the context of child rights, Abbasi et al. in his article "Rights of Children in Islamic Perspective and Child Abuse in Pakistani Society: Causes and Remedies from Islamic Teachings" identify significant principles related to child protection, dignity, health, and education as foundational elements within Islamic teachings.²⁹ The authors emphasize the prevalence of child abuse in Pakistan, attributing it to socio-economic challenges, limited awareness, cultural influences, and weak enforcement of child protection laws. In response, the authors propose remedies derived from Islamic teachings, advocating for the involvement of family, community, and religious leaders to foster ethical awareness and protective behavior. The study also compares Pakistan's child protection laws with Islamic principles, suggesting potential legislative improvements. The research does not sufficiently address potential societal and political barriers in Pakistan that may hinder the implementation. Exploring these obstacles could yield insights for effective policy execution, offering recommendations to address them. Additionally, these findings could improve the application of Islamic teachings in safeguarding children's rights in Pakistan.

Muhammad Munir, in his paper titled "The Evolution and Sources of the Pakistani Legal System,"³⁰ provides a comprehensive overview of Pakistan's legal system's historical and structural foundations, focusing on its dual influences from British colonial law and Islamic jurisprudence. The author draws the system's evolution from its colonial roots to its current framework, emphasizing the unique blend of common law and *Sharī'ah* principles. The author stresses critical sources of law in Pakistan, such as the Constitution, statutory law, Islamic law, and customary practices, and discusses how these sources interact and sometimes conflict. Even though the study thoroughly examines Pakistan's legal history, it fails to provide a comparative analysis of how other post-colonial nations blend traditional and colonial legal elements. This comparison would offer a deeper insight into Pakistan's distinct legal evolution.

²⁹ Muhammad Umar Riaz Abbasi and et al, "Rights of Children in Islamic Perspective and Child Abuse in Pakistani Society: Causes and Remedies from Islamic Teachings," *Journal of Legal, Ethical and Regulatory Issues*, vol. 25, no. S6 (2022): 1-7.

³⁰ Muhammad Munir, "Evolution and Sources of Pakistani Legal System," *via SSRN*, (last revised 2022), <<https://dx.doi.org/10.2139/ssrn.3975421>>

Asif Mahmood in his article "Problems of Orphan Children in State-Sponsored Orphanages of Khyber Pakhtunkhwa, Pakistan"³¹ explores the various challenges that orphans encounter in Pakistan, specifically social, economic, and psychological issues. The study highlights critical problems such as poverty, lack of access to education, inadequate healthcare, and social stigma. Orphans often face exploitation, including child labor and trafficking, and mental health struggles due to trauma and lack of emotional support. Mahmood also underscores the failure of government and societal institutions to provide adequate care and protection for these vulnerable children. Even though the author effectively outlines the problems orphans face, the study could benefit from a deeper evaluation of successful intervention programs and support systems that have improved the lives of orphans and from a comparative analysis of orphan care systems in other countries, particularly South Asia, to better understand regional challenges and best practices. Additionally, this research lacks an in-depth discussion on the role of informal care systems like *kafālah* in addressing the needs of orphans.

Mudasra Sabreen,³² in her paper titled "Maintenance of the Child in Pakistan: A Much-Needed Legislation", highlights that child maintenance (for legitimate children) is the responsibility of the father, whether they are under the care of the father or, in the case of separation from the mother. The father is obligated to pay maintenance to his son until the age of majority, that is, 18 years, whereas, for the daughter, he is bound to pay maintenance until marriage. Although there is no set legislation, courts still order maintenance per the Islamic law of *nafaqah* (financial requirements). The authors divided this study into four parts. In part one, Islamic laws related to child maintenance are discussed. Part two analyzes the relevant statutes in Pakistan by highlighting the deficiencies in the various provisions of these statutes. In Part Three, case law on the issue of the maintenance of children is examined to analyze the approach adopted by the judiciary. The final part of this paper summarizes the findings and provides recommendations regarding the legislation of a child's right to maintenance.

³¹ Asif Mahmood, Farhat Ullah, and Syed Faisal Hyder Shah, "Problems of Orphan Children in State-Sponsored Orphanages of Khyber Pakhtunkhwa, Pakistan," *Liberal Arts and Social Sciences International Journal (LASSIJ)*, vol. 4, no.1 (2020): 102–113. <<https://doi.org/10.47264/idea.lassij/4.1.10>>

³² Mudasra Sabreen, "Maintenance of the Child in Pakistan: A Much-Needed Legislation," *LUMS Law Journal*, vol. 7, (2020): 105-126.

However, this research presented an insufficient analysis of the role of extended family and grandfather in providing maintenance to the orphans.

Saeeda Shah, Taniya Ahmed, and Ghulam Mujtaba Malik's study, "Understanding the Prevalence of Child Abuse in Pakistan: A Comprehensive Study,"³³ explores the psychological consequences of abuse, particularly its link to anxiety, depression, and emotional stress among children. The authors reveal that victims frequently experience persistent fear, low self-esteem, and difficulty forming healthy social relationships. Emotional abuse and neglect were found to contribute significantly to long-term psychological trauma, while physical and sexual abuse intensified symptoms of depression and anxiety disorders. The study emphasizes the urgent need for psychosocial support, counseling services, and awareness programs to mitigate the adverse mental health outcomes.

Younas et al., delve into the legislative framework regarding child rights in their article "Child Protection in Pakistan: Legislation & Implementation".³⁴ This article sheds light on the application of laws on child rights, with a particular emphasis on the pivotal role of the National Commission for Child Welfare and Development (NCCWD), housed under the Ministry of Human Rights. The commission's crucial function is to monitor and evaluate children's constitutional, legal, and administrative rights and to propose necessary modifications and amendments to the law. The authors' primary goal is to underscore the commission's role in safeguarding child rights. This comprehensive work provides a detailed understanding of the commission, which will be invaluable for this research. Nevertheless, the research fails to comprehensively assess the influence of socioeconomic inequalities and urban-rural differences on child protection law implementation. Consequently, this investigation includes an examination of NCCWD's role, responsibilities, and reporting mechanism to UNCRC.

³³ Saeeda Shah, Taniya Ahmed, and Ghulam Mujtaba Malik, "Understanding the Prevalence of Child Abuse in Pakistan: A Comprehensive Study," *Pakistan Social Sciences Review* 7, no. 3 (2023): 72–86.

³⁴ Sana Younus, Aisha S. Chachar, and Ayesha Mian, "Child Protection in Pakistan: Legislation and Implementation," *Pakistan Journal of Neurological Sciences (PJNS)*, vol. 13, no. 2 (2018): 1-3.

Tahira Jabeen³⁵ in her paper "Pakistan's Child Protection Legislative and Policy Frameworks: A Critical Review", critically evaluates the Pakistani government's legislative and policy frameworks regarding child protection. The author collected all laws regarding children's rights and concluded that the State does not place great emphasis on child protection and rights. Recognizing child protection issues as a specific area of state policy and legislation is a recent phenomenon. The Constitution of Pakistan lacks a singular provision specifically addressing child protection. In 2009, Pakistan formulated its inaugural state policy on child protection. However, this paper omits the legal reforms necessary for effective policy implementation and the strategies required to overcome these challenges within Pakistan's unique sociocultural context.

One critical area regarding the rights of children is budget allocation, which requires significant attention from the government. Abdullah Khoso³⁶ submitted a draft to the Office of the High Commissioner for Human Rights (OHCHR) titled "Investment in the Rights of the Child in Pakistan", which examines the state of children's rights in Pakistan, focusing on government investment in education, healthcare, and child protection. The draft highlights insufficient funding and institutional weaknesses that hinder the effective implementation of child rights policies in Pakistan. The author calls for increased investment to meet the obligations under the UN Convention on the Rights of the Child and to address the growing needs of vulnerable children, especially orphans. However, this research has not explored children's rights, including orphans, from national, international, and Islamic perspectives.

Shahbaz Akhtar's work, *Child Abuse in Pakistan: A Study of Prevailing Laws*³⁷, provides a critical examination of the legal and institutional framework dealing with child abuse in Pakistan. The study highlights that although several laws exist, they remain fragmented, poorly implemented, and often lack child-sensitive mechanisms.

³⁵ Tahira Jabeen, "Pakistan's Child Protection Legislative and Policy Frameworks: A Critical Review," *Pakistan Law Journal of Criminology*, vol. 5, (2013): 159-180.

³⁶ Abdullah Khoso, "Investment in the Rights of the Child in Pakistan," *Institute for Social Justice (ISJ)*, (2013), <www.isj.org.pk> (accessed 23 June, 2022).

³⁷ Shahbaz Akhtar, "Child Abuse in Pakistan: A Study of Prevailing Laws," via ResearchGate, <https://www.researchgate.net/publication/388189312_Child_Abuse_in_Pakistan> (accessed 18 July, 2025).

Weak enforcement, inadequate institutional capacity, and limited public awareness further exacerbate the issue, leaving many children vulnerable to exploitation and violence. The author stresses the importance of adopting a comprehensive child protection policy, strengthening enforcement mechanisms, and ensuring effective coordination among stakeholders to safeguard children's rights in line with international human rights standards.

In his article, "Causes and Effects of Runaway Children Crisis: Evidence from Balochistan", Jahāngīr³⁸ focuses on Pakistani children and discusses the causes and effects of runaway children, explicitly focusing on Balochistan. The author investigates the underlying factors driving children to run away from home in Balochistan, Pakistan, and the socioeconomic impacts of this crisis. The study identifies critical causes such as domestic violence, poverty, lack of educational opportunities, and abuse, which push children into dangerous situations like street living and exploitation. The author also examines the long-term effects on both the children and society, including increased vulnerability to crime and human trafficking. This study, while incorporating the challenges and potential solutions for runaway children, including orphans, in Balochistan, lacks a comprehensive analysis of the legal frameworks and policy interventions—child protection laws, rehabilitation programs, and the role of state institutions—required to tackle the issue.

One of the critical articles by Mosa³⁹ titled "Study on the Important Issues of Child Rights in Pakistan" explains the different child rights issues in Pakistan. The author analyzes the statistics from 2004 to 2008 and highlights the main problems related to children in Pakistan to the attention of legislators and policymakers. The purpose was to address these problems in the interests of children and the future of Pakistan. The author discusses the juvenile justice system of Pakistan and its related laws. Moreover, the author mentioned that there are almost 10 million child laborers in Pakistan.

³⁸ Jahangir Khan Achakzai, "Causes and Effects of Runaway Children Crisis: Evidence from Balochistan", *Pakistan Economic and Social Review*, (2011): 211-230.

³⁹ Munir M. Sadruddin, "Study on the Important Issues of Child Rights in Pakistan", *The Dialogue*, vol. 6, no.1 (2008): 14-30.

The author states that children's education in Pakistan was extremely inadequate, with weak infrastructure, poor quality teaching, a lack of qualified teachers, teacher absenteeism, corporal punishment, emotional and verbal abuse, strict conditions, and a lack of learning materials, all of which push children out of school. Moreover, many children in healthcare institutions suffer from primary deficiencies. The author emphasizes that the infant mortality rate was, at the time of the research, at 84 per 1000 live births, the under-five mortality rate at a shocking rate of 125 per 1000 live births, and 38 percent of children under five being underweight. One can only hold the state accountable for failing to fulfill its primary duty of providing healthcare to its citizens, especially the younger ones. This study seeks to engage with high-ranking government officials to address these issues. Additionally, it strengthens the present finding that children are the most vulnerable group within society. Consequently, it emphasizes the collective responsibility of individuals to investigate the issues, work towards their resolution, and provide support to children. However, this research lacks a specific framework for how Islamic principles can be integrated with international standards to address orphans' unique socio-legal challenges. Further research could bridge existing gaps by proposing concrete legal reforms that harmonize Islamic law with international child rights standards, fostering a more cohesive approach to safeguarding orphaned children's rights in Pakistan.

One of Hamid Khan's⁴⁰ books on Islamic inheritance law is significant. It explores the principles of inheritance under Islamic law, focusing on both *Sunni* and *Shī'ā* perspectives and the legal reforms across various Muslim-majority countries. The author covers all the relevant areas for the distribution of property, whether it is inheritance, gift, or will. The literature on inheritance rights for orphans within this framework is underexplored. Although the author discusses the broad implications of contemporary inheritance law, he does not address its impact on orphaned children, especially concerning their rights to inherit property and assets. This omission is significant, as orphans frequently encounter unique challenges in accessing their rights due to societal and legal barriers.

⁴⁰ Hamid Khan, *The Islamic Law of Inheritance* (Karachi: Oxford University Press, 2007).

Lucy Carroll,⁴¹ in her article "Orphaned Grandchildren in Islamic Law of Succession: Reform and Islamization in Pakistan" provides an insightful analysis of the Islamic law of succession as articulated by classical jurists, while referencing Qur'ānic verses. The article highlights Pakistan's attempt to address the problem of orphaned grandchildren and reformist legislation in the context of Islamization in the Zia regime.

In her article, the author comprehensively discusses the legislative process in Pakistan and its impact on the people through the judicial interpretation of those laws. The author discusses the Muslim Family Law Ordinance of 1961 and its effects on Islamization in Pakistan. Moreover, the Federal Shariat Court in Pakistan critically evaluated this law and declared it null and void in Section 4, which was pertinent to orphans' inheritance rights. Additionally, the appeal is currently pending before the Federal Shariat Court Bench of the Supreme Court. Consequently, the writer focuses on Pakistani law in the context of *Sharī'ah*.

Meanwhile, the author primarily focuses on Pakistan's reform efforts. Still, it lacks a deeper comparison with other Muslim-majority countries or a detailed discussion of how these reforms align with international child rights standards. Further research could explore these comparative and international dimensions for a more holistic understanding of orphans' rights.

Renowned author Kemal Faruki, in his article "Orphaned Grandchildren in Islamic Succession Law: A Comparison of Modern Muslim Solutions,"⁴² discusses orphans' right to inherit their grandparents' estate without their parents and compares the modern Muslim states' solutions to classical and traditional succession laws. He highlights that Muslim states, including Egypt, Sudan, Iraq, Syria, Morocco, and Tunisia, have reformed the succession law to enable such grandchildren to receive an ascertained proportion of their grandparent's estate upon death. The author also compares two methods of solving this issue: the "system of obligatory bequests" in Egypt in 1946 and the "system of inheritance by right," which is applied in the Pakistani

⁴¹ Lucy Carroll, "Orphaned Grandchildren in Islamic Law of Succession: Reform and Islamization in Pakistan," *Islamic Law and Society*, vol. 5, No. 3, (1998): 409-447.

⁴² Kemal Faruki, "Orphaned Grandchildren in Islamic Succession Law," *Islamic Studies, Journal of the Central Institute Research Karachi*, vol. iv, no. 3 (1965): 253-74.

law of 1961. The author evaluates the principles of bequests and succession for grandchildren, leading to the aspiration to effect this reform. Furthermore, it discusses orphans' right to inheritance, which is a critical element of the legal reforms in Pakistan based on *Sharī'ah*.

The writer is, nonetheless, limited in his exploration of how modern Islamic inheritance laws align with evolving global human rights standards. Therefore, this study proposes legal modifications to enhance the protection of orphans' rights within the national and Islamic frameworks.

1.7.2 Islamic Law Relating to Orphans

Haseeb Fatima in her article "A Critical Appraisal of Obligatory Bequest as Prevalent in Muslim Countries",⁴³ critically examines the concept of *waṣīyyah wajibah* (obligatory bequest), a provision in Islamic inheritance law mandating that heirs provide for relatives who might otherwise be excluded. In various Muslim-majority countries, this law seeks to balance traditional inheritance structures with the needs of financially dependent family members, such as grandchildren. The author observes that while obligatory bequest supports family welfare, its application is inconsistent due to variations in legal interpretation across different jurisdictions, leading to confusion and unequal treatment of beneficiaries.

This research identifies the need to harmonize obligatory bequest laws across Muslim countries to ensure uniform application. However, the research's outcome could be enhanced with more empirical data on how obligatory bequests impact the financial security of dependents compared to traditional inheritance.

Allah (S. W. T.) provides Muslims with clear directions for caring and supporting the needs of orphaned children. Muhammad Ziyad Batha,⁴⁴ in his article

⁴³ Haseeb Fatima, "A Critical Appraisal of Obligatory Bequest as Prevalent in Muslim Countries," *Islamic Studies*, vol. 63, no. 2 (2024): 213-240.

⁴⁴ Muhammad Zayadh Batha, "Orphans in The Quran: A Contextual Thematical Analysis," *Muslim*

"Orphans in the Qur'ān: A Contextual Thematic Analysis", examines the Qur'ānic guidance on the care of orphans, highlighting themes of compassion, justice, and societal responsibility. The author identifies that the Qur'ān mandates special attention to orphans' welfare, emphasizing their right to protection, financial security, and integration into society. The author contextualizes these themes within Islamic teachings, pointing out that orphans hold a prominent, protected status in the Qur'ān, urging the Muslim community to ensure their well-being beyond basic provision.

However, this research insufficiently addresses how the Qur'ānic guidance on orphan care is integrated within the legal frameworks of Muslim-majority countries and thus, could benefit from a more thorough analysis of the application of Qur'ānic principles on orphan care in diverse cultures.

One of the articles by Romesa Mariam and Rida Irfan,⁴⁵ "Different Aspects of Fetal Rights in the Light of Islam", explores fetal rights within Islamic teachings. It contrasts Islamic views with secular bioethical perspectives. The authors analyze Qur'ānic verses, *Hadīth*, and Islamic jurisprudence to outline a framework for fetal rights distinct from those in Western legal systems. The article highlights the Islamic texts and specific guidance on fetal rights, setting a unique ethical foundation, and discusses the differences between Islamic and secular views on fetal rights, particularly regarding the fetus's moral status. Further, it provides insights into how some Islamic countries' legal systems incorporate these fetal rights. Nevertheless, the research lacks additional empirical studies, and cross-cultural comparisons are necessary to enhance understanding and practical applications in this domain. Furthermore, there is inadequate exploration of the impact of Islamic interpretations on policy formulation in Muslim-majority countries.

Inheritance is one of the important rights of children, whether unborn child or minor. Abdul Rehman's article "Distribution of Estate in Islamic Law: A Case Study

Matters, 12 July, 2022, <<https://muslimmatters.org/2022/07/12/orphans-in-the-quran-a-contextual-thematic-analysis/>>

⁴⁵ Romesa Mariam and Rida Irfan, "Different Aspects of Fetal Rights in the Light of Islam" in *Proceedings from the 3rd International Seminar on Islamic Thought organized by University Kebangsaan Malaysia*, (Kuala Lumpur, December 2020). <https://www.researchgate.net/publication/346580175_Different_Aspects_of_Fetal_Rights_in_the_Light_of_Islam>

of Missing Person, Child in the Womb and Hermaphrodite"⁴⁶ explores the complexities of inheritance distribution under Islamic law, focusing on three unique cases: missing persons, unborn children, and individuals with ambiguous gender (hermaphrodites). In the study, the author discusses the inheritance rights of fetuses, which Islamic law generally protects as potential heirs. The estate distribution is postponed until the child is born, as the legal status depends on the child's eventual birth and viability. This provision ensures that the unborn child's right to inheritance is preserved, provided they survive birth. The author also examines the inheritance rights of missing persons as well as hermaphrodites.

Nonetheless, the study overlooks modern legal systems in Muslim-majority countries for interpreting and implementing rules in ambiguous cases like unborn children, intersex individuals, or prolonged absences. It compares inheritance laws in Muslim countries, offering insights into the adaptability of Islamic inheritance rules across different legal contexts while emphasizing the importance of the Islamic legal framework.

Regarding children's maintenance rights in *Sharī'ah* and international law, Bahiyah Ahmed et al.,⁴⁷ in their article "Assessing the Rate of Child Maintenance (Financial Support) from a Sharī'ah Perspective", examine the determination of child maintenance rates under *Sharī'ah* law. The study analyzes how Islamic principles are applied in setting financial support obligations for children, focusing on ensuring fairness and adequacy in the provision of children's needs.

The authors examine *Sharī'ah* guidelines on child support, emphasizing fathers' primary responsibility for financially supporting their children. The amount is generally determined by the father's financial capacity and the child's specific needs to ensure basic welfare. Several factors influence the calculation of child maintenance, including

⁴⁶ Manswab Mahsen Abdulrahman, "Distribution of Estate in Islamic Law: A Case Study of Missing Person, Child in the Womb and Hermaphrodite," *Journal of Islamic Studies and Culture*, vol. 8, no.1 (2020): 31-41. <<https://doi.org/10.15640/jisc.v8n1a4>>

⁴⁷ Bahiyah Ahmad and et al, "Assessing the Rate of Child Maintenance (Financial Support) from a Shariah Perspective," *Al-Jāmi'ah: Journal of Islamic Studies*, vol. 58, no. 2 (2020): 293-322.

the parents' income and wealth, the child's age, health, educational needs, and social considerations. Courts interpret these factors to render balanced judgments. The study compares *Sharī'ah* principles of child maintenance with practices in other legal systems, noting similarities and distinctive aspects within Islamic jurisprudence. This comparison reveals areas where *Sharī'ah* principles align with international child welfare standards. The authors discuss practical challenges in applying these principles, such as varying interpretations across Islamic legal schools and the absence of standardized criteria in some jurisdictions, resulting in inconsistent court rulings. Nevertheless, the study lacks data on the rate of maintenance for orphans and its applicability to grandfathers and extended family members.

While discussing the orphan's rights in *Sharī'ah*, Zainab Alwani⁴⁸, in her article "Kafālah: The Qur'ānic-Prophetic Model of Orphan Care", discusses in detail the Qur'ānic and prophetic ways to care for orphans. The author proposes a Qur'ānic framework of orphan care that is strictly centered on the *kafālah* and has been exemplified by Prophet Muḥammad throughout his life. Based on the Qur'ānic framework of orphan care and the prophetic example, which prioritizes protecting orphans' interests, the author argues that the responsibility of *kafālah* for orphaned and abandoned children falls on every individual. This essay concludes with specific recommendations that Muslim communities can take on a community level to fulfill our collective responsibility and alleviate the grievances of orphans. Indeed, this article is beneficial for orphan care in Muslim society. The study exhibits a deficiency in the integration of Islamic law with international law concerning the concept of *kafālah*. Consequently, this research also derives benefits from this work and enhances the areas of investigation while integrating Islamic provisions with international laws.

In his book, *Rights of the Child in Islam*, Muḥammad Munir⁴⁹ discusses child rights and protection in Islamic law by analyzing classical and traditional opinions. The author also emphasizes parenting in Islam, discussing how children get their rights from

⁴⁸ Zainab 'Alwānī, "Kafāla: The Qur'ānic-Prophetic Model of Orphan Care," *Journal of Islamic Faith and Practice*, vol. 3, no.1 (2020), <<https://doi.org/10.18060/24666>>

⁴⁹ Muhammad Munir, *Rights of the Child in Islam: Theory, Mechanism, Practices and Convention on the Rights of the Child* (Islamabad: IRI Press, 2017).

their parents, their duties towards their parents, and addressing violence against children, including abuse and exploitation, and the relevant Islamic law. One of the most significant areas that the author compares is international child rights and Islamic law, which provides significant insights. The author discusses different case studies from Pakistan and Jordan on children's rights and protection. Nevertheless, the author failed to differentiate between the rights of children and orphans. Furthermore, the study lacks a comparative analysis between Islamic and international children's rights frameworks. Therefore, this study aims to compare international and Islamic law regarding the protection of orphans in Pakistan.

Extant literature reveals a notable dearth of research concerning the effectiveness of *kafālah*, the long-term consequences for adopted children, societal attitudes towards adoption, and potential reforms to reconcile adoption practices across religious and secular frameworks. Nonetheless, this investigation delves into the concept of *kafālah* within Islamic jurisprudence and its ramifications for orphans in Pakistan. Further exploring the concept of *kafālah*, Rotabi et al., in their article "The Care of Orphaned and Vulnerable Children in Islam: Exploring Kafālah with Muslim Social Work Practice with Unaccompanied Refugee Minors in the United States,"⁵⁰ highlight that the concept of *kafālah*, a form of guardianship rooted in Islamic tradition, provides an alternative to adoption for orphaned and vulnerable children, especially within Muslim contexts. The authors explore how *kafālah* is practiced with unaccompanied Muslim refugee minors in the United States, contrasting it with conventional adoption models. In Islam, *kafālah* ensures a child's care while preserving their lineage and inheritance rights, aligning with religious mandates that prohibit traditional adoption. While *kafālah* prioritizes child welfare and upholds cultural identity, it challenges Western social work practices, which emphasize permanent family integration.

The authors discuss the complexities of implementing *kafālah* within Western legal systems, which may not fully recognize or accommodate this guardianship form. Additionally, *kafālah* faces challenges in providing comparable legal protections to

⁵⁰ Karen Smith Rotabi and et al, "The Care of Orphaned and Vulnerable Children in Islam: Exploring Kafala with Muslim Social Work Practice with Unaccompanied Refugee Minors in the United States," *Journal of Human Rights and Social Work*, vol. 2 (2017): 16-24.

those of adoption, as well as emotional support for children in transnational, refugee, and unaccompanied contexts. Contemporary research frequently demonstrates limited comprehension of *kafālah* within Western contexts, particularly regarding its legal ramifications and long-term effects on the well-being of refugee minors. This study investigates the UNCRC provision for vulnerable children residing in foster homes and the implementation of the Islamic concept of *kafālah* within the framework of international law.

In Islam, Allah (SWT) grants certain rights to children, as evident in the Qur'ān and *Sunnah*. Shabina Arafat, in her article "Islamic Perspective of Children Rights: An Overview",⁵¹ explores children's rights from an Islamic perspective and discusses the foundational principles in Islamic teachings that emphasize the protection, welfare, and development of children. The author emphasizes that, in Islam, children's rights include protection from harm, the right to education, and provision for their physical and spiritual needs. Rooted in the Qur'ān and *Ḥadīth*, these rights underscore a holistic approach to child welfare that integrates the ethical and moral responsibilities of parents and the community. However, the writer points out that the interpretation and application of these rights can vary significantly across Muslim-majority countries due to cultural and socio-political influences. The research lacks a comprehensive discussion on vulnerable orphans' rights. While examining children's rights, this study incorporates the rights of orphans in the context of the Quran and *Sunnah* and aligns these rights with international laws.

In the context of adoption in Muslim states, Dr. Azizah Mohd's article "Adoption as a Means of Child Protection: The Law and Practice in Malaysia"⁵² discusses the principles of adoption in Malaysia. In Malaysia, adoption is governed by a mixture of secular laws and religious considerations, creating a unique landscape for the practice. The author examines the relationship between legal frameworks and practical applications in the Malaysian adoption system. However, Malaysian adoption law is divided along religious lines, with two primary acts governing the process: the Adoption

⁵¹ Shabina Arafat, "Islamic Perspective of Children Rights: An Overview," *Asian Journal of Social Sciences and Humanities*, ISSN:2186-8492, vol. 2, no.1 (2013): 299-307.

⁵² Azizah Mohd, "Adoption as a Means of Child Protection: The Law and Practice in Malaysia," *Asia Pacific Journal of Social Work and Development*, vol. 22, no. 1-2 (2012): 79-89.

Act 1952, which applies primarily to non-Muslims, and the Registration of Adoptions Act 1952. For Muslims, the practice is influenced by *Sharī'ah* law, which does not recognize legal adoption in the same sense but permits *kafālah* (legal guardianship) as an alternative. The author highlights that these dual systems create a complex regulatory environment with non-uniform standards of care and eligibility requirements for prospective adoptive parents. The literature emphasizes that while these laws provide structure, the fragmented nature of the adoption process can lead to inconsistency in how child protection principles are applied.

While discussing further the children's right to maintenance, Badruddin Ibrahim and Azizah Mohd⁵³ in their article "The Child's Right to Maintenance: The Extent of Family's Responsibilities in Islamic Law and According to the Family Law Provisions of Muslim Countries," examine the responsibilities of family members in providing financial maintenance for children under Islamic law. The authors compare traditional Islamic principles with family law provisions in various Muslim-majority countries to analyze the understanding and enforcement of maintenance obligations. The study outlines the Islamic framework for child maintenance, highlighting that this duty usually falls on the father, in accordance with his financial capacity and the child's needs, such as food, clothing, education, and healthcare. Additionally, the research addresses situations where extended family members may take on maintenance responsibilities, such as in cases of orphaned children or fathers facing economic hardships. The authors analyze child maintenance provisions in the family laws of selected Muslim-majority countries, revealing diverse interpretations and implementations. Some countries incorporate more comprehensive child welfare provisions aligned with international standards. The study identifies challenges in enforcing child maintenance laws, including inconsistencies in legal interpretations and issues of non-compliance, leading to varying levels of support for children, especially in cases of divorce or family separation.

⁵³ Badruddin Hj Ibrahim and Azizah Mohd, "The Child's Right to Maintenance: The Extent of the Family's Responsibilities in Islamic Law and According to the Family Law Provisions of Muslim Countries," *Arab Law Quarterly*, vol. 25 (2011): 401.

This study offers a detailed analysis of child maintenance practices but reveals the absence of uniform guidelines across Muslim-majority countries, highlighting the need for standardized criteria to reduce inconsistencies and improve child support. However, the research does not establish a clear connection between enforcing maintenance provisions and child welfare outcomes, especially for vulnerable children in single-parent households or poverty. Nonetheless, this research suggests legal reforms for orphans in Pakistan, assigning maintenance responsibility to the paternal grandfather and family. If the paternal family cannot provide support, the government should assume responsibility for maintenance.

Kamran Hashemi, in his article "Religious Legal Traditions, the Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation",⁵⁴ provides an interesting comparison between the child rights convention and the Muslim state's reservations. This article examines how religious legal traditions influence the implementation of the Convention on the Rights of the Child (CRC) in Muslim states, with a focus on their reservations about the treaty. It compares Islamic *Sharī'ah* with CRC provisions, highlighting differences such as the definition of a child's age, where Muslim states differ from the CRC's standard of under 18 years. These reservations impact issues like criminal responsibility, property rights, and marriage. The article also addresses the treatment of illegitimate children under Islamic law, highlighting their lack of certain rights, which contrasts with the CRC's principle of non-discrimination. Even though the author elucidates fundamental conflicts, comprehensive solutions regarding how Muslim states can reconcile their religious laws with the CRC were not presented. Therefore, this study aims to investigate specific legal mechanisms or reforms that would bridge the gap between Islamic law and international obligations to better protect the rights of orphans and children in Muslim countries.

In another article regarding the rights of orphan succession, Habibur Rahman⁵⁵ discusses orphans' right to inherit their grandparents' property. In Muslim countries

⁵⁴ Kamran Hashemi, "Religious Legal Traditions, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation," *Human Rights Quarterly*, vol. 29, no.1 (2007).

⁵⁵ M. Habibur Rahman, "Problems for Orphaned Grandchildren in Succession: A Study of Suggestions," *Islamic Studies*, vol. 25, no.2 (1986).

such as Morocco, Syria, Egypt, Pakistan, and Tunisia, the concept of obligatory bequests and the principle of representation are incorporated into the law. Further, the author discusses the traditional tenets of inheritance, considering *Sunni* and *Shī'ā* laws. Finally, the author compares the succession laws practiced in different countries. This is a debatable issue in all Muslim countries. However, the research do not provide a thorough examination of how these concerns relate to global human rights standards. Additional investigation is necessary to examine the potential alignment between Islamic jurisprudence and worldwide principles for children's rights, particularly regarding orphans. Consequently, this investigation seeks to reconcile the domestic, global, and Islamic frameworks for orphan protection.

1.7.3 International Law Regarding Children's Rights

Simon et al., in their "Incorporation of the UN Convention on the Rights of the Child in National Law",⁵⁶ explore how various countries have incorporated the UN Convention on the Rights of the Child (CRC) into their domestic legal frameworks and must undertake all appropriate legislative, administrative, and other measures to implement the rights guaranteed to children. Their article titled "Incorporation of the UN Convention on the Rights of the Child in National Law" underscores that a state party has no discretion and must comply with this obligation. It describes incorporation as the "domestic internalization of international norms" through various "pathways," which include the constitutionality of an international standard, the legislative or administrative adoption of international human rights norms, complying with the decisions of an international complaint's mechanism, or judicial incorporation through the common law. While incorporating international law into national law, the authors also discuss the theories of the orthodox monist and dualist legal systems. In the earlier case, it became part of national law when the state ratified the international treaty or convention. Hence, this article provides an insightful discussion of incorporating international treaties and conventions into national law.

⁵⁶ Simon Hoffman, and Rebecca Thorburn Stern, "Incorporation of the UN Convention on the Rights of the Child in National Law," *International Journal of Children's Rights*, vol. 28, (2020): 133–156.

In "International Dynamics on the Rights of the Child"⁵⁷, Oinam Jitendra Singh examines the evolving international framework on children's rights, analyzing key factors that shape global child protection policies. The author explores the role of international organizations, such as the United Nations, and treaties like the Convention on the Rights of the Child (CRC) in standardizing child welfare norms globally. Singh emphasizes how international dynamics influence national policies, urging nations to harmonize their legal frameworks with global child rights standards.

The author also discusses obstacles to the uniform application of child rights, including political, economic, and cultural barriers. Further, the analysis suggests that while international conventions establish benchmarks, significant challenges lie in implementing these standards within diverse domestic contexts, where socio-political constraints may limit protections. The author highlights the importance of international cooperation and capacity building in less-resourced nations to ensure that child rights are actionable, not merely aspirational.

A more comprehensive exploration of the specific impacts on vulnerable child populations, such as those in conflict zones, refugees, or those affected by climate change, could further enhance the literature on children's rights, and a more detailed examination of successful case studies where countries have overcome these barriers would provide practical insights. This study is valuable for understanding the international landscape of child rights but lacks in focusing on emerging global issues and specific successes in rights enforcement.

In an article titled "Justice for the Orphans whose Land Rights were Violated by Family Members or Other Grabbers", Eugene Silas Seminega⁵⁸ reviews various documents to reveal the gravity of the problem and its implications on children's survival and legal protection, as reflected in several international conventions on children's security, of which the government of Rwanda is a signatory, as well as the

⁵⁷ Oinam Jitendra Singh, "International Dynamics on the Rights of the Child," *World Affairs: The Journal of International Issues*, vol. 22, no. 1 (2018): 136-151.

⁵⁸ Eugene Silas Seminega, "Justice for the Orphans whose Land Rights were Violated by Family Members or Other Grabbers," *Social Health Spectrum*, (2017). <https://www.szspektrum.eu/wp-content/uploads/2017/11/Seminega_1.pdf>

country's constitution. Based on these findings, property- and land-related issues were recorded as leading to family conflicts involving foster children. In addition, some land- and property-grabbing cases are in the courts of law. On the other hand, some foster children were denied information about their biological parents' property and land. Therefore, the author recommends property and land laws to incorporate the management, trust, guardianship, and transfer of foster and orphaned children's land and property rights of their late parents. While the research provides a detailed account of the problem, it exhibits a deficiency in empirical data regarding successful interventions and long-term outcomes for affected orphans. Furthermore, the study lacks a comparative analysis of land rights protection mechanisms across various regions or countries and a more comprehensive examination of the role of international human rights laws in addressing such violations.

Alistair MacDonald QC⁵⁹ compiles all international conventions and treaties in his book *The Rights of Child*. The author's comprehensive approach, which includes a brief commentary on the provisions of the law, provides a solid foundation for understanding the concepts. The author lists almost 28 rules in his book, divided into 28 chapters, and incorporates all fundamental laws regarding child rights. This book provides a comprehensive examination of children's rights under international law.

Moreover, in another book, *Children: The Modern Law*, Andrew Bainham⁶⁰ provides a detailed analysis of the legal status and rights of children in the UK family law. Further, the author examines the shift towards recognizing children as autonomous individuals with rights rather than passive dependents. This authoritative text covers various aspects of child law, including custody, welfare, and parental responsibilities, and explores the balance between state intervention and family autonomy in children's welfare matters.

The author's work is notable for its in-depth analysis of the principle of the child's best interests, a key concept in legal decisions affecting children. The writer examines judicial interpretations and applications of this principle, balancing children's

⁵⁹ Alistair MacDonald QC, *The Rights of the Child: Annotated Materials* (Bristol: Family Law, 2014).

⁶⁰ Andrew Bainham, *Children the Modern Law* (Family Law: Bristol, 3rd ed., 2005).

rights with parental authority and addressing the challenges in uniformly implementing this standard. The text also explores emerging issues in child law, such as the impact of societal changes on legal concepts of family and childhood. However, it lacks an examination of the relationship between child laws in Islamic and international legal frameworks.

In the context of the protection provided by the UN to children, Abhinaya Ramesh⁶¹, in her article "UN Convention on Rights of the Child: Inherent Weaknesses", critically evaluates the UN Convention on the Rights of the Child (CRC) for its inherent weaknesses, notably its universal approach, which often overlooks cultural differences in child welfare practices. The CRC's extensive expression and lack of enforcement mechanisms lead to inconsistent application across countries, especially where local laws or resources fall short. The author argues that the CRC inadequately addresses structural issues like poverty and access to education, which are crucial for realizing children's rights.

The research lacks culturally sensitive CRC adaptations, enforcement strategies, exploration of systemic inequalities affecting children, and comparative studies on CRC implementation across various regions. Addressing these gaps could enhance the CRC's global impact by making it more adaptable, enforceable, and attuned to diverse socio-political contexts.

The Population Council's article "Convention on the Rights of the Child" ⁶² offers a precise analysis of the UN Convention on the Rights of the Child (CRC) soon after its 1989 adoption. It outlines the CRC's core principles and its notable acknowledgment of children as rights holders, encompassing protection, participation, and provision of rights. The article underscores the Convention's all-encompassing approach, addressing civil, political, economic, social, and cultural rights, and setting global standards for child welfare.

⁶¹ Abhinaya Ramesh, "UN Convention on Rights of the Child: Inherent Weaknesses," *Economic and Political Weekly* (2001): 1948-1950.

⁶² *Population Council*, "Convention on the Rights of the Child," *Population and Development Review*, vol. 15, no. 4 (1989): 779-783, <<https://www.jstor.org/stable/1972615>>

The analysis highlights the CRC's role in establishing state obligations to uphold these rights, signifying a shift in international norms toward recognizing children as individuals with inherent rights rather than dependents. The Population Council also explores the policy and legal reforms states must undertake to adhere to CRC standards and the challenges of implementing these reforms, especially in resource-constrained developing countries with diverse socio-cultural contexts.

However, the article overlooks subsequent CRC implementation challenges, especially those from digital media, migration, and globalized economies affecting child welfare. It also fails to explore the specific impact on marginalized children, such as refugees and orphans, or the intersectional factors complicating rights realization. While it provides a crucial CRC overview, a longitudinal analysis of the Convention's effectiveness and evolving challenges in achieving universal child rights compliance would be beneficial.

In summary, the literature review has articulated critical aspects of orphans' rights within Pakistani, international, and Islamic legal frameworks. The analysis reveals both the strengths and limitations of these systems in addressing the unique needs and vulnerabilities of orphans. While Pakistani law provides foundational protections, the international framework offers broader standards that encourage more comprehensive safeguards. Islamic law, with its emphasis on the moral and social responsibilities toward orphans, provides a culturally resonant framework that complements legal measures. By comparing orphan rights provisions in various countries, this review also highlights potential areas for policy enhancement in Pakistan. Collectively, these insights underscore the importance of a multi-faceted approach that integrates legal, social, and ethical considerations to better protect and empower orphaned children.

1.8 RESEARCH METHODOLOGY

This research employs both doctrinal and non-doctrinal approaches, with the non-doctrinal research further divided into qualitative and quantitative research

methodologies to investigate the legal protection of orphans comprehensively.

1.8.1 Doctrinal Research

Doctrinal research has been established as a traditional source of study in the field of law. Moreover, it aims to discover unknown facts by reviewing legal materials to conclude on matters connected to the legal system, policies, regulations, and judiciary judgments without depending on a preliminary study from the field.⁶³

Katerina Linos and others explain that "doctrinal analysis and social science methods often lead scholars to choose and evaluate evidence in conflicting ways. For example, doctrinal tools prompt legal scholars to focus on cases in which the highest national court introduces a significant ruling that breaks from precedent."⁶⁴

A thorough research process was carried out to ensure a strong commitment to the pursuit of knowledge. Information was gathered from the libraries of the International Islamic University of Malaysia (IIUM), International Islamic University of Islamabad (IIUI), Fatima Jinnah Women University, Rawalpindi (FJWU), and Allama Iqbal Open University, Islamabad (AIOU). The primary data consisted of statutes, government documents, international conventions, treaties, the Qur'ān, the *Ḥadīth* of the Prophet (P.B.U.H), and Islamic classical and modern literature, which formed the backbone of the study. In engaging with the Arabic texts, reliance was placed on modern jurists' analyses and translations of classical Islamic literature including *Kitāb ul Fiqh, Ihya' 'ulūm al-dīn, Badā'e al-Ṣanā'e, Al Hidayah fi Sharh Bidayat al Muftadi, The Muwaṭṭā of Imām Muḥammad, Ṣaḥīḥ Al-Bukhārī, Ṣaḥīḥ Al-Muslim* which are commonly used in Pakistani courts. Meanwhile, secondary data were collected through academic journals, conference papers, published and unpublished

⁶³ Ibid.

⁶⁴ Katerina Linos, and Melissa Carlson, "Qualitative Methods for Law Review Writing," *The University of Chicago Law Review*, vol. 84, 213. <<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5991&context=uclrev>>

thesis and dissertations, articles from newspapers and magazines, reviews, and computer-aided electronic research (Internet) such as JSTOR, the HEC digital library, Lexis Nexis, Lexis Malaysia, Hein Online, Westlaw International, and Pakistan Law site related to case laws regarding orphans' rights. This comprehensive approach, utilizing tools designed explicitly for legal research and others for general research, ensured a robust foundation for this study.

In the absence of primary sources, secondary sources, including textbooks such as *"Rights of the Child in Islam: Theory, Mechanisms, Practices, and Convention on the Rights of the Child," "Family Laws in Pakistan: Islamic Law and Jurisprudence," "Islamic Law of Inheritance,"* and many others, were relied on. Commentaries on the Constitution of Pakistan, as well as on substantive and procedural laws, international laws, and conventions, were also utilized. Although these sources may not have as much authority, they offered valuable insights. The credibility of the findings reflects the quality of the legal materials used to reach those conclusions. It is in line with the study's aims to verify the hypothesis through further investigation, as doctrinal legal research seeks to confirm assumptions by analyzing authoritative sources directly.⁶⁵

1.8.2 Non-Doctrinal Research

Non-doctrinal research, also known as social-legal research, is research that employs methods taken from other disciplines to generate empirical data that answers the research questions. It can be a problem, policy, or a reform of the existing law. A legal non-doctrinal finding can be qualitative or quantitative. The non-doctrinal approach allows the researcher to conduct research that analyses the law from the perspective of other science disciplines, and to employ those disciplines in drafting the law.⁶⁶

⁶⁵ Pradeep, M. D., "Legal Research- Descriptive Analysis on Doctrinal Methodology," *International Journal of Management, Technology and Social Sciences*, vol. 4, no. 2 (2019): 95-103.

⁶⁶ Salim Ibrahim Ali, Zuryati Mohamed Yusoff, and Zainal Amin Ayub, "Legal Research of Doctrinal and Non-Doctrinal," *International Journal of Trend in Research and Development*, vol. 4, no. 1 (Jan–Feb 2017): 493. <<https://www.ijtrd.com/papers/IJTRD6654.pdf>>.

In this study, the non-doctrinal research is further classified into two types: qualitative and quantitative research.

1.8.2.1 Qualitative Research

Qualitative research generally describes events and persons scientifically without using numerical data.⁶⁷ It consists of interviews and questionnaires that include cognition, affect, intentions, and other aspects that can be encompassed as the participants' perspective. In qualitative research, a relatively small number of individuals or situations are studied, and the individuality of each is preserved in the analysis, rather than collecting data from large samples and aggregating the data across individuals or situations.⁶⁸

However, qualitative research adopts a multimethod framework characterized by an interpretive and naturalistic approach to the subject under investigation. This approach entails examining phenomena within their natural contexts, with the intention of understanding or interpreting them through the meanings that individuals assign to their experiences. It involves the use and collection of diverse materials—such as case studies, personal narratives, introspective accounts, life histories, interviews, observations, historical records, interactional data, and visual documentation—which collectively capture both routine and complex dimensions of human experience.⁶⁹

Accordingly, qualitative research was conducted to examine the impact of inadequate legislation on the protection of orphans' rights in family matters. This approach involved interviews with orphans, single mothers, and caregivers at orphanages primarily located in Punjab. Additionally, a second set of interviews was held with government officials responsible for orphan welfare at the state level, including representatives from the National Commission for the Rights of Children and the Child Protection Bureau in Islamabad. The principal objective of this qualitative

⁶⁷ P. K. Manoharan, *Research Methodology* (New Delhi: APH Publishing Corporation, 2009), 12.

⁶⁸ Joseph A. Maxwell, *Qualitative Research Design: An Interactive Approach* (London: Sage Publications, 2005), 22.

⁶⁹ Patrik Aspers, and Ugo Corte, "What is Qualitative in Qualitative Research," *Qualitative Sociology*, vol. 42 (2019): 139–160. <<https://doi.org/10.1007/s11133-019-9413-7>>

research is to gain a comprehensive understanding of orphans' lived experiences, identify underlying challenges, and propose effective legal reforms to better address their needs and vulnerabilities.

1.8.2.2 Quantitative Research

Quantitative research involves studies in which data can be analyzed in numerical terms.⁷⁰ For instance, quantitative research is employed to assess the thoughts, emotions, and behaviors of orphans in relation to their experiences of abuse and exploitation by their paternal families and communities.

In quantitative research, data collection instruments are precisely designed and implemented through structured experiments, ensuring that each subject is studied under uniform conditions. This standardized approach minimizes the potential for human bias, allowing for an objective analysis and interpretation of the results.⁷¹

This research examines the legal and social protection of orphaned children in Pakistan by using survey from selected orphanages and from orphans living with extended families or guardians. The primary focus is on understanding the lived experiences of orphans with their rights to education, health, identity, inheritance, and protection from abuse. Due to institutional and logistical constraints, the data collection is limited to a sample size of 150 orphans. Access to orphanages was restricted, as many institutions declined permission to conduct interviews, citing concerns about privacy and internal policies. Additionally, a significant number of orphans were reluctant to participate in in-depth interviews. Efforts to engage with government agencies and officials responsible for child welfare were also unsuccessful, resulting in the exclusion of direct input from public sector stakeholders.

⁷⁰ Manoharan, *Research Methodology*, 12.

⁷¹ Ibid, 13.

The study adopts a contextual approach to examine the challenges faced by orphans in Pakistan and based on the identified issues and gaps in legal protection, proposes targeted legal reforms to enhance their welfare and rights.

1.8.2.2.1 Study Design

This study was designed to survey orphaned children living in orphanage homes and with their families. A questionnaire was formulated for data collection according to the requirements and challenges faced by orphans in Pakistan. Data were collected through the questionnaire, coded, and further interpreted using the frequency percentage of variables through descriptive analysis. Further, interviews were conducted with government officials to analyze the role of government in this regard.

1.8.2.2.2 Population of the Study

The target population of this study was orphans living with their families and at orphanages. The selected orphanages are those run by both government and non-government, including Pakistan Sweet Homes, Kashana, Faiz-ul-Islam, Edhi Homes, Child Protection Bureau Islamabad, and orphans who were living with their families and identified through respective schools and courts, including District Courts Rawalpindi, F.G. High School Tariq Abad, F.G. Sir Syed School, Rawalpindi, F. G. Abid Majeed School, Rawalpindi, and Silver Oaks School.

Furthermore, orphans between the ages of 10 and 18 years were selected as the sample group through random sampling. This specific age range was chosen to understand better the challenges these orphans face both within their families and in society. The demographic characteristics recorded include gender, age, parent's education levels, employment status, grandfather's status, and the geographical location of orphanages. The survey was conducted with orphaned children living in Islamabad and Rawalpindi (representing Pakistan's center and the most extensive province, Punjab)

1.8.2.2.3 Instrument Development

For instrument development, the challenges faced by orphans in Pakistan were further divided into the following six variables:

1. Right to well-being of orphans
2. Right to name and registration
3. Right to education
4. Rights to health
5. Right to property and inheritance
6. Right to profess religion

They were further expanded into various items for an in-depth exploration of the abovementioned variables. The total number of items is 36. Each statement was rated on a 3-point Likert scale ranging from 1=Yes, 2=Sometimes, and 3=No.

1.8.2.2.4 Data Collection Questionnaire/Form

The data collection questionnaire was designed based on the fundamental rights of orphans as well as common problems faced by the orphans following the death of their fathers. These rights were clearly outlined, and the questions were structured as closed-ended. The responses were then analyzed using descriptive analysis, with results presented in frequency percentages. The questionnaire can be referred to in the appendix.

1.8.2.2.5 Pilot Testing

The research instrument was developed through an extensive literature review, expert consultation, and the researcher's own experience with orphans. It was reviewed by the co-supervisor and refined based on feedback from academics and professionals in child

welfare. The pilot study was conducted with 25 orphans due to the limited number of participants accessible in the selected institutions at the time of data collection. Since the purpose of the pilot was to test the clarity, reliability, and feasibility of the instrument rather than to generalize, this sample size was sufficient. Working with a smaller group also allowed for closer engagement, ethical sensitivity, and careful monitoring of participants' well-being. Despite the restricted availability, the data produced a reliability coefficient of 0.83, confirming the adequacy of the sample for refining and validating the questionnaire.

1.8.2.2.6 Data Collection

The first step in the data collection process involved scheduling appointments with the relevant orphanages and schools. This was followed by obtaining a formal permission letter from the university to survey these institutions. Additionally, the researcher secured participants' consent to ensure that the data collected would be valid and generalizable. A consent form was provided, offering participants the option to withdraw from the study at any time.

1.8.2.2.7 Data Processing and Analysis

The data collected from orphans using the questionnaire were organized in Microsoft Excel and then analyzed using the Statistical Package for Social Sciences (SPSS) version 6.0. Quantitative data were then evaluated through descriptive statistics, with frequency percentages displayed graphically for clarity. The responses were interpreted based on the codes derived from the data.

1.8.3 Framework of the Study

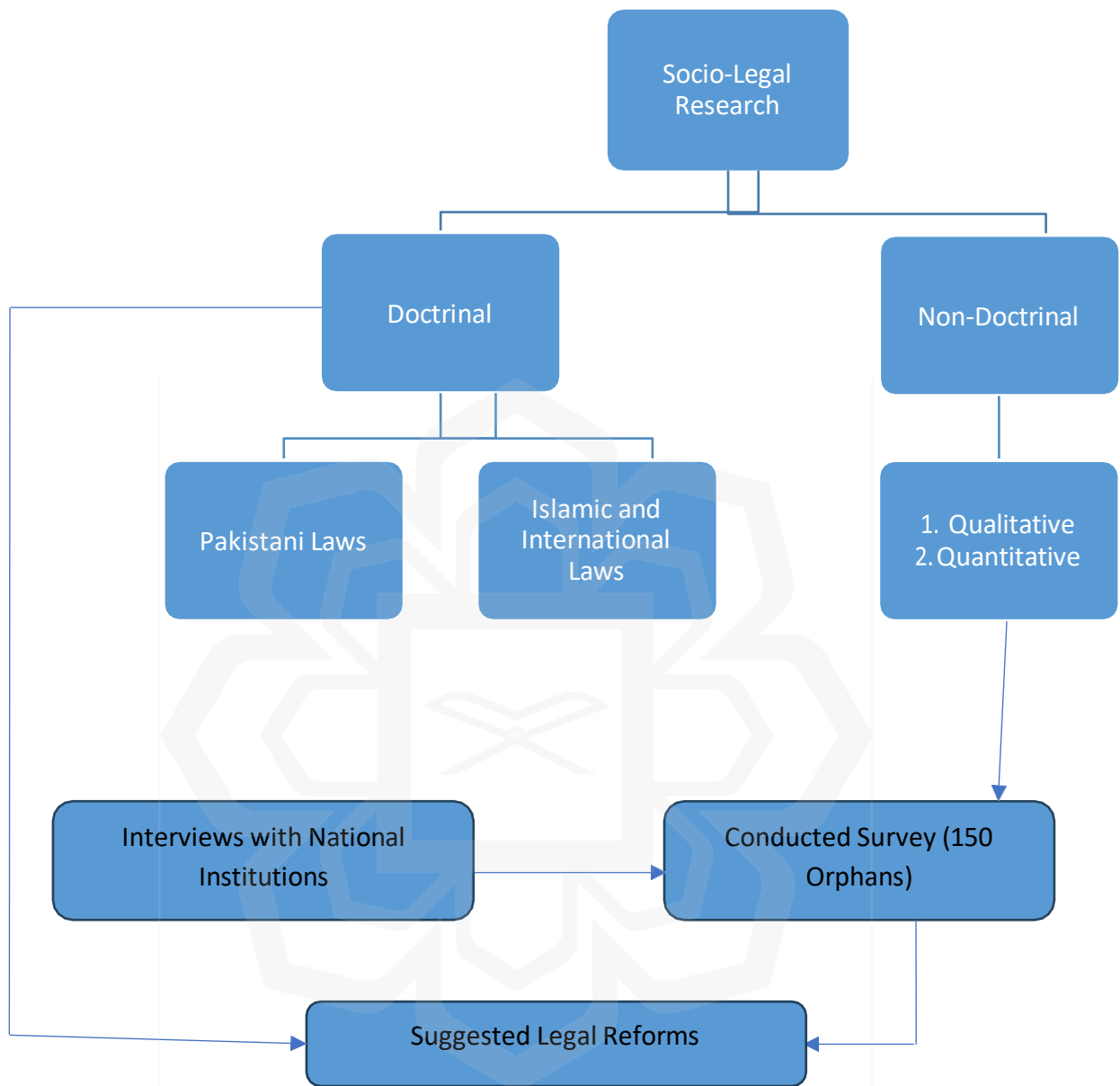


Figure 1.1: Framework of the Study

1.9 OUTLINE OF THE THESIS

This study is divided into five sections. The first chapter describes the study's background, problem statement, objectives, significance, scope, and hypothesis. It further explores the chapter's research methodology, literature review, and outline.

The second chapter addresses the Islamic legal frameworks established to protect the rights of orphans, drawing primarily on foundational sources like the Qur'ān and *Sunnah*. This chapter provides a detailed examination of Islamic principles and directives related to the protection and welfare of orphans.

The third chapter focuses on the international legal framework, providing an in-depth analysis of the United Nations Convention on the Rights of the Child (UNCRC) and the Organization of Islamic Cooperation's Covenant on the Rights of the Child in Islam (OIC-CRC). This chapter examines how these international instruments address the rights of orphans, detailing the specific protections afforded to them and the legal mechanisms established to ensure their welfare and safeguard their rights. Through this exploration, the chapter underscores the global commitment to orphaned children's protection and the roles these frameworks play in advancing their rights on an international scale.

The fourth chapter presents the legal framework for protecting orphan rights in detail, as outlined in the Pakistani legal system. This chapter examines the existing legal framework for the welfare and development of children in Pakistan's national and provincial legislation, and it explores the rights of orphans as outlined in this legislation. Finally, this chapter observes lacunas in the existing laws.

The fifth chapter addresses the challenges faced by orphans in Pakistan, presenting findings from an empirical study designed to capture the lived experiences and issues encountered by this vulnerable population. Data were gathered directly from orphans through structured questionnaires, focusing on various aspects of their welfare and the challenges they faced. The analysis involved calculating frequency percentages to provide a descriptive overview of the responses, with the results visually represented

in pie charts to offer clear insights into the data. This chapter thus provides a data-driven perspective on the specific hardships orphans in Pakistan face, contributing valuable empirical evidence to inform potential policy and welfare initiatives.

Chapter Six provides a comparative analysis of Egypt, Malaysia, and Morocco in relation to their legal, institutional, and social frameworks for the protection and welfare of orphans. By examining the policies, practices, and legislative measures in these countries, the chapter aims to identify best practices that can be adapted to the Pakistani context. This comparative evaluation provides critical insights into how Pakistan can improve its legal and policy frameworks to protect the rights and well-being of orphaned children.

The seventh chapter outlines proposed legal reforms aimed at enhancing protections and welfare for orphaned children in Pakistan. It introduces a new legislative framework inspired by both Islamic principles and international legal standards, bridging religious values with global human rights practices. Additionally, this chapter provides specific recommendations to further support the welfare, development, and integration of orphans within society, addressing both immediate needs and long-term growth. The chapter concludes the research by summarizing key findings and highlighting the significance of these proposed reforms for fostering a more supportive and inclusive environment for orphan children in Pakistan.

CHAPTER TWO

LEGAL FRAMEWORK FOR THE RIGHTS OF ORPHANS UNDER ISLAMIC LAW

2.1 INTRODUCTION

Islamic law is referenced in this study because it serves as a foundational source of legislation in Pakistan, as explicitly recognized in the Constitution of Pakistan, 1973. Article 227 mandates that all laws must conform to the injunctions of Islam, thereby positioning Islamic principles as a central influence on the country's legal framework. This is particularly relevant in matters concerning family, inheritance, and child welfare, where Islamic jurisprudence plays a vital role. This chapter critically explores the theoretical foundations underpinning the rights of orphans. The discussion is grounded in the Islamic legal and theoretical framework, drawing primarily from the Qur'ān and *Ḥadīth* as the foundational sources of Islamic jurisprudence. Islamic teachings concerning the care, protection, and welfare of orphans are thoroughly examined through references to the original Arabic texts, complemented by authoritative English and Urdu translations. In addition to scriptural analysis, the chapter engages with classical and contemporary *tafsīr* (Qur'ānic exegesis) and commentaries on *Ḥadīth* to offer a comprehensive understanding of the rights of orphans within Islamic thought. Particular attention is given to the dual aspects of orphan welfare, namely, the protection of their person and the preservation and management of their property. Thus, this chapter establishes a detailed account of the Islamic principles that inform and shape the discourse on orphan rights.

2.1.1 Definition of Orphan

The definition of an orphan (*yatīm*) in this study is drawn from the work of Muḥammad Ziyād Batha, who references classical Islamic sources to articulate the traditional understanding of the term. According to Batha, Al-Rāghib defines a *yatīm* (orphan) as a minor child who has lost their father before reaching the age of majority. Batha further notes that Ibn Manẓūr agrees with this definition in *Lisān al-‘Arab*, further clarifying that the loss of the mother will not render a human child a *yatīm* but rather *munqati’* (broken) because the father was considered to be the primary caregiver.¹ The Qur’ān mentions *al-‘aytām* (orphan) in more than twenty-two verses, emphasizing the protection of orphans in matters related to their lives, property, and all other ancillary concerns without discrimination. The Qur’ān also mentions the word *al-yatāmā* in Sūrah Al-Nisā,² which is the plural of *al-yatīm* (the orphan). It means the lone or the unique. For example, a pearl in its shell alone is called *dār al-yatīm* (the orphan pearl). In Islamic law, a *yatīm* is a child whose father has died. When a child attains maturity, that is, puberty, he is no longer referred to as a *yatīm* in Islamic law.³

2.2 BEST INTERESTS OF CHILDREN IN ISLAM AS THE BASIS OF ORPHAN PROTECTION

The tenets of Islam offer comprehensive guidance to their adherents regarding the upbringing and well-being of children. Typically, scholars define children's best interests as those that promote their overall welfare at any stage of life. In Islam, the concept of what constitutes a child's best interests is rooted in the teachings of the Holy Qur’ān. From the moment of their birth to their death, this sacred text outlines the various rights that children are entitled to.

¹ Muḥammad Ziyād Batha, “Orphans in The Qur’an: A Contextual Thematical Analysis,” *Muslim Matters*, 12 July 2022, <<https://muslimmatters.org/2022/07/12/orphans-in-the-Qur’an-a-contextual-thematical-analysis/>> (accessed 8 August, 2023).

² Al-Nisā:1-2.

³ Muḥammad Shafī, *Ma’āriful Qur’ān Vol.2* (Karachi: Maktaba-e-Dārul-‘Uloom, 2011), 164.

Islam places a significant emphasis on the interests of children. Before the advent of Islam, it was customary for Arabs to kill their children out of fear of poverty, with female children often being buried in graves. Allah (S. W. T.) says in the Qur'ān, "Do not kill your children for fear of want. We will provide them and you. Indeed, killing them is a great sin."⁴ The revelation of the Qur'ān brought blessings and happiness to pious people. Hence, they embraced Islam and followed in the footsteps of the Prophet (P. B. U. H.). After the revelation, the killing rate decreased daily, and people's faith in Allah (S. W. T.) and the Prophet (P. B. U. H.) increased.

The concept of children's best interest must include the best interest of orphans, and it is crucial to recognize their rights. They are entitled to the same rights as other children. In some circumstances, jurists relate the *ḥaḍānah* (child custody) and *wilayah* (authority) to the child's best interests. In pre-modern *Sunni* legal discourse, jurists used many words to refer to the child's well-being. These terms included *manfa'at al-walad* (the benefit of the child), *maslahat al-walad* (the welfare of the child), and *hazz al-walad* (the good fortune of the child).⁵

The concepts surrounding the protection of orphans' rights are both sensitive and inherently complex. Orphaned children are among the most vulnerable members of society, facing heightened risks of neglect, exploitation, and deprivation. Their needs are multifaceted, encompassing not only emotional and psychological support but also legal protection, financial security, and social integration. Complexities arise from the challenges of ensuring appropriate guardianship, managing their inheritance and property, and preventing potential abuse or mismanagement by caregivers.

In light of these challenges, it becomes imperative to safeguard the best interests and welfare of orphans through a holistic and rights-based approach. Within this context, *Sharī'ah* offers a comprehensive and principled framework for the protection of orphans, grounded in the Qur'ān, *Ḥadīth*, and the broader objectives of Islamic law (*Maqāṣid al-Sharī'ah*). Islamic teachings mandate kindness, justice, and integrity in

⁴ Al-Isra': 31.

⁵ Ahmed Fekry Ibrahim, "The Best Interests of the Child in Pre-modern Islamic Juristic Discourse and Practice," *American Journal of Comparative Law*, vol. 63 (2015): 859-891.

the treatment of orphans, placing significant legal and moral obligations on the community to ensure their care and well-being. These provisions, as well as the rights related to the person and property of orphans, will be discussed in greater detail in the subsequent sections.

2.3 PROTECTION OF ORPHANS' RIGHTS UNDER THE *SHARĪ'AH*

Islam places significant emphasis on the protection and well-being of children, recognizing them as a trust from Allah and a vital part of the family and society. To shield them from societal evils and external harms, Islam provides a safe and nurturing environment primarily through the institution of the family, particularly under the guardianship of parents. The role of parents, especially the father as the primary caregiver and financial supporter, is central to ensuring the child's moral, emotional, and physical development.

However, there are circumstances in which children lose their fathers and consequently attain the status of *yatīm* (orphan), thereby becoming particularly vulnerable. While Islamic teachings comprehensively address the rights and protection of orphans, it is essential to acknowledge that classical Islamic legal sources do not always provide a formal or codified framework for orphan care in the modern legal sense. This is because, in early Islamic societies, orphaned children were typically absorbed into the extended or immediate family, where care and support were provided through kinship ties as a religious and moral obligation.

Thus, the absence of extensive formal documentation on orphan care in Islamic legal texts does not indicate a neglect of their rights but reflects a communal and familial approach deeply embedded in Islamic society. The *Qur'ān* and *Ḥadīth* consistently encourage compassion, justice, and care for orphans, imposing strict prohibitions against the exploitation of their wealth and emphasizing their dignity and welfare as a collective duty upon the Muslim ummah.

Islamic jurisprudence outlines two key principles for the treatment of orphans. First, according to Islamic legal philosophy, orphans are children whose fathers die, not their mothers. In Muslim perception, the father is responsible for the welfare and well-being of the children. He has to maintain them, but the mother, as a mother, is not considered a natural guardian. Thus, under these circumstances, minor orphans are placed under the guardianship of a stranger.⁶ Second, it is essential to remember that our Holy Prophet (P. B. U. H.) was born after his father's death and placed under the guardianship of his paternal grandfather and uncle.⁷ The Qur'ān mentions orphans twenty-two times and calls upon believers to treat them with love and kindness.

2.3.1 Protection of Orphans' Rights in the Qur'ān and *Sunnah*

The roots of the orphans belong to the Prophet (P. B. U. H.). Allah (S. W. T.) says, "Did he not find thee an orphan and shelter thee?"⁸ Allah (S. W. T.) describes the Prophet (P. B. U. H.) as an orphan in this verse. His father, Abdullah, died young before the child was born, leaving little property. The Prophet's mother, 'Āminah, was in failing health, and Ḥalīmah, the Prophet's nursing mother, brought him up. His mother died when he was only six years old. His aged grandfather, 'Abdul Muṭṭalib, treated him as his son but died two years later. Therefore, his uncle, Abu Ṭālib, took the responsibility as his guardian. He was thus an orphan in more senses than one; yet, the love he received from each person was more significant than the love he had received from his parents.⁹

Allah (S. W. T.) mentions that the best approach for managing orphans' affairs is to keep their property, household, and accounts separate; there should be less temptation to obtain personal advantage from their guardianship by mixing them with the guardian's property, household, or accounts. The guardian will surely be tested by Allah in determining the best interest of the orphans. If the guardian falls into

⁶ Mahmoud Yazbak, "Muslim Orphans and the Shari'a in Ottoman Palestine According to Sijill Records," *Journal of the Economic and Social History of the Orient*, vol. 44, no.2 (2001): 123–40. <<http://www.jstor.org/stable/3632324>>

⁷ Ibid.

⁸ Al-Duhā: 6.

⁹ *The Holy Qur'ān English Translation of the Meaning and Commentary*, 1970.

temptation, even if human law does not detect it, he is sinning in Allah's (S. W. T.) sight.¹⁰

In Sūrah Al-Nisā, Allah (S. W. T.) says that the guardian should practice justice with the property of orphans:

"O men, fear your Lord who created you from a single soul, and from it created its match and spread from the two, many men and women. Fear Allah in whose name you ask each other (for your rights), and indeed Allah is watchful over you. To orphans, restore their property (when they reach their age), substitute (your) worthless things for their good ones, and devour not their substance (by mixing it up) with your own. For this reason, it is indeed a great sin."¹¹

The word "*al-arḥām*" in the first verse is the plural of "*raḥīm*." "*Raḥīm*" is a mother's womb—the child's home until it is born. Since this womb is the source of blood relationships, maintaining relations in that line is called *silatur-raḥīm* in Arabic (literally, umbilical link, bond, or relationship).¹² The first verse stressed the care and concern for kinship in an absolute sense. Immediately, the second verse commands the protection of the properties of the orphans and the prohibition of any misappropriation therein because the guardian of an orphaned child is usually one of his relatives. Therefore, this, too, has a bearing on the fulfillment of the rights of kinship.¹³ The Holy Prophet (P. B. U. H.), in a noble *Ḥadīth* that placed a great emphasis on bonds of kinship, said, "Whoever likes to have his livelihood made plentiful, and his age extended for him should maintain good relations with his near-kin."¹⁴

The responsibility of protecting orphaned children's property, should they have property—either gifted or inherited—as well as protecting the orphans, falls on the orphan's guardian, regardless of whether the guardian was appointed before the death of the father or by the government. Therefore, the meaning of "give the orphans their property" in the verse above should be taken in the sense of protecting their property so

¹⁰ *The Holy Qur'ān English Translation of the Meaning and Commentary*, 747.

¹⁰ Al-Naḥl: 94.

¹¹ Al-Nisā: 1-2.

¹² Muḥammad Shafī, vol. 1, 294.

¹³ Syed Hossein Nasar, *The Study Quran*, 1st Ed. (USA: Harper Collins, 2015), 190.

¹⁴ Muḥammad Shafī, vol. 1, 296.

that it could be given to them at its appropriate time. The verse continues by stating that the orphan's guardian is responsible for the orphan's welfare.¹⁵

The second verse mentions the prohibition of "eating the property of the orphan" because eating is one of the major end uses of what one possesses. But, in common usage, every act of using up, consuming, and exhausting is referred to as "eating up," whether this be by "using" or by "eating." The expression *la ta'kulu* (do not eat up) in the Holy Qur'ān carries this sense of usage, including all impermissible uses. Therefore, spending anything from the property of the orphan unlawfully by any means whatsoever is *harām* (forbidden).¹⁶

Furthermore, according to *Tafsir al Qur'ān*,

"justice for orphans is commanded, and three things are particularly mentioned as temptations in the way of a guardian: he must not postpone restoring all of his ward's property when the time comes; if there is a list of properties, it is not enough that the list should be technically followed; the restored property must be of equal value to the property received, and the same principle applies where there is no list; and if the property is managed together, or where perishable goods must necessarily be consumed, the strictest probity is necessary when the separation takes place, and this is insisted."¹⁷

In another verse, Allah (S. W. T.) commands that widows and orphans be helped because they are ordinarily weak, ill-treated, and oppressed:

"They ask thy instruction concerning the women, say: Allah (S. W. T.) doth instruct you about them: and remember what hath been rehearsed unto you in the Book, concerning the orphaned women to whom ye give not the portions prescribed, and yet whom ye desire to marry, as also concerning the children who are weak and oppressed; that ye stand firm for justice to orphans. There is not a good deed which ye do, but Allah (S. W. T.) is well acquainted in addition to that."¹⁸

¹⁵ Syed Hossein Nasar, 191.

¹⁶ Ibid, 192.

¹⁷ *The Holy Qur'ān English Translation of the Meaning and Commentary*, 747.

¹⁸ Al-Nisā: 127.

This injunction addressed concerns related to orphans and women, emphasizing the command to uphold their rights. Although the specific issue concerning women was not explicitly articulated, the subsequent judgment, delivered shortly after that, clearly elucidates the nature of the query. It is important to note that this statement does not constitute a direct response to the query itself. Before attending to this, Allah (S. W. T.) once again emphasizes that people should implement His directives regarding orphans in general and orphan girls in particular. This shows the importance of the rights of the orphans in the sight of Allah (S. W. T.).

In explaining this verse, "Āishah states that, in those days, guardians of orphan girls who had any significant inheritance from their parents used to perpetrate many wrongs on their wards. If the girl was rich and good-looking, the guardian desired to marry her and exploit her attractiveness and wealth without making the bridal due (*mahr*) or even having to maintain her. If the girl were ugly, the guardian would neither marry her nor allow her to get married, for she might thus get a husband who would support her claim to her legitimate rights."¹⁹

Furthermore, Allah (S. W. T.) states:

"As for the wall, it belonged to two youths, orphans in the towns; there was, beneath it, a buried treasure to which they were entitled; their father had been a righteous man. So thy Lord desired that they attain their age of full strength and get out of their treasure mercy from the Lord. I did not do it of my own accord. Such is the interpretation of those things over which thou wast unable to hold patience."²⁰

In addition, Allah (S. W. T.) states:

"Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them; but consume it not wastefully, nor in haste against their growing up if the guardian is well-off, let him claim no remuneration, but if he is poor, let him have for himself what is just and reasonable. When ye release their property to them, take witnesses in their presence, but all-sufficient."²¹

¹⁹ Sayyid Abul A'ala Mawdūdī, 90.

²⁰ Al-Kahf: 82.

²¹ Al-Nisā: 6.

These verses cover a broad spectrum of meanings. They emphasize to the community of believers that wealth is one of the main supports of human life, which should not be entrusted to individuals who lack the necessary skills to manage it effectively. By misusing wealth, such people might destroy the foundation of society and economy and wreck the moral foundations of human civilization. According to the directive embodied in this verse, anyone who entrusts his property to someone else's care should satisfy himself that the latter can make good use of it. Further, these verses elaborate that when orphans approach their majority, their mental development should be watched to determine to what extent they have become capable of managing their affairs.²²

Likewise, orphans should be tested through small assignments of buying and selling to determine their ability to conduct themselves in transactions on their own. Further, given the nature of children and the factors involved in the growth of reason and intelligence among them, they have been divided into three stages: minority (before puberty), after puberty, and after self-reliance and discretion in conducting personal affairs (*rushd* (right path) as opposed to *safāhah* (shamelessness)). During the first stage, the guardians of children have been instructed to educate and train them by providing them with hands-on experience—letting them become smarter by conducting small dealings in buying and selling on their own. It is from here that Imām Abu Ḥanīfah has deduced the ruling that the transactions of buying and selling entered into by minor children with the permission of a guardian are sound, valid, and operative.²³

Following other injunctions, when children reach maturity, puberty, and the age of marriage, the guardian should assess their growth in terms of experience, intelligence, and interpersonal skills. Once it becomes clear that they understand profit and loss and satisfactorily handle their affairs and dealings, their property should be handed over to them.²⁴

²² Sayyid Abul A'ala Mawdūdī, 9-10.

²³ Muḥammad Shaf'ī, vol. 2, 322.

²⁴ Ibid, 322-323.

Likewise, Allah (S. W. T.) says:

"But if at the time of the division other relatives, orphans, or poor, are present, give them out of the property and speak to them words of kindness and justice ... Those who unjustly eat up the property of orphans eat up a fire into their bodies; they will soon be enduring a blazing fire."²⁵

Before Islam, orphans and women, the weaker links in the human chain, had been victims of all sorts of injustices. Thus, Islam legalized their rights and instituted safeguards to ensure they remained secure against infringements. All this happened in the background when nations worldwide allowed these two weaker units of human society to remain deprived of their natural and obligatory rights. Such was the state of the law of inheritance.²⁶

During the Prophet's (P. B. U. H.) times, there was an incident when a companion, Sayyidina Aws ibn Thabit (RA), died. He left two daughters, a minor boy, and his wife as the inheritors. But, very much like the old Arab custom, two of his cousins from the father's side came and took the whole property in their possession and left nothing to anyone from among the children and wife of the deceased brother. Despite what happened, the widow of Sayyidina Aws ibn Thabit still wanted these cousins, who had taken possession of the entire property left by her deceased husband, to marry the two orphaned daughters so that she was relieved of the concern for their marriage. But as they did not accept the proposal, she went to the Holy Prophet (P. B. U. H.) and told him her sad story and explained the deprivation of children. Since the verse of inheritance was yet to be revealed by that time in the Holy Qur'ān, the Prophet (P. B. U. H.) held his response. His heart was at peace, and he was confident that this unjust practice would be removed through divine revelation. Thereupon, the seventh verse of Sūrah Al-Nisā was revealed.²⁷

This verse explicitly delineates individuals who are meant to receive an inheritance. Specifically, it identifies the shares that are to be distributed. Generally, the

²⁵ Al-Nisā: 8-10.

²⁶ Syed Hossein Nasar, 193.

²⁷ Ibid, 194.

principles that apply are as follows: females are entitled to inherit along with males and other relatives with no legal claim; orphans and impoverished individuals should not be subjected to harsh treatment during the division of assets.²⁸

The subsequent verse is devoted to the best approach to handling this situation. This verse elaborates that for distant relatives, orphans, and the needy who are to be excluded from having a share in the inheritance and who nevertheless show up at the time of its distribution, it is the standard obligation of those who get a share in the inheritance that they voluntarily give them some of it, which would become an act of charity for them, and certainly a modality of reward from Allah (S. W. T.) In fact, one should take it as a God sent opportunity to let these people have a little from what they have received, which would certainly compensate for the sense of deprivation faced by these people. Incidentally, this includes and covers the grandson of the deceased, who was excluded from the inheritance. His uncles and aunts should be pleased to give him something from their shares.²⁹

The tenth verse of Sūrah Al-Nisā carries a severe warning for those who unlawfully steal or dispose of the orphans' property. This verse equates the property of orphans with the fire of hell. For this reason, the prophet (P. B. U. H.) has given obvious instructions to observe the most stringent precautions. Sayyidina Abu Hurairah narrates that the Holy Prophet (P. B. U. H.) said, "I warn you to abstain from the property of two weak ones, the woman and the orphan."³⁰

Allah (S. W. T.) commands the giving of charity to orphans, as in the following verse:

"They ask thee what they should spend in charity. Say: Whatever wealth ye spend that is good, it is for parents and kindred and orphans and those in want and wayfarers, and whatever ye do that is good, Allah (S. W. T.) knoweth it well."³¹

²⁸ *The Holy Qur'ān English Translation of the Meaning and Commentary*, 526.

²⁹ Ghulum Malik Murtaza, *Anwār ul Qur'ān*, Vol.1 (Lahore: Malik Sons Publishers, 1997), 130.

³⁰ Ibid, 131.

³¹ Al-Baqarah: 215.

Regarding charity, mankind is asked to give anything good, sound, helpful, or valuable, be it property, money, a helping hand, advice, or a kind word. However, on the other hand, if what is given is useless, there is no charity in it.³² At another place, Allah (S. W. T.) says about charity in these words:

"It is not righteousness that ye turn your faces towards east from west, but it is righteousness to believe in Allah (S. W. T.) and the last day, and the angels, and the book, and the Messenger; to spend your substance, out of love for him, for your kin, for the orphan, for the needy, for wayfarers."³³

Allah (S. W. T.) says, "And they feed, for the love of Allah (S. W. T.), the indigent, the orphan, and the captive."³⁴ In this verse, Allah elaborates that the quality of the people of paradise is that they love food. Despite that, to please Allah, they feed the needy, the orphans, and the prisoners without expecting any gratitude in return. They do this only to please Allah, and from Him only do they expect compensation.³⁵

According to Haḍrat Abu Huraira (r.a.), the prophet (P. B. U. H.) said, "A person who sustains the widows and the needy is like the one who does *jihad* in the way of Allah or like the one who stands all night in his worship and fasts during the day."³⁶ At another place, Allah (S. W. T.) says, "to the orphans with claims of relationship, or the indigent (down) in the dust."³⁷ In this verse, if an orphaned family member is given food to eat, the reward is twofold: satisfying a hungry person's hunger to maintain family ties and fulfill his rights. If an orphan is not a close relative or family member but is impoverished and wallowing in dust, spending on him will yield a greater reward. The poorer the person, the greater the reward for the spender.³⁸

In the Qur'ān, Allah (S. W. T.) says that the property received is distributed among the people after the war, as in the following verse:

³² *The Holy Qur'ān English Translation of the Meaning and Commentary*, 134.

³³ Al-Baqarah: 177.

³⁴ Al-Insan: 8.

³⁵ Samar Khalid, 520.

³⁶ *Ṣaḥīḥ Bukhārī*, Al Nafqat, Book 69, Ḥadīth No. 3: 5353, <<https://sunnah.com/Bukhārī:5353#!>> (accessed 6 August 2023).

³⁷ Al-Balad: 15-16.

³⁸ Ghulum Malik Murtaza, vol. 1, 909-910.

"And know that out of all the booty that ye may acquire (in war), a fifth share is assigned to Allah (S. W. T.), the messengers, and to near relatives, orphans, needy, and the wayfarers."³⁹

Furthermore, the rule of the distribution of *ghanīmah* or spoils, described here, covers the distribution of spoils as a whole. But the Qur'ān mentions the rule as it applies to its one-fifth. No mention has been made of the remaining four shares. Where Allah says "*ma ghanīmtum*" (whatever spoils you receive), there is a hint here that this property is the right of those who receive it, which renders *mujāhidīn*. After that, it was declared that one-fifth was the share of Allah (S. W. T.), the Messenger (P. B. U. H.), and others. The number of words used in the Qur'ān is six: *lil-Lāh* (for Allah), *lir-Rasūl* (for the Messenger), *li-dhilqurbā* (for kinsmen), *al-yatāma* (orphans), *al-masakīn* (the needy), and *ibn as sabīl* (the wayfarer).⁴⁰

The Prophet (P. B. U. H.) showed incredible generosity towards orphans and highly regarded his followers for their similar generosity.

"Abu Hurayra said, the Messenger of Allah (S. W. T.), may Allah (S. W. T.) bless him and grant him peace, was asked, 'Which people are the most generous?' He replied, 'The most generous of them in the sight of Allah (S. W. T.) are those with the most *taqwa*.' They said, 'That is not what we are asking about.' He said, 'The most generous of people was Yusuf, the Prophet of Allah (S. W. T.), son of the Prophet of Allah (S. W. T.), who was the son of the Intimate Friend of Allah (S. W. T.) (Ibraḥīm).' They said, 'That is not what we are asking about.' He said, 'Are you asking about those of Arab origin?' 'Yes,' they replied. He said, 'The best of you in the *jahiliyya* is the best of you in Islam when you have understanding from Allah (S. W. T.).'⁴¹

In another place, the Prophet (P. B. U. H.) said,

"Umm Sa'id bint Murra al-Fihri related from her father that the Prophet, may Allah (S. W. T.) bless him and grant him peace, said, 'I and the

³⁹ Al-Anfāl: 41.

⁴⁰ Ghulum Malik Murtaza, vol. 1, 213.

⁴¹ Shaykh al-Albani, *Ṣaḥīḥ Al-Albani, Al-Adab Al-Mufrad*, Book 7, Ḥadīth No.1: 129, Sunnah.com, <<https://sunnah.com/adab:129>> (accessed 07 August, 2023).

guardian of an orphan will be in the Garden like these two (his two fingers)."⁴²

The sayings of the Prophet (P. B. U. H.) mentioned above stress that relatives and the Muslim community should look after the orphans in their families with kindness, fairness, and justice. If there is no living relative, they cannot endorse their duties. The Prophet (P. B. U. H.) took responsibility for these minors as the head of the community and expressed his deep love and affection for orphaned minors. After that, the responsibility was transferred to the *qāḍī* (Muslim judge) as the state's representative, whose duty was to appoint a trustworthy and humble person as a guardian in the absence of their father.⁴³

Islam established a mechanism for orphans from the beginning and provided protection and security under the guardianship of their paternal grandfather. However, in his absence or inability, the state is responsible for fulfilling their basic needs, which include food, shelter, health, and education.

2.3.2 Promotion of Good Treatment towards Orphans

In the Qur'ān, Allah (S. W. T.) enjoins good treatment for orphans, as in the following verse:

"And remember we took a covenant from the children of Israel (to this effect), worship none but Allah (S. W. T.), treat your parents and kindred, and orphans and those in need with kindness, and speak fair to the people."⁴⁴

This verse speaks of the pledge that Allah had made with the Israelites. The few people it refers to as having been faithful to the promise were those who acted upon the *Sharī'ah* of Mūsā (A.S) as long as it was in force and when it was abrogated, followed

⁴² *Ṣaḥīḥ Al Bukhārī*, Book 78, Ḥadīth 36: 6005, Sunnah.com, <<https://sunnah.com/bukhari:6005>> (accessed 07 August, 2023).

⁴³ Mahmoud Yazbak, "Muslim Orphans and the Sharī'a in Ottoman Palestine According to Sijill Records," *Journal of the Economic and Social History of the Orient*, vol. 44, no.2 (2001): 123–40. <<http://www.jstor.org/stable/3632324>>

⁴⁴ Al Baqarah: 83.

the *Sharī'ah* of Prophet Muḥammad (P. B. U. H.). This verse brings out the essential elements common to Islam and all the earlier *Sharī'ah* based on *tawḥīd* (the doctrine of unity or oneness): service to one's parents, relations, orphans, and people in need, being gentle in speaking to all human beings, *ṣalāh* (prayer), and *zakaṭ* (almsgiving). The verse further asks to adopt a gentle and soft tone and an open-hearted manner in talking to others, whether they are good or evil, pious or impious, orthodox or aberrant, followers of *Sunnah*, or adherents to partitive innovations in it.⁴⁵ According to 'Abdullāh Ibn-e-'Abbās, these words refer to the truth about the personality of the Holy Prophet (P. B. U. H.). This verse addresses the Jews who used to hide the truth contained in their holy books regarding the sacred Prophet (P. B. U. H.) and the Qur'ān so that people would not accept their faith in him as the prophet who was due to come according to the forecasts made by the prophets earlier to him, particularly Prophet Mūsā (A. S.). The Qur'ān, therefore, in verse eighty-three, asks them to speak to people what is true.⁴⁶

In another place, the Qur'ān says to the effect:

"Their bearings on this life and the hereafter they ask thee concerning orphans says: the best thing to do is what is for their good; if ye mix their affairs with yours, they are your brethren; but Allah (S. W. T.) knows the man who means mischief from the man who means good, and if Allah (S. W. T.) had wished he could have put you into difficulties; he is indeed exalted in power, wise."⁴⁷

Ibn Kathīr explains a *Ḥadīth* from the Prophet (P. B. U. H.), saying,

"When Al-Hassan recited this verse, 'Their bearings on this life and the hereafter' he said, 'By Allah! It would benefit he who gives thought to know that this worldly life is a place of ailments and is deemed to be evanescence; and the hereafter is the time of reckoning and eternity'. And 'they ask thee concerning orphans says: the best thing to do is what is for their good; if ye mix their affairs with yours, they are your brethren; but Allah (S. W. T.) knows the man who means mischief from the man who means good, and if Allah (S. W. T.) had wished he could have put you into difficulties; he is indeed exalted in power, wise', were revealed; he who was responsible for an orphan hastened to separate between his

⁴⁵ Al-Baqarah: 246.

⁴⁶ Syed Anwar Ali, *Qur'ān: The Fundamental Law of Human Life* (Karachi: Bait-ul Hikma, 1999), 279.

⁴⁷ Al-Baqarah: 220.

nourishment (food and drink) and that of orphans which is kept untouched that he is either to eat it or to be let even to be spoilt; the matter which was very hard and they complained that to Allah's prophet (P. B. U. H). Then Allah sent down: 'they ask thee concerning orphans ...' so they mixed their food and drink with that of the orphans. 'A'ishah, the mother of the believers, said: 'Surely, I hate to separate between my food and drink and that of an orphan if to manage his property.' Allah (S.W.T) says in the verse that you must be honest in their affairs (food, drink, and property), and if you mix your affairs with their affairs, there is no harm because they are your brothers in Islam. Therefore, in the verses, it is stated that if Allah (S.W.T) had willed, He could have made it hard, complicated, and illicit for you to mix your affairs with orphans; but it is easy, light, and lawful for you only to improve the orphans' property."⁴⁸

Hazrat Ali (may Allah (S. W. T.) be pleased with him), known for his profound knowledge and wisdom, emphasizes the significance of being kind to orphans, "One of the best righteous acts is being kind to the orphans." By highlighting this act as one of the best righteous deeds, he encourages Muslims to prioritize the well-being and care of those who have lost their parents. The Qur'ān also emphasizes this obligation through passages such as "*Therefore, be not harsh with orphans.*"⁴⁹ The unbelievers are warned, in these verses, that you neither treat them well nor give them their exact right of inheritance. This verse implies the command to honor the orphan; as it was authentically stated in the Hadith that the Messenger of Allah (S.W.T) said: "The best house where Muslim live is the house wherein an orphans who is dealt most kindly; and that the worst of houses where Muslim live is the house where an orphan handled therein badly."⁵⁰ The basic objective of the verse is that they deprive them of their rights and do not spend on them what is due to them. Still, the expression used is that they do not honor them, probably to indicate that the requirements of Allah's gratitude, and in a humanitarian sense, are not only that the orphans are given their dues by spending wealth on them, but it is also necessary to honor them and treat them kindly. The guardian should not despise and look down upon their words and discriminate against their children. This is a denial to the unbelievers who think that wealth is an honor and poverty is dishonor. After refuting their thoughts and ideas with the expression "*kallā*"

⁴⁸ Ibn Kathīr, *Tafsīr Ibn Kathīr*, trans. Muhammad Anis Gad Khalil, vols. 1–4 (Egypt: Dār al-Manārah, 2007), 132.

⁴⁹ Al-Fajr: 17.

⁵⁰ Ibn Kathīr, 2512.

(no/never), the verse progresses to say "*bal*" (but) that they are deprived of sustenance because they squander it in immoral pursuits, depriving the orphans of their rights.⁵¹

These verses highlight the importance of fulfilling the rights of orphans; it is a comprehensive command covering various aspects of kindness, righteousness, and being kind to orphans; thus, Allah (S. W. T.) prescribes a duty to be fulfilled and encourages following in the footsteps of the righteous.⁵²

After discussing the importance of treating orphans with kindness, the following section explores the concepts of *ḥaḍānah* (custody) and *wilāyah* (guardianship), which are sensitive issues concerning orphans. Safeguarding the best interests and welfare of orphans is crucial. In this context, Islam offers a comprehensive framework for the *ḥaḍānah* or *kafālah* (foster care) of orphans, which will be explained in detail below.

2.3.3 *Kafālah* as One of the Means of Protecting Orphans' Rights

Kafālah is an Arabic word that means "to support." Legally, *kafālah* is defined as "the commitment to voluntarily take care of the maintenance, education, and protection of a minor, in the same way a parent would do for a child."⁵³ *Kafālah* resembles foster parenting and is witnessed as "primarily a gift of care but not a substitute for lineal descent."⁵⁴

Allah (S. W. T.) designs *kafālah* as a mechanism to protect a child's best interests after the death of their father, through which the orphaned minors' welfare is upheld. The responsibility for *kafālah* falls upon the paternal grandfather, who is directly accountable for his grandchildren. However, if he has passed away or is unable to support them, close relatives or family members will be accountable. If there is no one to look after the orphaned minors, then the state is responsible for their welfare and is

⁵¹ Muḥammad Shaf'ī, vol. 8, 785-786.

⁵² Muḥammad Ziyād Batha, 195.

⁵³ Emeritus Tan Sri Dato Dzulkifli Abdul Razak, *Family Fiqh in Malaysia* (IIUM: Contemporary Fiqh Unit, Islamic Book Trust, 2021), 148.

⁵⁴ Ibid.

bound to take care of their best interests. The guardian, whether a relative or any other person, receives a place in Jannah as a reward. The Prophet (P. B. U. H.) said, "*Kafil* (guardian) of an orphan and I will be together in heaven," while indicating the proximity by crossing his two fingers.⁵⁵

Thus, for the welfare of minors, the following vital goals need to be addressed by the *kafil* and the state. These goals should also be discussed in light of the Islamic provisions outlined in the Qur'ān and *Sunnah*:

- a. Person of the Minor
- b. Property of the Minor

2.3.3.1 Person of the Minor

After the death of their father, the mother is considered the custodian of the minor,⁵⁶ as no one can better take care of the minor. Therefore, if a separation occurs between spouses, the mother has a superior right to custody of the child. Recorded in Abu Dawud in his *Sunan*, a woman said, "O Messenger of Allah (S. W. T.), the child of mine, for him my belly is like a cradle, my lap like a tent, and my breast like a beaker, but now his father wants to separate him from me." Therefore, the Prophet (P. B. U. H.) said, "You have a superior right to him, as long as you do not wed."⁵⁷ The reason is that the mother is more loving and more capable of *ḥaḍānah* (child maintenance). Accordingly, there is greater justice in giving a child to the mother. It is this towards which Abu Bakar (God be pleased with him) pointed when he said, "Her saliva has greater blessings in it than the nectar and honey you will give him, O 'Umar." He said this when separation occurred between him and his wife, uttering the statement when many companions

⁵⁵ Muḥammad Nisar al Din Albani, *Ṣaḥīḥ Sunnan Al Tirmadhāi* (Al Riyad: Maktab Al Tarbiyya Al Arabi li-Diwal al Khaliḥ, 1988), 2:179.

⁵⁶ Mudasra Sabreen, "Law on the Custody of Children in Pakistan: Past, Present and Future," *LUMS Law Journal*, vol 4. Difference between Guardian and Custodian, "Custody and guardianship can be distinguished as follows: custody is the bringing up, nursing or fostering of the child and taking care of the child's emotional and personal affairs on a day-to-day basis whereas guardianship means the power to effect legal transactions and contracts with responsibility for the legal consequences."

⁵⁷ Recorded in Abu Dawud in Jamal al-din al-Zayla'i, *Sunan Al Zayla'i*, 3: 265.

were present.⁵⁸ Moreover, if the child does not have a mother, then the mother's mother, however remote, might have a higher priority than the father's mother. This is because this form of *wilāyah* (authority) belongs to the mother.⁵⁹

The minors' rights include their individuality, life, maintenance, health, and education. Thus, the guardian is obligated to provide for the financial needs of the minor to ensure their well-being and development. The Qur'ān emphasizes this in many places, including the verse, "Therefore, be not harsh with orphans."

As a father is obligated to bear the maintenance of minors, Muslim jurists have two differing views regarding the individual who will be liable after the death of a minor's father. *Mālikī* jurists assert that the responsibility of providing maintenance to children will not be transferred to other family members, whether they are the paternal grandfather, mother, or any other relatives. According to them, the father was solely responsible for maintaining this. The paternal grandfather, mother, or any other relative is not obliged to provide maintenance. This is because a person's duty to keep the children of his kin should be established at the outset and not by transmission. According to this view, maintenance is incumbent on the state after the father.⁶⁰

Other jurists, including *Ḥanafī*, *Shāfi'ī*, and *Ḥanbalī*, believe that the care and maintenance of orphaned children are entrusted to other family members. However, the difference lies in who will be responsible for the maintenance. *Shāfi'ī* says duty is transmitted to relatives through linear kinship based on priority. First, it goes to the paternal grandfather, regardless of its height. After that, it will go to the mother, and later, it will go to the nearest relatives in lineage kinship from the father's or mother's side.⁶¹

According to the tradition reported by Ḥassan (son of Zayad) from Abu Ḥanīfah, the maintenance of the minor is obligatory on the father's father alone, and no portion

⁵⁸ Imran Ahsan Khan Nyazee, 1038.

⁵⁹ Ibid.

⁶⁰ Badruddin Hj Ibrahim and Azizah Mohd, 416.

⁶¹ Abdur Rehman Aljaziri, vol. 4, 720.

of the obligation shall be on the mother. Moreover, in cases where the mother of the minor is wealthy, and the minor (whose father is dead) has a full brother who is rich and a father's father who is rich, Abu Ḥanīfah says that the maintenance of the minor is obligatory on the father's father, and this is the view taken by the First Khaleefa, Abu Bakar.⁶²

According to the Zāhir-al-Riwāyah, if a man dies, leaving a minor child and his father, the child's maintenance shall be obligatory to the child's grandfather. In cases where the minor has a wealthy mother and grandfather, the minor's maintenance shall be obligatory on the father's father and mother, in thirds (i.e., 1/3 on the mother and 2/3 on the grandfather's father).⁶³

The *Ḥanbalī*'s opinion is based on an obligation as per the right to inheritance from children. Their duty is proportionate to their inheritance, but only if they are well-off. If they are poor, they will not be liable. *Ḥanbalī* jurists are more acceptable and practical since the one who gains benefits is the one who should assume responsibility. Moreover, it aligns with Islamic principle, "The detriment is a return for the benefit."⁶⁴

2.3.3.2 Property of the Minor

There are several Qur'ānic verses and *Ḥadīth* of the Prophet (P. B. U. H.) in which Allah (S. W. T.) clearly states the need to safeguard the properties of orphans. Allah (S. W. T.) Almighty commands us to work for the welfare of the orphans, and he forbids us from touching on their wealth except for their benefit. Allah (S. W. T.) states:

"And they ask you about orphans. The best thing is to work honestly on their property; if you mix your affairs with theirs, they are your brothers. And Allah (S. W. T.) knows him who means mischief from him who means good."⁶⁵

⁶² Qadi-Khan, al-Hasan ibn Mansur al-Uzjandi al-Farghani, *Fatawa-I-Kazee Khan relating to Mohammedan Law* (Lahore: Pakistan Educational Press, 1977), 1: fatwa no. 1766 (866).

⁶³ Ibid, fatwa no.1765 (865).

⁶⁴ Badruddin Hj Ibrahim and Azizah Mohd, 418.

⁶⁵ Al-Baqarah: 220.

He also says:

"And come not near to the orphan's property except to improve it until he (or she) attains the age of full strength."⁶⁶

As explained in *Tafsir Ibn Kathir*, "Allah (S. W. T.) commands that the property of the orphans be surrendered to them in full when they reach the age of adolescence; he forbids using or confiscating any part of it. So, He said, 'And do not exchange your bad things for their good ones.'" Further, Sa'īd bin Al-Musayyib and Al-Zuhri commented, "Do not substitute a weak animal of yours for a fat animal of the orphans." Suddi said, "One of them (caretakers of orphans) would take a fat sheep from the orphan's property and put in its place a weak sheep of his, saying, 'A sheep for a sheep.' He would also take a good dirham and exchange it for a fake dirham, saying, 'A dirham for a dirham.'" Allah (S. W. T.)'s statement, "And devour not their substance to your substance," means they should not mix their properties as it is a grave sin and a significant mistake.⁶⁸

The guardian of an orphan is required to act according to the guidelines narrated by Allah (S. W. T.), and it is clear from the verses that the guardian should do his best to keep the wealth or property of the orphans safe. Hence, if they want to increase their wealth by doing business or giving to a trustworthy third person, it is the responsibility of the guardian to fix a percentage of profits. If the person in business volunteers to provide all the profits to orphans, that is best, and Allah (S.W. T.) knows about every human act. On the other hand, if the guardian uses that property for his benefit and not for the welfare of the orphans, it is not allowed, and he is answerable before Allah (S. W. T.) for all his greediness.⁶⁹

The Prophet (P. B. U. H.) speaks in several places about orphans' property for the benefit of orphans:

⁶⁶ Al-'An'am: 152.

⁶⁷ Ibn Kathir, Vol.1, 593.

⁶⁸ Safi-ur-Rehman Al Mubarakpuri, 371-372.

⁶⁹ Ibid, 373.

"As Mālik informed us: Yaḥya ibn informed us, I heard Al Qāsim Ibn Muḥammad saying, "A man came to Ibn Abbas, and said to him, I have an orphan, and he owns some camels, so may I drink from his camel's milk? Ibn Abbas said to him, If you search for his stray camels, smear them with a pitch against mange, plaster and repair their watering troughs, and give them to drink on the day they come to drink, then you may drink, but without harming the camel's progeny or consuming the milk completely."⁷⁰

In another *Ḥadīth* of the Prophet (P. B. U. H.),

"Muḥammad said: It has reached us that 'Umar Ibn al-Khaṭṭāb mentioned the guardian of an orphan, and he said if he is independently wealthy, he should abstain, but if he is in need, he may eat (from the orphan's property), considering it as a loan. It has come to our attention that Sa'id Ibn Jubayr explained this ayah. Those who are wealthy should abstain from it. But, on the other hand, poor people should use it sensibly and correctly (Sūrah An Nisā), and he said, as a loan."⁷¹

In another *Ḥadīth* of the Prophet (P. B. U. H.),

"Sufyān ath-Thawrī informed us from Abi Ishāq from Silah ibn Zufar that a man came to 'Abdullah Ibn Mas'ūd and said, Give me counsel about the orphan, and he said, Do not buy anything with his property, and do not take a loan of anything from his property. So Muḥammad said: Abstaining from his property is preferable to us, and that is the verdict of Abu Ḥanīfah and our fuqahā in general."⁷²

From the Qur'ānic verses and the *Ḥadīth* above, it is evident that Islam accords paramount importance to the welfare of orphans and delivers explicit teachings to ensure their well-being. Moreover, Islam, from a broad perspective, ensures that *kafālah*, or guardianship, is the safest and most protected environment for orphans as it assists and ascertains the best interests of orphans. The child's best interests can only be met if the parents, family, society, and state can fulfill their roles in meeting their obligations to ensure that children have 'due rights.' Should a child-centered perspective

⁷⁰ Muḥammad ibn al Ḥasan al Shaybānī, *The Muwaṭṭā of Imām Muḥammad*, trans. Mohammad Abdur Rahman and Abdassamad Clarke (London: Turath Publishing, 2004), Ḥadīth no. 937, 408.

⁷¹ Al Shaybānī, 409.

⁷² Ibid.

be adopted at all levels, laws and values, whether secular or religious, can be harmonized and adjusted to put the 'children first' as visible assets needing equitable, quality care and opportunities to maximize their potential.⁷³

2.3.4 Adoption and Foster Placement of Orphans

Orphans who have lost their fathers are particularly susceptible to danger and insecurity. Additionally, they face the risk of exploitation. In such cases, couples may adopt orphans as their children. Adoption has been prevalent since ancient times; however, the procedures involved are still different. Notably, the adoption process extends beyond orphans or abandoned children. On occasion, biological parents may willingly choose to give up their children to nonbiological parents.

Adoption is legally defined in Black's Law Dictionary as "the creation of a parent-child relationship by judicial order between two parties who are unrelated; the relation of parent and child created by law between persons who are not parent and child."⁷⁴ Further, *Black's Law Dictionary* defines an adopted child as "a child who has become the son or daughter of a parent or parents by legal or equitable adoption."⁷⁵ Adoption, as it pertains to the law, signifies the act of transferring the entirety of a child's legal parentage from their natural parents to adoptive parents. This process is permanent and irreversible, representing the only means by which all parental rights and obligations can be conveyed during the parents' lifetime. The concept of adoption follows the guidelines established under English Law, which imposes a precise and unyielding legal definition.⁷⁶

⁷³ Shaheen Sardar Ali Khan, "Comparative Perspective of the Convention on the Rights of the Child and the Principles of Islamic Law: Law Reform and Children's Rights in Muslim Jurisdictions" in UNICEF, (ed.) *Protecting the World's Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems* (London: Cambridge University Press, 2007), <<https://doi.org/10.1017/CBO9780511511271.005>>, ISBN 9780521875134.

⁷⁴ *Black's Law Dictionary*, 9th Ed. s.v. "adoption."

⁷⁵ *Ibid*, s.v. "adopted child."

⁷⁶ Azizah Mohd, "Protection of Rights of Adopted Children in Relation to Duties of Adoptive Parents under the Law in Malaysia," *Adoption Quarterly*, vol. 14, no. 4 (2011): 229-245.

Under Islamic law, this adoption is known as *tabanni* and is strictly prohibited. This is based on the injunction in the Qur'ān that forbids this kind of adoption, as the Qur'ān states:

"Nor has He made your adopted sons your sons. This is (only) your (manner of) speech by your mouth. However, Allah tells (you) the truth, and He shows the (right) way. Call them with (the names of) their fathers, which is more just in the sight of Allah. But if you do not know their father's (names, call them), your brothers in faith, or your Mawlas."⁷⁷

The above verse pertains to Zayd ibn Ḥārithah, who was adopted by Prophet Muḥammad (P. B. U. H.) and was referred to as "the son of Muḥammad" by the people of Makkah. However, the Qur'ān forbids such practices and asserts that a person's relationship with their father is only established through parentage and not through adoption. The practice of adoption was also prohibited based on the Prophet's tradition, which states that anyone who falsely claims to be the son of someone other than their biological father while knowing that the person is not their father will be denied entry into paradise.⁷⁸

It should be noted that Islam is not opposed to the idea of adoption. According to the Qur'ān and *Sunnah*, Islamic principles promote the care and upbringing of orphans, abandoned, and neglected children by childless couples. However, Islam does not permit the alteration of a child's parentage because doing so would undermine the Islamic family system.⁷⁹ According to Maḥmud Shaltut and Atiyyah Saqar, adoption is typically divided into two categories: one that bestows parental status upon the adopted child and one that does not alter the adopted child's biological status. The latter form of adoption is not forbidden in Islam and may be highly recommended if it can provide a home for orphans or children without guardians. Similar to fostering care, this type of

⁷⁷ Al-Ahzab:5

⁷⁸ Azizah Mohd and Nadhilah A. Kadir, "Protection of Adopted Children's Rights to Custody and Maintenance: An Appraisal of the Law Governing Muslims in Malaysia," in *The Asian Yearbook of Human Rights and Humanitarian Law*, vol. 4, edited by Javaid Rehman, Ayesha Shahid, and Steve Foster (Boston: Brill Nijhoff, 2020), 183.

⁷⁹ Ibid.

adoption involves placing a child in someone's care without changing their biological status.⁸⁰

With regard to foster placement, the term "foster care" is defined in Black's Law Dictionary as "the act of placing a child in a home with a person or persons who provide parental care for the child."⁸¹ Foster care generally means "the formal and informal custodial care of children outside their biological family home when their parents are unable, unwilling, or prohibited from caring for them."⁸²

Foster care typically involves placing a child in the care of a nonbiological parent or parents, known as foster parents, who provide temporary residence in their own homes. This arrangement is intended to protect children who need care and protection, such as those without families and those who have been orphaned, abandoned, abused, or neglected. Foster care is often necessary when a child's biological parents are absent or when the family faces significant social, emotional, economic, or physical challenges. In many countries, the primary objective of foster care is to provide substitute care for children who have been abandoned, abused, and neglected to ensure that they have similar opportunities as other children. This substitute care is designed to replace parental care and is considered a crucial child welfare service, partially or fully.⁸³

According to Islamic principles, international law, and national law, adoption and foster care are recognized as viable solutions for the irreparable loss of fathers. The design of these legal mechanisms ensures the care and nurturing of children who have lost their fathers in a loving and supportive environment.

⁸⁰ Hammudah Abd. Ati, *The Family Structure in Islam* (American Trust Publication, 1977), 193.

⁸¹ *Black's Law Dictionary*, 9th Ed., s.v. "Foster care."

⁸² Azizah Mohd and Nadhilah A. Kadir, 295.

⁸³ Azizah Mohd and Nadhilah A. Kadir, 295.

2.4 PROTECTION OF ORPHANS' RIGHTS AS PART OF CHILD POPULATION UNDER THE *SHARĪAH*

This study also includes the rights of children as general, recognizing that orphans constitute a specific and vulnerable category within the broader child population. The protection provided to children is divided into two classes:

1. Right of an unborn child
2. Right of a child after birth

The rights and duties of children after birth are mentioned in the Qur'ān and *Sunnah*. The Prophet (P. B. U. H.) said that "his Muslim community would be noted among other communities for its kindness to children."⁸⁴ Almighty Allah (S. W. T.), a Sustainer of Life, created a means and source for protecting His creations in the form of their parents. Thus, the children's best interests, including orphans, are in their parents' hands. It is important to note that Allah (S. W. T.) has created parents to protect children, but in some cases, where children lose their parents for any reason, they have the right to be protected by their families and the state.

2.4.1 The Right of an Unborn Child

An unborn orphaned child refers to a child in the mother's womb, the Arabic word for which is "*janīn*" (fetus). "*Janīn*" is an Arabic word that refers to hidden things that cannot be seen through the eyes. Ibn e Manzoor defines it as "a developing human in the mother's womb, and it is called *janīn* because it is a hidden thing in the womb; anything out of sight is called *janīn*."⁸⁵ The word "*jin*" is also from *janīn*, and *jins* (demons) are hidden from our eyes. The words "fetus" and "embryo" were used in the English language for *janīn*. Usually, both are synonymous, but there can be slight differences. The embryo is a developing human in the first eight weeks inside his

⁸⁴ Khalid Dhorat, *Certain Aspects of Children's Rights in Islamic Law* [Unpublished dissertation, Rand Afrikaans University, South Africa], 52.

⁸⁵ Yadin La Udin and et al., "Ibnu Manzur and his method of writing 'Lisanul Arab'," *El-Syaker: Samarinda International Journal of Language Studies*, vol. 1, no. 1 (2024): 55-66.

mother's womb, whereas the fetus is a developing human from the ninth week until birth.⁸⁶

In Islam, a fetus has several rights during pregnancy, even before the birth of the child. The fetus has an *ahliyyat wājib* (capacity for obligation or duty) as the fetus can acquire a limited number of rights and bear certain obligations that are usually kept aside pending its live birth.⁸⁷ Islam protects all creatures and the creation of Allah. It follows that the *janīn* or unborn orphaned child, before its birth, deserves certain rights, according to different schools of thought.

Muslim jurists (*Ḥanafī*, *Mālikī*, *Shāfi'ī*, and *Ḥanbalī*) unanimously agree that abortion after four months of pregnancy, when the soul breathes into an embryo, constitutes homicide.⁸⁸ Thus, it is legally punishable and religiously forbidden; the offender should pay full *diya* (blood money), called *ghurrah*.⁸⁹ According to most jurists, the right to receive a *ghurrah* belongs to the legal heirs of stillborn children. The minority view holds that it belongs to the mother.⁹⁰

There was a difference in opinion among jurists regarding abortion during the first 120 days of pregnancy. Scholars of *Ḥanafī* state that pregnancy may be terminated within the first four months, even without the husband's consent. Abortion at this stage should not even be deemed objectionable."⁹¹

⁸⁶ Romesa Mariam and Rida Irfan, "Different Aspects Fetal Rights in the Light of Islam" in *the 3rd International Seminar on Islamic Thought 2020 organized by Universiti Kebangsaan Malaysia*. <https://www.researchgate.net/publication/346580175_Different_Aspects_of_Fetal_Rights_in_the_Light_of_Islam>

⁸⁷ Mustafā Ahmad Al-Zarqā, *Al-Madkhal Al-Fiqhi Al-Ām*, 6th ed., (1959), vol. 2, 747.

⁸⁸ Taqī al-Dīn Ibn Taimiyyah, *Majm'ua ul-Fatāwā*, vol. 4, ed. Al-Qāsim, 'Abdal Raḥmān (Beirut: Dār Al Arabiya, 1977), 102.

⁸⁹ *Ghurrah* is an Arabic term that means "compensation, which is equivalent to one-twentieth of Diyah paid in respect of causing miscarriage of fetus."

⁹⁰ Muhammad Umar Riaz Abbasi and et al., "Rights of children in Islamic Perspective and Child Abuse in Pakistani Society Causes and Remedies from Islamic Teachings," *Journal of Legal, Ethical and Regulatory Issues*, vol. 25, no. S6 (2022): 1-7. <https://www.researchgate.net/publication/365449982_Rights_of_children_in_Islamic_perspective_and_child_abuse_in_Pakistani_society_causes_and_remedies_from_Islamic_teachings>

⁹¹ Ibn Al-Humām and et al., *Sharḥ Faṭḥ Al-Qadīr*, vol. 2 (Beirut: Dar al-fikr, n.d), 495; see Muḥammad 'Al-Ā'uddīn Ḥaskafī, *Ad-Durar Al-Mukhtār Fil-Fatāwa*, (1863), 176. <<https://archive.org/details/in.ernet.dli.2015.323861/page/n5/mode/2up>> (accessed 08 June, 2023).

Scholars of *Shāfi'ī* have different opinions regarding aborting the fetus. The first opinion holds that it is permissible to abort the womb as long as the fetus has not breathed life into it. The second opinion, that of Ar Ramli, holds that abortion of the fetus was prohibited before the breath was breathed into it.⁹² Finally, the third opinion, that of Imām Al Ghazālī, forbids abortion of the fetus at all stages of the development of pregnancy.⁹³

2.4.1.1 Unborn Child's Right to Paternity and Lineage (Nasab)

One of the purposes of Islamic law is to protect lineage, as stated in the *Maqāṣid al-Sharī'ah*.⁹⁴ Once a child has been conceived or born, it deserves the right to paternity. In Islamic law, a child's *nasab* (lineage) is crucial to ascertain the child's legitimacy. The legitimacy of a child in the mother's womb after the father's death was established through gestation. Muslim jurists are unanimous that the minimum period for the birth of a child is six months.⁹⁵ While Imam Abū Ḥanīfah said if a child is born within two years after the death of the propositus, then there may be a presumption in this respect that the child was perceived in the lifetime of the propositus,⁹⁶ Imām Shāfi'ī, Imām Mālik, and Imām Ḥanbil extended it to 4 years.⁹⁷

Children born during legal wedlock are considered legitimate, and those born out of wedlock are considered illegitimate. However, a legitimate child is legally associated with the father, which is an honor for the father and family. In the event of the father's death, the legitimate children are eligible to inherit the property as the legal heir of the deceased.

⁹² Shams al-Din Muhammad b. Ahmad b. Hamzah al-Ramli, *Nihāiat Al Muḥtāj ala Sharḥ al Minhāj*, Vol.3 (Beirut: Dār ul Fikar, 1984), 325.

⁹³ Trans. Fazlul Karim, Imām Ghazālī, *Iḥyā' 'ulūm al-dīn*, 1st ed. (Karachi: Darul-Ishaat, 1993), 227-28.

⁹⁴ Abu Hāmid al-Ghazālī wrote categorically that the *Maqasid al Shari'ah* pursued five objectives: faith, life, intellect, lineage, and property, which were to be protected as an absolute priority.

⁹⁵ Tanzil ur Rehman, *Majmoa Qawneen e Islam*, vol. 5 (Islamabad: IRI, 1978), 1852.

⁹⁶ Mian Khurshid Ahmad Nasim, *Principles of Mohammedan Law*, 16th ed. (Lahore: Mazoor Book House, 1965), 506-507.

⁹⁷ Tanzil ur Rehman, 1854-1855.

Scholars of *Ḥanbalī* have a different viewpoint. They hold that "such abortion is reprehensible, yet pardonable."⁹⁸ The scholars of *Mālikī* hold that abortion is illegal irrespective of the pregnancy age.⁹⁹ Nevertheless, in pregnancy due to rape, incest, and adultery, some scholars have stated that abortion is permissible during the first 120 days of gestation. Nonetheless, other scholars have never permitted abortions, even for such causes.¹⁰⁰

2.4.1.2 Unborn Child's Right to Property

In Islamic law, a child in the womb of its mother is considered to possess the capacity to inherit property. "A child in its mother's womb can succeed if born alive. To determine succession, a child born alive is considered by law to have been alive and thus possessed inheritance rights since its conception."¹⁰¹ "The rights of inheritance for the fetus are subject to two conditions: its mother conceived the "fetus" or child in the "womb" in the lifetime of the propositus, and the fetus or child is brought into the world alive in any event, for a couple of moments."¹⁰² On this occasion, the jurists liken the signs of a child's life to "crying, feeding, breathing, moving," which are indicators of a living child.¹⁰³

Muslim jurists said that the fetus has the right to inherit if there are no impediments and two conditions are met: the existence of the fetus at the time of the deceased person, and the child should be born alive to take what was preserved. The majority of Muslim jurists, like *Mālikī*, *Shāfiʿī*, and *Ḥanbalī*, said that a newly born

⁹⁸ Muḥammad ʿAl-Āʿuddīn Ḥaskafī, *Ad Durar Al Mukhtār Fil Fatāwa*, (1863), 178, <<https://archi ve.org/details/in.ernet.dli.2015.323861/page/n5/mode/2up>> (accessed 08 June, 2023).

⁹⁹ Ibid.

¹⁰⁰ Moḥamad Firdaus Moḥamad Ismail and et al., "Islamic Moral Judgement on Abortion and its Nursing Applications: Expository Analysis," *International Nursing Scholars Congress*, vol. 28, no. S1 (2016). <<https://www.elsevier.es/es-revista-enfermeria-clinica-35-articulo-islamic-moral-judgement-on-abortion-S1130862118300706>>

¹⁰¹ Mohi Uddin, "Provisions of the Rights of Inheritance in Special Circumstances in the Muslim Law: An Overview," *Beijing Law Review*, vol. 12, (2021): 205-214. <<https://doi.org/10.4236/blr.2021.121012>>

¹⁰² Mohi Uddin, 209.

¹⁰³ Tanzil ur Rehman, 1871.

must be alive for three days,¹⁰⁴ while *Hanafi* jurists asserted that a fetus must be alive after delivery has been completed.¹⁰⁵

2.4.1.2.1 Distribution of Property

If the fetus is entitled to inherit and legal heirs agree to preserve the estate until the fetus is born, the distribution will not be made; if legal heirs are not willing to maintain the estate, they will take whichever is less of their portions based on six presumptions of a baby being born: death, male, female, twin male, twin female, and twin males and females.¹⁰⁶ There are various approaches or examples of distribution, as follows:

"If the fetus is not entitled to inheritance, whether male or female, distribution will be made without delay. For example, suppose someone leaves behind a wife, two germane sisters, a mother, and the wife of the pregnant father. In this case, the fetus will become either a consanguine brother (his share is residue, and nothing will remain because Qur'anic heirs will complete all shares) or a consanguine sister to the deceased person. Two germane sisters were excluded.

The estate distribution is suspended if the fetus is alone or excludes other legal heirs. If the fetus is born alive, it will inherit all the property; if it is born dead, other legal heirs will inherit it. For example, if someone dies and leaves behind the wife of the father, who is pregnant, the fetus will become either a consanguine brother or a consanguine sister. He will either become a residue (consanguine brother), take all the property, or consanguine sister, and take 1/2 of the estate.

Shares of the fetus are the same in both male and female presumptions that estate distribution will occur immediately. For example, someone may die and leave a wife and mother pregnant with another person. The fetus becomes a uterine brother or sister. Furthermore, their shares are the same.

The share of the fetus is changed based on the presumption that their shares will be suspended while other legal heirs will take their portions, whichever is less based on the six presumptions."¹⁰⁷

¹⁰⁴ Ibid, 1873.

¹⁰⁵ Wan Norain Mohd Salim, *Islamic Law of Succession: A Practical Guide to the Laws of Faraidh* (Malaysia: Printmate Sdn Bhd, 2012). See Tanzil ur Rehman, 1871.

¹⁰⁶ Manswab Mahsen Abdulrahman, "Distribution of Estate in Islamic Law: A Case Study of Missing Person, Child in the Womb and Hermaphrodite," *Journal of Islamic Studies and Culture*, vol. 8, no.1 (2020): 31-41. <http://jisc.thebrpi.org/journals/jisc/Vol_8_No_1_June_2020/4.pdf>

¹⁰⁷ Ibid, 35.

Islamic law is profound and extensive. This clarifies that legal relations create a new legal relationship between the unborn child and the propositus. Property distribution is based on the categories of legal heirs.¹⁰⁸

2.4.1.2.2 Wills and Gifts for Unborn Child

Wills and gifts have played a vital role in the lives of Muslims and non-Muslims for the greater interest of the legatee's benefit and for not harming other legal heirs. In Islamic law, the general rule for the validity of a *waṣiyyah* (will) or *hibah* (gift) is the acceptance of a legatee or donee. An exception to this general rule is an unborn child, a minor, or insane. In these situations, guardians have the authority to decide on their behalf.¹⁰⁹ Muslim jurists are unanimous that the will and gift in favor of the unborn child are valid if the child takes birth within six months of the date of making the will or gift. In other circumstances, the jurists differ based on their knowledge and beliefs.¹¹⁰

The beneficiary of the will must be identifiable by description, such as the children of A. The majority of *Sunni* jurists, except the *Mālikī*, stipulate that while the beneficiary may not have existed at the time of the making of the will, it must exist at the time of the testator's death, subject to the condition that children born more than six months after the death of the testator shall not be entitled to any part of the bequest. The *Mālikī* doctrine incorporates the entitlement of embryos born after the testator's death into the Moroccan Law. In Pakistan, a bequest for a person born after the bequest but before the testator's death is valid.¹¹¹

The *Ḥanafī* distinguishes between two cases: where the testator acknowledges and fails to acknowledge the existence of an embryo beneficiary at the time of making a will.¹¹² In the first case, the *Ḥanafī* school of thought believed in "The validity of a will or gift in favor of an unborn child who takes birth within two years of the making

¹⁰⁸ Tanzil ur Rehman, 1871-1874.

¹⁰⁹ Muhammad Zubair Abbasi and Shehbaz Ahmed Cheema, *Family Laws in Pakistan* (Karachi: Oxford University Press, 2018), 327.

¹¹⁰ Hamid Khan, *The Islamic Law of Inheritance* (Karachi: Oxford University Press, 2007), 226.

¹¹¹ Ibid, 228.

¹¹² I bid.

of the will, whether the mother is married or in her *'iddah* (waiting period) of divorce or death."¹¹³ In the second case, there is a further distinction between two contingencies: if the mother-to-be is actually or deemed to be married, e.g., in her *'iddah* of a revocable divorce, the will shall be valid only if the child is born less than six months after the making of the will, but if she is in her *'iddah* of irrevocable divorce or of death, the will shall be valid if the child is born within two years.¹¹⁴

2.4.2 The Right of the Child After Birth

According to Islamic law, Allah grants all children, including orphans and vulnerable children, equal status and treatment. The rights accorded to every child are neither discriminatory nor universal. Under the Islamic legal framework, all children, including orphans, inherit their rights from birth without any distinction or discrimination. These rights encompass the fundamental right to life, the right to a name, the right to good health, the right to education, the right to inheritance, the right to a safe and secure environment for optimal development, and many other rights related to people and property.¹¹⁵

Islamic law enshrines these rights, preventing alterations or interpretations based on cultural or societal norms. Parents, guardians, and the community must protect and uphold these rights for the benefit of all children, including orphans and other vulnerable children.¹¹⁶ Islam elaborates on these rights through the examples mentioned in the Qur'ān and *Sunnah*. Below is a brief discussion of these rights from an Islamic perspective.

¹¹³ ʿAbd al-Raḥmān al-Jazirī, *Kitāb al Fiqh ʿalaʾ al Madhāhib al Arabaʾh* (Beirut, Lebanon: Dārul Ḥadīth), 434.

¹¹⁴ Hamid Khan, 229.

¹¹⁵ Muhammad Munir, 32-33.

¹¹⁶ Ibid, 57-59.

2.4.2.1 *The Right to Well-being (life)*

Orphans, like ordinary children, have the right to live. Before the advent of Islam, children's rights to life were rarer. In many cases, parents would kill their children, demonstrating a profound disregard for the sanctity of human life, often driven by misguided beliefs and the desire to appease false deities. The Qur'ān clearly states the following:

"When news is brought to one of them of the birth of a female child, his face darkens, and he is filled with inward grief. With shame, he hides his people because of the bad news he has had. Shall he retain it on sufferance and contempt or bury it in the dust? Ah, what a wrong choice they made!"¹¹⁷

The attitude of the unbelievers was tantalizingly self-contradictory. On the one hand, they considered it a matter of shame to have daughters, and on the other, they had no compunction in saying that God had daughters. Notwithstanding the gross ignorance and blasphemy in the claim that God had children, the disbelievers cherished a concept of God that, in terms of their conception, showed God in an unfavorable light. Polytheistic beliefs had made them so blasphemous, bold, and insensitive to God's majesty that they had no hesitation in saying whatever they wished about Him.¹¹⁸

These were situations before Islam, but unfortunately, these inhuman atrocities still exist in the twenty-first century. For instance, in 2014, a Lahore (Pakistan) mother killed her two children in poverty.

"The inspector revealed the mother's modus operandi. He said they removed a rope from the neck of the baby boy while the girl had her hands and feet tied with rope when they recovered her body. The inspector said that Bisma killed the baby boy by strangulating him and throwing the daughter in a water tub after tying her hands and feet. When asked, the investigating officer said that the man was also present in the room when his wife was killing the children, but he did not stop her."¹¹⁹

¹¹⁷ Al-Nahl: 58-59.

¹¹⁸ Sayyid Abul A'ala Mawdūdī, 338.

¹¹⁹ Rana Tanveer, "Driven by Poverty: Mother Kills Her Two Children in Lahore," *The Express Tribune*, 5 March 2014, <<https://tribune.com.pk/story/679272/driven-by-poverty-mother-kills-her-two-children>> (accessed on 31 January, 2023)

According to Islamic law, life is an objective. No religion or entity can exist without safeguarding life. Therefore, the family and the state are responsible for protecting the child after birth. Killing an innocent child is considered murder, and the punishment for killing human life is given under Islamic law based on Allah's (S. W. T.) commands in the Qur'an:

"Because of that, we decreed upon the Children of Israel that whoever kills a soul unless, for a soul or corruption [done] in the land, it is as if he had slain humanity entirely and whoever saves a life it is as though he had saved the lives of all humanity."¹²⁰

On the authority of Ibn Mas'ood (may Allah (S. W. T.) be pleased with him), who said the Messenger of Allah (P. B. U. H.) said,

"It is not permissible to spill the blood of a Muslim except in three [instances]: the married person who commits adultery, a life for a life, and the one who forsakes his religion and separates from the community."¹²¹

The verse and *Ḥadīth* mentioned above command humans to protect and secure each other's lives. Moreover, no one can take anyone's life except in permissible circumstances, for example, through the punishment of *qiṣāṣ* (retaliation). Thus, protecting children is the duty of everyone, especially the parents and the state.

2.4.2.2 The Right to Registration and Family Name

After a child is born, the parents are bound to give the child a good name. According to the Prophet's instructions, "By the seventh day, the child should be given a good name and their head shaved, along with all other hygienic measures required for healthy growth. This could be a festive event. At any rate, the child's right to care is so inalienable that not even a mother, the closest person to the child, can tamper with it."¹²²

¹²⁰ Al-Mā'idah: 32.

¹²¹ Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, Ḥadīth 14.

¹²² Shabina Arfat, "Islamic Perspective of the Children's Rights: An Overview," *Asian Journal of Social Sciences and Humanities*, vol. 2, no.1 (2013): 302.

The Prophet (P. B. U. H.) loves children and explicitly mentions their rights in many places. The Prophet (P. B. U. H.) said, "Whoever is graced with a child should give him a beautiful name and beautify his character." On another occasion, he asserted, "Surely you will be called on the Day of Judgment according to your names and (the names of) your fathers."¹²³

Haḍrat Abu Wahab quoted the sayings of the Prophet (P. B. U. H.):

"Give (your children) the names of the prophets of Allah (S. W. T.). Almighty Allah (S. W. T.) likes most of the names of Abdullah and Abdur Rahman."¹²⁴

During the caliphate of ‘Umar ibn Al Khaṭṭāb (RA), an incident regarding children's rights occurred, as described below:

"A man came once to ‘Umar ibn al-Khattab (RA), complaining of his son's disobedience to him. ‘Umar (RA) summoned the boy and questioned him about his disobedience to his father and neglecting his rights. The boy replied, "O Amir al-Mu'minin, has not a child had rights over his father?" "Certainly," replied the great Caliph. "What are they?" enquired the boy. "They are that the father should choose his mother, give him a good name, and teach him the Qur’ān." "O Amir al-Mu'minin, my father did nothing of this. My mother is a magician: a fire worshipper. He named me Ju'alan (meaning a dung beetle or a scarab), and he did not teach me a single letter of the Qur’ān". Turning to his father, the Caliph said, "You have come to me to complain about the disobedience of your son. You have failed in your duty towards him before he has failed in his duty towards you; you have wronged him before he has wronged you."¹²⁵

In Islam, the principles of *Sharī‘ah* are based on the commands and permissions granted by Allah Almighty, serving as the ultimate legal authority for governing human conduct. These rights refer to the legal authority that allows for the regulation of specific actions by individuals, who are then obligated to comply with the required actions. It is

¹²³ Muhammad Akbar Khan, and Rabia Tus Saliha, "A Critical Analysis of the Convention on the Rights of the Child (CRC), 1989 in the Light of Islamic Law," *Hazara Islamicus*, vol. 9, no.1 (2020): 01-20.

¹²⁴ Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim, The Book of Manners and Etiquette*, Ḥadīth 38: 2132, and also mentioned by Shahid Ashraf, *Family Culture in Islam* (India: Anmol Publications, 2006), 247.

¹²⁵ Khalid Dorat, *The Rights of Children in Islam* (Unpublished Master's Dissertation, Rand Afrikaans University of South Africa, 1996), 18.

essential to acknowledge that all individuals, regardless of age, gender, or religious affiliation, are entitled to the same rights and freedoms. This includes children, such as orphans, who should be treated with the same respect and dignity as any other human being, regardless of their situation or background.¹²⁶

Once the family finalizes the name, the parents must register the child's name under the national laws for protection, such as citizenship, educational benefits, healthcare, inheritance, and many more. Therefore, from the beginning of Islam until now, the identification of children is recommended for the best interests of their rights, and it becomes an obligation for parents or legal guardians to take good care of their interests.

2.4.2.3 The Right to Health

Protecting children's health and ensuring access to quality healthcare is essential, as it is their fundamental right. Children's well-being may be compromised without proper care and access to healthcare.¹²⁷ With regard to the importance of health, Imam Al-Ghazali states that "A proper understanding and implementation of religion, from the standpoint of both knowledge and worship, can only be arrived at through physical health and life preservation."¹²⁸ The Prophet says, "Many people give themselves a raw deal with regard to two blessings: health and spare time."¹²⁹

Most people underestimate the importance of health when they are healthy. The Prophet says, "Second to faith, no one has ever been given a greater blessing than health." In another *Ḥadīth*, the Prophet defines the relative importance of health and wealth when he (P. B. U. H.) says, "Wealth is of no harm to a God-fearing person, but

¹²⁶ Ibid.

¹²⁷ Aḥmad Talha, Muḥammad Tayyab, and Tayyaba Sardar, "Child Rights and Its Implementation Status in Pakistan," *Journal of Asian Development Studies*, vol. 12, no. 3 (2023): 512-524.

¹²⁸ Muḥammad Haytham Al-Khayat, *Health as a Human Right in Islam* (Cairo, Egypt: World Health Organization Regional Office for the Eastern Mediterranean, 2004), 14.

¹²⁹ Abu Abdullāh Muḥammad Ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī, The Book of Ar-Riqāq*, Book 81, Ḥadīth No. 1: 6412, Sunnah.com, <<https://sunnah.com/Bukhārī:6412>> (accessed 6 August, 2024).

to the God-fearing, health is better than wealth."¹³⁰ It is evident from the Prophet's (P. B. U. H.) sayings that health is better than wealth; in other words, health is the most incredible wealth in this life.

Allah (S. W. T.) created modes of safeguarding human health from the beginning of human life. Such as, at the time of birth of a child, Allah (S. W. T.) orders the mother to breastfeed¹³¹ the child for two years, which gives complete nourishment and health. In the Qur'ān, Allah (S. W. T.) says,

"The mothers shall give this to their offspring for two years if the father desires to complete the term. However, he bears the cost of food and clothing on equitable terms. No soul shall have a burden on it that is more significant than it can bear. No mother was mistreated because of her child. Nor the father, on account of his child, shall an heir be chargeable in the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame for them. If ye decide on a foster mother for your offspring, there is no blame on you, provided ye pays (the mother) what ye offered on equitable terms. But fear Allah (S. W. T.) and know Allah (S. W. T.) sees what ye do well."¹³²

This verse contains injunctions relating to *raḍā'ah*, or the suckling of children. In verses appearing earlier and later than this, the injunction of *talaq* (divorce) has been addressed. In between, there appear injunctions relating to the suckling of children because it generally happens that issues concerning the feeding and upbringing of children are disputed following a divorce. Hence, this verse offers moderate injunctions that can be feasible for men and women. For the two situations of suckling and weaning, whether these show up during the period of marriage or after divorce, a system was suggested that helps stop mutual bickering or injustice to any of the parties.¹³³

¹³⁰ Imām bin Yazeed and Ibn Mājah Al Qazwinī, *Sunan ibn Mājah*, Riyādh. Ed. 1st, 2141, 12:5. See also *Sunan ibn Majah*, Book No.12, Ḥadīth No. 5: 2141, <<https://sunnah.com/ibnmajah:2141>> (accessed 01 February, 2023).

¹³¹ Breast milk is recommended as the infant's sole source of nutrition for the first six months of life. It is recommended that complementary foods be added to the infant's diet at 6 months of age and that breastfeeding continues up to two years of age and beyond; [Christine M. Dieterich](#), "Breastfeeding and Health Outcomes for the Mother-Infant Dyad", *Pediatric Clinics of North America*, vol. 60, no. 1 (2013) 31–48, <<https://doi.org/10.1016/j.pcl.2012.09.010>>

¹³² Al-Baqarah: 233.

¹³³ *The Holy Qur'ān English Translation of the Meanings and Commentary*, 164.

Some rules concerning *raḍā'ah* or suckling of children come from this verse; the first rule is that suckling is an obligation of the mother. She will be a sinner if she does not feed without a valid reason or because of some hostility or displeasure. She cannot accept any payment for suckling from her husband as long as she is married to him because that is her own duty.¹³⁴

The second rule is about the total period of suckling, which is two years. Unless there is some particular reason, it is the child's right that this period be completed. However, based on some verses of the Qur'ān and reports from a *Ḥadīth*, Imām Abu Ḥanīfah ruled that if it were carried on over 30 months or two and a half years, all the legal effects of suckling would be applicable. If it were done because of the child's weakness, a legitimate excuse, it would be no sin either.¹³⁵ Anas b. Mālīk reported a *Ḥadīth*:

"I have never seen anyone more kind to one's family than Allah's Messenger (P. B. U. H.) and Ibraḥīm was sent to the suburb of Medina for suckling. He used to go there, and we accompanied him. He entered the house, and it was filled with smoke as his foster father was a bricksmith. He took him (his son Ibraḥīm), kissed him, and then came back. 'Amr said that when Ibraḥīm died, Allah's Messenger (P. B. U. H.) said: Ibraḥīm is my son, and he dies as a suckling babe. He has two foster mothers who would complete his suckling period in Paradise."¹³⁶

Furthermore, Ad-Daraqutnī related that Ibn-ʿAbbās said Allah's Messenger said: "suckling establishes *tahrim* (prohibition, i.e., one cannot marry his mother or sister from suckling¹³⁷) only within the first two years." Further, Imām Mālīk reported this *Ḥadīth* from Thawr bin Zayd, who narrated that Ibn ʿAbbas related it to the Prophet (P. B. U. H.), Ad-Darawardī reported this *Ḥadīth* from Thawr, who narrated it from

¹³⁴ Imām ʿAlāudīn Abu Bakar bin Masood Alkasānī, *Badāʿe al-Ṣanāʿe*, vol. 4, Trans. M. Saadullah (Lahore: Diyal Sang Trust, 2013), 84.

¹³⁵ Muḥammad Shafī, vol. 1, 580.

¹³⁶ Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim, The Book of Virtues*, Book No. 43, Ḥadīth 84: 2316, <<https://sunnah.com/muslim:2316>> (accessed 25 August, 2023).

¹³⁷ Muslimway, "The Suckling Period is only Two Years," <<https://www.muslimway.org/tafsir-ibn-kathir/526-2-Al-Baqarah-The-Cow-286-verses/11500-the-suckling-period-is-only-two-years>> (accessed 17 December, 2023).

Ikrimah, who narrated it from Ibn ‘Abbas. In this more authentic narration, he added, "Whatever occurs after the two years is not considered."¹³⁸

The third rule of Islamic law in this verse is that while suckling the child is undoubtedly the mother's responsibility, the mother's sustenance, including all necessities of life, is the father's responsibility. This responsibility continues as far as the wife's marriage or the *‘iddah* (post-divorce waiting period) continues. When divorce and *‘iddah* are matured, the husband's responsibility towards the wife's expenses will end. Still, the father will continue to be obligated to pay for the child's suckling. The jurisprudence further elaborated that matching expenses will be obligatory, regardless of the husband and wife's wealth or poverty. While there is total agreement among Muslim jurists on this matter, they differ when the husband and wife have different financial statuses. Following Al-Khaṣṣāf, the author of *Hidāyah*, ruled that should the woman be poor and the man rich, her expenses would be average, which is higher than those of the poor and lower than those of the rich. According to Al-Karkhī, the status of the husband will be the criterion.¹³⁹

"The Qur’ān endorses breastfeeding as a fundamental right for every newborn and infant with high recommendations for completing a breastfeeding cycle of two years, which is emphasized in the case of infants in dire need of milk nutrition. Hence, this verse (2: 233) carries a confirmed right to infants' breastfeeding, and therefore, Islamic law considers breastfeeding as one of the child's most fundamental rights."¹⁴⁰

The right to proper nourishment and health was provided at birth. Moreover, the father is responsible for adequately maintaining the children and fulfilling all the necessities of life for better health and development as a human being.

The right to health is vital for everyone, but it is particularly significant for children because they are vulnerable and are more at risk of illness and health complications. Furthermore, when children are free from diseases, they are more likely

¹³⁸ Ṣaḥīḥ-ur-Reḥmān Al Mubārakpurī, *Tafsīr Ibn Kathīr* (Lahore: Darussalam: 2000), 1:651-652.

¹³⁹ Ibid, vol.1, 653.

¹⁴⁰ Benaouda Bensaïd, "Breastfeeding as a Fundamental Islamic Human Right," *Journal of Religion and Health*, vol. 20, Springer.com, <<https://link.springer.com/article/10.1007/s10943-019-00835-5>> (accessed 4 July, 2023).

to attain a higher level of physical, intellectual, and emotional development and grow into healthier and more productive adults. Over the years, the world has made significant progress in fulfilling children's rights to health, and child mortality is declining worldwide.¹⁴¹

In Islam, the right to health for children is as essential as it is for adults. Indeed, Islamic teachings guide parents and legal guardians regarding their responsibility towards their children. A classical jurist, Burhān al Dīn al Marghīnānī, mentioned in his book that "the maintenance of minor children is the liability of the father, and no one else participated in this with him." This is due to the words of Allah (S. W. T.), "but he (the father of the child) shall bear the cost of their food and clothing on equitable terms."¹⁴²

It is essential to mention that the orphan child has a suckling right up to two years. The father is responsible for maintaining the child and his wife for food and clothing, but in case of a father's death, scholars of *Ḥanafī* opine that the person who will be the legal heir of the child will contribute to the maintenance, and the same principle applies even after two years of milk feeding.¹⁴³

2.4.2.4 The Right to Education

Allah (S. W. T.) sent the first revelation to the Holy Prophet (P. B. U. H.) and said, "Recite in the name of Allah (S. W. T.) who created man from a clot of congealed blood. Recite, and your Lord is the most generous. Who taught by the pen? Taught man what he did not know."¹⁴⁴ The Prophet (P. B. U. H.) was told to read in the name of Allah, the universe's Creator. The first message given by Allah (S. W. T.) to His Prophet (P.

¹⁴¹ Organization of Islamic Cooperation Statistical, Economic and Social Research and Training Centre for Islamic Countries (SESRIC), "The State of Children in OIC Member Countries (OIC Outlook Series June 2015)," <<https://sesricdiag.blob.core.windows.net/sesric-site-blob/files/article/506.pdf>> (accessed 13 July 2023).

¹⁴² Burhan Ad-Din Al-Farghani Al-Marghinani, *Al-Hidayah (The Guidance): Translation of Al-Hidayah fi Sharh Bidayat al-Mubtadi*, translated by Imran Ahsan Khan Nyazee (Lahore: Federal Law House, 2015), 1061.

¹⁴³ Muḥammad Shafī, vol.1, 583.

¹⁴⁴ Al-'Alaq: 1-5.

B. U. H.) emphasizes the importance of reading (education) and beginning an action in the name of Allah (S. W. T.). After the mention of the creation of the universe, there is a particular reference to the creation of a man who was created from a clot of blood, from which the entire human body took shape. Allah (S. W. T.) gave man knowledge and taught him the art of writing, through which knowledge gradually spread. Every person is born without knowledge, but as he grows up, he learns with the blessings of Allah.¹⁴⁵

In another verse, Allah (S. W. T.) says in the Qur'ān, "Ask them: Are those equal to those who do not know? Only they will remember [who are] people of understanding."¹⁴⁶ In another place in the Qur'ān, it is mentioned that "Allah (S. W. T.) will raise to high rank those of you who believe and are endowed with knowledge."¹⁴⁷ These verses emphasize the importance of gatherings held for good causes or to please Allah, such as recitation, guidance, or Friday prayers. They encourage Muslims to make space for others, as practiced in the Prophet's (P. B. U. H.) meetings. Allah (S. W. T.) promises generosity in all aspects of life—sustenance, residence, the grave, and paradise—for those who show such consideration. Being seated far from the Prophet (P. B. U. H.) does not diminish one's status, nor should leaving a meeting be seen as an insult. True status is determined by faith and knowledge, with Allah (S. W. T.) rewarding efforts in seeking religious understanding.¹⁴⁸

The Prophet (P. B. U. H.) said, "Life on earth, including the ants and the fish in the water, pray for the knowledgeable."¹⁴⁹ The Prophet (P. B. U. H.) emphasizes the importance of education and guides Muslims to seek education and impart it to others. After the Battle of Badr, the Prophet consulted with his close companions Abu Bakr al-Ṣiddīq and 'Umar Ibn al-Khaṭṭāb as to the fate of the prisoners. Abu Bakr suggested releasing them on the condition of ransom, while Umar suggested killing them. The Prophet later ransomed prisoners for freedom. He demanded wealthy prisoners to pay

¹⁴⁵ Samar Khalid, *A Selection of Tafseer from the thirty Paras of The Holy Qur'an*, Trans. Samar Mubarakmand (Lahore: International Darussalam, n.d.), 545-546.

¹⁴⁶ Al-Zumar: 9.

¹⁴⁷ Al-Mujādilah: 11.

¹⁴⁸ Samar Khalid, 463-464.

¹⁴⁹ Imām Abu 'Isa Muhammad at-Tirmidhī, *Jām'ie al-Tirmidhī*, Chapter 277, Ḥadīth 5: 2682, <<https://www.islamicfinder.org/Hadith/tirmidhi/knowledge/2682/>> (accessed 13 July, 2023).

based on their financial situation. He required poor but literate prisoners to teach ten Muslim children to read and write. Without any conditions, he released those who were neither rich nor literate.¹⁵⁰

It is clear from the above example that education and learning were of utmost importance even 1400 years ago. The same approach to getting an education was endorsed at the first World Conference on Muslim Education held in Mecca in 1977 as the purpose of education is to foster the balanced development of the human personality by nurturing the spirit, intellect, rational faculties, emotions, and physical senses. It must therefore support growth in all dimensions—spiritual, intellectual, imaginative, physical, scientific, and linguistic—both at the individual and collective levels, guiding each towards goodness and the pursuit of perfection. Ultimately, the objective of Muslim education is the realization of complete submission to Allah, encompassing the individual, the community, and humanity as a whole.¹⁵¹

Education is essential for everyone without discrimination, whether adults or young, men or women, Muslims or non-Muslims. Knowledge is not considered the property of anyone; a child born as a Muslim or non-Muslim obtains knowledge about the new world from their mother or surroundings. Allah (S. W. T.) empowers a newborn child with five senses that he develops over time. Knowledge and education are synonymous in our context, as modern education starts at three years. In contrast, from an Islamic perspective, a child begins learning and acquiring knowledge from the mother's lap. Furthermore, education is classified as religious or modern. Religious education started with the newborn's birth when the *Azan* and *iqamat* were recited to his ears.¹⁵² Accordingly, the Prophet (P. B. U. H.) said, "When your child should start speaking, make them learn the *Kalimā-i-Tauhīd* (unification of oneness of God), that is "*la ilaha illaLlah Muhammadur Rasulullah*" (I bear witness that there is no deity but Allah, and I bear witness that Muhammad is the messenger of Allah.)"¹⁵³ Thus, religious

¹⁵⁰ Rebaz R. Khdir, "The Fate of Prisoners of War Between the Qur'an, Traditions of the Prophet Muḥammad and Practice of the Islamic State in Iraq and Syria," *European Scientific Journal*, vol. 13, no. 34 (2017): 3.

¹⁵¹ Syed Ali Ashraf, *New Horizons in Muslim Education* (Cambridge: Hodder & Stoughton, 1985), 4.

¹⁵² Shahid Ashraf, *Family Culture in Islam* (India: Anmol Publications, 2006), 259.

¹⁵³ Ibid, 260.

education has become part of teaching and learning. It has become a part of any Muslim family's training, through which children learn ethical and moral values.

Since then, modern education has become a necessity for worldly life. It includes basic literacy skills, such as reading and writing. Moreover, no discrimination was based on sex, religion, or caste. Education is considered a fundamental right¹⁵⁴.

This research explores the importance of education for children who are unable to access it, emphasizing the need to determine who will provide the benefits of free education to orphaned children and identify areas where education remains inaccessible. It also examines the role of those who provide education to orphans, highlighting the responsibilities of various stakeholders in addressing these challenges. This research aims to provide children's rights given in Islamic law to vulnerable children, including orphans.

2.4.2.5 The Right to Maintenance and Property

The principles of *Sharī'ah* offer comprehensive guidance to believers on matters of their faith and daily lives. These guidelines facilitate the organization of individuals' lives, making them more fulfilling. Our fundamental requirements, including food, clothing, and shelter, are crucial to our well-being. According to *Sharī'ah*, fathers are responsible for meeting their children's basic needs.

Maintenance generally refers to the expenses incurred by a person to provide his wife, children, and parents with food, clothing, and accommodation. Muslim jurists are unanimous in their belief that children are among those entitled to maintenance under Islamic law. The basis of their entitlement is *qarābah* (kinship) of blood and lineage.¹⁵⁵

¹⁵⁴ Universal Declaration of Human Rights, Article 26.

¹⁵⁵ Imām 'Alāudīn Abu Bakar bin Masood Alkasānī, *Badā'ie al-Ṣanā'ie*, vol. 4, Trans. M. Saadullah (Lahore: Diyal Sang Trust, 2013), 84-86.

According to the Qur'ānic principles, wives and children have the right to maintenance, even if they can receive a share of their father's property. *Sharī'ah* provides guidelines for determining the maintenance of wives and children, which should be based on *kifāyah* (sufficient) and *m'arūf* (acceptable) criteria. After formulating *kifāyah* and *m'arūf*, it is essential to determine the elements of children's *kifāyah* needs. Sufficient need depends on the socioeconomic class of the family and the social needs or health status of individuals. Similarly, maintenance paid per sufficient needs should be *m'arūf* (acceptable).¹⁵⁶

Muslim jurists are unanimous that maintenance is the right of a wife and children, but they differ in terms of the period of maintenance.¹⁵⁷ *Hanaḥī* and *Mālikī* agreed that boys' entitlement to maintenance will end when they marry. However, there was a difference in opinions concerning boys.¹⁵⁸ *Hanaḥī* jurists said that boys are eligible to remain until they reach working age, although they have yet to reach puberty. However, there is no fixed minimum working age.¹⁵⁹ At the same time, *Mālikī* jurists maintains that the entitlement of boys will come to an end when they reach the age of puberty, that is, 18 years.¹⁶⁰ *Shāfi'ī* jurists maintain that there is no difference between boys and girls; their right to maintenance ends when they reach puberty, that is, 15 years. Furthermore, boys and girls have the same working capabilities. On the other hand, *Hanbalī* jurists do not set any age for terminating children's entitlement to maintenance. According to *Hanbalī* jurists, children are eligible until they are poor and unable to fulfill their needs.¹⁶¹

The discussion above clarifies that *Sharī'ah* principles determine all the factors for the distribution of maintenance while following the principles of *kifāyah* and *m'arūf*.

¹⁵⁶ Bahiyah Aḥmad and et al, "Assessing the Rate of Child Maintenance (Financial Support) from a Shari'ah Perspective," *Al-Jāmi'ah: Journal of Islamic Studies*, vol. 58, no. 2 (2020): 293-322.

¹⁵⁷ Imām 'Alāudīn Abu Bakar bin Masood Alkasānī, vol. 4, 48.

¹⁵⁸ Ibid, 48.

¹⁵⁹ Abdur Rehmān Aljaziri, *Kitab ul Fiqh*, 6th ed., vol. 4, Transl. Manzoor Ahsan Abbasi (Lahore: Maktaba Jadeed Press, 2000), 791.

¹⁶⁰ Badruddin Hī Ibrahim and Azizah Mohd, "The Child's Right to Maintenance: The Extent of Family's Responsibilities in Islamic Law and According to the Family Law Provisions of Muslim Countries," *Arab Law Quarterly*, vol. 25, (2011), 401-422.

¹⁶¹ Ibid.

As a result, maintenance is the children's right, and the father is bound to maintain them. This right is based on the relationship between fathers and children and includes the inherited right to property.¹⁶²

Property rights are private ownership rights. It is important to note that while modern legal systems are secular, Muslim law is a divine revelation. This means that institutions, such as individual ownership, private rights, and contractual obligations, are sacred. Infringement of someone else's property and rights is not only a violation of the law but also a sin against religion and Allah (S. W. T.). Private ownership and individual rights are gifts from Allah (S. W. T.), and lawful means of acquiring property or entitlement to rights, such as creative labor, inheritance, and contracts, are channels of God's bounty and goodness to humans.¹⁶³ As the Qur'ān states, "Indeed, the land belongs to Allah, and he makes whomsoever he willeth of his servants inherit."¹⁶⁴

2.4.2.6 The Right to Obligatory Bequest

Waṣiyyah is a legal declaration of intention by a Muslim regarding property that he desires to be carried into effect after his death.¹⁶⁵ *Waṣiyyah* is a form of donation and charity work. It means making a will for the specified beneficiaries. As a verbal noun, *waṣiyyah* refers to the action of the person who makes the *mūṣī* (will), as the Qur'ān mentions, "O ye who believe, when death approaches any of you, take witnesses among yourselves when making bequests."¹⁶⁶ *Waṣiyyah* refers to the item given through it (*mushā bihī*) as the Qur'ān states, "after the payment of legacies and debts."¹⁶⁷ In the literal sense, *waṣiyyah* means to determine, command, recommend, connect, and so forth.¹⁶⁸

¹⁶² Imām 'Alāudīn Abu Bakar bin Masood Alkasānī, vol. 4, 83-84.

¹⁶³ Saba Habachy, "Property, Right, and Contract in Muslim Law," *Columbia Law Review*, vol. 62, no. 3 (1962): 450-473, <<https://www.jstor.org/stable/1120053>>

¹⁶⁴ Al-A'arāf: 128.

¹⁶⁵ Hamid Khan, 225.

¹⁶⁶ Al-Mā'idah: 106

¹⁶⁷ Al-Nisa: 11

¹⁶⁸ M. Habibur Rahman, Abu Talib Mohammad Monawer and Noor Mohammad Osmani, "Waṣiyyah Wajibah in Islamic Estate Planning: An Analysis," *Journal Islam dan Masyarakat Kontemporari*, vol. 21, no.3 (2020): 1, <<https://ir.uitm.edu.my/id/eprint/42979/1/42979.pdf>> (accessed on 7 August, 2024)

According to Ḥanafī jurists, *waṣiyyah* is defined as "voluntarily transferring ownership of an asset or benefits, which will be effective after the donor's death."¹⁶⁹ *Mālikī* school defines *waṣiyyah* as "a contract that establishes the right in one-third of the wealth of the contracting party, which will be effective upon his death."¹⁷⁰ *Shāfiʿī* school defines *waṣiyyah* "as donating the right related, though implicitly, to the duration after death."¹⁷¹ *Ḥanbalī* school defines *waṣiyyah* "as the dealing or instruction to deal after one's death or donating the wealth for the duration after death."¹⁷² Based on the definitions obtained, it is concluded that *waṣiyyah* entails making a will to donate and distribute wealth, limited to one-third of one's property, which becomes effective upon the donor's death.

In a technical sense, the concept of obligatory bequest is a product of contemporary scholars in the realm of Muslim family law. It is compulsory and is sanctioned by law. Historically, under classical Islamic law, it is directed towards a specific class of individuals who are not entitled to inheritance.¹⁷³ The distribution of this obligatory bequest among grandchildren is governed by the rules of inheritance, which stipulate a double share for males. This practice helps alleviate grandchildren's financial hardships and aims to level their social standing with their more affluent cousins.¹⁷⁴

A modern scholar, Ṣalāḥ al-dīn Sulṭān,¹⁷⁵ defines *waṣiyyah wājibah* as "a fraction of property that the grandchild of the deceased deserves when his father dies in the lifetime of his grandfather. After that, he takes the portion of his father the same as he lives, which shall not exceed one-third, and the law requires that." Additionally,

¹⁶⁹ Abdur Reḥmān Aljaziri, *Kitāb ul Fiqh*, translated by Manzoor Ahsan Abbasi, vol. 3 (Lahore: Ulma Academy, 2000), 297.

¹⁷⁰ Ibid, vol. 3, 298.

¹⁷¹ Ibid, 298.

¹⁷² Ibid, 300. See M. Habibur Rahman, 2.

¹⁷³ Mian Khurshid Ahmad Nasim, 183. A bequest to an heir is not valid unless the other heirs consent to the bequest after the death of the testator.

¹⁷⁴ Haseeb Fatima, "A Critical Appraisal of Obligatory Bequest as Prevalent in Muslim Countries," *Islamic Studies*, vol. 63, no.2 (2024): 213–240, <<https://doi.org/10.52541/isiri.v63i2.3071>> (accessed on 7 August, 2024).

¹⁷⁵ Ṣalāḥ al-Dīn Sulṭān, *Al-Mīrāth wal Waṣiyyah bayna al-Sharī'ah wal Qānūn* (USA: Sultan Publishing, 2006).

Muḥammad Ṭāhā Khalīfah defines *waṣiyyah wājibah* as "the obligatory *waṣiyyah* in one-third of the legacy for the child of the deceased's son. The latter died in the deceased's lifetime or died with him legally."¹⁷⁶

Recently, *ijtihād* (reasoning) has been introduced as a reform in inheritance law to enable grandchildren to receive a specific portion of their grandparents' estate upon their death. Several Muslim countries have enacted such reforms, including Egypt (in 1943 and 1946), Sudan (in 1945), Syria (in 1953), Tunisia (in 1956 and 1959), Morocco (in 1958), Iraq (in 1959 and 1963), and Pakistan (in 1961).¹⁷⁷

In conclusion, orphaned children acquire the right to their grandfather's property through an obligatory bequest rooted in *ijtihād* principles. This legal provision safeguards the welfare and rights of orphaned descendants within Islamic inheritance law. The right aligns with Islam's ethical and moral directives and highlights *ijtihād's* role in maintaining justice, equity, and relevance in Islamic law. This blend of tradition and progressive interpretation underscores Islamic jurisprudence's enduring vitality in fostering a compassionate and just society.

2.4.2.7 The Right to Religion

Apart from the obligatory bequest, orphans have other fundamental rights that ensure their well-being and development. Among these, the freedom to choose one's religion is particularly significant and highly valued in Islamic teachings. Islam advocates for individuals' autonomy to profess their faith without fear of persecution or coercion. This right is enshrined in Islamic law and is fundamental to religious practice and belief. Islamic law upholds justice, autonomy, and respect for human dignity by ensuring that individuals can freely profess their faith. This commitment to religious freedom highlights Islamic jurisprudence's progressive and inclusive nature, aligning with contemporary human rights and personal liberty values.

¹⁷⁶ M. Habibur Rahman, 3.

¹⁷⁷ Kemal Faruki, "Orphaned Grandchildren in Islamic Succession Law: A Comparison of Modern Muslim Solution," *Islamic Studies*, vol. 4, no.3 (1965): 253, <<https://www.jstor.org/stable/20832807>> (accessed on 3 June, 2022).

"Abu Huraira reported that the Prophet (P. B. U. H.) said, 'No child is born, but that he is upon instinct. His parents made him a Jew, a Christian, or a Magian. As an animal gives birth to a child with limbs intact, do you detect any flaws?' Then, Abu Hurairah recited the verse, 'The nature of Allah upon which he has set people' (30:30)". It is evident from the *Ḥadīth* that a child is born on a *fitrah*; he is not born a Jew, Christian, and so on. As Ibn Shihab said, "The funeral prayer should be offered for every child, even if he were the son of a prostitute, as he was born with a natural inclination towards Islam. If his parents are Muslims or only his father, and even if his mother practices other than Islam, and if he cries after delivery before his death, his funeral prayer must be offered. If the child does not cry after the delivery, his funeral prayer should not be offered, and he will be considered a miscarriage."¹⁷⁸

Moreover, a *Ḥadīth* narrated by Mālik bin Anas, and also reported by Talha bin ʿUбайдullah, includes a slight variation in which the Prophet (P. B. U. H.) remarked:

"By his father, he shall succeed if he were true (to what he professed); or: By his father, he would enter heaven if he were true (to what he professed)."¹⁷⁹

Allah commanded Messenger Muḥammad (P. B. U. H.) to profess the religion of Islam. A *Ḥadīth* is reported on the authority of Abu Huraira that the Messenger of Allah said:

"I have been commanded to fight against people so long as they do not declare that there is no god but Allah, and he who professed it was guaranteed the protection of his property and life on my behalf except for the right affairs rest with Allah."¹⁸⁰

¹⁷⁸ *Ṣaḥīḥ al-Bukhārī*, vol. 2, Book 23, Ḥadīth 44. See *Ṣaḥīḥ al-Bukhārī*, vol. 2 Book 23 Ḥadīth 44: 1358, <<https://sunnah.com/Bukhari:1358#>> and *Ṣaḥīḥ Muslim*, Book 46, Ḥadīth 37: 2658e, <<https://sunnah.com/muslim:2658e>> (accessed 17 July, 2023).

¹⁷⁹ *Ṣaḥīḥ Muslim*, Book 1, Ḥadīth 9. See *Ṣaḥīḥ Muslim*, Book 1, Ḥadīth 9: 11b, Sunnah.com, <<https://sunnah.com/muslim:11b>> (accessed 17 July, 2023).

¹⁸⁰ *Ṣaḥīḥ Muslim*, Book 1, Ḥadīth 34. See *Ṣaḥīḥ Muslim*, Book 1, Ḥadīth 34: 21b, Sunnah.com, <<https://sunnah.com/muslim:21b>> (accessed 17 July, 2023).

Sharī'ah integrates the rights above based on the Qur'ān and *Sunnah*. Therefore, it is incumbent upon states to enact legislation for the well-being of orphans based on *Sharī'ah* principles.

2.5 CONCLUSION

Islamic law fundamentally aims to protect orphaned children, with the Qur'ān and *Sunnah* serving as the primary sources offering comprehensive protection and guidance. Islam uniquely addresses the needs of orphans and provides a detailed mechanism for their care and welfare. Thus, Muslim states must incorporate these provisions into their legal frameworks and create specialized laws that directly benefit orphans.

Moreover, *Sharī'ah* offers a comprehensive and structured framework for the protection of orphans' rights, grounded in the primary sources of Islamic law, that is the Qur'ān and *Sunnah*. This framework affirms the orphan's entitlement to well-being, financial maintenance, preservation of lineage, and religious guidance. Central to this protective mechanism is the concept of *Kafālah*, which serves as an institutionalized system for the care, guardianship, and social integration of orphaned children within the Islamic legal tradition.

The state is predominantly responsible for addressing the unique challenges orphans face. The state must implement laws that protect the rights of orphans and ensure that these rights are upheld at both national and international levels. With the increasing number of orphans globally, there is an urgent need for legislative protection aligned with the principles of *Sharī'ah* to safeguard the well-being and future of these vulnerable children.

CHAPTER THREE

LEGAL FRAMEWORK FOR THE RIGHTS OF ORPHANS UNDER INTERNATIONAL LAW

3.1 INTRODUCTION

This chapter explores Pakistan's international commitments concerning the protection and promotion of children's rights, with a particular focus on orphaned children. As a signatory to several key international conventions—including the United Nations Convention on the Rights of the Child (UNCRC), its Optional Protocols, and the Covenant on the Rights of the Child in Islam under the Organization of Islamic Cooperation (OIC)—Pakistan has demonstrated a formal commitment to advancing the welfare of children. These instruments offer broad principles for the survival, development, protection, and participation of children, laying the groundwork for national legal and policy reforms. However, despite these international obligations, the specific rights and needs of orphaned children remain inadequately addressed within both global and domestic frameworks. This chapter critically examines the scope, limitations, and implementation of Pakistan's international obligations, evaluating their effectiveness in securing the rights of orphans. It also highlights the significance of Islamic principles, such as *Kafālah*, in shaping culturally appropriate responses and underscores the necessity of developing a more targeted legal regime.

3.2 DEVELOPMENT OF CHILDREN'S RIGHTS AT THE INTERNATIONAL LEVEL

After World War I, the widespread loss of life and mass casualties highlighted significant concerns for the welfare of children. In response, there was a global movement to protect children's rights. The League of Nations was pivotal in this effort,

initiating various international instruments, including the Geneva Declaration of the Rights of the Child in 1924. This declaration first incorporated children's rights, which contained the following principles:

"By the present Declaration of the Rights of the Child, commonly known as 'Declaration of Geneva,' men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

- The child must be given the means required for standard, material, and spiritual development.
- The hungry child must be fed, the sick child must be nursed, the backward child must be helped, the delinquent child must be reclaimed, and the orphans must be sheltered and supported.
- The child must be the first to receive relief during distress.
- The child must be put in a position to earn a livelihood
- The child must be protected from every form of exploitation.
- The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men."¹

It is important to note that the Declaration of Geneva mentioned "orphans" in its principles and acknowledged the right to shelter and aid with their needs. Furthermore, the 1948 Universal Declaration of Human Rights codified different legal principles, rights, and obligations. Articles 25 and 26 mainly highlight the concerns of children for their betterment and a secure future². Thenceforth, the General Assembly passed a resolution in November 1959 and declared the "UN Declaration of the Rights of the Child (1959)." This was adopted unanimously by all 78 Member States of the United Nations General Assembly in Resolution 1386 (XIV).³ The General Assembly declares this Declaration of the Rights of the Child with the aim of ensuring a happy childhood

¹ *UN Documents*, "Geneva Declaration of the Rights of the Child," <<http://www.un-documents.net/gdrc1924.htm>> (accessed 31 October, 2022).

² The Universal Declaration of Human Rights, 1948, Article 25(2), "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." Article 26, "1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all based on merit. 2. Education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. 3. Parents have a prior right to choose the kind of education that shall be given to their children."

³ *Humanium*, "Declaration of the Rights of the Child, 1959," <<https://www.humanium.org/en/declaration-rights-child-2/>> (accessed 13 August, 2024).

for every child, allowing them to benefit from the rights and freedoms outlined within it for their own well-being and the betterment of society. It urges parents, individuals, voluntary organizations, local authorities, and national governments to acknowledge these rights and work toward their implementation through legislative and other progressive measures, adhering to the ten principles stated in this document.⁴ The declaration had no binding effect at the state level. After thirty years, the General Assembly adopted The United Nations Convention on the Rights of the Child (UNCRC).

"The day of adoption was the thirtieth anniversary of the proclamation of the previous specialized UN human rights document concerning children: the Declaration of the Rights of the Child. A Convention demands an active decision by an individual state to ratify it. In addition, a mechanism for monitoring a nation's compliance is usually an integral part of a convention. Governments that sign the new Convention must report to a Committee on the Rights of the Child."⁵

The UNCRC was enacted on September 2, 1990, and the required 20 States ratified it. The Convention is a complete statement of children's rights under the force of international law.⁶ Further, a mechanism for monitoring compliance is an integral function of the Convention, and signatory states must report to the Committee on the Rights of the Child. Although there is no provision for inter-state or individual complaints, the fact that the ratifying states agree to submit regular reports to the Committee, which are made public, provides an element of legal accountability.⁷

The UNCRC focuses on the best interest of the child. Article 3(1) reads, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the child's best interests shall be a primary consideration."⁸ A child's rights involve provision, protection, prevention, and participation in influencing one's situation and decision-

⁴ United Nation Declaration of the Rights of the Child (1959), Preamble.

⁵ Population Council, "Convention on the Rights of the Child," *Population and Development Review*, vol. 15, no. 4 (1989): 779-783, <<https://www.jstor.org/stable/1972615>.>

⁶ Leila Seth, "The Rights of the Child," *India International Centre Quarterly*, vol. 20, no. 4 (1993): 79-89, <<https://www.jstor.org/stable/23003691>.>

⁷ Ibid.

⁸ The United Nations Convention on the Rights of the Child, 1989, Article 3.

making. Thus, the 1960s witnessed an ideological shift in the perception of child rights from protection to autonomy, nurturance to self-determination, and welfare to justice.⁹ It recognizes children's exposure and addresses their civil, political, social, and cultural rights. It also promotes children's awareness by fully acknowledging their rights and ensuring they are well-informed about exploitation and abuse. The underlying principle of the Convention is to protect children's best interests without any hindrance.¹⁰

3.3 PAKISTAN AS PART OF INTERNATIONAL TREATIES REGARDING THE SAFEGUARDING OF CHILDREN'S RIGHTS

Pakistan is a signatory to international human rights conventions addressing child rights, directly or indirectly. Pakistan ratified the United Nations Convention on the Rights of the Child (hereafter known as UNCRC) in 1990 with several general reservations. The legislative body in Pakistan would interpret the Convention in light of the provisions of Islamic law and the Constitution, and as a result, the reservations made by Pakistan were withdrawn after the recommendation from the Ministry of Religious Affairs and the Council of Islamic Ideology and the decision of the Cabinet. The Ministry of Foreign Affairs also formally announced the withdrawal of the reservation.¹¹ By committing to the obligations of the Conventions, Pakistan has committed itself to ensuring children's rights. Therefore, it must develop and undertake all necessary actions to promote and protect children's rights.¹²

Child protection rights are not solely defined in the United Nations Convention on the Rights of the Child (UNCRC). Numerous other international and regional conventions and treaties grant child rights and protection.¹³

⁹ Abhinaya Ramesh, "UN Convention on Rights of the Child: Inherent Weaknesses," *Economic and Political Weekly*, vol. 36, no. 22 (2001): 1948-1950 <<https://www.jstor.org/stable/4410687>>

¹⁰ Ibid.

¹¹ Ministry of Human Rights, "National Commission for Child Welfare and Development," <<https://mohr.gov.pk/Detail/MzFjMTM5ODctODkwYS00NTUyLTk2NjQtMmNjZjEwNzJIN2Fk>> (accessed 10 December, 2021)

¹² UNICEF, "Report of Child Protection System Mapping and Assessment in Fata," (July 2020), <<https://www.unicef.org/pakistan/reports/report-child-protection-system-mapping-and-assessment-fata>> (accessed 5 January, 2022)

¹³ Muhammad Salman and Shaukat Hussain Bhatti, "Implicative Analysis of Child Protection Laws and U.N. Convention on the Rights of Child (A Case Study of Pakistan from an International Perspective),"

3.3.1 A Critical Analysis of the 1989 United Nations Convention on the Rights of the Child

Even though the principles of the Universal Declaration of Human Rights (UDHR), The United Nations Convention on the Rights of the Child (UNCRC), the Declaration of Geneva, and international humanitarian and human rights laws have been routinely flouted, these instruments remain genuine landmarks that provide a basis for action. However, mechanisms and will for enforcement are lacking.¹⁴ Thus, a critical analysis of the UNCRC will be conducted to find loopholes and establish a system to curb such inconveniences for the state parties, particularly for the main subject, children.

At the universal level, as of February 11, 2022, 196 states were parties to the UNCRC, making it the most widely ratified human rights instrument.¹⁵ The UNCRC contains a preamble and fifty-four articles covering all areas from life to civil, political, social, cultural, and other rights. The preamble of the Convention is extensive, covering the main principles of the UN charter and recognizing the inherent dignity and inalienable rights of all members of human society in the greater interest of justice and peace in the world. Moreover, the Convention reaffirms all international human rights treaties and declares the entitlement of every person to rights and freedoms without discrimination. Furthermore, it recalls the principles of the UDHR for better care of children and guarantees rights and freedoms.

The UNCRC acknowledges the concept of family for better children's growth. The family structure provides protection and assistance in livelihood. They also recognize the importance of family culture for children's healthier physical and mental development in terms of peace, dignity, tolerance, freedom, equality, and solidarity.¹⁶

Review of Education, Administration and Law, vol. 5, no. 4 (2022): 665–676. <<http://dx.doi.org/10.47067/real.v5i4.295>>

¹⁴ Oinam Jitendra Singh, “International Dynamics on the Rights of the Child,” *The Journal of International Issues*, vol. 22, no. 1 (2018): 136-151, <<https://www.jstor.org/stable/10.2307/48520053>>

¹⁵ United Nations, “Report of the Committee on the Rights of the Child,” <<https://documents.un.org/doc/undoc/gen/g22/355/04/pdf/g2235504.pdf?OpenElement>> (accessed 01 November, 2023).

¹⁶ The United Nations Convention on the Rights of the Child, 1989, Preamble.

In the preamble, the UNCRC uses the phrase 'before as well as after birth,' but it does not explicitly define the point at which it begins to apply. This lack of clarity extends to whether it applies to an unborn child. Article 1 also does not limit a state's discretion in determining the point at which childhood begins under domestic law.¹⁷

The UNCRC introduces groundbreaking conceptualizations of children's rights, integrating their civil, political, cultural, and economic rights into a single document. This innovative approach provides children with substantive rights, including those related to their name and nationality, family reunification, freedom of expression, thought, conscience and religion, privacy, adoption, prevention of abuse, protection from various forms of exploitation, and the rights of children who belong to cultural, religious, and linguistic minorities. The document also addresses the unique issues of parentless, refugee, or disabled children, the protection of children in armed conflicts, and the treatment of children in penal matters.¹⁸

The UNCRC unequivocally recognizes a child as a person under 18, ensuring their rights and protection. The document also allows state parties to retain a lower age if it is set as the end of childhood. The UN Committee on the Rights of the Child acknowledges that state parties may set a minimum age for activities involving children. The committee expects these protective minimum ages to be set as high as possible and minimum ages designed to encourage autonomy to be flexible and sensitive to the individual child's needs. Moreover, in matters related to criminal justice, all persons under 18 should be treated as juveniles, reinforcing the protection of their rights.¹⁹

Furthermore, the UNCRC defines the concept of non-discrimination, which applies to all children without exception. The state must protect children from discrimination and take positive action to promote their rights. However, Article 2 does not include the definition of discrimination. In contrast, the definition of discrimination

¹⁷ Alistair MacDonald QC, *The Rights of the Child: Annotated Materials* (Bristol: Family Law, 2014), 15.

¹⁸ *Population Council*, "Convention on the Rights of the Child," *Population and Development Review*, vol. 15, no. 4 (1989): 779-783, <<https://www.jstor.org/stable/1972615>>

¹⁹ MacDonald QC, 16.

can be seen in Article 26 of the International Covenant on Civil and Political Rights²⁰, Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination²¹, and Article 1 of the International Convention on the Elimination of All Forms of Discrimination against Women²².

Each article of the UNCRC must be read, considering Article 2. For example, the word "ensure" in Article 2(1) implies an affirmative obligation on the state to take measures necessary to enable children to enjoy and exercise their rights without discrimination. Although Article 2(1) of the UNCRC does not appear to prohibit discrimination against children, the prohibitions in Article 2(1) always refer to the rights contained in the Convention. Moreover, the non-discrimination principle enshrined in Article 2(1) applies to all children in the jurisdiction, including visitors, children of migrant workers, refugees, and children within the jurisdiction.²³ Further, in Article 2(2), the phrase "or his or her parents or legal guardian" ensures that the child's rights are not infringed upon due to acts of discrimination resulting from the status, activities,

²⁰ The International Covenant on Civil and Political Rights, Article 26, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

²¹ The International Convention on Elimination of All Forms of Racial Discrimination, Article 1, "1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. 2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens. 3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality. 4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

²² The Convention on the Elimination of All Forms of Discrimination against Women, Article 1, "For the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

²³ *UN Committee on the Rights of the Child (CRC)*, "General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin", CRC/GC/2005/6, 1 September 2005, <<https://www.refworld.org/legal/crc/2005/en/38046>> (accessed 13 December, 2023)

expressed opinions, or beliefs of their parents, legal guardians, or family members, who might bring these adults into conflict with the state.²⁴

After describing the non-discrimination of rights, the UNCRC further focuses on the child's best interests and states that all actions concerning the child should fully account for their best interests. The state shall provide the child with adequate care when parents or others charged with that responsibility fail to do so. The concept of a "child's best interests" is not new. It was enshrined in the 1959 Declaration of the Rights of the Child (para. 2), the Convention on the Elimination of All Forms of Discrimination against Women (Articles 5 (b) and 16, para. 1 (d)), regional instruments, and many national and international laws.²⁵ The concept of the child's best interests under Article 3(1)²⁶ aims to ensure the full and effective enjoyment of all rights recognized in the Convention and the child's holistic development. The Committee has already pointed out that "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention." There is no hierarchy of rights in the Convention; all the rights provided are in the "child's best interests," and no right could be compromised by a negative interpretation of the child's best interests.²⁷ Moreover, the application of the best interest must be determined on a case-by-case basis; therefore, the concept is flexible and adaptable.

However, while focusing on general rights, the UNCRC also highlights the fundamental challenges children face in their states, which are discussed in the UNCRC guidelines.

²⁴ MacDonald QC, 17.

²⁵ *UN Committee on the Rights of the Child (CRC)*, "General Comment No. 14 (2013): The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Article 3, para. 1)," CRC/C/GC/14, 29 May 2013, <<https://cypcs.org.uk/wpcypcs/wp-content/uploads/2021/02/General-Comment-14.pdf>> (accessed 13 December, 2023)

²⁶ The United Nations Convention on the Rights of the Child, Article 3(1), "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

²⁷ *Ibid*, para 4.

3.3.1.1 *The Right to Life*

The right to life is inherent; thus, the UNCRC places the responsibility on the state to protect children's lives from societal injustices. Article 6²⁸ of the UNCRC reads, "Survival and development refer to every child's inherent right to life, and the State must ensure the child's survival and development."

The right to life is a guiding principle of cardinal importance for the existence and efficacy of all other rights of the child.²⁹ The child's right to life applies to all children without exception. The right to life enshrined in Article 6(1) of the UNCRC is non-derogable and includes no exceptions for circumstances such as armed conflict or the death penalty. Moreover, there is a compelling argument that the right to life, and thus the child's right to life, forms part of the rules of customary international law and may be the norm of jus cogens.³⁰ Therefore, the child's right to life should not be interpreted narrowly and should not limit the state's positive obligations to adopt measures to protect this right.³¹

The state is under a positive obligation to affect the child's right to survival and development, requiring that all necessary steps be taken within the dynamic concepts of survival and development. This is further articulated in other provisions of the UNCRC, such as the right to health (Article 24), the right to adequate welfare (Article 26), the right to enjoy nutritious food, clean drinking water, an acceptable standard of living (Article 27), and the right to play (Article 31).³²

²⁸ The United Nations Convention on the Rights of the Child, 1989, Article 6, "1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child."

²⁹ Peter Newell and Rachel Hodgkin, *Implementation Handbook for The United Nations Convention on the Rights of the Child*, 3rd ed. (New York: UNICEF, 2008), 83.

³⁰ MacDonald QC, 21. See *UN Human Rights Committee (HRC)*, "CCPR General Comment No. 6: Article 6 (Right to Life)," HRI/GEN/1/Rev. 8, p 166, para 1. 30 April 1982, <<https://www.refworld.org/legal/general/hrc/1982/en/32185>> (accessed 14 December, 2023)

³¹ *UN Human Rights Committee (HRC)*, "CCPR General Comment No. 6: Article 6 (Right to Life)," HRI/GEN/1/Rev. 8, p 167, para 5. 30 April 1982, <<https://www.refworld.org/legal/general/hrc/1982/en/32185>> (accessed 14 December, 2023)

³² MacDonald QC, 22.

3.3.1.2 The Right to Registration of Birth

After the birth of a child, parents are responsible for registering their child in the national database and claiming the vested rights given by the states. The UNCRC incorporated this critical provision into children's rights under Articles 7 and 8.³³ Article 7 pertains to name and nationality and refers to the right to cardinal identity elements. Article 7(1) clarifies that the child's right to identity encompasses several further rights that are foundational aspects of the right to identity, namely the child's right to be registered immediately after birth, the right to name, the right to acquire nationality, and the right to be cared for by their parents. Other international human rights instruments articulate the right to name, birth registration, and nationality.³⁴ It is available in the International Covenant on Civil and Political Rights under Articles 24(2) and (3), which read, " Every child shall be registered immediately after birth and shall have a name. Every child has the right to acquire a nationality."³⁵ Even though Article 7(1) requires a child to have a name from birth, the UNCRC does not specify which type of name children have, and thus, national law should create a mechanism that prevents the registration of a name that might make the child subject to ridicule or discrimination.³⁶ Furthermore, Article 7(2) clarifies that the state has a positive duty to ensure that the child is assured of the rights enshrined in Article 7(1).³⁷

Article 8 concerns the preservation of identity and enshrines the child's right to protect their identity once name, nationality, and family relations have been established, similar to other factors that comprise the child's identity. The aim of Article 8 is to ensure the broadest possible respect for and protection of a child's identity, as

³³ The United Nations Convention on the Rights of the Child, 1989, Articles 7 and 8, "Article 7 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless. Article 8 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

³⁴ Ibid, 23.

³⁵ The International Covenant on Civil and Political Rights, 1966, Article 24 (2) and (3).

³⁶ Newell and Hodgkin, 104.

³⁷ MacDonald QC, 25.

established under Article 7. Moreover, in Article 8(2), the phrase "appropriate assistance and protection will be provided to children" comprises legislative measures, including civil and penal sanctions.³⁸

3.3.1.3 The Right to Health

Health is a natural right, and everyone has the right to stay healthy and live a peaceful life. In this regard, health rights are legislated in the UNCRC under Article 24,³⁹ with the origin of this provision dating back to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Covenant on Economic, Social and Cultural Rights (ICCPECR), and from the definitions and principles formulated by UNICEF and the World Health Organization (WHO).⁴⁰

This provision states that the state is responsible for providing the best possible health facilities. They strive to provide primary health facilities for their citizens, particularly children. The state ensures primary education, as well as essential health and nutrition knowledge, for parents and their children. Moreover, developed countries must help developing countries by providing critical health facilities. An essential

³⁸ "Human Rights Reporting" in *Manual on Human Rights Monitoring* (United Nations Human Rights, 2011), 432-433.

³⁹ The United Nations Convention on the Rights of the Child, 1989, Article 24, "1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; (d) To ensure appropriate pre-natal and post-natal health care for mothers; (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; (f) To develop preventive health care, guidance for parents and family planning education and services. 3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. 4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries."

⁴⁰ MacDonald QC, 49.

element of cultural rights is the right to the highest attainable standard of health, comprising availability, accessibility, acceptability, and quality.⁴¹ These elements guide state parties to develop their health systems from this perspective, which is available to every child without discrimination.

3.3.1.4 The Right to Education

The right to education is not new; humans have been acquiring knowledge since birth. This right has been upheld from the Magna Carta to the UNCRC. Further, Articles 28 and 29 of the UNCRC explore the importance of the right to education. Article 28 pertains to a child's right to education in terms of its provision, access, and equality of opportunity, while Article 29 provides the aims of education. The right to education is granted to all children equally. The Committee on the Rights of the Child elaborates on the aim of education, focusing on the relevance of the curriculum, the role of teachers, and the nature and ethos of the learning environment. The key principles of a child's right to education are access, quality education, and respect in the learning environment.⁴² Education aims to fully develop every child's personality, talent, and abilities. It must also encourage the child's respect for human rights, their parents, their own and other cultures, and the environment. In this context, respect means acknowledging the equal worth of people of all cultures without dominance.

3.3.1.5 The Right to Maintenance and Property

Every child has the right to a standard of living that is sufficient to meet their physical and social needs and to support their development. The states shall take appropriate

⁴¹ *UN Economic and Social Council*, "General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant)," E/C.12/2000/4, UN Committee on Economic, Social and Cultural Rights (CESCR), 11 August 2000, <<https://tinyurl.com/349menux>> (accessed 13 December, 2023).

⁴² *UNICEF/UNESCO*, "A Human Rights-based Approach to Education for All: A Framework for the Realization of Children's Right to Education and Rights within the Education," <<https://tinyurl.com/u8zfcvwt>> (accessed 13 December, 2023).

measures to assist parents and others responsible for the child in upholding this right. They shall offer material assistance and support programs as needed, particularly on nutrition, clothing, and housing. Article 27 of the UNCRC explains the adequate standard of living, which enshrines the prospect of Article 11 of the Covenant on Economic, Social, and Cultural Rights.⁴³ Article 27 is as follows:

"1. State Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development.

2. The parent(s) or others responsible for the child are primarily responsible for securing the conditions necessary for the child's development within their abilities and financial capacities.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child in implementing this right and shall, in case of need, provide material assistance and support programs, particularly regarding nutrition, clothing, and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements."⁴⁴

The right to an adequate standard of living under Article 27 places a positive obligation on state parties to ensure its effective realization. The primary state responsibility under Article 27(3) is to secure the living conditions of children as a

⁴³ The Covenant on Economic, Social and Cultural Rights, Article 11, "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

⁴⁴ The United Nations Convention on the Rights of the Child, 1989, Article 27.

group rather than to assist individual children. The obligation to provide material assistance requires more than the bare minimum, as assistance must be sufficient to foster the child's physical, mental, spiritual, moral, and social development.⁴⁵

Moreover, state parties are responsible for providing property rights to vulnerable children under legal entitlement. This right has yet to be discussed separately in the convention; however, its importance does not diminish as it is the right children inherit from their parents. Different religions have distinct ways of distributing property shares among legal heirs. Hence, state parties must protect children's legal entitlement.

3.3.1.6 The Right to Religion

The concept of freedom is central to exercising the right to freedom of thought, conscience, and religion. The idea of freedom implies the absence of coercion. Article 14 requires state parties to respect a child's right to freedom of thought, conscience, and religion. It omits many of the additional elements of the rights enshrined in Article 18⁴⁶ of the UDHR. Article 14 is as follows:

- "1. States Parties shall respect the child's right to freedom of thought, conscience, and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians to provide direction to the child in exercising his or her rights in a manner consistent with the child's evolving capacities.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."⁴⁷

⁴⁵ MacDonald QC, 53.

⁴⁶ The Universal Declaration of Human Rights, 1948, Article 18, "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

⁴⁷ The United Nations Convention on the Rights of the Child, 1989, Article 14.

Article 14 provides that the right to freedom of religion should accommodate various beliefs, diverse tastes and pursuits, customs, and codes of conduct.⁴⁸ Moreover, a child's right to freedom of religion must be read together with Article 3(1), which pertains to a child's best interests. Furthermore, the child's right to freedom of religion is circumscribed only by the provisions of Article 14(2) concerning parental direction and Article 14(3) concerning the manifestation of religious belief. The child's right to freedom of religion will protect theistic, non-theistic, and atheistic beliefs—whether traditional or institutional—and the child's right not to profess any religion or belief, whether in terms of religion or belief more broadly construed.⁴⁹

Furthermore, Article 14(2) requires state parties to respect the rights of parents to provide direction to the child in matters of religion, as children have evolving capacities. The direction and guidance parents provide should be child-centered and achieved through discussion.⁵⁰ In cases where parental direction is unavailable, it becomes the state's responsibility to inform the children about their familial religion since this guidance impacts their lives, shaping their personality, education, clothing, eating habits, culture, and more.

After discussing the challenges vulnerable children face under UNCRC, it is clear that substantive rights have been provided to children in Articles 1 to 41. Both developed countries and developing countries ratified the UNCRC and adopt these principles as part of their national laws to provide maximum protection to children; however, developing countries are under-resourced to effectively and sufficiently offer these protections to children. Consequently, it is the committee's responsibility to set a mechanism through which developed countries can help developing countries. UNICEF alone is unable to provide substantive rights to children worldwide. Within the paradigm of children's rights, the universalist perspective of children's rights believes that:

"Childhood constitutes a coherent group or state defined by identical needs and desires, regardless of class, ethnic, or racial differences [and

⁴⁸ MacDonald QC, 37.

⁴⁹ HRI/GEN/1 rev. 8, page 195, para 2.

⁵⁰ *UN Committee on the Rights of the Child (CRC)*, "General comment No. 7 (2005): Implementing Child Rights in Early Childhood," CRC/C/GC/7/Rev.1, 20 September 2006, <<https://www.refworld.org/docid/460bc5a62.html>> (accessed 3 April, 2023).

is] based on an assumed identity of the biological and physiological attributes of children worldwide."⁵¹

These rights are available to all state parties' children without discrimination. Nevertheless, they were not implemented in the spirit of the UNCRC.

Part II of the Convention pertains to the implementation mechanism. The state must report on the measures adopted and progress made in advancing children's rights in their countries in the form of a report submitted to the Committee on the Rights of the Child appointed by the UN under Article 43 of the Convention. In addition, Article 45 of the Convention states that the committee will receive assistance from specialized bodies and other UN organs in the form of reports on their areas of expertise in its implementation task.⁵² Making all these provisions effective in developing countries is vital.

3.3.2 Cairo Declaration on Human Rights in Islam

Pakistan recognizes the Cairo Declaration on Human Rights in Islam, adopted by the Organization of Islamic Cooperation (OIC) on August 5, 1990, as an important reference point in aligning human rights with Islamic values. As a member state of the OIC, Pakistan supports the declaration's emphasis on dignity, justice, and social welfare within the framework of *Sharī'ah*. The Cairo Declaration complements Pakistan's constitutional mandate under Article 227, which requires that all laws be brought into conformity with Islamic injunctions. This recognition holds particular significance in matters relating to family and child welfare, including the rights of orphans. The declaration reinforces the obligation of the state and society to protect vulnerable children, uphold their dignity, and ensure their well-being in accordance with Islamic principles. In this context, Pakistan's legal system draws upon both international human

⁵¹ Emilia Ericson, "A Religious Child or A Child of Religious Parents? - An Analysis of the Circumcision Debate in Sweden" (Master's thesis, University of Stockholm, 2012)

⁵² Abhinaya Ramesh, 1948.

rights commitments and Islamic jurisprudence, providing a dual foundation for strengthening legal protections for orphaned children.⁵³

3.3.3 Universal Declaration on Human Rights

Pakistan was among the original 48 member states of the United Nations that voted in favor of the Universal Declaration of Human Rights (UDHR) on December 10, 1948. Although the UDHR is not a binding treaty, it serves as a foundational document for international human rights law and reflects principles that Pakistan has committed to uphold.

In the context of child rights, the UDHR laid the groundwork by affirming in Article 25(2) that "Motherhood and childhood are entitled to special care and assistance."⁵⁴ The UDHR's emphasis on dignity, equality, and protection of vulnerable groups aligns with Pakistan's constitutional and international obligations to safeguard the rights of all children, including orphans. By endorsing the UDHR, Pakistan has legislated numerous laws in alignment with its principles—including those concerning child rights, education, equality, labor, and protection from exploitation.⁵⁵

3.3.4 Optional CRC Protocol on Sale of Children, Child Prostitution and Child Pornography

Pakistan is a State Party to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (OPSC), which it ratified on September 5, 2011. This protocol supplements the UN Convention on the Rights of the Child (CRC) by strengthening international measures to combat

⁵³ *Organization of Islamic Cooperation*, "Cairo Declaration on Human Rights in Islam (2021)," <https://www.oic-oci.org/upload/pages/conventions/en/CDHRI_2021_ENG.pdf> (accessed 17 July, 2025).

⁵⁴ *United Nations*, "Universal Declaration of Human Rights," adopted December 10, 1948, art. 25(2), <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>

⁵⁵ *Pakistan Council of Churches Secretariat*, "Domestic Implementation of the UN Convention on the Rights of the Child: Pakistan's Progress Report," <<https://pc.gov.pk/uploads/report/Domestic.pdf>> (accessed 17 July, 2025).

the exploitation of children in its most extreme forms, including trafficking, commercial sexual exploitation, and child pornography. It obligates states to criminalize and prevent these practices, ensure the prosecution of offenders, and provide recovery and reintegration services for child victims. The protocol holds particular relevance for orphaned children, who are disproportionately vulnerable to trafficking and exploitation due to the absence of familial protection, legal guardianship, and economic support.⁵⁶

3.3.5 Optional CRC Protocol on Involvement of Children in Armed Conflict

Pakistan ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) on November 18, 2016, reaffirming its commitment to prohibit the recruitment and use of children in armed conflict. The protocol sets 18 as the minimum age for direct participation in hostilities and for compulsory recruitment by state forces. It also calls for legal, administrative, and practical measures to prevent the involvement of children in armed groups. This instrument is particularly significant for the protection of orphaned and unaccompanied children, who are especially vulnerable to recruitment and manipulation by non-state armed groups due to the lack of parental care, protection, and economic opportunities. In regions affected by militancy or instability, such children may be targeted for indoctrination or used in armed activities. OPAC thus provides an important legal framework for Pakistan to strengthen national laws, child protection systems, and rehabilitation programs to ensure that all children, including orphans, are shielded from the threats of armed conflict and recruitment.⁵⁷

⁵⁶ *United Nations Treaty Collection*, “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,” adopted May 25, 2000, entered into force January 18, 2002, <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtldsg_no=IV-11-c&chapter=4> (accessed 17 July, 2025).

⁵⁷ *United Nations Treaty Collection*, “Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,” adopted May 25, 2000, entered into force February 12, 2002, <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtldsg_no=IV-11-b&chapter=4> (accessed 17 July, 2025).

3.3.6 Hague Convention on the Civil Aspects of International Child Abduction

Pakistan acceded to the Hague Convention on the Civil Aspects of International Child Abduction on March 1, 2017, becoming a Contracting Party to the international treaty that seeks to protect children from international abduction by a parent or guardian. The Convention provides a legal mechanism for the prompt return of abducted children to their country of habitual residence and upholds custody rights across borders. Pakistan's accession marked a significant step in aligning with international standards on cross-border child protection and custody disputes. The United States formally accepted Pakistan's accession in 2020⁵⁸, enabling bilateral cooperation under the Convention's framework. This development enhances Pakistan's capacity to address transnational custody conflicts, particularly in cases involving one parent removing a child from the country without lawful consent. The Convention is especially relevant in safeguarding the rights of vulnerable children, including orphans and those under guardianship, who may be at risk of wrongful international relocation. Pakistan's implementation of the Convention, through its Central Authority established within the Ministry of Law and Justice, contributes to improving legal remedies and reinforcing the state's commitment to child welfare in cross-border contexts.⁵⁹

3.3.7 Minimum Age Convention, 1973 (ILO Convention No.138)

The Minimum Age Convention, 1973 (ILO Convention No. 138) sets a global standard to eliminate child labor by requiring ratifying states to establish a minimum age for employment that is not less than the age of completion of compulsory schooling, and in any case not less than 15 years (or 14 for developing countries under certain conditions).

⁵⁸ U.S. Department of State, "Annual Report on International Child Abduction: Pakistan," <<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>> (accessed 17 July, 2025).

⁵⁹ Hague Conference on Private International Law, "Hague Convention on the Civil Aspects of International Child Abduction," concluded October 25, 1980, entered into force December 1, 1983, <<https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>> (accessed 17 July, 2025).

Pakistan ratified the Convention on July 6, 2006, committing to progressively raise the minimum age for admission to employment and ensure legal safeguards against child labor. This Convention is particularly relevant in the context of orphaned children, who, due to the absence of parental care and economic support, are often more vulnerable to being pushed into premature and exploitative labor conditions. Despite the ratification, enforcement in Pakistan remains uneven, with significant numbers of children—especially orphans—engaged in informal and hazardous work. The Convention provides a vital legal foundation for strengthening national child labor laws, such as the Employment of Children Act, 1991, and for developing targeted interventions to protect vulnerable children, ensuring that their right to education and a healthy childhood is not compromised by economic necessity or systemic neglect.⁶⁰

3.3.8 The Worst Forms of Child Labor Convention, 1999 (ILO Convention No. 182)

This Convention obliges ratifying states to take immediate and effective measures to eliminate the worst forms of child labor, including slavery, trafficking, prostitution, illicit activities, and hazardous work that harms children's health, safety, or morals. Pakistan ratified this Convention on October 11, 2001, reaffirming its commitment to eradicating exploitative child labor, particularly among the most vulnerable populations. Orphaned children, who often lack family protection and financial stability, are especially at risk of falling prey to these worst forms. The Convention provides an essential legal framework for Pakistan to strengthen its domestic laws and child protection mechanisms. It supports the enforcement of instruments such as the Punjab Restriction on Employment of Children Act, 2016 and the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, which seek to curb child labor at the provincial level. However, challenges remain in implementation, especially in informal sectors and rural areas. Effective realization of this Convention requires integrated

⁶⁰ *International Labor Organization*, "ILO Convention No. 138: Minimum Age Convention, 1973," adopted June 26, 1973, entered into force June 19, 1976, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138 (accessed 17 July, 2025).

efforts across legal, social, and institutional domains to ensure that all children—including orphans—are safeguarded from the gravest forms of exploitation.⁶¹

3.3.9 The Protocol to Prevent, Suppress and Punish Trafficking in Persons

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted in 2000 as a supplement to the United Nations Convention against Transnational Organized Crime, is commonly known as the Palermo Protocol. It aims to prevent and combat trafficking, protect victims, and promote international cooperation. Pakistan acceded to the Protocol on October 13, 2010, thereby undertaking obligations to criminalize trafficking, especially involving children, and to implement victim protection measures. This is particularly relevant for orphaned children, who are disproportionately vulnerable to trafficking for purposes such as forced labor, sexual exploitation, and begging due to the absence of guardianship and socio-economic support. In response, Pakistan enacted the Prevention of Trafficking in Persons Act, 2018, which criminalizes all forms of human trafficking and incorporates many provisions aligned with the protocol. However, implementation remains a challenge due to weak coordination between institutions and limited victim identification and rehabilitation mechanisms. Strengthening enforcement and victim support systems is essential to fully realize the protections envisioned by the protocol for orphaned and vulnerable children.⁶²

⁶¹ *International Labor Organization*, “ILO Convention No. 182: Worst Forms of Child Labour Convention, 1999,” adopted June 17, 1999, entered into force November 19, 2000, <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182> (accessed 17 July, 2025).

⁶² *United Nations Treaty Collection*, “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,” adopted November 15, 2000, entered into force December 25, 2003, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-12-a&chapter=18> (accessed 17 July, 2025).

3.3.10 International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966 and entered into force in 1976, affirms the fundamental civil and political rights of all individuals, including children. Article 24 of the ICCPR specifically recognizes every child's right to protection by society and the state, without discrimination, and emphasizes the need for registration and a name immediately after birth. Pakistan acceded to the ICCPR on June 23, 2010, thereby committing to uphold these protections. The Covenant is particularly significant for orphaned children, who often face systemic neglect and lack access to identity documentation, education, and protection. Article 24 creates a legal foundation for advocating state responsibility in safeguarding orphan rights. However, the absence of a specialized legal framework for orphans in Pakistan hinders the full realization of these rights. To meet its ICCPR obligations, Pakistan must harmonize domestic laws with international standards and ensure that all children receive equal protection and dignity under the law.⁶³

3.3.11 International Covenant on Economic, Social, and Cultural Rights (1966)

The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966 and in force since 1976, guarantees essential socio-economic rights to all individuals, including children. Key provisions relevant to child welfare include the rights to education (Article 13), the highest attainable standard of health (Article 12), social security (Article 9), and protection and assistance for families, mothers, and children (Article 10). Pakistan ratified the ICESCR on April 17, 2008, thus affirming its commitment to uphold these standards. These provisions are particularly significant for orphaned children, who often face multidimensional deprivation. The ICESCR obliges states to progressively realize these rights without discrimination, making it a critical instrument for advocating reforms in Pakistan's legal and welfare systems to protect vulnerable children. While Pakistan has enacted several child-related laws, such

⁶³ *United Nations Treaty Collection*, "International Covenant on Civil and Political Rights," adopted December 16, 1966, entered into force March 23, 1976, <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4> (accessed 17 July, 2025).

as the Right to Free and Compulsory Education Act, implementation gaps remain. Therefore, aligning domestic policies with ICESCR principles is essential to ensure that orphans are not excluded from vital socio-economic protections.⁶⁴

3.3.12 OIC Covenant on the Rights of the Child in Islam

Sharī'ah provides fundamental rights to all individuals, including children, from birth to death. While focusing on the Islamic Principles for human rights and particularly for children's rights, the Organization of Islamic Countries (OIC)⁶⁵ set some legal standards for protecting human beings according to the principles of the Qur'ān and *Sunnah*. In the domain of human rights, the OIC seeks to serve as the collective voice of the Muslim world. It has produced two legal instruments: the Declaration on Human Rights in Islam and the Covenant of the Rights of the Child in Islam. Furthermore, in 2008, the revised OIC Charter established the OIC Independent Permanent Human Rights Commission as an ongoing body to promote human rights within the Member States.⁶⁶

In 2005, Muslim states adopted the Covenant on the Rights of the Child in Islam. The preamble of the covenant summarizes the purpose and mentions that state parties to the covenant believe in the values and principles that constitute a better Muslim family environment, affirm the civilization and historical role of the ummah, contribute to international efforts on human rights, and raise awareness among the masses about public freedoms as an integral part of Islam. It also ensures responsibility towards children, as they are the future of the Muslim ummah, enhances Islamic initiatives aimed towards children's welfare, and adopts the legal framework and mechanisms for the transformation of this sector. More importantly, the present charter affirms the

⁶⁴ *United Nations Treaty Collection*, "International Covenant on Economic, Social and Cultural Rights," adopted December 16, 1966, entered into force January 3, 1976, <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4> (accessed 17 July, 2025).

⁶⁵ The Organization of Islamic Cooperation, initially known as the Organization of the Islamic Conference, is an intergovernmental organization comprised of fifty-seven member states. It was established to protect the interests of the Muslim world while promoting peace.

⁶⁶ Ioana Cismas, "Introductory Note to The Statute of the OIC Independent Permanent Human Rights Commission," *International Legal Materials*, vol. 50, no. 6 (2011): 1148-1160. <<https://www.jstor.org/stable/10.5305/intelegamate.50.6.1148>>

rights of children under the provisions of Islamic *Sharī'ah* and considers domestic state laws for the rights of children of minorities and Muslim communities.⁶⁷

However, this Covenant does not provide specific provisions for the rights of orphans. Therefore, they are regarded as a part of a broader group of children and are entitled to the same rights as other children. The covenant's provisions encompass the fundamental rights of children, and it is essential to note that the covenant commences in the early stages of a child's life. The covenant does not specify a particular age but adopts an open-ended definition of maturity, which marks the point at which a child attains full rights.⁶⁸

Furthermore, for this study, the right to life was discussed in Article 6, which reads,

"1. The child shall have a right to life from where he is a fetus in his/her mother's womb or case of his/her mother's death; abortion should be prohibited except under necessity warranted by the interests of the mother, the fetus, or both of them. The child shall have the right to descent, ownership, inheritance, and child support.
2. state parties to the covenant shall guarantee the basics necessary for the survival and development of the child and his/her protection from violence, abuse, exploitation, and deterioration of his/her living and health conditions."⁶⁹

The article mentions that a child should have the right to life, even in the womb of their mother. The law strictly prohibits abortions unless the mother's life is in danger. The child has the right to descent, ownership, inheritance, and support. Moreover, the state parties shall guarantee the survival and development of the child and protect them from abuse, violence, exploitation, and deterioration of their living and health conditions.⁷⁰

⁶⁷ OIC Covenant on the Rights of the Child in Islam, Preamble, OIC/9-IGGE/HRI/2004/Rep. Final <https://www.icnl.org/wp-content/uploads/Transnational_OIC-Child-En.pdf>

⁶⁸ OIC Covenant on the Rights of the Child in Islam, Preamble.

⁶⁹ OIC Covenant on the Rights of the Child in Islam, Article 6.

⁷⁰ OIC Covenant on the Rights of the Child in Islam, Article 6.

Article 7, which protects the right to identity, clearly states that a child, after birth, has the right to have a good name and then register the name with the concerned authorities of the state parties to be known by name, family name, nationality, and, in this case, foster mother's name. Article 7 provides further clarification as follows:

1. "A child shall, from birth, have the right to a good name, to be registered with authorities concerned, to have his nationality determined, and to know his/her parents, all his/her relatives, and foster mother.
2. States Parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality, and family relations in domestic laws. They shall make every effort to resolve the issue of statelessness for any child born in their territories or to any of their citizens outside their territory.
3. A child of unknown descent or legally assimilated to this status shall have the right to guardianship and care without adoption. He shall have a right to a name, title, and nationality."⁷¹

The covenant further safeguards children under domestic law. It shall ensure the name, nationality, and family relations to resolve statelessness for any child born in their territories or any of their citizens outside the territory where any child of unknown family descent has the right of guardianship but without adoption.⁷²

Article 11 pertains to the right to upbringing, maintenance, and property, which reads as:

"A sound upbringing is a right of the child and shall be the responsibility of his/her parents or legal guardian, as the case may be, and in which the institutions of the state, within their means, shall assist them. The upbringing of the child shall aim at the following objectives:
To develop personality, religious and moral values, a sense of citizenship, and Islamic and human solidarity in the child and to instill in them a spirit of understanding, dialogue, tolerance, and friendship among people.

⁷¹ OIC Covenant on the Rights of the Child in Islam, Article 7.

⁷² OIC Covenant on the Rights of the Child in Islam, Article 7.

Encourage the child to acquire skills and capabilities to face new situations, overcome negative customs, and grow up grounded in scientific and objective reasoning."⁷³

Article 11 discusses the upbringing of children, including orphans, as the responsibility of the parents and legal guardians. If children are raised in institutions, the responsibility for their upbringing falls on the institution. Furthermore, upbringing includes developing a better personality in children who are aware of religious and moral values, have a sense of citizenship, care for human relations and tolerance, and build a friendly atmosphere among the public. Moreover, children must have the courage to deal with societal issues, learn to manage harmful customs, and excel in positive reasoning skills.⁷⁴

Article 14 pertains to social living standards and states that every child is entitled to legal custody and maintenance, as they are unable to protect themselves. The covenant expressly states that state parties should provide social security to children and better living standards according to their psychological, physical, and social needs. Moreover, state parties require parents and legal guardians to provide facilities based on their capabilities.⁷⁵

The covenant secures the right to education, as specified in Article 12, which reads as follows:

"1. Every child has a right to free compulsory primary education by learning the principles of Islamic education (as well as belief and *Sharī'ah* according to the situation) and to the provision of the necessary means to develop their mental, psychological, and physical abilities, to allow them to be open to the expected standards of human culture.

State parties to the present covenant shall provide:

1. Compulsory, free primary education for all children on an equal footing.
2. Free and compulsory secondary education on a progressive basis.

⁷³ OIC Covenant on the Rights of the Child in Islam, Article 11.

⁷⁴ OIC Covenant on the Rights of the Child in Islam, Article 11.

⁷⁵ OIC Covenant on the Rights of the Child in Islam, Article 14, OIC/9-IGGE/HRI/2004/Rep. Final, <https://www.icnl.org/wp-content/uploads/Transnational_OIC-Child-En.pdf>

3. Higher education, while observing each child's capability and interests in accordance with the education system in each state.
4. The right of every child to wear clothes compatible with her beliefs while complying with Islamic *Sharī'ah*, public etiquette, and modesty.
5. Effective treatment of the problem of illiteracy, dropouts, and those who miss primary education.
6. Taking care of outstanding and gifted students in all stages of education.
7. Producing and publishing children's books, setting up children's libraries, and using the mass media to propagate cultural, social, and artistic materials related to children and encourage children's education."⁷⁶

According to this article, every child is entitled to free, compulsory primary education that includes learning the fundamental principles of Islamic law. This type of education fosters students' mental, psychological, and physical development, ultimately leading them to embrace human culture. State parties must ensure the prompt implementation of Article 12 while upholding Islamic norms within educational institutions.⁷⁷

The right to health was granted to children under Article 15, which extends to the child even before birth, as Islamic law provides exceptional care and protection to pregnant mothers. The aim of offering health rights is to ensure better living conditions for children. States safeguard children from harmful substances and infectious and endemic diseases.⁷⁸ Article 15 provides further clarification regarding child health as follows:

"The Child is entitled to physical and psychological care; this shall be realized through:

1. Providing care for the mother from the onset of pregnancy and during natural nursing, either by the mother or someone else, if the mother cannot suckle the baby.

⁷⁶ OIC Covenant on the Rights of the Child in Islam, Article 12.

⁷⁷ OIC Covenant on the Rights of the Child in Islam, Article 12.

⁷⁸ OIC Covenant on the Rights of the Child in Islam, Article 15.

2. The right of the child to mitigate some *Sharī'ah* and judicial rules in favor of their legitimate wet nurse under *Sharī'ah* law, and to postpone some punishments given against her as well as lessening work assignments of a nursing and pregnant woman and reduce their working hours.
3. His/her right to necessary measures to reduce infant and child mortality rates.
4. A compulsory medical examination for prospective couples in order to ensure the absence or causes of hereditary or contagious diseases that portend danger to the child.
5. The right of a male child to circumcision.
6. Non-interference between parents and others in medically altering the color, shape, features, or sex of the fetus, except for medical necessities.
7. Providing preventive medical care, disease and malnutrition control, and necessary healthcare for them or others.
8. The child's rights from the State and society to extend medical information and services for mothers to raise awareness and help them improve their children's health.
9. Guaranteeing the child's right to be protected from narcotics, intoxicants and other harmful substances, and infectious and endemic diseases."⁷⁹

The Covenant diverges from the OIC's Declaration by not designating *Sharī'ah* as the primary criterion for interpretation and not including a general clause subjecting the child's rights to religious values or Islamic law. Although the Covenant exhibits a reduced emphasis on religious restrictions on specific rights compared to the Declaration, provisions requiring compatibility with domestic law may enable *Sharī'ah*, acting as claw back clauses, to restrict rights in OIC member states where *Sharī'ah* is a source of legislation.⁸⁰

The purpose of the Covenant on the Rights of the Child in Islam (OIC-CRC) is primarily to provide an alternative framework to the UNCRC for Muslim-majority states. Rather than offering detailed, group-specific protections, the OIC-CRC

⁷⁹ OIC Covenant on the Rights of the Child in Islam, Article 15, OIC79-IGGE/HRJ720047Rep.Final.

⁸⁰ Cismas, 1148-1160.

articulates general principles for the rights and welfare of children in line with Islamic values and *Sharī'ah* principles. While it does not specifically address orphans as a distinct legal category, it offers a cultural and religious lens for member states to frame their national child protection laws. Importantly, the OIC-CRC reflects unique provisions such as the right to protection during practices like male circumcision, which are grounded in religious and cultural context but are not explicitly discussed in other international conventions. Thus, the covenant serves as a guiding tool to help Muslim states align child protection laws with their religious and socio-legal systems, even though the omission of specific provisions for vulnerable children, such as orphans, raises significant concerns. These children are often at a heightened risk of exploitation, abuse, and neglect due to their lack of familial support and protection. Therefore, the failure to explicitly address their rights within the covenant represents a critical oversight.

3.4 ORPHANS' RIGHTS UNDER THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, 1989

The primary objective of the research is to examine the protection of orphans' rights. During the discussion of children's rights outlined in the UNCRC, only Article 20 addresses children who are deprived temporarily or permanently of their family environment, and the state is responsible for providing exceptional protection and assistance. Subclause (3) explicitly mentions *kafālah* (foster placement) under Islamic law or the adoption of the child for their best interest. Further, Article 20 must be read in conjunction with Principle 6 of the Declaration of the Rights of the Child,⁸¹ The Declaration of Social and Legal Principles relating to the Protection and Welfare of Children with Special Reference to Foster Care Placement and Adoption Nationally

⁸¹ Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 UN GAOR Supp. (No. 16) at 19, UN Doc. A/4354 (1959). Principle 6, "The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable." <<http://hrlibrary.umn.edu/instree/k1drc.htm>>

and Internationally, and the UN Guidelines for the Alternative Care of Children 2010.⁸² In considering alternative care arrangements, state parties must systematically evaluate all the relevant rights and obligations of the child under the UNCRC and follow the UN Guidelines to ensure the protection and promotion of children's rights outside their families.

Article 20 does not provide a definition of best interests⁸³. Therefore, the concept of best interest is interpreted according to Article 3(1). Arguably, the child's best interest will be paramount in all matters related to the placement of children outside the care of their parents. Further, the phrase "shall be entitled to" emphasizes the State's obligation to the children who cannot be cared for by their families.⁸⁴ Moreover, Article 20(3) enshrines that state parties should prioritize alternative placements that ensure security, continuity of care, and affection and allow children to form long-term attachments.⁸⁵

Article 20 provides the Islamic concept of *kafālah*, which ensures the protection of children without families since no specific provision is dedicated to addressing the needs of orphans. Under the theory of universalism, children under the age of minority should be protected. Children without parents have specific rights, including birth, name, parentage, nationality, shelter, education, health, inheritance, and more.⁸⁶ The UNCRC is considered the most progressive instrument for children; however, more specific instruments should be established to address orphans under Islamic principles and the laws of different ethnicities. As Islam outlines particular rules for *kafālah* and orphans, they must be incorporated internationally for Muslim children's best interests.

⁸² UN General Assembly, "Resolution Adopted by the General Assembly on 18 December 2009", (A/RES/64/142), 24 February 2010, <<https://documents.un.org/doc/undoc/gen/n09/470/35/pdf/n0947035.pdf?OpenElement>> (accessed 13 December, 2023)

⁸³ The United Nations Convention on the Rights of the Child, 1989, Article 20, "1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child. 3. Such care could include, inter alia, foster placement, *kafālah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

⁸⁴ Newell and Hodgkin, 279.

⁸⁵ "General Comment No.7", 448.

⁸⁶ United Nations Human Rights, "Children Have Specific Rights and Should be Protected at All Times, UN Experts," 06 October 2022, <<https://www.ohchr.org/en/statements/2022/10/children-have-specific-rights-and-should-be-protected-all-times-un-experts>>, (accessed 15 August, 2023).

3.4.1 Kafālah as a Means of Protection of Orphans' Rights

Nowadays, the number of orphans is increasing due to circumstances such as armed conflicts, the war on terror, natural disasters, H.I.V./AIDS, and many others. Furthermore, there are children who have been left behind after one or both of their parents died, leaving them vulnerable to face challenges in life. The state needs to consider minors' circumstances, investigate their challenges, and provide the best possible opportunities for them.

In this regard, the 1996 Hague Convention on the Protection of Children, formally known as the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, aims to provide a framework for addressing issues related to parental responsibility, custody, visitation rights, and child protection in cross-border situations.⁸⁷ This convention plays a crucial role in aiding children who have lost parents by facilitating the process of connecting them with prospective adoptive parents. Adoptive parents assume the responsibility of nurturing and offering orphaned children an improved quality of life within a supportive family setting. This legal framework ensures that children without parental care find loving and stable homes. It safeguards their well-being and growth by establishing clear guidelines for adoption procedures that transcend national borders. By fostering these connections, the Convention contributes significantly to the welfare of orphaned children, granting them the opportunity for a brighter future within a caring and nurturing family environment.⁸⁸

Islam supports the concept of *kafālah* to ensure a better life for orphans but rejects the idea of adoption, as it may replace their original identity with their adoptive parents' names, causing them to lose their sense of origin. In these circumstances, it is

⁸⁷ The 1996 Hague Convention on the Protection of Children, <<https://www.hcch.net/en/instruments/conventions/full-text/?cid=70>> (accessed 25 August, 2023).

⁸⁸ Lowe Nigel and QC Nicholls Michael, *The 1996 Hague Convention on the Protection of Children* (Jordan: Family Law, 2012), 27.

crucial to create a particular law to benefit orphans and protect their originality, family name, nationality, and inheritance. To achieve this, the state is obligated to provide a mechanism through which the person and property of orphans will be protected, and their needs will be met, just as their father would have provided for them when they were alive. The state must ensure security and protection against exploitation and abuse, as they are among the most vulnerable groups in society. Since no one advocates for their rights, it is the state's responsibility to speak on behalf of these individuals.

Furthermore, there should be a different convention for orphans, as their number is increasing internationally. The UN and all its agencies have investigated this issue, as this is not a matter of *kafālah* or adoption. It concerns their name, originality, nationality, and religious beliefs. Therefore, a mechanism should be established internationally to protect them.

3.5 CONCLUSION

In conclusion, Pakistan's ratification of key international instruments, such as the United Nations Convention on the Rights of the Child (UNCRC), its Optional Protocols, and the OIC Covenant on the Rights of the Child, underscores the country's formal commitment to upholding children's rights in line with global and Islamic standards. These conventions have played a vital role in shaping legal and policy frameworks aimed at promoting the well-being, survival, and development of children. Nevertheless, while they provide a strong foundation for child protection generally, they fall short in addressing the specific and complex realities faced by orphaned children.

However, apart from the recognition of *kafālah* in Islamic law, which offers an alternative to adoption for orphan care, these international instruments do not provide a comprehensive framework specifically tailored to the needs of orphans. *Kafālah*, while valuable in ensuring guardianship without violating Islamic principles, addresses only a narrow aspect of orphan welfare. Orphans face multifaceted challenges beyond care and custody, such as access to inheritance, education, identity, healthcare, and

protection from exploitation. Despite Pakistan's commitment to these global frameworks, the absence of specific, enforceable provisions targeting orphaned children renders the international legal framework inadequate for addressing their unique vulnerabilities. This gap underscores the need for Pakistan to develop a specialized, rights-based national legal regime that holistically protects orphans in accordance with both international standards and Islamic teachings.



CHAPTER FOUR

LEGAL FRAMEWORK FOR THE PROTECTION OF ORPHANS IN PAKISTAN

4.1 INTRODUCTION

Protecting orphans stands among the significant concerns within the social justice and human rights framework, necessitating substantial theoretical and legal mechanisms to safeguard orphan welfare. In Pakistan, where socioeconomic challenges and demographic complexities exacerbate the vulnerabilities faced by orphans, the legal system's role becomes particularly critical. This chapter examines the theoretical underpinnings of national policy and the legal provisions constituting Pakistan's orphan protection framework. By examining the intersection of Islamic principles, international human rights standards, and domestic legal instruments, this study provides a comprehensive understanding of how the Pakistani legal system addresses the needs and rights of orphans. The analysis covers statutory laws, policy measures, and judicial interpretations, highlighting the strengths and gaps of the existing legal infrastructure. Furthermore, it considers the practical implications of these legal frameworks and assesses their effectiveness in ensuring the protection and welfare of orphans. Through this examination, this study intends to contribute to the ongoing discourse on child protection and advocate for enhanced legal reforms and policy interventions that align with national and international obligations.

4.2 FEDERAL AND PROVINCIAL LEGAL SYSTEMS IN PAKISTAN

A legal system is the basic structure of rules set by the sovereign of any state through which it endeavors to establish legal relations between rights and duties, power and liability, and immunity and disability between individuals and the state. Even though

the objectives of different legal systems may differ, the modality through which these purposes are fulfilled is the same in every legal system by means of juristic relations. The legal system determines whether a state is developed or underdeveloped. Thus, robust legal systems are an essential requirement and precondition for the sustained development of any state. Ineffective legal systems in underdeveloped countries are the main obstacle to growth.¹

Pakistan operates under a federal legal system established by the Constitution of 1973, which outlines a structured division of legislative powers between the federal and provincial governments. This framework allows both levels of government to enact laws and policies within their respective domains, promoting a balanced approach to governance. Federal laws apply uniformly across the country, while provincial legislation caters to regional needs, particularly in sectors like education, health, and child protection. Over the years, Pakistan has introduced several national policies, such as the National Child Protection Policy 2021 and National Plan of Action for Children, which serve as guiding instruments for both federal and provincial authorities to implement child-focused programs. These policies emphasize coordination across different levels of government and institutions to ensure that the rights and welfare of children, including orphans, are effectively protected and promoted throughout the country.²

4.2.1 Pakistan's National Policy on Child Rights

Pakistan's National Policy on Child Rights, 2021 is the first comprehensive and rights-based policy dedicated solely to children, developed in alignment with Pakistan's obligations under the UN Convention on the Rights of the Child (UNCRC). While earlier frameworks such as the 2006 National Plan of Action for Children, the 2000 Juvenile Justice System Ordinance, and various education and child labour policies addressed specific aspects of child welfare, they lacked an integrated approach to child

¹ Lubna Hasan, "Rule of Law, Legal Development and Economic Growth: Perspectives for Pakistan," *Journal of Advanced Research in Law and Economics*, vol. 2, (2011): 48–59. <<https://doi.org/10.2139/ssrn.1685132>>

² Ibid.

rights. The 2021 policy consolidates these fragmented efforts into a unified national framework that focuses on children's survival, development, protection, and participation, reflecting a shift from welfare-based to rights-based governance in child-related matters. It also aligns with the Sustainable Development Goals (SDGs) and provides a basis for coordination between federal and provincial authorities for effective implementation.³

While significant challenges remain, the policy framework highlights numerous opportunities to advance the human rights agenda. The protection and promotion of fundamental freedoms are recognized as essential to Pakistan's democratic and developmental aspirations. Therefore, it prioritizes the practical realization of these rights, including those of children, through legal, institutional, and policy reforms.⁴

The National Policy specifically focused on the protection of the rights of vulnerable groups, in which they discussed child rights, particularly. Moreover, children in Pakistan constitute approximately 46% of the total population, making them one of the most vulnerable segments of society. Recognizing the importance of child welfare, Pakistan was among the six countries that endorsed the 1990 World Summit for Children, which issued the "first call for children" at the international level. According to the National Policy, Pakistan is focusing on the protection of child rights, and it aligns with the UNCRC. The Government of Pakistan recognizes the multifaceted challenges faced by children, including widespread malnutrition, limited access to quality education and healthcare, and various forms of exploitation. Violence against children remains a pervasive issue, occurring in multiple settings such as the home, school, workplace, and broader community. The gendered nature of this violence warrants particular attention, as girls are often disproportionately affected due to prevailing conservative norms. These norms may restrict their access to education and hinder their development, thereby perpetuating gender-based disparities in opportunities and outcomes.⁵

³ Ministry of Human Rights, Pakistan, "Pakistan National Policy Framework on Human Right (2022-2027)," <<https://mohr.gov.pk/SiteImage/Misc/files/NPFW%20on%20HR%2022-27.pdf>> (accessed 17 July, 2025).

⁴ Ibid.

⁵ Pakistan's National Policy on Child Rights 2021, 12.

Under the National Policy framework, the following initiatives are recommended by the government of Pakistan:

- i. “Develop a national as well as provincial legal framework and a sound strategy to improve child rights.
- ii. Promote and strengthen legislative, administrative, and institutional mechanisms for complaint redressal at the national and provincial levels to protect child rights. For local grievances, practical and accessible grievance redressal mechanisms shall be developed at the district level.
- iii. Protect all children from all forms of violence and abuses, harm, neglect, stigma, discrimination, deprivation, exploitation, including economic exploitation and sexual exploitation, abandonment, separation, abduction. Sale or trafficking for any purpose or in any form, pornography, social media/ cyber-crime, alcohol and substance abuse, or any other activity that takes undue advantage of them, or harms their personhood, or affects their development.
- iv. Adopt measures to ensure that every child in the age group of 5-16 years is in school and enjoys the fundamental right to free and compulsory education as enshrined in the Constitution.
- v. Recommend all Provincial Governments to pass legislation for giving effect to Article 25-A. The quantum of public spending on education should increase substantially from the current allocation. After the coming into effect of such laws, the respective Departments of Education will frame rules detailing the norms and procedures for providing free and compulsory education in their respective areas.
- vi. Ensure that all out of school children such as child laborers, migrant children, trafficked children, children of migrant labor, street children, child victims of sexual and substance abuse, children in areas of civil unrest, orphans, children with disability (mental and physical), children of prisoners, etc. are tracked, registered, rescued, rehabilitated and have access to their right to education.
- vii. Address discrimination of all forms to foster equal opportunity for children, treatment, and participation irrespective of place of birth, sex, religion, disability, language, region, caste, health, social, economic, or any other status.
- viii. Create an early childhood care, protection, and safe environment for all children to reduce their vulnerability in all situations and keep them safe at all times, especially in public spaces.

- ix. Commit to taking special protection measures to secure the rights and entitlements of children in need of special protection, characterized by their specific social, economic and geo-political situations, including their need for rehabilitation and reintegration in particular; but not limited to children affected by migration, and displacement due to communal or sectarian violence, civil unrest, disasters and calamities.
- x. Engage with donor agencies and NGOs to build programs for the development and protection of children.
- xi. Ensuring registration and documentation of all children, including abandoned, orphaned, and homeless children.
- xii. Establish a nationwide unified financial support fund to assist children facing economic hardship.
- xiii. Recommend allocation of adequate resources to the devolved subjects, especially the additional resources made available to the provinces.
- xiv. Provide special grants, particularly for underdeveloped areas, based on rates of illiteracy and out-of-school children.
- xv. Establish a basic Education Fund, where donors, philanthropists, and expatriates can contribute to promote public-private partnership.
- xvi. Run a mass mobilization campaign to bring children to schools with the help of political leaders, CSOs, and the media.
- xvii. Collect data on out-of-school children at the district level through a unified system to establish a comprehensive mechanism for compulsory education.
- xviii. Inclusion of human rights and civic education in the curriculum."⁶

Moreover, the National Policy is extensive and provides protective measures for all children living in Pakistan and also encourages provinces to take initiatives for the protection of human rights, particularly for children. However, in June 2025, the Punjab Government introduced its first provincial Child Protection Policy. The policy establishes a comprehensive and integrated child protection framework aimed at safeguarding children from abuse, neglect, exploitation, and harmful practices. Anchored in the United Nations Convention on the Rights of the Child (UNCRC) and the Constitution of Pakistan, the policy aligns with both international standards and national legal obligations.⁷

⁶ Pakistan's National Policy on Child Rights 2021, 13-15.

⁷ *Government of Punjab*, "Punjab Government to Be First in Launching Historic Child Protection Policy," <<https://dgpr.punjab.gov.pk/node/33520>> (accessed 10 July, 2025).

A key feature of the policy is its emphasis on multi-sectoral coordination, involving families, schools, communities, and various government departments to ensure a cohesive and timely response to child protection concerns. It outlines clear protocols, legal procedures, and support services designed to strengthen both formal and informal protection mechanisms. To facilitate implementation, the policy includes professional training for social service workers, the development of a Child Protection Case Management and Referral System (CP-CMRS) for individual case tracking and timely intervention, and the introduction of a centralized Management Information System (MIS) to enhance data collection, inter-agency collaboration, and follow-up mechanisms. This policy signifies a significant step forward in provincial-level child protection governance in Pakistan.⁸

Thus, both national and provincial policies reflect Pakistan's ongoing efforts to strengthen child protection mechanisms and adopt best practices to safeguard the rights and welfare of children.

4.2.2 Federal Legal Framework of Pakistan

4.2.2.1 History of the Constitution

Pakistan is a developing country that has attained independence since 1947. Prior to its independence, Pakistan was part of the Indian subcontinent and had been ruled by several rulers. Muslims also ruled the Indian subcontinent for almost 300 years and had introduced the Islamic legal system over the centuries. Later, in 1857, the subcontinent was under the control of the British administration, and they introduced the Common law in the subcontinent. Pakistan inherited its Common law system from British rule in India. However, the laws and legal institutions inherited were those suited for regulation by the colonial power.⁹

⁸ Ibid.

⁹ *Asian Development Bank*, "Technical Assistance to the Islamic Republic of Pakistan for the Legal and Judicial Reform Project," Project Number: 38612, February 2007. <<http://www.adb.org>> (accessed 20 February, 2022).

The bulk of Anglo-Indian law is still applicable in Pakistan. Pakistan and India were established on the 14th and 15th of August 1947 by the Indian Independence Act 1947. The Government of India Act 1935 was retained as a provisional constitution on independence. This arrangement persisted until the Constituent Assembly drafted a new constitution. Consequently, the legal and judicial framework of the British era was maintained, with appropriate modifications made to suit the needs of the new Republic. By doing so, a gap or interruption in the functioning of the legal system was averted, ensuring its continuous operation.¹⁰

To draft Pakistan's first constitution, the government established different constituent committees, and in 1956, Pakistan enacted the first constitution. Later, due to political instability in the newly born State, martial law was introduced, thus abolishing the first Constitution in 1958. Years later, in 1962, 1972 and 1973, the second, third, and fourth Constitutions were legislated to replace earlier Constitutions. Currently, the Constitution of 1973 is the supreme law of Pakistan.¹¹ The Constitution of Pakistan envisions a governance system based on principles of social justice and protection of fundamental rights with a separation of powers between the Executive, Legislature, and Judiciary.¹²

4.2.2.2 The Constitution of Pakistan, 1973

The Constitution of Pakistan, 1973, is the supreme law of the land. According to the Constitution, legislation between the center and provinces is distributed through Article 70(4)¹³, which mandates the Federal Government to legislate on different subject

¹⁰ Faqir Hussain, *The Judicial System of Pakistan* (Islamabad: Federal Judicial Academy, 2015), 4th ed., 10, via Supreme Court of Pakistan, <<https://www.supremecourt.gov.pk/download/judicial-system-of-pakistan/>>

¹¹ Amna Hassan, "Quality Legislation in Pakistan," (University of Pécs, 2020), 5 via ResearchGate, <https://www.researchgate.net/publication/340538875_Quality_Legislation_in_Pakistan>

¹² Ibid., 6.

¹³ The Constitution of the Islamic Republic of Pakistan 1973, Art 70(4), "(4) In this Article and the succeeding provisions of the Constitution, "Federal Legislative List means the Federal Legislative List in the Fourth Schedule."

matters mentioned in Schedule Four (Annex A)¹⁴. Furthermore, Articles 141 to 143¹⁵ authorize the provincial governments to legislate on different subject matters mentioned in the Provincial List. However, the 18th amendment to the Constitution of Pakistan, 1973, omitted the concurrent list from Schedule Four of the Constitution of Pakistan, 1973. Thus, after the omission of the concurrent list, more subject matters were added to the provincial legislative list, which empowered the provincial governments in Pakistan to legislate family issues, including children's rights. Hence, all provinces legislate according to their needs.

Furthermore, the Constitution of Pakistan is structured into distinct chapters, each addressing specific thematic areas and outlining corresponding legal and institutional mechanisms.

4.2.2.3 Children's Rights under the Constitution

The Constitution of Pakistan offers a robust framework for safeguarding these rights, combining international standards and Islamic principles. This dual approach guarantees that children's rights are protected within the country's legal and cultural context. The Constitution mandates that the state guarantees the well-being, education, and development of children while also incorporating provisions from the Muslim Personal Law based on *Sharī'ah*. This section proceeds with a discussion of

¹⁴ The Constitution of the Islamic Republic of Pakistan 1973, Appendix A, Schedule IV.

¹⁵ The Constitution of the Islamic Republic of Pakistan 1973, Art 141 to 143, “Extent of Federal and Provincial laws 141. Subject to the Constitution, 1 [Majlis-e-Shoora (Parliament)] may make laws (including laws having an extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof. 142. Subject-matter of Federal and Provincial laws 142. Subject to the Constitution— (a) 1 [Majlis-e-Shoora (Parliament)] shall have exclusive power to make laws with respect to any matter in the Federal Legislative List; 2 [(b) Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence;] 3 [(c) Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List;] 4 [(d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province]. 143. Inconsistency between Federal and Provincial law 5 [143. If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.]”

fundamental rights in the Constitution of Pakistan and is followed by a thorough analysis of articles that pertain to children's rights.

The first and fundamental right of any individual, regardless of age, is the right to life. The Constitution of Pakistan also provides this as an individual's right. Article 9 of the Constitution of Pakistan states that "No person shall be deprived of life or liberty save in accordance with the law."¹⁶

The Supreme Court of Pakistan examined Article 9 of the Constitution in *Arshad Mehmood and Ors. v Government of Punjab through the Secretary*¹⁷ and decided that,

"The word 'life' used in Article 9 of the Constitution includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally; the word 'life' in the Constitution has not been used in a limited manner; a wide meaning should be given to enable a man not only to sustain life but to enjoy it."¹⁸

It is apparent from the wording of the Constitution that the right to life and liberty of any individual is more sacred and inviolable. Moreover, the State is obligated to protect everyone's life without any distinction. Hence, the lives of children living in Pakistan are as essential as the other members of the State. If there is any violation, then the State is responsible for it. Therefore, the courts must safeguard the fundamental rights of every citizen and protect their life and liberty from illegal, unauthorized, and malicious acts of omission or commission by an authority or person. The freedom of a citizen involves the action initiated by the police; when found to be mala fide, the court should not hesitate to step in and grant relief to the citizen.¹⁹

The right to life involves the right to health, which means everyone has the right to the best physical and mental health. To achieve this, all forms of medical services must be available and accessible to everyone without discrimination. Therefore, the

¹⁶ The Constitution of the Islamic Republic of Pakistan, 1973, Article 9.

¹⁷ *Arshad Mehmood and Ors. v Government of Punjab through the Secretary* PLD [2005] SC 193.

¹⁸ Munazza Razzaq, *Fundamental rights in the light of the Constitution of Islamic Republic of Pakistan, 1973* (Islamabad: Women Aid Trust, 2018), 33.

¹⁹ *Muhammad Aslam (Amir Aslam) and Ors. v District Police Officer Rawalpindi and Ors.* [2009] SCMR 141.

Federal Government carries the obligation to ensure the realization of this goal. As Pakistan is a federal state, it adopts the rules of federalism while providing fundamental rights to the citizens of Pakistan.

The discussion of women's rights is critical when discussing the right to life. In the case of *Sadaf Aziz and Ors. v the Federation of Pakistan*²⁰, rape was committed against an innocent woman. The Lahore High Court resolved the matter and established moral rights for the victim in the case to ensure that the victim has a right to live in a dignified manner and to ensure accessibility to a decent physical, social, and cultural environment. It also protects a person from the structural stigma, as stereotype discrimination adversely impacts the dignity of a person. Moreover, such rights entail that the person receives an optimum healthcare standard and an attainable physical and mental health standard, which are indispensable.²¹

The Constitution of Pakistan discusses the dignity of man and considers it a sacred matter. As stated in Article 14(1) under the Constitution, "the dignity of man and, subject to law, the privacy of home shall be inviolable."²² This provision is crucial for ensuring the safety and well-being of all citizens within the country. In light of this, the government must enforce this provision to protect the privacy and security of all citizens, following the teachings of the Holy Qur'ān. Allah (S. W. T.) says,

"O ye who believe: Enter not houses other than your own, until ye have asked permission and saluted those in them; That is best for you, so that ye may heed (what is seemly)."²³

"If ye find none in the house, enter not until permission is given to you; if ye are asked to go back, go back; that makes for greater purity."²⁴

Article 14 of the Constitution of Pakistan provides for the preservation of man's dignity. Islamic injunctions and national legislation protect and preserve man's dignity

²⁰ *Sadaf Aziz and Ors. v the Federation of Pakistan* [2021] PCRLJ 205.

²¹ Ibid.

²² The Constitution of the Islamic Republic of Pakistan, 1973, Article 14.

²³ Al-Nūr: 27.

²⁴ Al-Nūr: 28.

and home privacy. Violating one's privacy through arbitrary intrusion without the authority of law is unwarranted and unacceptable to human rights.²⁵

In Pakistan, the rights of individuals in all aspects of life under the Constitution are subject to extensive debate, but even more concerning, the country's Higher Judiciary has not yet explicitly addressed the rights of children. However, obtaining specific judgments pertaining to the Convention on the Rights of the Child and children's rights requires considerable effort. The Constitution of Pakistan does elaborate on the concept of dignity and its different components, but the dignity of children remains to be addressed. Children are part of society, and their lives and homes are equally significant as those of others. Void of the right to dignity may result in the failure of the Court of Law to protect them. The question now is, how can children be considered dignified individuals only once they attain the age of majority? If children never receive respect from adults, how can they be expected to show respect in return? These are not merely rights but the foundational moral values of any society.

Under the fundamental rights, another necessary provision deals with equality before the law. Article 25 states that,

4.2.2.3.1 All citizens are equal before the law and are entitled to equal protection of the law.

4.2.2.3.2 There shall be no discrimination based on sex.

4.2.2.3.3 Nothing in this Article shall prevent the State from making any special provision to protect women and children.²⁶

Equality is a fundamental principle deeply ingrained in human morality. It is a value widely recognized and enshrined in the constitutions of many nations. Furthermore, various countries have implemented anti-discrimination laws prohibiting

²⁵ *Mushtaq Ahmed and Ors. v Secretary, Ministry of Defence through Chief of Air and Army Staff and Ors.* PLD [2007] SC 405.

²⁶ The Constitution of the Islamic Republic of Pakistan, 1973, Article 25.

all forms of discrimination or specific types of discrimination, such as racial or gender-based discrimination.²⁷

The concept of equal protection of the law envisages that a person or class of persons should not be denied the rights, which other persons in the same situation enjoy.²⁸ Further, Article 25 of the Constitution of Pakistan does not require all laws to apply uniformly to all persons. Classification is always permissible, provided it is reasonable and bears a direct nexus with the objects of legislation. The legislature must ensure that all laws comply with Article 25 and Article 8²⁹ of the Constitution of Pakistan.³⁰

The Supreme Court of Pakistan reflects equality under the provisions of Article 25 of the Constitution and has laid down the following principles³¹:

1. The equal protection of the law does not mean that every citizen should be treated equally in all circumstances. Still, it contemplates that persons similarly situated or placed should be treated alike.
2. The reasonable classification is permissible but must be founded on a valid distinction or rational basis.

²⁷ Samantha Besson, “The Principle of Non-Discrimination in the Convention on the Rights of the Child”, *The International Journal of Children's Rights*, vol. 13 (2005): 433-46.

²⁸ *Miss Shazia Batool v Government of Balochistan*, [2007] SCMR 410.

²⁹ The Constitution of the Islamic Republic of Pakistan, 1973, Article 8, “Laws inconsistent with or in derogation of Fundamental Rights to be void 8. (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void. (2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void. (3) The Provisions of this Article shall not apply to— (a) any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or 2 [(b) any of the — (i) laws specified in the First Schedule as in force immediately before the commencing day or as amended by any of the laws specified in that Schedule; (ii) other laws specified in Part I of the First Schedule;] and no such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision of this Chapter. (4) Notwithstanding anything contained in paragraph (b) of clause (3), within a period of two years from the commencing day, the appropriate Legislature shall bring the laws specified in 1 [Part II of the First Schedule] into conformity with the rights conferred by this Chapter: Provided that the appropriate Legislature may by resolution extend the said period of two years by a period not exceeding six months. Explanation.— If in respect of any law 2 [Majlis-e-Shoora (Parliament)] is the appropriate Legislature, such resolution shall be a resolution of the National Assembly. (5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.

³⁰ *Ardeshtir Cowasjee and 11 Ors. v Sindh Province and Ors.* [2004] CLC 1353.

³¹ *Messrs Amas CNG through Managing Partner v Zila Nazim, Lahore, and Ors.* [2009] MLD 71.

3. No universal standard to test the reasonableness of classification can be laid down, as what may be a reasonable classification in one set of circumstances may be unreasonable in another.
4. A law applying to one person or class of persons may be constitutionally valid if there is a sufficient basis or reason for it. Still, an arbitrary classification that is not founded on any rational basis is no classification that warrants its exclusion from the purview of Article 25.
5. The equal protection of the law means that all persons equally placed are treated alike in privileges conferred and liabilities imposed.
6. To make a classification reasonable, it should be based on the following:
 - a. On an intelligible distinction, which distinguishes persons or things that are grouped from those who have been left out.
 - b. The difference must have a rational nexus to the object sought to be achieved by such classification.

Therefore, citizens' right to equality is not violated if the discrimination proceeds on a rational classification relevant to the legislation's underlying object.³²

Another important right provided under the Constitution is outlined in Article 25-A, which states that "the State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law."³³

Through the 18th Amendment, this Article was added to Pakistan's Constitution in 2010. This Article ensures free education under the supervision of government organs from age five to sixteen years old. On the other hand, Article 29, read with Article 25A of the Constitution, requires the enforcement of fundamental rights by the State. Therefore, primarily because of Article 25A of the Constitution, it has been mandatory for the State to provide education to children aged five to sixteen.³⁴

³² Munazza Razzaq, 25.

³³ Inserted by the Constitution (Eighteenth Amendment) Act 2010.

³⁴ *Fiaqat Hussain and Ors. v Federation of Pakistan through Secretary, Planning and Development Division, Islamabad and Ors.* PLD [2012] SC224.

It is the right of every man, woman, and child to read, write, and attain knowledge without discrimination. Education is a fundamental right as it ultimately affects the quality of life, which is related to other fundamental rights guaranteed under Articles 4 to 9 of the Constitution. Recognition of rights and obligations, advancement of civic awareness in society, and appreciation of fundamental liberties ensured by the Constitution are significantly influenced by the quality of education. Individuals are unlikely to fully exercise their rights unless they are adequately educated about them.³⁵

In his judgment, the Chief Justice of Pakistan decided that the right to live meant the right to live with dignity and honor, including the right to proper health care, the right to adequate food and nutrition, the right to appropriate clothing, the right to education, the right to shelter, the right to earn one's livelihood, and the right to a clean atmosphere and unpolluted environment.³⁶

It is important to note here that free education is the State's responsibility as provided under the Constitution of Pakistan. Thus, in compliance with this Article, the Federal Government shares the responsibility with all the provinces. Therefore, the provinces have the autonomy to legislate free education in their provinces without discrimination, which leads to the legislation of the laws below:

1. The Punjab Free and Compulsory Education Act 2014 (XXVI of 2014)
2. The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017
3. The Sindh Right of Children to Free and Compulsory Education Act, 2013
4. The Balochistan Compulsory Education Act, 2014 (Act No. V of 2014)

These are the provincial legislations and the purpose behind the separate legislations is to achieve the Sustainable Development Goals (SDGs) of 2030. A detailed discussion of local legislation will be in the next part of this chapter.

³⁵ *Rana Aamer Raza Ashfaq and Another v Dr. Minhaj Ahmad Khan and Another* [2012] SCMR 6.

³⁶ *Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v President of Pakistan Through Secretary and Ors.* PLD [2010] SC 61.

Meanwhile, it is crucial to appreciate the efforts of the Federal and Provincial governments in initiating and promulgating the laws regarding free education. However, Pakistan, a struggling and underdeveloped state, confronts difficulties related to the implementation of these laws.

Currently, in one of the reports by UNICEF regarding out-of-school children (OOSC), Pakistan has the world's second-highest number of OOSCs, with an estimated 22.8 million children aged 5 to 16 years, representing 44 percent of the total population in this age group. On the other hand, among children aged 5 to 9, 5 million of them are not enrolled in schools after primary school age, which is double compared to 11.4 million adolescents between the ages of 10 and 14 not receiving formal education. In addition, the disparities based on gender, socioeconomic status, and geography are significant. According to the data available, in Sindh, girls constitute a majority of the out-of-school children (OOSC), with 58% of the poorest children falling into this category. In Balochistan, the percentage of OOSC girls is significantly higher, at 78%. Furthermore, at the primary level, the ratio of enrolled male students is approximately 10.7 million compared to 8.6 million female students, and these numbers drop to 3.6 million and 2.8 million, respectively, at the lower secondary level.³⁷

In Pakistan, the right to education is granted to all children aged five to sixteen without discrimination. Nevertheless, the effective implementation of this law has yet to be observed in the country. The primary obstacle to resolving this issue is the requirement for additional resources, as mandating free and compulsory education for all children would necessitate a substantial investment in establishing schools and necessary infrastructure.³⁸

Moreover, Article 25A of the Constitution of Pakistan guarantees free and compulsory education to all children between the ages of five and sixteen. This general provision does not account for the specific socio-economic and psychological barriers

³⁷ "Education in Pakistan," UNICEF, <<https://www.unicef.org/pakistan/education>> (accessed 25 October, 2021).

³⁸ Combined sixth and seventh periodic reports submitted by Pakistan under article 44 of the Convention, due in 2021, <<https://documents.un.org/doc/undoc/gen/g24/016/93/pdf/g2401693.pdf>> (accessed 20 October, 2022)

that orphans face in accessing education. Unlike children with parental support, orphans often lack the familial, financial, and emotional resources necessary to benefit from mainstream educational opportunities. They may reside in institutional care, informal guardianship, or on the streets—contexts that frequently fall outside the scope of routine educational outreach. Therefore, a separate legal and policy framework is essential to ensure not only access but also continuity, quality, and support services (such as counselling, stipends, and residential schooling) tailored to their unique circumstances. Special legislation would operationalize the constitutional right in a way that is responsive to the lived realities of orphaned children.

Another important right provided under the Constitution is property rights. Article 24 states that,

"(1) No person shall be compulsorily deprived of his property save in accordance with the law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and how compensation is to be determined and given."³⁹

It is important to note that Article 24 of the Constitution of the Islamic Republic of Pakistan, 1973, strictly imposes that no person would be deprived of his property save by the law. The action of an executive depriving a person of his property must carry the sanction of the law behind it. Substantial compliance with the law is obligatory during the process. If the action taken is not appropriate, such action is legally considered a nullity, and coram-non-judice would reduce the same to naught.⁴⁰

It is equally essential to note that age and gender are not factors in the consideration of property rights. All men, women, and children can ask for relief if their fundamental rights are infringed. Fundamental rights guaranteed under Articles 23 and 24 of the Constitution are inalienable rights of every citizen. Such Constitutional rights guarantees are subject to the legitimate exercise of the power of the eminent officials of

³⁹ The Constitution of the Islamic Republic of Pakistan, 1973, Article 24.

⁴⁰ *Aamir Khalil v Government of Pakistan Through Director General, A.N.F., Rawalpindi, and 5 Ors.* PLD [2004] Pesh. 251.

the State. Public functionaries must ensure that their actions are based on a just decision since exercising the power of forcibly taking a citizen's property infringes on their Constitutional right to own, possess, and enjoy their property. Unauthorized actions of the executive erode the rule of law.⁴¹ If the State functionaries acquire any property from any individual of the State in a mala fide manner, the person has the right to invoke the jurisdiction of the High Court under Article 199 of the Constitution of Pakistan.

The Constitution of Pakistan guarantees the fundamental rights of every citizen, wherever he may be. For example, Article 9 provides for the security of the person. Article 11 prohibits slavery and forced labor. Article 14 ensures the dignity of man, Article 22 covers the rights of minorities, and Article 25 promises equality for citizens (although Section 25(3) further provides that this equal protection clause shall not prevent the State from making special provisions for the protection of women and children). In addition, the Constitution obliges the State under Article 35⁴² to protect the institution of marriage, the family, the mother, and the child.⁴³ Furthermore, the Constitution guarantees it by stating in Article 38-D, which reads:

"The State shall provide necessities of life, such as food, clothing, housing, education, and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment."⁴⁴

The above explanations make it clear that the Constitution of Pakistan provides fundamental rights without discrimination. The Constitution does not explicitly mention a specific age limitation or any age restrictions. Moreover, for the rights of orphans, any person on behalf of those orphans can invoke the jurisdiction of the High Court and the Supreme Court.

⁴¹ *Malik Bashir Ahmad and 4 Ors. v Federal Government of Pakistan Through Secretary Cabinet Division and 6 Ors.* PLD [2018] Islamabad 68.

⁴² The Constitution of the Islamic Republic of Pakistan, 1973, Article 35.

⁴³ Tahira Jabeen, "Child Protection Policy in Pakistan," (unpublished Ph.D. thesis, Australian National University, 2012), 64.

⁴⁴ The Constitution of the Islamic Republic of Pakistan, 1973, Article 38(D).

4.2.3 Other Federal Legislation Regarding the Rights of Children in Pakistan

The legislative framework for child protection in Pakistan is anchored in the constitutional provisions that delineate the responsibilities of the federal and provincial governments. The Federal Legislative List, as enshrined in the Constitution of Pakistan, empowers the federal government to legislate on matters concerning the welfare and protection of children within the Islamabad Capital Territory. This jurisdictional mandate underscores the federal government's commitment to ensuring that children residing in the capital are afforded legal protections and support mechanisms tailored to their unique needs and circumstances.

Beyond the confines of the capital territory, the federal government holds a broader mandate to enact laws with nationwide applicability when necessary. This legislative authority is crucial for addressing uniformity in child protection standards across the diverse provinces of Pakistan, which may otherwise have varying legal frameworks and enforcement capabilities. By legislating comprehensive child protection laws, the federal government aims to establish a cohesive legal regime that aligns with international child rights standards, including those articulated in the United Nations Convention on the Rights of the Child (UNCRC), to which Pakistan is a signatory.

The following are the primary laws enacted to recognize and protect children's rights in the Islamabad capital territory, some of which are applicable nationally, these laws further classified into three main themes:

A. Criminal Justice System

1. Pakistan Penal Code, 1860
2. Criminal Procedure Code, 1898
3. Juvenile Justice System Act, 2018
4. The Zainab Alert, Response and Recovery Act, 2020
5. Prevention of Trafficking in Persons Act, 2018

B. Family Laws

1. Muslim Family Law Ordinance, 1961
2. Guardians and Wards Act, 1890
3. Child Marriage Restraint Act, 1929

C. Other Laws

1. Islamabad Capital Territory Child Welfare Act, 2018
2. National Commission on the Rights of the Child Act, 2017
3. Civil Procedure Code, 1908
4. The Majority Act, 1875
5. National Database and Registration Ordinance, 2000

4.2.3.1 Criminal Justice System

4.2.3.1.1 Pakistan Penal Code, 1860

The Pakistan Penal Code, 1860 (herein after called as PPC, 1860) does not provide a comprehensive child rights framework; it contains critical provisions that protect children from violence, abuse, trafficking, sexual exploitation, and labor exploitation. These provisions are increasingly interpreted in light of constitutional guarantees, international obligations (e.g., CRC), and specialized child protection laws in Pakistan. Adequate protection, however, depends on the implementation, interpretation, and coordination with other legislative instruments, such as the Juvenile Justice System Act 2018, the Zainab Alert Act 2020, and provincial child protection laws.

The PPC, 1860, provides general exceptions, which include children under fourteen years. Section 82 of the Pakistan Penal Code sets the minimum age for criminal responsibility at ten years, stating that "Nothing is an offense done by a child under [ten] years of age."⁴⁵ Moreover, Section 83 provides a further explanation by stating that "Not an offense which is done by a child above [ten] years of age and under [fourteen], who has

⁴⁵ The Pakistan Penal Code, 1860, s 82.

not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."⁴⁶ It specifies when a child's act becomes an offense. The court has the discretion to determine whether a child over seven and under twelve who has committed an offense is of sufficient cognitive maturity to comprehend the consequences of their action.⁴⁷

The Code criminalizes acts that endanger a child's life, safety, and dignity. For instance, Sections 302 and 308⁴⁸ safeguard the child's right to life and protection from attempts to cause death, while Sections 332 to 337 deal with bodily harm and grievous hurt, which are applicable in cases of physical abuse or domestic violence against children. Section 328⁴⁹ specifically addresses the abandonment of children under twelve by guardians, and Sections 340 to 346⁵⁰ criminalize unlawful confinement, often relevant in situations of child trafficking or forced labor. Furthermore, Sections 361 to 369 protect children from kidnapping and abduction, particularly Section 369⁵¹, which deals with kidnapping to beg. Sections 370 and 371 relate to trafficking and forced prostitution, extending protection against commercial exploitation. The PPC also covers sexual offences, with Sections 375⁵² and 376 on rape and Section 377 on unnatural offences, which have been increasingly invoked in cases of child sexual abuse. The Code also prohibits the exposure of children to obscene material (Sections 292 and 293) and penalizes unlawful compulsory labor under Section 374. Although many of these

⁴⁶ The Pakistan Penal Code, 1860, s 83.

⁴⁷ *Mir Muhammad Farid v Mst Ambreen* 2003 [YLR] 2234

⁴⁸ The Pakistan Penal Code, 1860, s 308(1). "Punishment in qatl-i-amd not liable to qisas, etc.: Provided further that where at the time of committing qatl-i-amd the offender being a minor, had attained sufficient maturity of being insane, had a lucid interval, so as to be able to realize the consequences of his act, he may also be punished with imprisonment of either description for a term which may extend to [twenty-five years] as ta'zir."

⁴⁹ The Pakistan Penal Code, 1860, s 328. "Exposure and abandonment of child under twelve years by parent or person having care of it: Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation: This section is not intended to prevent the trial of the offender for *qatl-i-amd* or *qatl-i-shibh-i-amd* or *qatl-bis-sabab*, as the case may be, if the child dies in consequence of the exposure."

⁵⁰ These are the general provisions which includes children as well.

⁵¹ The Pakistan Penal Code, 1860, s 369. Kidnapping or abducting child under ten years with intent to steal from its person: Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁵² The Pakistan Penal Code, 1860, s 375(v) Rape: "With or without her consent when she is under sixteen years of age."

provisions are general, they are often applied in conjunction with specific child protection laws, such as the Juvenile Justice System Act 2018 and the Zainab Alert Act 2020. Collectively, these sections of the PPC form a foundational part of the legal framework that protects children in Pakistan, reflecting both constitutional mandates and the country's international human rights obligations under instruments such as the UN Convention on the Rights of the Child.

4.2.3.1.2 Criminal Procedure Code, 1898

The Criminal Procedure Code, 1898 (hereinafter referred to as CrPC, 1898), primarily provides the procedures in the criminal justice system. The CrPC does not have a single, comprehensive section exclusively dedicated to children. However, various provisions refer to children or juveniles within broader criminal procedures. The most relevant provision is Section 497(1) that states,

" a person accused of a non-bailable offence may not be released on bail, unless certain exceptions apply. However, the Explanation to this section provides that "a woman or a child under the age of sixteen years" may be granted bail even in cases where bail is ordinarily not granted.⁵³"

The purpose of this section is to align with the juvenile justice system, as provided under the Juvenile Justice System Act, 2018 (JJSA), which serves as the primary framework for handling children in conflict with the law. Moreover, this section reflects a protective intent within the criminal justice system by allowing relaxed bail conditions for minors (under 16), recognizing their vulnerability and the need to handle them differently from adults. Moreover, the courts in Pakistan have consistently interpreted this clause in the best interest of the child, granting bail even in serious offenses unless there is strong justification to deny it (e.g., risk of flight, tampering with evidence, or repeat offenses)

⁵³ The Criminal Procedure Code of 1898, s 497.

This provision reflects a child-sensitive approach within Pakistan's criminal justice system and demonstrates alignment with both constitutional protections and international obligations to safeguard the rights of children in conflict with the law.

4.2.3.1.3 Juvenile Justice System Act, 2018

A separate system of justice for dealing with juvenile offenders is a relatively modern concept. The underlying premise behind the creation of a juvenile justice system is that of rehabilitation. Pakistan took a decade after ratifying the UNCRC to promulgate its first exclusive law dealing with juvenile offenders. The Juvenile Justice System Ordinance 2000 (JJSO) was promulgated in July 2000. The JJSO remained the major law for dealing with juvenile crime until the enactment of the Juvenile Justice System Act 2018 (JJSA) on May 24, 2018. The fundamental principles behind the JJSO were ostensibly to provide protection to children involved in criminal litigation and to rehabilitate them into society.⁵⁴

Despite the legislative developments put forward by the JJSO, the ordinance remained largely ineffectual for almost two decades, until the passage of the JJSA 2018 repealed it. There were two main reasons for this: a) the JJSO had faced significant criticism over its inadequacies, and it was clear that a new law was needed to better conform to Pakistan's commitment to the UNCRC; b) the Lahore High Court issued a judgement which struck down the JJSO, and had called for a different enactment that was more discerning of the needs of children. The JJSA was largely considered an improvement over the previous law. The law aimed to improve the state of juvenile offenders by focusing on providing them with better access to justice and their rehabilitation.⁵⁵

The Juvenile Justice System Act (JJSA) 2018 aims to align Pakistan's juvenile justice mechanisms with constitutional guarantees and international obligations,

⁵⁴ Rabia Chaudhry, *Juvenile Justice Act of Pakistan 2018*, (Lahore: Center for Public Policy and Governance, United States Institute of Peace, and Forman Christian College, 2024), 14. <<https://cpgg.fccollege.edu.pk/wp-content/uploads/2024/03/JJSA-1.pdf>>

⁵⁵ Chaudhry, *Juvenile Justice Act*, 15.

particularly the United Nations Convention on the Rights of the Child (UNCRC). It extends to the whole of Pakistan. It defines a juvenile as anyone under the age of 18 at the time of the alleged offence and mandates the establishment of special Juvenile Courts to ensure child-sensitive trials. The Act introduces Juvenile Justice Committees (JJC's), comprising social workers, lawyers, and probation officers, to facilitate diversion and restorative justice as alternatives to formal trials. It guarantees free legal aid for juvenile offenders and emphasizes that bail should be granted in most cases. Moreover, it strictly prohibits the death penalty and life imprisonment without the possibility of release for minors. Juveniles must also be kept in separate facilities from adult offenders. The law places a strong emphasis on rehabilitation, reintegration, education, and vocational training. However, despite its comprehensive and rights-based approach, the implementation of JJSA 2018 faces several challenges, including a lack of infrastructure, insufficient training, and poor coordination among child protection and justice institutions across Pakistan.⁵⁶

4.2.3.1.4 The Zainab Alert, Response and Recovery Act, 2020

The Zainab Alert, Response and Recovery Act, 2020 (ZARRA), represents a landmark legislative response to the growing concern of child abduction and abuse in Pakistan. The Act is named after Zainab Ansari, a young girl whose abduction, rape, and murder in Kasur sparked national outrage and revealed systemic failures in child protection mechanism. The Act aligns with Pakistan's broader human rights obligations and emphasizes its role in bridging the gap between constitutional rights, criminal justice, and child protection.

This act is only applicable in Islamabad and does not apply to the other four provinces. The draft law proposes the establishment of the Zainab Alert, Response, and Recovery Agency for Missing and Abducted Children (ZARRA). The Agency will be headed by a Director General to be appointed by the Prime Minister. The Agency will essentially coordinate with other agencies, such as the police, to achieve the desired

⁵⁶ Ibid.

level of results. It will measure the problem of missing and abducted children by maintaining a database and using the helpline 1099. It is expected to work closely with the National Commission for the Rights of the Child (NCRC), established under the National Commission for the Rights of the Child Act, 2017. The Act also imposes a time-bound reporting obligation, mandating the registration of an FIR within two hours of receiving a report and the initiation of a response within 12 hours. The Act represents a significant step toward enhancing child safety, while cautioning that its success depends on sustained political will, effective inter-agency coordination, and widespread public awareness.⁵⁷

4.2.3.1.5 Prevention of Trafficking in Persons Act, 2018

The Prevention of Trafficking in Persons Act, 2018, is an important legislation regarding human trafficking crimes that is applicable throughout Pakistan. The Act primarily aims to prevent and combat trafficking in persons—especially concerning women and children, to promote and facilitate national and international co-operation in the matter and to protect trafficking victims.

Section 3 of the Act criminalizes forced labor and sexual trafficking, but more importantly, Section 3(2) specifies that where the offence is perpetrated against a child or a woman, the severity of the penalties increases. In such cases, the perpetrator is subjected to imprisonment for a term not exceeding ten years, with a minimum sentence of two years, a fine of up to one million rupees, or both. The Act imposes liability on the local police and the Federal Investigation Agency (FIA), respectively, to carry out investigations pertaining to internal trafficking and external trafficking. Moreover, the Act highlights the importance of raising awareness regarding trafficking crimes and emphasizes upon national and international cooperation in the matter to curb the peril of this offence. It further discusses the significance of data collection on the matter to

⁵⁷ Kamran Adil, “The Zainab Alert, Response and Recovery Act, 2020”, n.d. <<https://www.cpc.org.pk/wp-content/uploads/2020/10/Zainab-Alert-Kamran-Adil.pdf>> (accessed 11 July, 2025).

identify not only the factors that lead to trafficking but also the offenders and the victims.⁵⁸

4.2.3.2 Family Laws

4.2.3.2.1 Muslim Family Laws Ordinance, 1961

The Islamic law of inheritance has extensively explained the entitlement and shares of different legal heirs in the estate of the deceased person. The shares of heirs are fixed, and Allah (S. W. T.) knows their wisdom. Humans cannot meticulously comprehend its logic. For inheriting the share in the estate of the propositus, the heir must be in a nearer degree to the deceased person and must be alive at the time of the opening of the succession. However, heirs who are in distant relation to the deceased and also who are not alive upon the demise of the deceased are excluded from inheritance. In the classical law of inheritance, children of a predeceased son/daughter (i.e., grandchildren) do not inherit any share from the estate of the propositus if the direct children (sons or daughters) of the deceased are still alive. Therefore, for the protection of the inheritance rights of orphaned grandchildren, Section 4 of the Muslim Family Laws Ordinance 1961 (hereinafter MFLO, 1961) was enacted. Section 4 grants a share to orphaned grandchildren under the principle of representational succession.⁵⁹

However, this law moved into the provincial lists after the 18th amendment to the Constitution of Pakistan in 2010. It pertains to all Muslim family matters, including *nikāḥ* (marriage) registration, maintenance, dower, *talāq* (dissolution of marriage), and the inheritance rights of orphaned children to their grandfather's property.

However, one of the significant aspects of Section 4 of the MFLO, 1961, declares the inheritance rights of orphans to their grandfather's estate if a father is

⁵⁸ *State of Children*, "Prevention of Trafficking in Persons Act, 2018," <https://stateofchildren.com/national/#Prevention_of_Trafficking_in_Persons_Act_2018> (accessed 14 July, 2025).

⁵⁹ Haseeb Fatima Saikh, "Inheritance Rights of Orphaned Grandchildren under Section 4 of Muslim Family Law Ordinance, 1961 and its Alternative Solutions," *Law and Policy Review*, vol. 3, no. 2 (2025): 21–42. <<https://doi.org/10.32350/lpr.32.02>>

predeceased. In other words, in the event of their grandfather's passing, orphaned grandchildren are entitled to inherit his property, as it is crucial for their well-being and livelihood, as mentioned below:

"In the event of the death of any son or daughter of the propositus before the opening of the succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stirpes receive a share equivalent to the share which such son or daughter would have received if alive."⁶⁰

This provision grants orphans a representative share in inheritance; however, its incorporation appears to prioritize the protection and welfare of orphans within the Pakistani legal framework. Nevertheless, this approach simultaneously departs from the classical Islamic law of inheritance, thereby raising questions about its consistency with traditional jurisprudential principles. Mr. Allah Rakha (herein after referred to as Applicant) challenged this Ordinance⁶¹ in the Federal Shariat Court. The learned Judges of the Federal Shariat Court discussed all the provisions of the law as provided by the Islamic jurists on the issue of legal fraternity. Following extensive deliberation, the Federal Shariat Court held that Section 4 is null and void, deeming it inconsistent with the principles of Islamic inheritance law. In response, the respondent challenged the ruling by filing an appeal before the Shariat Appellate Bench of the Supreme Court in 2000. However, this appeal has remained undecided for over two decades. This prolonged inaction raises critical concerns regarding judicial inertia and its implications for legislative reform. From a normative perspective, a more suitable and Islamically reasonable alternative could be introduced, such as the legal recognition of an obligatory bequest (*waṣīyyah wājibah*) to safeguard the interests of orphans better. This approach would be consistent with the principles of *ijtihād* and align with the inheritance laws adopted by a majority of Muslim jurisdictions, which seek to harmonize traditional jurisprudence with contemporary social realities.

⁶⁰ The Muslim Family Laws Ordinance, 1961, s 4.

⁶¹ *Allah Rakha v Federation of Pakistan* PLD [2000] FSC 1.

4.2.3.2.2 Guardians and Wards Act, 1890

The Guardians and Wards Act of 1890 (hereafter referred to as GWA of 1890) is a significant legal statute in Pakistan that addresses child custody and guardianship issues. Its primary aim is to protect the welfare and best interests of children facing challenging family circumstances, such as divorce, separation, or the loss of a parent. Though originating in the colonial era, the GWA of 1890 remains a cornerstone of family law in Pakistan. The Act establishes a legal framework for appointing guardians, safeguarding children's rights and interests, and defining the rights and responsibilities of guardians and the children under their care.

Section 4 of the GWA of 1890 defines the key terms related to child custody and guardianship. A "minor" means "a person who, under the provisions of the Majority Act, 1875 (IX of 1875), is to be deemed not to have attained his majority."⁶² A "guardian" means "a person caring for the person of a minor, his property, or his person and property."⁶³ "Ward" means "a minor for whose person, property, or both, there is a guardian."⁶⁴

The GWA of 1890 is classified into different chapters addressing the appointments and declaration of guardians, duties, rights and liabilities of guardians, guardianship of the person, guardianship of the property, and termination of guardianship.

The GWA of 1890 serves a vital function for courts, parents, and guardians in protecting and promoting the welfare of children. Providing a structured legal framework assists in navigating intricate family dynamics and making well-informed decisions that prioritize the child's best interests. The Act ensures that all stakeholders have defined guidelines to follow, leading to a more consistent and equitable approach to resolving custody and guardianship matters.

⁶² The Guardians and Wards Act, 1890, s 4(1).

⁶³ The Guardians and Wards Act, 1890, s 4(2).

⁶⁴ The Guardians and Wards Act, 1890, s 4(3).

4.2.3.2.3 The Child Marriage Restraint Act, 1929

The Child Marriage Restraint Act (CMRA), originally enacted in 1929, stands as one of the earliest legislative efforts in the Indian subcontinent aimed at regulating the legal age of marriage and preventing child marriages. Following Pakistan's independence, the Act was retained as part of the national legal framework and continues to serve as the primary federal statute governing child marriage. Although initially uniform across the country, certain provinces have since amended the Act to raise the minimum legal age of marriage, particularly to enhance protections for girls. Under the federal CMRA, the minimum legal age for marriage is set at 18 years for males and 16 years for females⁶⁵. The law imposes penalties on any individual who enters into marriage with a child, as well as on those who solemnize, conduct, or permit such a marriage, including parents or guardians. Offences under the CMRA are classified as cognizable and non-bailable, with punishments that may include imprisonment for up to one month, a fine⁶⁶, or both. While the Act provides a basic legal framework for restraining early marriages, its limited penalties and uneven application continue to hinder its effectiveness in eliminating the practice.

4.2.3.3 Other Federal Laws

4.2.3.3.1 National Commission on the Rights of the Child Act, 2017

This law applies to the whole of Pakistan. The preamble of the Act provides the following:

⁶⁵ The Child Marriage Restraint Act, 1929, s.2(a) defines Child as "child" means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age."

⁶⁶ The Child Marriage Restraint Act, 1929, s.4 "Punishment for male adult above twenty-one years of age marrying a child. Whoever, being a male above 3[eighteen] years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both."

"An Act to provide for a constitution of a National Commission on the child's rights and for matters connected therewith or incidental thereto. Whereas it is expedient to set up a National Commission on the rights of child in accordance with international obligations and for matters connected therewith or incidental thereto."⁶⁷

Section 2 of the Act defines "child" as "any person below the age of 18 years,"⁶⁸ while child rights "means and includes but is limited to rights of the child in the United Nations Convention on the Rights of the Child and in any other domestic law."⁶⁹ The objectives of the Act are aligned with the UNCRC, which shows that the Pakistani government is determined to implement child rights in Pakistan.

Chapter II of the Act provides a mechanism to constitute a commission under Section 3(1):

"The Federal Government shall constitute a commission to be known as the National Commission on the Rights of Child to exercise its powers and perform its functions under this Act."⁷⁰

Furthermore, Section 3(2) outlines the criteria for candidates for the chairperson or a member of the Commission. The Commission shall consist of a Chairperson—appointed by the Federal Government—with a minimum of fifteen years' experience in child rights, and not less than forty-five years of age. Ex-officio members include senior representatives (BPS-20 or above) from relevant federal divisions such as Foreign Affairs, Interior, Human Rights, and the Commissions on the Status of Women and Human Rights, as well as Chairpersons of provincial child rights commissions. In addition, six members represent the provinces, ICT, and FATA (with inclusion of women and minorities), two child representatives (one boy and one girl, aged 15 or above), and the Secretary of the Commission.⁷¹ These are members of the National Commission, and this Commission is considered a corporeal body with a common seal and has the right to sue and be sued.⁷²

⁶⁷ National Commission on the Rights of the Child Act, 2017, Preamble.

⁶⁸ National Commission on the Rights of the Child Act, 2017, s 2(b).

⁶⁹ National Commission on the Rights of the Child Act, 2017, s 2(c).

⁷⁰ National Commission on the Rights of the Child Act, 2017, s 3(1).

⁷¹ National Commission on the Rights of the Child Act, 2017, s 3(2).

⁷² National Commission on the Rights of the Child Act, 2017, s 3(4).

Chapter II of the Act outlines the Commission's administrative structure, including its formation, secretariat, appointments, disqualification, salary and allowances, removal from the office, employees, and other administrative functions. Meanwhile, Chapter III of the Act outlines the Commission's powers and functions.

Section 15 of the Act elaborates on the functions of the Commission, which are:

- a) "To examine existing or proposed legislation, administrative instruments, and proposals related to child rights and make such recommendations as it deems appropriate.
- b) To liaise with the provincial commissions set up under provincial laws and other concerned provincial organizations.
- c) To examine and review any law policy or practice, for the time being in force, to protect child rights and recommend measures for their effective implementation.
- d) To present to the Federal Government and to the provincial governments reports upon working of such law, policy, or practice specified under clause (c).
- e) To inquire into violation of child rights and recommend to the relevant agency or department initiation of proceedings in such cases.
- f) To examine all factors that inhibit enjoyment of rights of child, such as violence, abuse and exploitation, trafficking, torture, pornography and prostitution and recommend appropriate remedial measures.
- g) To sponsor, steer encourage research and maintain a database relating to children and their issues to provide knowledge and awareness for national policy and strategic action for its remedy.
- h) To spread awareness, promote dialogue on child rights among various sections of society, and promote awareness of the safeguards available to protect these rights.
- i) To examine international instruments and undertake a periodical review of existing policies and programs on child rights and make recommendations for their effective implementation in the best interest of children.
- j) To advise the Federal Government to sign, ratify, or accede to any proposed international treaty, protocol, etc.
- k) While inquiring into complaints of violations of child rights, may call for information or report from the Federal Government, civil society organizations, and autonomous or concerned bodies, and in this regard, the Commission shall have the powers vested in a civil court under the for enforcing the attendance of any person and compelling the production of documents: and
- l) To undertake such other functions as assigned by the Federal Government and as it may consider necessary to promote and protect child rights and any other matter incidental to the above functions."⁷³

These are the functions entrusted by the Federal Government to the National Commission for protecting children throughout Pakistan. The Commission is bound to legislate national laws and establish coordination between federal and provincial legislation. The Commission is responsible for developing policies and ensuring their implementation all over Pakistan and for providing reports per the requirement of the CRC. Moreover, it is responsible for inquiring into complaints from society, government organizations, and other stakeholders about child rights violations.

Although the National Commission on the Rights of the Child (NCRC) Act, 2017 serves as a general legislative framework for promoting and protecting the rights of all children in Pakistan, it adopts a broad-based approach that does not sufficiently address the unique vulnerabilities and needs of specific child categories, such as orphans. Orphans often experience a compounded form of disadvantage due to the absence of parental care, limited access to inheritance, inadequate guardianship, and a heightened risk of abuse or neglect—issues that are not distinctly covered under the general mandate of the NCRC. Therefore, the call for specific protection stems from the need to operationalise a more targeted, context-sensitive legal and policy framework that can respond to the lived realities of orphaned children. Such specificity ensures that their rights are not only legally recognised but also meaningfully implemented through tailored safeguards and dedicated welfare interventions.

Moreover, Section 17⁷⁴ of the Act stipulates that the Commission is required to submit annual reports regarding the condition of the children in Pakistan to the Federal Government, specifically to the Majlis-e-Shoora (Parliament). The Commission is responsible for providing periodic reports per the requirements of international

⁷⁴ National Commission on the Rights of the Child Act, 2017, Sections 17:

1. The commission shall submit an annual report about child rights in the country and performance of the Commission and submit it to the Federal Government which shall lay the report before each House of Majlis-e-Shoora (Parliament).
2. The Commission may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.
3. The Commission shall assist the Federal Government in preparation of its periodic reports in accordance with international declarations, conventions, treaties, covenants, and agreements relating to children and their rights.

conventions and agreements regarding child rights. This 2017 Act is also discussed in Chapter IV. regarding funds, finance, accounts, and audits, making it a more reliable institution for child rights.

4.2.3.3.2 Islamabad Capital Territory Child Protection Act, 2018

The preamble of the Islamabad Capital Territory Child Protection Act, 2018 (hereafter known as ICT Child Protection Act, 2018) clearly and conclusively states that,

"It is expedient to provide for protection and care of children in Islamabad Capital Territory from all forms of physical or mental violence, injury, neglect, maltreatment, exploitation, abuse and matters ancillary thereto."⁷⁵

It clearly mandates the protection of children living in Islamabad from all forms of abuse, exploitation, and maltreatment. Section 1(2)⁷⁶ of the ICT Child Protection Act, 2018 provides that the Act applies to the whole of the ICT.

Section 2 of the ICT Child Protection Act, 2018 provides the definitions of some key terms. It explains that alternative care "includes family care, placement in an institution established or regulated by the government or any other arrangement in the child's best interest, as directed by the Court."⁷⁷ This indicates that the government will provide alternative care for the protection and best interests of the children. Section 2(d) defines the age of the child who will benefit from the ICT Child Protection Act, 2018 "as a person who has not attained the age of eighteen."⁷⁸ Section 2(e) defines child abuse as "physical or mental violence, injury, exploitation neglect, or negligent treatment, maltreatment or sexual abuse."⁷⁹

⁷⁵ The Islamabad Capital Territory Child Protection Act, 2018, Preamble.

⁷⁶ The Islamabad Capital Territory Child Protection Act, 2018, Section 1(2) reads, "It extends to the whole of the Islamabad Capital Territory."

⁷⁷ The Islamabad Capital Territory Child Protection Act, 2018, s 2(a).

⁷⁸ The Islamabad Capital Territory Child Protection Act, 2018, s 2(d)

⁷⁹ The Islamabad Capital Territory Child Protection Act, 2018, s 2 (e)

Other forms of violence are also defined in Section 2 of the ICT Child Protection Act, 2018. Section 2(f) defines child exploitation as "all types of exploitation prejudicial to the protection and care of a child including exploitation in terrorist activities, medical or scientific experimentation, sports or performing arts, etc."⁸⁰ Maltreatment of children is defined as "cruel treatment meted out to a child resulting from ignorance or willful neglect,"⁸¹ while mental violence as "subjecting or exposing a child to scaring, terrorizing, and threatening behavior that may result in psychological trauma, including anxiety, chronic depression, or any other treatment which may diminish the sense of identity, dignity, and self-respect."⁸²

Section 2(q) defines neglect as "failure on the part of a natural or legal guardian or institution responsible for the child's care to provide the child with physical, psychological, and educational needs"⁸³ and physical violence as "corporeal punishment and all other forms of torture, cruel, inhuman, or degrading treatment or punishment."⁸⁴ Section 2(t) defines the inducement or coercion of a child to engage in any unlawful sexual activity to include the "use of children in audio or visual images for child pornography, child prostitution, trafficking within and between countries for sexual exploitation and sale of children for sexual purposes."⁸⁵

Of all these definitions under the ICT Child Protection Act 2018, one crucial term relating to the research is "unattended children." Section 2(v) defines an unattended child as "a child with unknown parentage, orphan, abandoned, neglected and destitute, homeless, or not in the legal custody of anyone."⁸⁶

This section of the Act clarifies all key terms relating to child rights, and most importantly, it includes orphans in the provision of law for the first time, which is considered the most constructive thing in the ICT Child Protection Act, 2018. As such, this Act is viewed as the model law for the provinces of Pakistan.

⁸⁰ The Islamabad Capital Territory Child Protection Act, 2018, s 2(f).

⁸¹ The Islamabad Capital Territory Child Protection Act, 2018, s 2(o).

⁸² The Islamabad Capital Territory Child Protection Act, 2018, s 2(p).

⁸³ The Islamabad Capital Territory Child Protection Act, 2018, s 2(q).

⁸⁴ The Islamabad Capital Territory Child Protection Act, 2018, s 2(r).

⁸⁵ The Islamabad Capital Territory Child Protection Act, 2018, s 2(t).

⁸⁶ The Islamabad Capital Territory Child Protection Act, 2018, s 2(v).

Other relevant provisions of the law enhance the purpose and implications of the ICT Child Protection Act, 2018 in Pakistan's capital territory. Section 3 of the ICT Child Protection Act, 2018 outlines the factors that determine the children's best interests while protecting them, which are:

- i. "Child protection, care, well-being, and safety of a child.
- ii. Physical and emotional needs of a child.
- iii. Religious and cultural views of a child.
- iv. Education and educational requirements of a child.
- v. Family as the preferred environment for the care and upbringing of a child."⁸⁷

The factors mentioned above serve as essential criteria for protecting children, with provisions focused mainly on child protection, well-being, and utmost safety. Moreover, they emphasize respect for the child's religious and cultural views to support healthy development and upbringing. Providing them with a safe family environment is paramount to protecting unattended children. In these circumstances, the State's responsibility is invoked under Section 3 of the ICT Child Protection Act, 2018 to provide protection and take actions for the welfare of children.

In order to implement the ICT Child Protection Act, of 2018, the Court holds jurisdictions to adjudicate most of the matters provided in Sections 4⁸⁸ and 5.⁸⁹ However, the custody of a child or appointment of a guardian⁹⁰ is provided under the Guardian Court established under the Guardians and Wards Act of 1890. Under the

⁸⁷ The Islamabad Capital Territory Child Protection Act, 2018, s 3.

⁸⁸ The Islamabad Capital Territory Child Protection Act, 2018, Section 4 read as Court can restrict parent control: "A child is at risk of significant harm and needs care. (a) a child is subject to a childcare plan, or (b) a child is subject to emergency powers exercised by a Child Protection Officer under this Act."

⁸⁹ The Islamabad Capital Territory Child Protection Act, 2018, Section 5 read as: "A child in need of protection and care shall include a child who: (a) has been subjected to or is under serious threat of being subjected to child abuse or child exploitation while in the care of parents, legal guardians or any other person who has custody of the child in any manner. (b) is unattended, a victim of an offence, child, domestic and such other workers, found begging, imprisoned with the mother or lives in an immoral, environment."

⁹⁰ The Islamabad Capital Territory Child Protection Act, 2018, Section 2(m) read as: "guardian means a person, other than a biological parent who has parental responsibility for a child, which may include a guardian appointed under the Guardians and Wards Act, 1890 (VIII of 1890)."

Guardian and Wards Act of 1890, the Guardian Court appoints a guardian other than the biological parent in a manner that guarantees the welfare of a minor and protects his best interest.

Section 4 of the ICT Child Protection Act, 2018 outlines the circumstances in which the Court can restrict parental custody and control, which are:

- a) "A child is at risk of significant harm and needs care.
- b) A child is subject to a childcare plan, or
- c) A child is subject to emergency powers exercised by a Child Protection Officer under this Act."⁹¹

Among these factors, the primary concern is the well-being and safety of a child who is at risk of significant harm, even in the custody of parents or guardians. The Court can restrict their custody and control in these exceptional circumstances. The ICT Child Protection Act further clarifies in Section 5 that,

"A child in need of protection and care shall include a child who:
(a) has been subjected to or is under serious threat of being subjected to child abuse or child exploitation while in the care of parents, legal guardians, or any other person who has custody of the child in any manner.
(b) is unattended, a victim of an offense, a child, domestic, and such other workers, found begging, imprisoned with the mother, or lives in an immoral environment."⁹²

This provision mandates the Court to restrict the custody of the parental or legal guardian if there is any possibility of child abuse or exploitation. It is not a new phenomenon, but it is the first time in history that legislators discussed this issue, enacted a law on it, and empowered the Court to restrict even parents if they are involved in child abuse and exploitation.⁹³

⁹¹ The Islamabad Capital Territory Child Protection Act, 2018, s 4.

⁹² The Islamabad Capital Territory Child Protection Act, 2018, s 5.

⁹³ *Ahmed Bilal v Khurram Javed*, [2023] PLD 83 Islamabad.

An Advisory Board to protect children in the capital territory was established to implement this law. Section 8 outlines the functions of the Advisory Board as follows:

1. To advise the government on policy and legislation regarding child protection and to advise on child issues regarding the international commitments made by the State.
2. To ensure the coordination between child protection institutions' implementation and care management.
3. To provide sponsorship for the research regarding Pakistan's child protection and care management information
4. To inspect and regulate all the caregiver organizations as they work per the law.
5. To submit an annual report to the Federal Government.⁹⁴

It is also important to note that a child protection institution has been established under this Act, together with the appointment of child protection officers. Additionally, a childcare plan has also been set to protect the children.

The ICT Child Protection Act, 2018 specifies all the legal requirements relating to the custody of an unattended child. For example, when the child protection officer finds an unaccompanied child, he will determine whether it fulfills the requirements of section 12 of the ICT Act.⁹⁵ Within thirty days from the completion of the initial assessment, the concerned officer must comprehensively evaluate whether the child needs protection and care.⁹⁶ Section 18 states that during an emergency, the child protection officer can use his powers through the court's interim order under exceptional circumstances to take the unattended child and start the assessments. Following that, the Court may permit an investigation of the matter per the law within three days.⁹⁷

⁹⁴ The Islamabad Capital Territory Child Protection Act, 2018, s 8.

⁹⁵ The Islamabad Capital Territory Child Protection Act, 2018, s 12.

⁹⁶ The Islamabad Capital Territory Child Protection Act, 2018, s 13.

⁹⁷ The Islamabad Capital Territory Child Protection Act, 2018, Section 18 read as: "Emergency power. -(1) Where the Child Protection Officer has reasonable cause to believe that a child needs care within the meaning of section 5, he may take the unattended child into care or remove the child from the custody of his parents, legal guardian or another current career as the case may be.

(2) Where care of an unattended child or removal of a child takes place under sub-section (1), the Child Protection Officer shall immediately inform parents. The legal guardian or current career, if any, of the

If the child protection officer finds any unattended children as per the definition, the officer under section 25(1) shall register the unaccompanied child by the provisions of the National Database and Registration Authority Ordinance, 2000 (VIII of 2000), or any other applicable law in effect at the time.⁹⁸

The ICT Child Protection Act, 2018 also mandates that child protection institutions protect the fundamental rights of unattended children. This provision provides a new horizon for legal practitioners and society as it is rehabilitative and serves to promote the welfare and betterment of children. The Ministry of Human Rights is responsible for overseeing all matters related to fulfilling the objectives of the ICT Child Protection Act, 2018.

One of the primary concerns regarding the implementation of the Act is that the Advisory Board, under Section 6 of the ICT Act 2018, only holds an advisory role to provide legal counsel to the Federal Government. As such, it inherently lacks genuine commitments to its effective implementation. The Board has no power to either make decisions or take strict actions against those who violate the law. The Federal Government was then empowered to establish a Child Protection Tribunal under the law for its effective implementation.

Pakistan is focusing on achieving Sustainable Development Goals (SDGs) by 2030. A Child Protection Tribunal could bring significant outcomes for the children at stake and complement the achievement of the SDGs by 2030. It would also help

child for reasons of taking the child into care and further steps to be taken.

(3) When an unattended child has been taken into care or a child has been removed from the custody of his parents, guardian or any other person for care in accordance with sub-Section (1). The Child Protection Officer shall.

(a) Place the child immediately with a caregiver for interim care:

(b) Apply to the Court within twenty-four hours for a formal Emergency Protection order.

(4) Pending the determination of an application for an Emergency Protection Order, the court shall not return a child to his home prior to the completion of an initial assessment by the Child Protection Officer.

(5) Notwithstanding anything contained in sub-section (1) to (4), a child shall not be removed from his family, for a period exceeding three days, except through an interim order of the Court under exceptional circumstances to be recorded in writing.

⁹⁸ The Islamabad Capital Territory Child Protection Act, 2018, s 25(1).

implement the ICT Child Protection Rules, 2021, enacted by the federal government, to fulfil its objectives.⁹⁹

4.2.3.3.3 Civil Procedure Code, 1908

The Civil Procedure Code of 1908 (hereafter referred to as CPC, 1908) plays a crucial role in the appointment of a "next friend" for minors in Pakistan. The term "next friend" refers to "a person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff but who is not a party to a lawsuit and is not appointed as a guardian."¹⁰⁰ Order XXXII of the CPC, 1908 addresses "suits by or against minors or unsound minds."

Accordingly, no minor can sue and be sued without a next friend.¹⁰¹ The next friend should be of sound mind and attain the majority, and that person's interest should have no adverse effect on the minor.¹⁰² Moreover, without the leave of court, no next friend or guardian can enter into compromise agreements on behalf of minors.¹⁰³ Furthermore, the role of a next friend or guardian ad litem¹⁰⁴ continues until the minor attains a majority or the court decides to replace them for valid reasons.¹⁰⁵ The CPC provides mechanisms for removing and substituting the next friend if they are found unsuitable or unable to perform their duties effectively.¹⁰⁶

The CPC 1908 ensures that minors are adequately represented in legal matters, thereby preventing prejudice due to their inability to manage their legal affairs. The CPC protects minors' legal rights and interests throughout the judicial process by establishing clear guidelines for the appointment and responsibilities of a next friend.

⁹⁹ The Islamabad Capital Territory Child Protection Rules, 2021.

¹⁰⁰ *Black's Law Dictionary* (9th ed. 2009) s.v. "Next friend"

¹⁰¹ The Civil Procedure Code of 1908, Order XXXII, Rule 1.

¹⁰² The Civil Procedure Code of 1908, Order XXXII, Rule 4.

¹⁰³ The Civil Procedure Code of 1908, Order XXXII, Rule 7.

¹⁰⁴ *Black's Law Dictionary* (9th ed. 2009) s.v. "Guardian ad litem" (defining "A guardian, a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party").

¹⁰⁵ The Civil Procedure Code of 1908, Order XXXII, Rule 9 & 10.

¹⁰⁶ The Civil Procedure Code of 1908, Order XXXII, Rule 11.

4.2.3.3.4 The Majority Act, 1875

The Majority Act, 1875, is a foundational statute that defines the legal age at which a person attains the status of majority in Pakistan. According to Section 3¹⁰⁷ of the Act, every person domiciled in Pakistan is deemed to have attained the age of majority upon completing 18 years, unless a specific law provides otherwise.

4.2.3.3.5 National Database and Registration Authority Ordinance, 2000

The National Database and Registration Authority (hereinafter referred to as NADRA) plays a vital role in the protection and welfare of children in Pakistan by ensuring their legal identity and registration. Under Section 9¹⁰⁸ of the Ordinance, every citizen is required to be registered, and this includes the issuance of Child Registration Certificates (CRCs) for individuals under the age of 18. Through the issuance of Child Registration Certificates (CRC), commonly known as B-Forms, NADRA provides children with a recognized legal identity from birth. This official documentation is essential for accessing fundamental rights such as education, healthcare, inheritance, and legal protection. Moreover, NADRA's digital database helps in preventing identity fraud, child trafficking, and illegal adoptions, especially for orphans and abandoned children. In collaboration with child protection institutions and welfare organizations, NADRA also supports the registration of orphaned and unclaimed children under guardianship arrangements, ensuring that they are accounted for in state records. By maintaining a secure, centralized system of child identity, NADRA not only upholds Article 7 of the UN Convention on the Rights of the Child, which guarantees a child's

¹⁰⁷ The Majority Act, 1875, s 3 “a "minor" is a person who has not attained the age of 18.”

¹⁰⁸ The National Database and Registration Ordinance, 2000, s 9 Registration of citizen (1) 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 (his Ordinance:---
Provided that the Authority may, on case-to-case basis, extend the period for registration of a citizen who has not attained the age of eighteen years.

right to a name and nationality, but also reinforces the broader child protection framework in Pakistan.

The discussion on various federal laws concerning children reflects Pakistan's growing commitment to recognizing children as valued and integral members of society, with dedicated legislation aimed at safeguarding their rights and well-being. These laws include provisions that extend protection to orphans as part of the broader child protection framework. While specific legislation exclusively addressing the needs of orphans is still evolving, this presents a valuable opportunity for further legal development. Given that orphans are among the most vulnerable groups—often facing heightened risks such as abuse, exploitation, trafficking, child labor, and early marriage—there is significant potential to strengthen legal protections in a more targeted and comprehensive manner. Enhancing the existing framework to explicitly focus on orphans will reinforce Pakistan's commitment to child rights and ensure that no child is left behind in the pursuit of justice, equity, and social protection.

4.2.4 Provincial Legal Framework

Under the 1973 Constitution of Pakistan, the government established provincial governments. The relationship between the federation and provinces is outlined in Chapter V (Article 141-159) of the Constitution of Pakistan. Matters related to children fall within the jurisdiction of the provinces. Hence, provincial governments enacted the legislation while considering the principles in the UNCRC and the federal legislation.

4.2.4.1 Province of Punjab

Punjab is the most populated province in Pakistan. Half of the country's population is concentrated in the big cities, namely Lahore, Faisalabad, Rawalpindi, Gujranwala, and Multan. There is a considerable rural-to-urban migration in the province, especially in larger cities. The province is predominantly Muslim, with Christians, Hindus, and Sikhs minorities. Punjabi is the mother tongue of the great majority of the population.¹⁰⁹

Punjab Assembly played a pivotal role in legislating laws pertaining to children. Mainly, these laws provide protections to children in general without specific provisions for orphans. Since its inception, several enactments have been enacted. The most important laws are listed below:

1. The Punjab Children Act, 1952
2. The Punjab Destitute and Neglected Children Act, 2004, and its Amendment in 2017
3. The Punjab Free and Compulsory Education Act, 2014
4. Punjab Prohibition of Child Labor at Brick Kilns Act, 2016
5. Punjab Restriction on Employment Children Act, 2016
6. Punjab Domestic Workers Act, 2019
7. The Punjab Child Marriage Restraint Act, 2015
8. Punjab Technical Education and Vocational Training Authority Act, 2010
9. The Punjab Restriction on Employment of Children Act, 2016

The laws above cover all the basic needs of children, including orphans residing in Punjab. However, some provisions in specific laws address homeless children due to the absence of parents or guardians. This research will examine the applicable legal provisions and critically evaluate them in the best interest of the orphans in Punjab.

4.2.4.1.1 The Punjab Children Act, 1952

The Punjab Children Act of 1952 was an old law in Pakistan governing children, specifically children living in Punjab. The preamble of this law explains its purpose as "an Act to make further provision for the custody and protection of children."¹¹⁰ The law specifically protects children "needing care under section 8."¹¹¹ Section 8(1) of the Punjab Children Act listed the criteria for children as below:

(accessed 20 June, 2022).

¹¹⁰ The Punjab Children Act, 1952, Preamble.

¹¹¹ The Punjab Children Act, 1952, s 2(a).

"Children found homeless, needy, etc.:

(1) A Probation Officer or any other person appointed on this behalf may, in accordance with rules made by the government, bring before a Court any person who, in his opinion, is a child and who-

(a) has no home, settled place of abode, or visible means of subsistence, or no parent or guardian exercising regular and proper guardianship; or

(b) Is found destitute, and his parents or surviving parent or other guardian, or, in the case of an illegitimate child, his mother or other guardian, are or is undergoing transportation or imprisonment; or

(c) Is generally found in the company of any reputed criminal or prostitute not being his parent or guardian or

(d) Is residing or frequenting a house used by a prostitute for a prostitute or and is not the child of that prostitute; or

(e) Is otherwise likely to fall into bad association or to be exposed to moral danger or to enter upon a life of crime; or

(f) being overworked or ill-treated by his employer."¹¹²

Section 8 of the Punjab Children Act, 1952 plays a pivotal role in safeguarding children who are found homeless, destitute, neglected, or exposed to circumstances that may threaten their moral or physical well-being. This section empowers a Probation Officer or any authorized person to bring such children before a competent Juvenile Court for necessary protective action. It identifies a range of risk situations, including children without a settled home or visible means of subsistence, those without proper guardianship, or those in the company of criminals or prostitutes. It also includes children exposed to potential exploitation or overwork by employers. The law thus reflects an early recognition of the State's duty to intervene on behalf of vulnerable children, not for punitive reasons but for their protection, care, and rehabilitation. Section 8 can be seen as a foundational step toward building a child protection framework, emphasizing the principle that no child should be left without care or exposed to moral and social dangers.

Section 4 of the Punjab Children Act clarifies that a Court shall exercise the powers conferred to a Court of first instance, which is not below that of a First-Class Magistrate, and shall have jurisdiction over the area to which the child or person or persons concerned in the proceedings under this Act belongs or belong. This law

¹¹² The Punjab Children Act, 1952, s 8(1).

empowers the First-Class Magistrate to apply his judicial judgment to the welfare and best interest of the child while deciding custody and protection issues. Therefore, this Act provides good legal support for orphans while resolving custody matters.

The law limits the age for individuals to be considered children to fourteen years. However, as per general observation, children aged fourteen to eighteen do not yet attain the age of maturity; hence, they equally deserve special care and protection. Consequently, legislators need to amend the age range in the above-said law in the broader interest of justice.

The Punjab Destitute and Neglected Children Act, 2004 (hereinafter referred to as PDNCA, 2004), along with subsequent child protection frameworks, has effectively rendered the Punjab Children Act, 1952, obsolete within the province. Although the PDNCA, 2004, did not formally repeal the 1952 Act, it is deemed inoperative and has been superseded by the more comprehensive and contemporary provisions of the 2004 legislation. In both legal practice and enforcement, the PDNCA, 2004 now serves as the prevailing statutory framework governing the protection and welfare of vulnerable children in Punjab.

4.2.4.1.2 The Punjab Destitute and Neglected Children Act, 2004

A. Scope of the Law

After ratifying the CRC, Pakistan attempted to fulfill the Convention's requirements and, consequently, legislated various laws at both the federal and provincial levels. The Punjab Destitute and Neglected Children Act, 2004, repealed both the Punjab Youthful Offenders Ordinance, 1983, and the Punjab Supervision and Control of Children Homes Act, 1976, thereby consolidating and streamlining the legal framework for the care, protection, and rehabilitation of vulnerable children in the province.

The Punjab Destitute and Neglected Children Act 2004 was enacted to rescue and provide protective custody, care, and rehabilitation to destitute and neglected children in the Province of Punjab other than those involved in criminal litigation.¹¹³

This law applies to Punjab under section 1(2).¹¹⁴ Section 2 of this Act defines the key terms related to destitute and neglected children.¹¹⁵ Many Acts define the word "child," but there is always a difference in the child's age. For example, Section 2(e) of the Punjab Destitute and Neglected Children Act, 2004 defines a child as a natural person less than 18 years of age without any gender discrimination.¹¹⁶

Other terms, such as child protection institution, child protection officer, and child protection unit, are defined below:

- (f) "'Child protection institution' means the admission, care, protection, and rehabilitation of destitute and neglected children established or recognized under this Act or the rules."¹¹⁷
- (g) 'Child protection officer' means a person appointed under section 15 of this Act.¹¹⁸
- (h) 'Child protection unit' means a child protection unit established by the Bureau for a local area under section 16."¹¹⁹

Additionally, the Punjab Destitute and Neglected Children Act, 2004 defines the word "court" under Section 2 (j) as "A Child Protection Court established or any Court exercising powers of a Child Protection Court under this Act,"¹²⁰ which refers to the establishment of separate courts. Otherwise, existing courts are empowered to exercise the powers under this law to protect children. Under the section 2(k) of this law, a destitute and neglected child is a child who,

- "(i) is found begging; or
- (i) is found without having any home or settled place of abode and without any ostensible means of subsistence; or
- (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the child; or
- (iv) lives in a brothel or with a prostitute or frequently visits any place being used for prostitution or is found to associate with any prostitute or any other person who leads an immoral or depraved life; or

¹¹⁴ The Punjab Destitute and Neglected Children Act, 2004, Section 1(2) read as: (1) *This Act may be called the Punjab Destitute and Neglected Children Act 2004.* (2) *It extends to the Province of Punjab.*

¹¹⁵ The Punjab Destitute and Neglected Children Act, 2004, s 2.

¹¹⁶ The Punjab Destitute and Neglected Children Act, 2004, s 2(e).

¹¹⁷ The Punjab Destitute and Neglected Children Act, 2004, s 2(f).

¹¹⁸ The Punjab Destitute and Neglected Children Act, 2004, s 2(g).

¹¹⁹ The Punjab Destitute and Neglected Children Act, 2004, s 2(h).

¹²⁰ The Punjab Destitute and Neglected Children Act, 2004, s 2(j).

- (v) is being or is likely to be abused or exploited for an immoral or illegal purpose or unconscionable gain; or
- (vi) is beyond the parental control; or
- (vii) has lost his parents or one of the parents and has no adequate source of income; or
- (viii) is a victim of an offense punishable under this Act or any other law for the time being in force, and his parent or guardian is convicted or accused of the Commission of such offense.
- (ix) is at risk owing to disability or child labor; or
- (x) is imprisoned with the mother or is born in a jail; or
- (xi) is abandoned by the parents or guardian."¹²¹

Section 2(k)(vii) of the Punjab Destitute and Neglected Children Act, 2004, justifiably includes orphans within the definition of destitute and neglected children, ensuring their legal recognition as a vulnerable group entitled to state protection. This provision reflects a rights-based and welfare-oriented approach grounded in constitutional principles, addressing the legal gap for orphan-specific protection. It promotes non-discrimination and equitable access to services, upholding social justice by shielding orphans from exploitation and exclusion. By aligning with other child protection laws and enabling practical measures such as shelter, guardianship, and rehabilitation, the Act reinforces the state's duty to safeguard the best interests of orphans through comprehensive care and integration.

While the Children Protection and Welfare Bureau provides children with shelter, food, and education, there is a significant concern that it does not protect the children's fundamental rights, such as family name, inheritance, and many more. Therefore, under this Bureau, the Board of Governors¹²² should be established and empowered to regulate the services to protect the fundamental rights of the children.

Under Section 22¹²³ of the Act, child protection courts are established with consultation from the Lahore High Court. These courts are empowered to grant custody to child protection institutions or any other person to care for the children until they attain the age of 18.¹²⁴ The Punjab Destitute and Neglected Children Act, 2004 provides

¹²¹ The Punjab Destitute and Neglected Children Act, 2004, s 2(k).

¹²² The Punjab Destitute and Neglected Children Act, 2004, s 6.

¹²³ The Punjab Destitute and Neglected Children Act, 2004, s 22.

¹²⁴ The Punjab Destitute and Neglected Children Act, 2004, Chapter VI & VII.

a complete mechanism for the welfare and protection of neglected children in Punjab. The following section provides the factual data collected by the Punjab Protection Bureau in their final report for the year 2022-2023.¹²⁵

B. Protections for Children under the Law

Under the Punjab Destitute and Neglected Children Act of 2004, the provincial government establish Punjab Child Protection Bureau which provides various protections to children in Punjab, including rescue operations and child helpline services.

I) Rescue Operations

The Bureau's rescue team conducts grand rescue operations against beggars in addition to routine operations to curb the social issue of child begging, especially in big cities. During these rescue operations, they rescue large numbers of child beggars. The rescue operations will be conducted at all operational districts of the Child Protection and Welfare Bureau (from now on referred to as CPWB).¹²⁶ The Social Section is a vital component of the CPWB and is primarily staffed by Child Protection Officers. Through these rescue operations, the destitute and neglected children, including lost children, runaway children, child beggars, and abused children, are rescued by the Social Section and taken into protective custody for a safe and healthy environment. In 2022-2023, the CPWB, in their annual report, mentioned that around 18,605 children were rescued.¹²⁷

II) Child Helpline Service

The destitute and neglected children are provided immediate help through Child Helpline 1121, established by the Child Protection and Welfare Bureau. This helpline offers prompt assistance and support to children subjected to violence, exploitation,

¹²⁵ Child Protection Welfare Bureau Punjab, "Annual Report 2022-2023," <<https://cpwb.punjab.gov.pk/system/files/Annual%20Report%202022-23.pdf>> (accessed 14 July, 2024).

¹²⁶ Ibid.

¹²⁷ Ibid.

abuse, and neglect. According to the 2022-2023 report, 20,301 children were assisted through the helpline service.¹²⁸

4.2.4.1.3 The Punjab Free and Compulsory Education Act, 2014

The Punjab Free and Compulsory Education Act, 2014 was enacted to fulfill the constitutional mandate under Article 25-A of the Constitution of Pakistan, which guarantees free and compulsory education to all children aged five to sixteen years. Section 3 entitles every child between the ages of 5 and 16 to receive free and compulsory education, non-formal education, or vocational education without any discrimination based on gender, caste, or religion. Section 4 mandates the Provincial Government to provide free education to every child, ensure compulsory admission, attendance, and completion of education, provide safe commuting facilities for the child, monitor the functioning of schools, and provide infrastructure, trained staff, and age-appropriate curriculum.

Moreover, Section 8 mandates a local authority to ensure that a sufficient number of schools are established and maintained within a specified area to provide education to all children residing in that area, as well as to use schools in evening hours as required to ensure the effective implementation of the Act. Section 9 addresses the duty of parents or guardians. The provision imposes liability on them to ensure that their child attends school regularly and completes the required course of study until the completion of elementary education, except in cases where a reasonable excuse is provided. The child is deemed incapable of attending school due to any infirmity or mental incapacity. Section 10 stipulates that the provincial government shall make arrangements for providing free pre-school education to children aged 3 until they begin formal schooling, to ensure that they receive a strong foundation before entering formal schooling by focusing on early childhood development. Section 11 directs the provincial government or local authority to establish a School Management Body to regulate and ensure the effective implementation of the Act. Furthermore, Section 14

¹²⁸ Ibid.

prohibits schools from collecting capitation fees or charging any additional fees and also prohibits them from conducting any form of screening, testing, or evaluation procedure that may discriminate against or exclude children from admission. The Act specifies that anyone who fails to comply with the provision shall be punished with twenty times the capitation fee charged and a fine of fifty thousand to one hundred thousand for subjecting a child to a screening procedure.

4.2.4.1.4 The Punjab Prohibition of Child Labor at Brick Kilns Act, 2016

The Punjab Prohibition of Child Labor at Brick Kilns Act, 2016 represents a significant legislative development aimed at addressing the entrenched issue of child labor within the brick kiln industry of Punjab, Pakistan. The Act expressly prohibits the employment of children below the age of fourteen years¹²⁹ at brick kilns¹³⁰, recognizing the hazardous nature of such work and its detrimental impact on the physical, mental, and emotional development of children. It places a legal obligation on brick kiln owners to ensure that no child is engaged, whether directly or indirectly, in any form of labor on their premises.

To enhance enforcement, the legislation provides for a system of registration of all brick kilns, coupled with the appointment of designated inspectors authorized to conduct inspections and initiate legal proceedings in case of violations. The Act prescribes punitive measures, including monetary fines and imprisonment, for non-compliance.¹³¹ Overall, the Act signifies a rights-based and preventive approach to child protection within the province's legal and policy framework.

¹²⁹ The Punjab Prohibition of Child Labour at Brick Kilns Act, 2016, s 2(e) defines “child” means a person who has not completed the fourteenth year of age.

¹³⁰ The Punjab Prohibition of Child Labour at Brick Kilns Act, 2016, s 2(d) “brick kiln” means a kiln in which bricks are baked or burnt underneath the fuel, including kneading, moulding, piling, baking, releasing, stacking and any other work ancillary to or connected with the manufacturing processes, irrespective of the workplace connection.

¹³¹ The Punjab Prohibition of Child Labour at Brick Kilns Act, 2016, s 13. Penalty. – (1) An occupier who contravenes any provisions of section 3, 4 or 5 of this Act, shall be liable to punishment with simple imprisonment which may extend to six months but which shall not be less than seven days and fine which may extend to five hundred thousand rupees, but which shall not be less than fifty thousand rupees. (2) A parent or guardian who permit the child to work at a brick kiln shall be jointly and equally liable for the offence under subsection (1) along with the occupier to the extent of contravention of section 5.

4.2.4.1.5 Punjab Restriction on Employment of Children Act, 2016

The Punjab Restriction on Employment of Children Act, 2016 serves as a pivotal legislative instrument aimed at curbing child labor across various sectors in the province of Punjab, Pakistan. This Act restricts the employment of children under the age of fifteen¹³² years in all forms of labor and expressly prohibits their engagement in hazardous¹³³ occupations and processes as specified in the Schedule of the Act. It further prohibits the employment of adolescents¹³⁴ (aged 15–18) in hazardous work, thereby aligning provincial law with Pakistan's international obligations under the International Labor Organization (ILO) Conventions and the United Nations Convention on the Rights of the Child (UNCRC).

This law mandates that employers maintain a register of employed adolescents and ensure working conditions that do not compromise their health, safety, or education. The Act also authorizes the government to appoint labor inspectors with the power to enter establishments, examine records, and initiate legal proceedings in cases of violations. Penalties for contravention include fines and imprisonment, reflecting the state's commitment to deterrence and accountability.¹³⁵

¹³² The Punjab Restriction on Employment of Children Act, 2016, s 2(c) "child" means a person who has not attained the age of fifteen years.

¹³³ The Punjab Restriction on Employment of Children Act, 2016, s 2(i) "hazardous work" means the work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of adolescents and is mentioned in the Schedule

¹³⁴ The Punjab Restriction on Employment of Children Act, 2016, s 2(a) "adolescent" means a person who has attained the age of fifteen years but has not attained the age of eighteen years.

¹³⁵ The Punjab Restriction on Employment of Children Act, 2016, s 11. Penalties. – (1) An occupier, who employs or permits a child to work in an establishment, shall be liable to punishment with imprisonment for a term which may extend to six months, but which shall not be less than seven days and with a fine which may extend to fifty thousand rupees, but which shall not be less than ten thousand rupees. (2) An occupier, who employs or permits any adolescent to work in contravention of the provisions of section 3, shall be liable to punishment with imprisonment for a term which may extend to six months, but which shall not be less than seven days and with a fine which may extend to fifty thousand rupees, but which shall not be less than ten thousand rupees. (3) A person, who employs a child or an adolescent in: (a) any form of slavery or practices similar to slavery, such as the sale and trafficking of children or adolescents, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children or adolescents for use in armed conflicts; (b) the use, procuring or offering of a child or adolescent for prostitution, for the production of pornography or for pornographic performances; and (c) the use, procuring or offering of a child or adolescent for illicit activities, in particular for the production and trafficking of drugs, shall be liable to punishment with imprisonment

By integrating legal safeguards and rehabilitative mandates, the Act reinforces the principle that children must be protected from economic exploitation and hazardous work and be allowed to grow and develop in a safe and enabling environment.

4.2.4.1.6 Punjab Domestic Workers Act, 2019

The Punjab Domestic Workers Act, 2019, marks a critical step in extending legal protection to one of the most vulnerable and informal sectors of labor, domestic work. The importance of the Act lies in its protective framework for children, aimed at preventing their exploitation in private households. The Act explicitly prohibits the employment¹³⁶ of children under the age of fifteen as domestic workers and classifies domestic work as a hazardous occupation for children, thereby recognizing the inherent risks to their physical safety, mental development, and educational rights.

In essence, the Punjab Domestic Workers Act, 2019 contributes to the broader child protection framework by legally excluding children from exploitative domestic environments and reaffirming the right of every child to education, health, and development in a safe and supportive environment. Its child-specific provisions represent a progressive shift toward recognizing domestic work as a space that requires legal scrutiny and child-sensitive safeguards.

4.2.4.1.7 The Punjab Child Marriage Restraint Act, 2015

The Punjab Child Marriage Restraint Act, 2015 represents a significant provincial reform aimed at curbing the deeply entrenched practice of child marriage in Punjab,

for a term which may extend to seven years but which shall not be less than three years and with fine which may extend to one million rupees but which shall not be less than two hundred thousand rupees.

¹³⁶ The Punjab Domestic Worker Act, 2019, s 3, Prohibition on employment. – No child under the age of 15 years shall be allowed to work in a household in any capacity:

Provided that no domestic worker under the age of 18 years shall be engaged in a domestic work except involving light work in a household. Explanation: “light work” means a domestic work which is part-time in nature and is not likely to harm health, safety and education of a domestic worker.

Pakistan. Enacted under the province's legislative competence following the 18th Constitutional Amendment, the Act builds upon and modifies the earlier framework established by the federal *Child Marriage Restraint Act, 1929*. It defines a child as a male under 18 years and a female under 16 years¹³⁷, thereby maintaining a gender-based age disparity. The Act prohibits the contracting, solemnizing, or facilitating of child marriages and imposes stricter penalties than previous laws, including imprisonment up to six months and fines up to PKR 50,000.¹³⁸ It also holds parents, guardians, and marriage solemnizers accountable. Offences are classified as cognizable and non-bailable, granting law enforcement broader powers for immediate action. The law mandates Nikah registrars to verify the age of both parties, institutionalizing preventive oversight. While implementation challenges remain, especially in rural areas, the Act marks a significant step in promoting child rights and protecting children—particularly girls—from the harmful consequences of early marriage in Punjab's socio-legal context.

4.2.4.1.8 Punjab Technical Education and Vocational Training Authority Act, 2010

The Punjab Technical Education and Vocational Training Authority Act, 2010 (hereinafter referred to as P-TEVTA) establishes P-TEVTA as a statutory body responsible for regulating and promoting technical and vocational education in Punjab. While the Act primarily targets the broader population, it holds significant implications for adolescents (aged 15–18) by offering alternative education and skill development pathways, especially for out-of-school and vulnerable children. Through its mandate to provide demand-driven, equitable, and inclusive technical education, the Act supports early interventions that can prevent child labor and promote economic empowerment. Although it does not explicitly address children under 15, its alignment with the Punjab Free and Compulsory Education Act, 2014, and child protection laws enables its vocational programs to serve as a rehabilitative mechanism for children withdrawn from hazardous labor. By integrating skill-based training with protective policies, P-

¹³⁷ The Punjab Child Marriage Restraint Act, 2015, s 2(a), "child" means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age.

¹³⁸ The Punjab Child Marriage Restraint Act, 2015, s 4, "Punishment for marrying a child. – If a person, not being a minor, contracts child marriage, he shall be liable to punishment of simple imprisonment which may extend to six months and fine of fifty thousand rupees."

TEVTA contributes to the broader goal of safeguarding child rights and promoting decent future livelihoods in Punjab.

4.2.4.1.9 The Punjab Restriction on Employment of Children Act, 2016

The Punjab Restriction on Employment of Children Act, 2016, is a key legislative measure aimed at eliminating child labor across Punjab. It prohibits the employment of children¹³⁹ under the age of 15 years in any establishment and bans adolescents (15–18 years) from working in hazardous¹⁴⁰ occupations listed in the Schedule. The Act defines "child" and "adolescent"¹⁴¹ in line with international standards and seeks to protect their rights to health, education, and development. Employers are required to maintain records of adolescent workers and ensure that their work does not interfere with schooling or endanger their well-being. The law authorizes inspectors to conduct inspections and impose penalties, including fines and imprisonment, for violations. By creating clear restrictions and enforcement mechanisms, the Act aligns with the national and international commitments for reinforcing Punjab's child protection framework.

In conclusion, the legislative framework established by the Punjab government reflects a progressively evolving commitment to the protection, development, and welfare of children. The laws collectively aim to address child exploitation, hazardous labor, early marriage, and lack of access to education and vocational skills. These statutes are not only aligned with Pakistan's constitutional mandates—particularly Articles 11(3) and 25-A—but also reflect the province's obligations under international human rights instruments such as the UNCRC and ILO conventions. While enforcement and societal attitudes remain significant challenges, the legal foundation laid by these laws represents a vital step toward a rights-based and protective environment for children across Punjab.

¹³⁹ The Punjab Restriction on Employment of Children Act, 2016, s 2(c) "child" means a person who has not attained the age of fifteen years.

¹⁴⁰ The Punjab Restriction on Employment of Children Act, 2016, s 2(i) "hazardous work" means the work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of adolescents and is mentioned in the Schedule.

¹⁴¹ The Punjab Restriction on Employment of Children Act, 2016, s 2 (a) "adolescent" means a person who has attained the age of fifteen years but has not attained the age of eighteen years.

4.2.4.2 Province of Sindh

Sindh is the second largest province in Pakistan, with Karachi as its capital. It is not only the most populous metropolis in the country but also a commercial hub. The region of Sindh has two gigantic seaports, both in Karachi. Quaid-e-Azam International Airport is the most extensive international airport in Karachi, Pakistan. Due to its geographically isolated position, Sindh has preserved its political independence for a long time. Sindh is also well-known as Bab-ul-Islam (Gateway to Islam in the Indo-Pakistan subcontinent) due to the influence of Muḥammad Bin Qāsim in 93A.H/712 AD.¹⁴² Sindh is also renowned for its rich culture because it is Pakistan's most significant source of income, and people move from all over the country to Karachi for better employment.

However, when looking at child rights in Sindh and Pakistan, they are generally blatantly violated in the big cities. Children become targets for child abuse, child trafficking, child kidnapping, and child labor. All these circumstances make them vulnerable. Furthermore, nearly 30 years after Pakistan ratified the CRC, no publicly coordinated child protection case management and referral system has been established that is aligned with international standards.¹⁴³

Apart from the constitutional provisions and legislation at the federal level, there are various special laws enacted by the Provincial Assembly of Government of Sindh, i.e.:

- i. The Sindh Child Protection Authority Act, 2011.
- ii. The Sindh Child Marriages Restraint Act, 2013.
- iii. The Sindh Prohibition of Employment of Children Act, 2017; and
- iv. The Sindh Right of Children to Free and Compulsory Education Act, 2013.

¹⁴² Nabi Bakhsh Baloch, *Sindh: Studies in History*, (Pakistan Studies Center: University of Sindh, Jamshoro, 2003), 3 & 8.

¹⁴³ Sindh Child Protection Authority, Social Welfare Department, Government of Sindh, <<https://scpa.sindh.gov.pk>> (accessed on 7 July, 2022).

v. Sindh Technical Education and Vocational Training Authority Act, 2019

However, effective implementation of laws and awareness of child rights remain limited and require significant improvement, as children still face many challenges in Sindh.¹⁴⁴

Under this subtopic, the research will primarily focus on the laws enacted by the Sindh Provincial Assembly for Child Protection, examining their crux and implementation mechanisms. These will be critically evaluated and discussed within the research.

4.2.4.2.1 The Sindh Child Protection Authority Act, 2011

The Sindh Assembly enacted this law to protect child rights. The preamble highlights the main objective of the law as follows:

"Whereas it is expedient to provide for the establishment of an Authority known as the Sindh Child Protection Authority to ensure the rights of the children in need of special protection measures and to provide for matters ancillary to it."¹⁴⁵

Adhering to the exact language of the law ensures effective implementation and avoids any ambiguity in its interpretation or application. Section 2(c) of the Act specifies the term "child in need of special protection" as a child who,

- "(i) is a victim of violence, abuse and exploitation.
- (ii) is subjected to physical and psychological violence, sexual abuse, or commercial sexual exploitation.
- (iii) is forced into the worst forms of child labor, exploitative labor, or beggary.
- (iv) is subject to human trafficking within and outside Pakistan.
- (v) is being misused for drug trafficking or is subjected to abuse of substances like glue, drugs, and spirit.
- (vi) is engaged in an armed conflict.

¹⁴⁴ *Legal Rights Forum*, "Child Rights Protection and Governance," <<https://lrfpk.org/what-we-do/programmes/child-rights-protection-and-governance/>> (accessed 7 July, 2022).

¹⁴⁵ The Sindh Child Protection Authority Act, 2011, Preamble.

(vii) is a child without primary caregivers; and
(viii) is affected or infected with HIV aids."¹⁴⁶

Even though the definition does not mention orphans, sub-clause (vii) includes children without primary caregivers for special protection. To protect these children, the Sindh Government has established the Child Protection Institution. Following the provisions of the Sindh Child Protection Authority Act, the institution is established or recognized based on the regulations governing the admission, care, protection, and rehabilitation of children requiring special safeguarding measures.¹⁴⁷

As is specified in other Acts, the age range for an individual to be considered a child remains a significant matter. This Act defines a child as a person who has not attained the age of eighteen.¹⁴⁸ There is no discrimination based on gender; any child, either male or female, under 18 years is considered a child.

Following this Act, the Sindh Government established the Sindh Child Protection Authority under the Ministry of Social Welfare Department. The Sindh Child Protection Authority assembles data and submits its yearly report to the Social Welfare Department. Presented below are relevant facts and figures from the 2019- 2020 report.

I. Total division of cases received:¹⁴⁹

According to the law, the Child Protection Authority started working after the enactment. Therefore, the recent report provided by the institution is for the year 2019-2020. The actual figures in the form of graphs are reproduced here as follows:

¹⁴⁶ The Sindh Child Protection Authority Act, 2011, s 2(c).

¹⁴⁷ The Sindh Child Protection Authority Act, 2011, s 2(d).

¹⁴⁸ The Sindh Child Protection Authority Act, 2011, s 2(g).

¹⁴⁹ *Sindh Child Protection Authority*, "2019-2020 Yearly Report," <<https://scpa.sindh.gov.pk/cpu/>> (accessed 7 July, 2022).

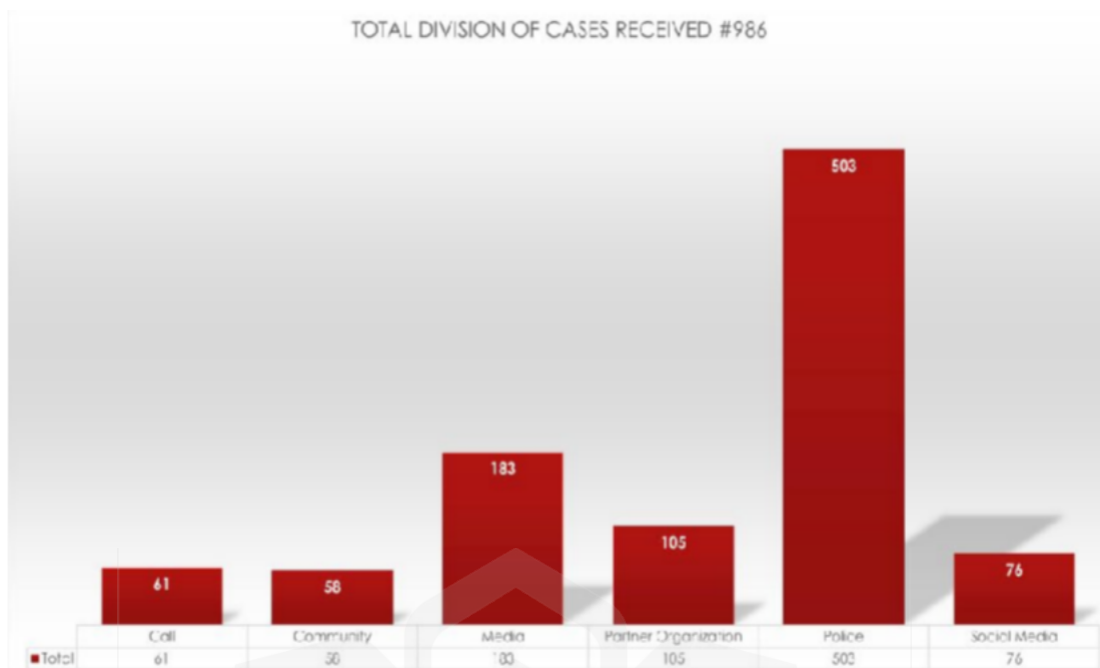


Figure 4.1: Total Division of Cases Received

The chart shows the total number of cases the Sindh Child Protection Authority received through different modes. The total number of cases received was 986. The modes used to collect cases are helpline (61), community (58), media (183), partner organization (105), police (503), and social media (76).

II. Total Division of Cases According to Age Group:¹⁵⁰

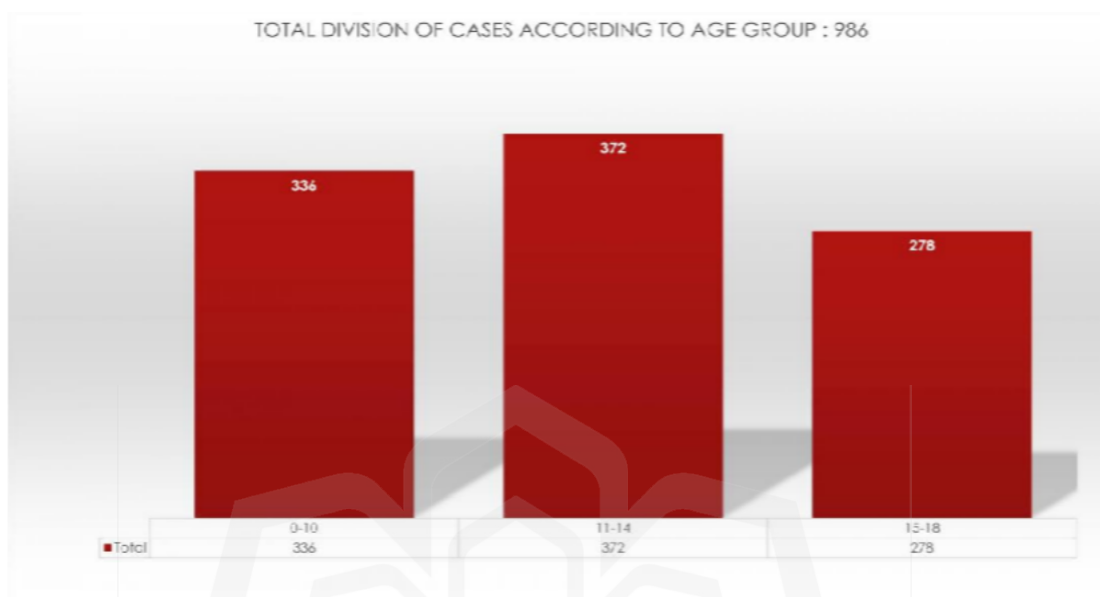


Figure 4.2: Total Division of Cases According to Age Group

The information presented in the bar chart pertains to the cases of child protection received by the Sindh Child Protection Authority based on age group. The data indicates that the highest incidence of cases involves children aged 11 to 14 years, followed by those in the 1 to 10-year age group. This observation suggests that children between 1 and 14 years old are particularly susceptible to exploitation and in serious need of protection.

¹⁵⁰ Sindh Child Protection Authority, “2019-2020 Yearly Report,” <<https://scpa.sindh.gov.pk/cpu/>> (accessed 7 July, 2022).

III. Divisions of children who were protected by the institution:¹⁵¹

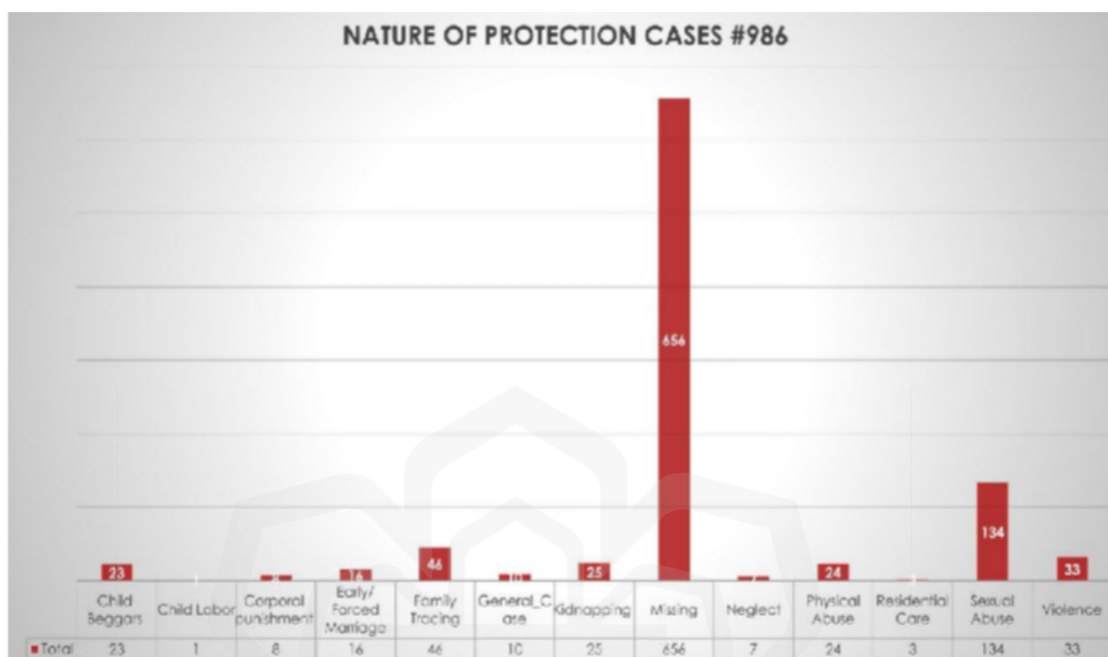


Figure 4.3: Divisions of Children who were Protected by the Institution

This chart shows the divisions of children who were protected by the Sindh Child Protection Authority: child beggars (23), child labor (1), corporal punishment (8), early forced marriage (16), family tracing (46), general case (10), kidnapping (25), missing (656), neglect (7), physical abuse (24), residential care (3), sexual abuse (134) and violence (33). According to this data, the number of missing children is the highest, followed by sexual abuse, family tracing, and violence cases. However, there is no category for orphaned children, which is why this research focuses on orphans' rights, an area currently lacking in the legal framework.

¹⁵¹ Sindh Child Protection Authority, "2019-2020 Yearly Report," <<https://scpa.sindh.gov.pk/cpu/>> (accessed 7 July, 2022)

4.2.4.2.2 The Sindh Child Marriages Restraint Act, 2013.

The Sindh Child Marriages Restraint Act, 2013, is a landmark provincial legislation that sets 18 years¹⁵² as the minimum legal age of marriage for both males and females, making Sindh the first province in Pakistan to adopt a gender-neutral and internationally aligned standard. The Act declares child marriage an offence and imposes strict penalties, including three years of imprisonment and fines, on individuals who contract,¹⁵³ solemnize, or facilitate such marriages.¹⁵⁴ It further criminalizes the role of parents, guardians,¹⁵⁵ and marriage registrars who are complicit in the process. Offences under the Act are cognizable, non-compoundable, and non-bailable, reflecting a strong commitment to enforcement. By eliminating the gender disparity in marriage age and strengthening punitive mechanisms, the Act aligns with international obligations, reinforcing Sindh's direction in child protection. However, implementation challenges persist due to socio-cultural resistance and limited institutional capacity in rural areas.

4.2.4.2.3 The Sindh Prohibition of Employment of Children Act, 2017

The Sindh Prohibition of Employment of Children Act, 2017 is a comprehensive provincial statute aimed at eliminating child labor and regulating adolescent employment across Sindh. The Act prohibits the employment of children under the age of 14¹⁵⁶ in any establishment and bans adolescents¹⁵⁷ (aged 14–18) from engaging in

¹⁵² The Sindh Child Marriage Restraint Act, 2013, s 2(a) "child" means a person male or female who is under eighteen years of age.

¹⁵³ The Sindh Child Marriage Restraint Act, 2013, s 3, Whoever, being a male above eighteen years of age, contracts a child marriage shall be punished with rigorous imprisonment which may extend to three years but shall not be less than two years and shall be liable to fine.

¹⁵⁴ The Sindh Child Marriage Restraint Act, 2013, s 4, Whoever performs, conducts, directs, brings about or in any way facilitates any child marriage shall be punished with rigorous imprisonment which may extend to three years but shall not be less than two years and shall also be liable to fine, unless he proves that he had reason.

¹⁵⁵ The Sindh Child Marriage Restraint Act, 2013, s 5, Where a parent or guardian or any other person in any capacity, lawful or unlawful, does any act to promote the child marriage or permits it to be solemnized, or fails to prevent it negligently, from being solemnized, shall be punished with rigorous imprisonment which may extend to three years but shall not be less than two years and shall also be liable to fine.

¹⁵⁶ The Sindh Prohibition of Employment of Children Act, 2017, s 2(ii) "child" means a person who has not completed his fourteenth years of age.

¹⁵⁷ The Sindh Prohibition of Employment of Children Act, 2017, s 2(i) "adolescent" means a person who has completed his fourteenth but has not completed eighteenth year of his age.

hazardous¹⁵⁸ occupations listed in its Schedule. The Act mandates employers to maintain proper records and ensures that adolescent work does not interfere with schooling or endanger health. Enforcement is facilitated through appointed inspectors with the powers to conduct unannounced visits and initiate legal proceedings. Violations are punishable with fines and imprisonment, reinforcing accountability.¹⁵⁹ The law reflects Sindh's alignment with constitutional provisions and international obligations, including ILO Conventions and the UNCRC, contributing to the broader goal of protecting children from economic exploitation and harmful labor conditions.

4.2.4.2.4 The Sindh Right of Children to Free and Compulsory Education Act, 2013

The Sindh Right of Children to Free and Compulsory Education Act, 2013 operationalizes Article 25-A of the Constitution of Pakistan¹⁶⁰, guaranteeing free and compulsory education to all children aged 5 to 16 years in Sindh. This Act places a binding obligation on the state, parents, and schools—both public and private—to ensure that every child¹⁶¹ receives equitable, inclusive, and quality education. It

¹⁵⁸ The Sindh Prohibition of Employment of Children Act, 2017, s 2(viii) “hazardous work” means the work which, by its nature or the circumstances in which it is carried out, is likely to harm or jeopardize the health, safety or morals of children and adolescents and includes occupations and processes mentioned in the Schedule.

¹⁵⁹ The Sindh Prohibition of Employment of Children Act, 2017, s 14 14. (1) Whoever employs any child in contravention of the provisions of sub-section 3 (1) shall be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to fifty thousand rupees or with both: Provided that if the child is employed in any hazardous work the fine may extend to one hundred thousand rupees but not less than ten thousand rupees and imprisonment which may extend to three years: Provided further that if the child or the adolescent is employed in – (a) any form of slavery or practice similar to slavery, such as the sale and trafficking of children or adolescents, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children or adolescents for use in armed conflicts; (b) the use, procuring or offering of a child or adolescent for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child or adolescent for illicit activities, in particular for the production and trafficking of drugs; the fine may extend to ten hundred thousand rupees but not less than two hundred thousand rupees and the imprisonment may extend to ten years but not less than five years. (2) Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of sub-section 3 (2) shall be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to seventy-five thousand rupees or with both.

¹⁶⁰ The Sindh Right of Children to Free and Compulsory Education Act, 2013, Preamble “WHEREAS it is expedient to provide for the right to education to all children of the age of five to sixteen years as envisaged in Article 25-A of the Constitution of the Islamic Republic of Pakistan, 1973”.

¹⁶¹ The Sindh Right of Children to Free and Compulsory Education Act, 2013, s 2(b) “child” means a child of any gender of the age of five to sixteen years with varied learning needs; and s 2(c) “disadvantaged child” means a child who belongs to a socially and economically disadvantaged class, or group or belongs to such parent whose annual income is lower than the minimum limit and whose parents

prohibits any form of discrimination, physical punishment, or denial of admission based on gender, caste, religion, or disability. Additionally, the Act mandates the establishment of school management committees, registration of private schools, and mechanisms for grievance redressal. Special emphasis is placed on enrolling out-of-school children, particularly from marginalized communities. The Act is a foundational part of Sindh's child rights framework, reinforcing other protective laws by promoting education as a tool for empowerment and social mobility. However, implementation challenges remain due to inadequate infrastructure, teacher shortages, and limited monitoring mechanisms.

4.2.4.2.5 The Sindh Technical Education and Vocational Training Authority Act, 2009

The Sindh Technical Education and Vocational Training Authority Act, 2009 (hereinafter referred to as STEVTA) establishes STEVTA as the apex body for regulating and promoting technical and vocational education across the province. While not exclusively child-focused, the Act holds significant relevance for adolescents (aged 15–18), especially those who are out of school, at risk of child labor, or in need of employable skills. The Act mandates the provision of market-relevant, inclusive, and equitable training programs, thus enabling young individuals to acquire vocational competencies for decent livelihoods. It supports skill development as a pathway for economic empowerment and social protection, particularly in conjunction with laws prohibiting child labor and promoting education. STEVTA's framework reinforces a preventive and rehabilitative approach, offering vulnerable youth alternatives to hazardous work and aligning with Pakistan's constitutional and international obligations to safeguard children's rights to education, development, and dignified work.

In the end, Sindh's legislative framework demonstrates a progressive and rights-based approach to child welfare, education, and protection. The laws reflect a comprehensive provincial commitment to upholding the rights of children in line with

constitutional mandates and international human rights obligations, including the UNCRC and ILO conventions. These statutes address critical issues such as early marriage, child labor, access to education, and vocational empowerment for adolescents. Notably, Sindh has emerged as a legislative leader by setting the marriage age at 18 for both genders and adopting robust child labor laws. However, implementation challenges—such as weak enforcement, socio-cultural resistance, and limited institutional capacity—must be addressed to fully realize the protective and developmental goals envisioned by these progressive legal reforms.

4.2.4.3 Province of Khyber Pakhtunkhwa (KP)

Khyber Pakhtunkhwa (KP) has a rich and complex history heavily influenced by its strategic location. As a gateway to the Indian subcontinent, the region has a long and tumultuous past marked by invasions by those seeking the subcontinent's wealth. The Aryans, a group of semi-nomadic conquerors, began migrating into India around 2000 BC and entered the region through Khyber Pakhtunkhwa, initially settling along the Swat, Gomul, Kurram, and Kabul Rivers. Over several centuries, more and more Aryans migrated into the subcontinent and settled in modern-day India. The Persians conquered Gandhara in the 6th century BC and made it one of the provinces of the Achaemenid Empire. As a conquered nation, Gandhara was required to pay tribute to the Persian kings.¹⁶²

Khyber Pakhtunkhwa (KP), a prominent tourism destination, significantly influences Pakistan's international standing. Additionally, the region's verdant valleys and snow-capped mountains offer a distinct advantage over other areas in the tourism sector. However, the province has been plagued by internal conflicts and terrorist incidents, prompting the Pakistan army to conduct multiple operations in its merged areas. As a result, numerous children and families were displaced, and some became orphans.

¹⁶² Government of Khyber Pakhtunkhwa, "History (March of Time)," <https://kp.gov.pk/page/history_march_of_time> (accessed 7 July, 2022).

The Khyber Pakhtunkhwa Assembly passed numerous laws to protect children in the province, aligning with national and international obligations.

- 1) Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010
- 2) The Child Marriage Restraint Act, 1929
- 3) The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015
- 4) The Khyber Pakhtunkhwa Bonded Labour System (Abolition) Act, 2015
- 5) The Khyber Pakhtunkhwa Technical Education and Vocational Training Authority Act, 2015
- 6) The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017
- 7) The Khyber Pakhtunkhwa School Bags (Limitation of Weight) Act, 2020

4.2.4.3.1 Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010

The KP government enacted a law to protect children in 2010 after the 18th amendment of the Constitution of Pakistan. The legislation is known as the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 (hereafter referred to as the KP Child Protection and Welfare Act, 2010). The aim of the law is,

"To provide for the care, protection, maintenance, welfare, training, education, rehabilitation, and reintegration of Children at risk in Khyber Pakhtunkhwa."¹⁶³

The Act is a perfect model for the federal government and other provinces as it protects and caters to children's training, education, rehabilitation, and reintegration.

Similar to other Acts regarding the protection of children, the definition clause in the KP Child Protection and Welfare Act, 2010 acknowledges different terminologies involving children. Section 2(b) specifies that the best interest of children should be a

¹⁶³ Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, Preamble.

primary consideration in all actions, either by public or private bodies, for the protection, survival, development, and participation of children.¹⁶⁴ The Act also defines a "child" as "a natural person who has not attained the age of eighteen" regardless of gender.¹⁶⁵

Additionally, the KP Child Protection and Welfare Act, 2010 also defines a child who is at risk as below:

"(e) a child in need of protection-

- (i) is at risk, including an orphan, a child with disabilities, a child of migrant workers, a child working and or living on the street, a child in conflict with the law, and a child living in extreme poverty.
- (ii) is found begging; or
- (iii) is found without having any home or settled place of abode or without any apparent means of subsistence; or
- (iv) has a parent or guardian who is unfit or incapacitated to exercise control over the child; or
- (v) lives in a brothel or with a prostitute or frequently visits any place being used for prostitution or is found to associate with any prostitute or any other person who leads an immoral or depraved life; or
- (vi) is being or is likely to be abused or exploited for immoral or illegal purposes or gain; or
- (vii) is beyond the parental control; or
- (viii) is imprisoned with the mother or born in jail.
- (ix) has lost his parents or one of the parents and has no adequate source of income; or is a victim of an offense punishable under this Act or any other law for the time being in force and his parent or guardian is convicted or accused of the Commission of such offense; or
- (x) is left abandoned by his parent or parents as the case may be, which will include a child born out of wedlock and left abandoned by his parent."¹⁶⁶

¹⁶⁴ Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, s 2(b).

¹⁶⁵ Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, s 2(d).

¹⁶⁶ Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, s 2(e).

This Act established a child protection institution to implement the law effectively. The institution aims to provide at-risk children with admission, care, protection, and rehabilitation. Moreover, the government established the "*Kafalat Ghar*" or "Children Home" or "Orphanage" for abandoned children.¹⁶⁷

In child protection matters, KP, like other provinces, legislates and establishes institutions to protect the welfare and rights of children, and most importantly, it concentrates on orphans, too. KP has taken significant steps to uphold the well-being and rights of children, including orphans, by creating dedicated institutions and implementing relevant legislation.

4.2.4.3.2 The Child Marriage Restraint Act, 1929

The Child Marriage Restraint Act, 1929, as a federal law, remains in force in Khyber Pakhtunkhwa (KP) and serves as the primary legal instrument prohibiting child and early marriages in the province, despite its limited deterrent effect due to outdated penalties and gender-discriminatory age thresholds.

4.2.4.3.3 The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015

The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 prohibits and regulates the employment of children and adolescents under the age of 18 in any hazardous or non-hazardous work. Under the Act, a "child"¹⁶⁸ means a person who has not completed his fourteenth year of age, and "adolescent"¹⁶⁹ means a person who has completed fourteenth but has not completed his eighteenth year of age. No child shall be employed or permitted to work in any establishment with the exception that a child

¹⁶⁷ Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, s 2(g).

¹⁶⁸ The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, s 2(b).

¹⁶⁹ The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, s 2(a).

not below the age of 12 years, may be engaged in the light work,¹⁷⁰ alongside his family member, for a maximum of two hours per day mainly to acquire skills, in a private undertaking, or in any school established, assisted or recognized by Government for such purpose.¹⁷¹ No adolescent shall be employed or permitted to work in any hazardous work included in the Schedule. The law places a legal obligation on employers to maintain proper records and ensure compliance with safety, health, and non-interference in education. The law empowers designated inspectors to conduct workplace inspections and initiate legal proceedings against violators, with penalties including imprisonment and fines. This Act aligns with Pakistan's constitutional provision under Article 11(3) and international commitments. Despite its progressive framework, effective enforcement remains a challenge, particularly in informal and rural sectors of the province.

4.2.4.3.4 The Khyber Pakhtunkhwa Bonded Labor System (Abolition) Act, 2015

The Khyber Pakhtunkhwa Bonded Labor System (Abolition) Act, 2015, is a comprehensive legislative measure enacted to abolish bonded labor in all forms across the province. The preamble of the law addresses the root causes of economic exploitation, and the Act reinforces the state's obligation under Article 11 of the Constitution, which prohibits slavery, forced labor, and child exploitation. The Act defines bonded labor as any labor or service rendered under a debt or obligation and prohibits the enforcement of such arrangements, declaring them void and illegal. It criminalizes the practice of bonded labor and provides for penalties, including imprisonment and fines for those who compel or benefit from it. Particularly relevant to children, the Act protects minors from being forced into exploitative labor relationships due to familial debt or poverty, practices that are especially prevalent in

¹⁷⁰ The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, s 2(j) "light work" means work, which is not likely to cause harm to health or impede the physical or mental development of a child engaged in such work.

¹⁷¹ The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, s 3, Prohibition of employment.--- (1) No child shall be employed or permitted to work in any establishment: Provided that a child not below the age of 12 years may be engaged in the light work, alongside his family member, for a maximum of two hours per day mainly for the purpose of acquiring skills, in a private undertaking, or in any school established, assisted or recognized by Government for such purpose.

marginalized communities. The law mandates the release and rehabilitation of bonded laborers, including children, and allows for the Constitution of Observance Committees to monitor implementation. The Act also includes provisions for the establishment of labor courts and the appointment of inspectors to enforce the law and protect the rights of workers.¹⁷²

4.2.4.3.5 The Khyber Pakhtunkhwa Technical Education and Vocational Training Authority Act, 2015

The Khyber Pakhtunkhwa Technical Education and Vocational Training Authority Act, 2015, establishes a regulatory body that focuses on technical education and vocational training in KP. The Act aims to enhance the quality of technical education and vocational training, promote skill development, and bridge the gap between industry requirements and the skills of the workforce.

Although not exclusively focused on children, the Act holds particular significance for adolescents (aged 15–18), especially those who are out of school, at risk of child labor, or in need of employable skills. It aims to provide demand-driven, inclusive, and competency-based training to enhance youth employability and reduce socio-economic vulnerabilities. The Authority is empowered to develop curricula, accredit institutions, and collaborate with industries to ensure relevance and quality. In conjunction with child labor and education laws, KP-TEVTA can serve a preventive and rehabilitative function by diverting youth from exploitative work toward sustainable livelihoods.¹⁷³

¹⁷² *State of Children*, “Khyber Pakhtunkhwa: Special Laws,” <https://stateofchildren.com/khyber-pakhtunkhwa/#Khyber_Pakhtunkhwa_Bonded_Labour_System_Abolition_Act_2015> (accessed 14 July, 2025).

¹⁷³ KPTEVTA, “Technical Education and Vocational Training Authority Act – KPTEVTA,” <<https://kptevta.gov.pk/technical-education-and-vocational-training-authority-act-2015/kpcode.kp.gov.pk+10kptevta.gov.pk+10kptevta.gov.pk+10>> (accessed 14 July, 2025).

4.2.4.3.6 The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017

The Khyber Pakhtunkhwa Free and Compulsory Education Act, 2017 ensures that children¹⁷⁴ between the ages of 5 to 16 have the right to receive free and compulsory education in KP. The Act seeks to ensure that children have access to quality education without any discrimination or barriers in the province.

Section 3¹⁷⁵ entitles every child between the ages of 5 to 16 to receive free and compulsory education without any discrimination based on gender, caste, or religion. The provision mandates the Provincial Government to provide free education to every child, ensure compulsory admission, attendance, and completion of education, provide safe commuting facilities for the child, monitor the functioning of schools, and provide infrastructure, trained staff, and age-appropriate curriculum.

The provision imposes liability on them to ensure that their child attends school regularly and completes the required course of study until the completion of elementary education, except in the case of a reasonable excuse where the child is deemed incapable of attending school by the School Attendance Authority, because of any infirmity or mental incapacity.

Moreover, Section 5¹⁷⁶ establishes a School Attendance Authority and a mandatory representative from a Parents' Teachers' Council (PTC). The Authority is responsible for ensuring that all children within the specified age range attend school regularly. The Authority has the power to take necessary measures to enforce compulsory education, such as conducting inspections, monitoring attendance records, and taking appropriate action against parents or guardians who fail to comply with the attendance requirements. The goal is to ensure that every child has access to education and can attend school regularly. The Act represents a cornerstone of KP's commitment

¹⁷⁴ The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017, s 2(a) "child" means a child of either sex whose age at the beginning of the school year is not less than five years and not more than 16 years and within the age limit prescribed for admission in class 1 to class 10th.

¹⁷⁵ The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017, s 3.

¹⁷⁶ The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017, s 5.

to universal education, serving as a preventive tool against child exploitation and a pathway to long-term empowerment.

4.2.4.3.7 The Khyber Pakhtunkhwa School Bags (Limitation of Weight) Act, 2020

The Khyber Pakhtunkhwa School Bags (Limitation of Weight) Act, 2020, is a pioneering provincial statute designed to protect children's physical health by regulating the maximum permissible weight of school bags for students from pre-grade 1 through grade 12. It sets specific limits—ranging from 1.5 kg for pre-grade one up to 7 kg for grades 11 and 12—mandating compliance by all public and private educational institutions.¹⁷⁷

The provision imposes liability on the Education Monitoring Authority (EMA) and the Private Schools Regulatory Authority (PSRA) to ensure the effective implementation of the Act. Section 5¹⁷⁸ outlines the penalties for non-compliance with the weight limitations on school bags. It states that any person, including school authorities, found in violation of the Act shall be liable for the imposition of a fine of up to two hundred thousand rupees.

This legislation is unique and represents a child-friendly legal development in the province, specifically designed to safeguard the physical health and well-being of school-going children by regulating the burden of heavy schoolbags.

In conclusion, Khyber Pakhtunkhwa has taken substantial legislative steps to promote and protect the rights and well-being of children through a multi-dimensional legal framework. The laws, as mentioned above, address critical aspects of child labor,

¹⁷⁷ "Implementation of Schoolbag Weight Limit Ordered," *Dawn*, 15 December, 2020, <https://www.dawn.com/news/1595996>

¹⁷⁸ The Khyber Pakhtunkhwa School Bags (Limitation of Weight) Act, 2020, s 5, Penalties.--- Any educational institution, violating the provisions of this Act and the rules made thereunder shall be penalized as under: (a) head of the public sector educational institutions shall be proceeded for disciplinary action under the relevant rules; and (b) the management of educational institutions other than those that are in public sector shall be liable for imposition of fine of rupees up to two hundred thousand.

access to education, and vocational empowerment. The province has also introduced progressive and child-sensitive measures such as the School Bags (Limitation of Weight) Act, 2020, which uniquely focuses on children's physical health within educational settings. Collectively, these laws reflect the province's growing alignment with constitutional mandates under Articles 11(3) and 25-A, as well as international commitments under the UNCRC and ILO conventions. While implementation remains a challenge, these legal reforms mark a significant shift toward a more protective, inclusive, and rights-based approach to child welfare in Khyber Pakhtunkhwa.

4.2.4.4 Province of Balochistan

Balochistan has a unique strategic position. With the largest size, the most extensive coastline, and sensitive borders with Iran and Afghanistan, Balochistan occupies an arm of the Arabian Sea closer to the choke point of the Strait of Hormuz. The military significance of this province cannot be underscored; strategically, it lies within the lines of Machkinder's rimland, western, and northeastern portions of its pivotal strategic calculation. Further, the mineral wealth of Baloch province has raised its international significance in every market.¹⁷⁹

Legislation in Balochistan is comparatively less developed than in other provinces and needs a more robust implementation mechanism, primarily due to inadequate infrastructure and financial resources. Although the Balochistan Assembly enacted child protection laws in 2016, these laws require substantial institutional support to be effectively operationalized.

Following the 18th Amendment to the Constitution of Pakistan in 2010, the Balochistan Assembly demonstrated increased commitment to legislative action by enacting various laws to protect children in the province. These laws include:

1. The Balochistan Child Protection Act, 2016

¹⁷⁹ Riaz Ahmad, *Balochistan through History* (QAU: Islamabad, 2008), 118-119.

2. The Balochistan Employment of Children (Prohibition and Regulation) Act, 2021
3. The Balochistan Child Marriage Prohibition Act, 2021
4. Balochistan Technical Education and Vocational Training Authority Act, 2011
5. Balochistan Domestic Violence (Prevention and Protection) Act, 2014
6. Balochistan Forced and Bonded Labor System (Abolition) Act, 2021

These laws represent a significant legislative effort by the Balochistan Assembly to ensure the protection and welfare of children in the province. By analyzing its provisions, implementation challenges, and impact, the study aims to assess the effectiveness of the laws in safeguarding children's rights and ensuring their well-being. This detailed analysis will provide insights into how the legislation aligns with national and international child protection standards and identify areas for further improvements or support.

4.2.4.4.1 The Balochistan Child Protection Act, 2016.

The Balochistan Child Protection Act, 2016, provides a comprehensive scheme for protecting children in Balochistan. The preamble of the law highlights its main features, which is "to protect children in Balochistan from all forms of physical or mental violence, injury, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse and matters incidental to it."¹⁸⁰

Key terms are defined in Section 2 of the Act to allow for accurate interpretation. The Act defines the word "child" as a person, either male or female, under 18.¹⁸¹ According to Section 2(f), "child abuse" refers to one, or a combination of more than one, of the following: physical or psychological violence, exploitation, injury, neglect or negligent treatment, maltreatment, and sexual abuse.¹⁸² "Protection unit," as specified

¹⁸⁰ The Balochistan Child Protection Act, 2016, Preamble.

¹⁸¹ The Balochistan Child Protection Act, 2016, s 2(e).

¹⁸² The Balochistan Child Protection Act, 2016, s 2(f).

under Section 2(g), refers to a unit established in the District Social Welfare Office under Section 11 of this Act.¹⁸³ One unique feature, elaborated in the definition clause, is the Child Protection Plan under section 2(i), which is defined as a document containing details of services to be offered to a child requiring protection under this Act based on a comprehensive assessment of the child and family under Section 14.¹⁸⁴

A notable provision under the Balochistan Child Protection Act, 2016 is stated under Section 3, "Every child has the inherent right to life," The term "right to life" appears exclusively in the Constitution of the Islamic Republic of Pakistan, 1973. Undoubtedly, this law is more comprehensive, as it attributes the right to life as an integral part of child rights.

Moreover, the Act also outlines specific provisions that uphold the best interests of a child:

- (1) "All state bodies, agencies, organizations, public and private social welfare institutions, and civil society organizations shall safeguard and promote the best interests of the child in need of protection.
- (2) All actions taken about a child under this Act, or any Rules or Regulations made under this Act, whether by the Courts, Child Protection Officers, or any other administrative authority, public or private social welfare institutions, civil society organizations, or any other body, shall be subject to the over-riding principle that the best interests of the child in need of protection shall be the primary consideration.
- (3) All state bodies, agencies and organizations, public and private social institutions, and civil society organizations shall safeguard and promote the child's right to be heard, and every child capable of forming his views shall be entitled to express those views.
- (4) For the full and harmonious development of a child's personality, a child should preferably grow up in a family social structure and environment.

Where special protection of a child or assistance to the parent(s) or carers

¹⁸³ The Balochistan Child Protection Act, 2016, s 2(g).

¹⁸⁴ The Balochistan Child Protection Act, 2016, s 2(i).

is required from the State, including out-of-home care, the child's participation in the related decision-making process must be ensured to the maximum extent possible.

- (5) No child shall be removed from its family home and environment by state intervention unless the removal is deemed by the Court to be in the best interests of the child to protect him/her from the threat of/or significant harm after considering all views, including those of the child.
- (6) Where there is a reference in this Act to the best interests of the child in need of protection, the factors to be taken into account in determining the child's best interests shall include: -
 - a) the child's right to protection from violence, neglect, and exploitation.
 - b) the welfare, well-being, and safety of the child needing protection.
 - c) the child's physical, mental, psychological, and emotional needs and level of development.
 - d) protecting the child rests primarily with the parent(s).
 - e) the quality of the child's relationship with a parent or any other person and the effect of maintaining that relationship.
 - f) the parent(s) capacity to provide a safe home and adequate food, clothing, and medical care.
 - g) the child's religious, cultural, and spiritual views.
 - h) the child's level of education and educational requirements.
 - i) the effect on the child of a delay in deciding and
 - j) the child's valid preference."¹⁸⁵

Under Section 5, the Act further elaborates on the categories of children who need protection, as follows:

"A child in need of protection shall include any child who has been subjected to, is subject to, or is under serious threat of being subjected to:

- (a) physical violence or injury
- (b) mental violence

¹⁸⁵ The Balochistan Child Protection Act, 2016, s 4.

- (c) neglect or negligent treatment
 - (d) maltreatment
 - (e) exploitation; and
 - (f) sexual abuse or sexual exploitation
- while in the care of parent(s), legal guardian(s), or any other person who cares for the child."¹⁸⁶

At the same time, the Balochistan government has established the Child Protection Commission under Section 8 for the purposes mentioned below:

- (1) "The Government shall establish a Child Protection Commission.
- (2) The Social Welfare Department shall provide necessary services to the Commission.
- (3) The government shall allocate an adequate budget for the effective functioning of the Commission."¹⁸⁷

The Balochistan Assembly enacted the law to protect child rights, but unfortunately, the Government of Balochistan has not paid much attention to its implementation. Therefore, it is essential to address this issue in order to safeguard child rights.

4.2.4.4.2 The Balochistan Employment of Children (Prohibition and Regulation) Act, 2021

The Balochistan Employment of Children (Prohibition and Regulation) Act, 2021, introduces vital measures to protect children's rights within the province's labor market. It defines a child as an individual under 14 years and an adolescent as someone aged 14 to 18. While complete prohibition applies to hazardous work for both groups, the Act permits light work for children aged 12 to 14, limited to no more than three hours per

¹⁸⁶ The Balochistan Child Protection Act, 2016, s 5.

¹⁸⁷ The Balochistan Child Protection Act, 2016, s 8.

day and in occupations deemed non-harmful to health and development.¹⁸⁸ The legislation also establishes a Provincial Coordination Committee on Child Labor to guide policy and compliance. By combining age-based restrictions, work-hour limits, and formal governance mechanisms.

Generally, all provinces in Pakistan have enacted legislation prohibiting the employment of children, reflecting a shared commitment to fulfill constitutional mandates—notably Article 11(3)—as well as Pakistan’s obligations under international conventions, including the ILO Conventions and the UN Convention on the Rights of the Child (UNCRC).

4.2.4.4.3 The Child Marriage Restraint Act, 1929

The Child Marriage Restraint Act, 1929, a federal law, remains applicable in Balochistan and serves as the primary legal instrument prohibiting child and early marriages in the province.

4.2.4.4.4 Balochistan Technical Education and Vocational Training Authority Act, 2011

The Balochistan Technical Education and Vocational Training Authority Act, 2011 (hereinafter referred to as BTEVTA) establishes a regulatory body that focuses on technical education and vocational training in Balochistan. The Act aims to enhance the quality of technical education and vocational training, promote skill development, and bridge the gap between industry requirements and the skills of the workforce. The

¹⁸⁸ The Balochistan Employment of Children (Prohibition and Regulation) Act, 2021, s 2(b) "Adolescent or young person" means a person who has completed his fourteenth but has not completed his eighteenth year; and s 2 (c) "Child" means a person who has not completed his fourteenth year of age.

Act empowers the Authority to devise policy, develop curricula, and administer trade testing and certification, aligning training programs with labor market demands.¹⁸⁹

It mandates the formation of Institute Management Committees and School Attendance Authorities to oversee governance and student enrolment. BTEVTA is responsible for setting competency standards, licensing training institutions, and publishing annual reports. Recent reforms have placed various polytechnic institutes and boards under B-TEVTA's administration to streamline educational delivery and enhance institutional coordination. The Act's structure and mandates echo national TVET strategies, although implementation has faced challenges, as the Authority remained inactive for a period post-enactment. Overall, the legislation lays the groundwork for a standardized, industry-responsive vocational education system essential to Balochistan's workforce development.¹⁹⁰

4.2.4.4.5 Balochistan Domestic Violence (Prevention and Protection) Act, 2014

The Balochistan Domestic Violence (Prevention and Protection) Act, 2014, establishes comprehensive measures to protect all members of domestic units—including children—from physical, psychological, and sexual abuse. Under Section 2(a), a child qualifies as an "aggrieved person",¹⁹¹ granting them the same rights to seek legal protection as adults. The Act empowers courts to issue protection orders under Section 8¹⁹², prohibiting abusive conduct and restricting the accused from contacting or

¹⁸⁹ State of Children, "Balochistan Technical Education and Vocational Training Authority Act, 2011," *State of Children*, accessed July 14, 2025, https://stateofchildren.com/balochistan/#Balochistan_Technical_Education_and_Vocational_Training_Authority_Act_2011.

¹⁹⁰ The Newspaper's Staff Correspondent, "Balochistan to Bring Technical Institutes under Labour Department," *Dawn*, May 30, 2025, <https://www.dawn.com/news/1914194>.

¹⁹¹ Balochistan Domestic Violence (Prevention and Protection) Act, 2014, s 2(a) "aggrieved person" means any woman, child, man or any vulnerable person who is or has been in a domestic relationship with the accused and who alleges to have been subjected to any act of domestic violence by the accused; and s 2 (c) child" means any person under the age of eighteen years living in a domestic relationship with the accused and includes any adopted, step or foster child.

¹⁹² Balochistan Domestic Violence (Prevention and Protection) Act, 2014, s 8 (1) The court on being satisfied that domestic violence has taken place may pass a protection order in favour of the aggrieved person and prohibit the accused from— (a) committing any act of domestic violence; (b) aiding or abetting in the commission of acts of domestic violence; (c) entering the place of employment of the aggrieved person or, if the aggrieved person is a child, his or her educational institution or any other place

harming children or other dependents. Importantly, Section 9¹⁹³ allows courts to mandate monetary relief, covering medical expenses, lost income, and maintenance for children of the aggrieved party. Additionally, Section 10 enables courts to grant temporary custody of affected children to the aggrieved caregiver or service providers in cases involving child victims or sexual abuse. These child-focused provisions illustrate the Act's protective intent, offering legal recourse, financial support, and child-centric remedies within domestic abuse contexts.

In conclusion, Balochistan has gradually developed a legal framework addressing key dimensions of child protection, welfare, and development. Legislative measures reflect the province's growing recognition of children's rights. These laws align with Pakistan's constitutional commitments—particularly Articles 11(3) and 25-A—and international obligations under the UNCRC and ILO conventions. While the federal Child Marriage Restraint Act, 1929, remains enforceable in the province, recent efforts to introduce updated and child-sensitive laws mark significant progress. However, challenges related to enforcement, awareness, and institutional coordination persist, especially in remote and underdeveloped areas. Continued legislative reform, resource allocation, and implementation oversight are essential to translating these legal protections into meaningful outcomes for children in Balochistan.

4.2.5 Institutions Governing the Welfare of Children at the National Level

In Pakistan, the central government has established institutions to govern child rights. Specifically, the following institutions are actively working towards the welfare of children in Pakistan:

frequented by the aggrieved person; (d) attempting to communicate in any form, whatsoever with the aggrieved person, including personal, oral or written, electronic or telephonic or mobile phone contact; (e) causing violence to the dependents, other relatives or any person who gives the aggrieved person assistance against domestic violence; and (f) committing any other act as specified in the protection order.

¹⁹³ (1) The court may, at any stage of the trial on an application by the aggrieved person, direct the accused to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and such relief may include, but is not limited to- (a) loss of earning; (b) medical expense; (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and (d) the maintenance for the aggrieved person as well her children, if any, including an order under or in addition to an order of maintenance under family laws.

4.2.5.1 National Commission on Child Welfare and Development

In December 1980, the National Commission for Child Welfare and Development (hereafter NCCWD) was established. It is one of the core institutions working to protect and promote child rights at the national level. This Commission was under the Ministry of Social Welfare and Special Education. After the 18th Constitutional amendment (through which the subjects of Social Welfare and Special Education were delegated to the provinces), the NCCWD was transferred to the Capital Administration and Development Division (herein referred to as CADD). At present, the NCCWD is working under the administrative control of the Ministry of Human Rights.

The NCCWD is an advisory body to the Government of Pakistan on child rights and protection matters. Coordinating with provincial governments ensures the implementation of child rights. In addition, it liaises and coordinates with the Provincial Commissions for Child Welfare and Development and Children Complaint Offices. Additionally, it works closely with international and national non-governmental organizations to promote and protect child rights in Pakistan. The role of the NCCWD is to foster a child-friendly society that acknowledges children's unique qualities, respects their beliefs and opinions, and considers their passions in all aspects of life while safeguarding them from physical, emotional, and financial harm.

The NCCWD also assesses the impact of constitutional, legal, and administrative provisions oriented towards the welfare and development of children. Its mandate includes suggesting amendments to the Constitution and national laws, where feasible, to bring them into harmony with the UNCRC. In addition, its task is to legislate and create deterrence against child abuse in all forms, including physical violence, child mutilation, exposure to drugs, child labor, and legislate protection for children who are differently abled (mentally or physically) or otherwise in need of social security and services at the national level.¹⁹⁴

¹⁹⁴ UNCRC, "Pakistan's Initial Report to the UN Committee on the Rights of the Child on the

The NCCWD works closely with the government to ensure the successful execution of the CRC and the establishment of a comprehensive child rights framework in Pakistan. The NCCWD adopted a model containing five processes for robust implementation of the UNCRC. The processes are as follows:

1. Review of national laws and enforcement of UNCRC through federal regulations.
2. Measures for implementation.
3. Monitoring the violation of rights.
4. Reporting to the Committee of UNCRC and
5. Disseminating information on the UNCRC and educating the public.¹⁹⁵

For monitoring and reporting, the National Core Committee was established to work in coordination with the NCCWD.¹⁹⁶

4.2.5.1.1 National Core Committee under the NCCWD

The National Core Committee, constituted of representatives from relevant federal and provincial governments and NGOs, has the following objectives:

1. To develop strategies for accelerating the implementation of the CRC and monitoring the goals set in the National Plan of Action for Children,
2. To assign implementation and monitoring to other units or sections, and
3. To provide feedback to the NCCWD to prepare future reports.

On its committee's recommendation, the NCCWD prepares the reports for implementing CRC and other child protection laws for UNICEF. However, the most

Implementation of the Optional Protocol on the Sale of Children” (2016), United Nations, <<https://www.ohchr.org/en/press-releases/2016/05/committee-rights-child-reviews-report-pakistan>> (accessed 3 February, 2022).

¹⁹⁵ Ministry of Human Rights, “National Commission for Child Welfare and Development,” <<https://mohr.gov.pk/Detail/MzFjMTM5ODctODkwYS00NTUyLTk2NjQtMmNjZjEwNzJIN2Fk>> (accessed 10 December, 2021)

¹⁹⁶ Ibid.

striking feature of these legislative reviews and compilations regarding child protection conceptualization, enactment, and implementation in Pakistan is that neither the Constitution nor any single law directly covers orphan protection.¹⁹⁷

4.2.5.2 National Commission on Child Rights

The Government of Pakistan established the National Commission on the Rights of the Child (NCRC) under the National Commission on the Rights of the Child Act of 2017. The mandate of the NCRC, as outlined in Section 15 of the Act, includes examining and reviewing laws and policies related to child rights, investigating violations of these rights, assessing international instruments, and periodically reviewing existing policies and programs concerning child rights. The Commission is tasked with making recommendations for effectively implementing these policies in children's best interests. Additionally, the NCRC advises the Federal Government on signing, ratifying, or acceding to proposed international treaties and protocols.¹⁹⁸

The NCRC, as per the Act of 2017, consists of a Chairperson, Members, and Ex-Officio members who are at least officers in BPS-20 from various ministries, including Interior, Foreign Affairs, and Human Rights. The Chairpersons of the National Commission on Human Rights (NCHR), the National Commission on the Status of Women (NCSW), and the Provincial Commissions on the Rights of the Child also serve as members.¹⁹⁹

According to Section 15(b) of the Act, the Commission must maintain liaison with the Provincial Commissions established under provincial laws and policies and other relevant provincial organizations. Section 15(c) empowers the Commission to

¹⁹⁷ Tahira Jabeen, 70.

¹⁹⁸ *National Commission on the Rights of Child*, "Policy Brief by the National Commission on the Rights of Child – Forced Conversion," <<https://www.ncrc.gov.pk/wp-content/uploads/2021/03/POLICY-BRIEF-BY-NCRC-AFTER-ARZO-CASE.pdf>> (accessed 18 March, 2022).

¹⁹⁹ Ibid.

examine and review any existing law, policy, or practice concerning child rights protection and recommend measures for their effective implementation.²⁰⁰

In conclusion, the institutions operating at the national level for the welfare of children in Pakistan play a pivotal role in shaping, coordinating, and monitoring child protection and development efforts. Bodies such as the National Commission on the Rights of the Child (NCRC), the Ministry of Human Rights, the National Child Protection Centre, and various child-related units within federal ministries reflect the state's institutional commitment to advancing child welfare. These institutions are tasked with implementing legislative mandates, monitoring compliance with international obligations, addressing violations, and formulating policies responsive to children's diverse needs, including education, health, protection, and care for orphans and vulnerable children. While these bodies have made meaningful progress, their effectiveness is often hindered by limited resources, coordination gaps, and implementation challenges. Strengthening institutional capacity, ensuring inter-agency collaboration, and enhancing accountability mechanisms are essential to fully realizing the rights of children and translating national commitments into tangible outcomes for every child in Pakistan.

4.3 CONCLUSION

Pakistan has established a multi-tiered legislative framework for child protection, encompassing both national and provincial laws. At the national level, key instruments such as the Child Marriage Restraint Act, 1929, the Juvenile Justice System Act, 2018, and the National Commission on the Rights of Child Act, 2017 reflect Pakistan's foundational efforts to align with constitutional mandates and international obligations like the UNCRC. However, federal laws—particularly the 1929 Act—suffer from outdated provisions, including gender-discriminatory age limits and weak punitive measures, limiting their effectiveness in contemporary child protection.

²⁰⁰ National Commission on the Rights of the Child Act, 2017, s 15.

In contrast, provincial legislation exhibits progressive reform tailored to regional contexts. Sindh, for instance, has led with the Sindh Child Marriages Restraint Act, 2013, setting 18 as the minimum marriage age for both genders, and enacting strong education and child labor laws. Punjab has similarly advanced with acts like the Punjab Destitute and Neglected Children Act, 2004, and the Free and Compulsory Education Act, 2014. Khyber Pakhtunkhwa stands out for its innovative School Bags (Limitation of Weight) Act, 2020, while Balochistan has made strides through its child labor and domestic violence legislation.

Despite these strengths, implementation remains a shared weakness across all provinces. Challenges include poor coordination, limited institutional capacity, and insufficient awareness at the grassroots levels. Furthermore, the lack of uniformity in legal standards—especially regarding child marriage age—creates legal inconsistencies and protection gaps. Some provinces still rely heavily on outdated federal laws in the absence of modern replacements.

In the end, while Pakistan’s provincial legal landscape demonstrates growing commitment and innovation, national harmonization, more vigorous enforcement, and integrated policy efforts are essential to ensure comprehensive and equitable protection for all children, particularly orphans and other vulnerable groups.

CHAPTER FIVE

CHALLENGES FACED BY ORPHANS IN PAKISTAN

5.1 INTRODUCTION

This chapter presents the analysis and interpretation of the data collected through a non-doctrinal research design, with a particular emphasis on the qualitative dimension of the study. The primary objective is to explore and understand the lived experiences, perspectives, and challenges of orphans, single mothers, and officials from relevant government and non-governmental institutions. By employing an inductive, open-ended approach, the chapter aims to provide a nuanced understanding of the social realities faced by vulnerable children, particularly orphans. Through purposively selected interviews and observations, the study offers insight into the actions and responses of key actors involved in orphan care and protection. This analysis not only highlights individual narratives but also examines institutional roles and structural factors that shape the experiences of orphans within the broader socio-legal context.¹

Moreover, while this study primarily adopts a qualitative approach to examine the rights and protection of orphans, quantitative methods are also employed to complement and support the research findings. Although not the primary focus, the quantitative component contributes to the overall understanding by addressing three key elements: research design, measurement, and statistical analysis.² These components were outlined in detail in Chapter 1. In the present chapter, the emphasis is explicitly placed on the statistical analysis, which provides practical support to the qualitative insights and enhances the robustness of the study's conclusions.

¹ Joseph A. Maxwell, *Qualitative Research Design: An Interactive Approach, Applied Social Research Methods Series, vol. 41* (Thousand Oaks, CA: SAGE Publications, 1996), 17–19.

² Laura M. O'Dwyer and James A. Bernauer, *Quantitative Research for the Qualitative Researcher* (Thousand Oaks, CA: SAGE Publications, 2014), 48.

5.2 CHALLENGES FACED BY ORPHANS IN PAKISTAN

In this era of digital advancement, people are witnessing a shift toward leveraging technology to redefine the world and even explore the moon. However, humanity faces fundamental challenges in the modern age, as seen in Pakistan. Pakistan is a developing country, with children constituting nearly half of the Pakistani population. Although children are considered the future strength of the Pakistani state, the number of orphans is alarmingly increasing. Children, including orphans, are the future of Pakistan, for which the Pakistani state is collaborating with UN agencies and becoming a part of international conventions and treaties. These international instruments include the United Nations Convention on the Rights of the Child (UNCRC).

This study is grounded in a non-doctrinal research approach, incorporating both qualitative and quantitative methods to examine the protection of orphans' rights in Pakistan comprehensively. For the qualitative component, in-depth interviews were conducted with officers from various governmental and non-governmental organizations involved in child welfare and protection. In addition, case studies of orphaned children and single mothers are included to illustrate the lived realities and complex challenges they face. The objective is to highlight the vulnerabilities experienced by orphans and single mothers, and to explore how state institutions and non-governmental organizations respond to and support these groups. The analysis also critically examines the extent to which the existing legal framework for child protection addresses the specific needs and rights of orphans. Following the qualitative analysis, the study transitions to a discussion of the quantitative findings, which further reinforce and contextualize the qualitative insights.

Furthermore, this study presents an analysis of the quantitative data collected from 150 orphaned children. The data is illustrated using pie charts and frequency percentages to offer a clear and accessible representation of the findings. The survey questions were designed to assess various aspects of the children's well-being, including whether they receive any form of support from their paternal families, such as shelter, financial assistance, or general maintenance. Additionally, the study inquired whether

any paternal family members had attempted to expose the children to drugs, as well as whether the children had experienced physical or emotional abuse. Further questions examined indicators of psychological distress, such as tendencies toward social withdrawal, feelings of anxiety and depression, and the suppression of personal needs. The purpose of these inquiries is to evaluate the overall well-being of orphaned children and to identify potential gaps in protection and support systems.

In addition to the questions concerning well-being, the survey also explored several legal and social dimensions of orphanhood. Respondents were asked whether their names were registered with the National Database and Registration Authority (NADRA), and whether they had received any support from their paternal family, particularly their grandfathers or their mothers, in the event of medical emergencies. The inquiry also included questions related to educational support, recognizing that access to free and compulsory education is a constitutional right for every child in Pakistan. The study sought to determine whether paternal family members had assisted orphans in accessing their right to education.

Furthermore, the questionnaire addressed issues related to property and inheritance rights following the death of the father. Participants were asked whether they had received any inheritance, gifts, or wills from their grandfathers or paternal relatives, or whether they had successfully claimed their legal share in their father's property. Another important aspect examined was the orphans' freedom of religion, specifically, whether they were free to profess and practice the religion of their family without coercion or restriction.

The overarching aim of these inquiries is to assess the multifaceted challenges faced by orphaned children and to identify systemic gaps in the protection of their rights. While Pakistan has established a general legal framework for child protection, this study investigates whether that framework adequately addresses the specific vulnerabilities of orphans. The findings of this analysis will inform the discussion on whether there is a need for a distinct and comprehensive legal instrument dedicated solely to the rights and welfare of orphaned children.

5.3 RESULTS AND DATA ANALYSIS FROM QUANTITATIVE STUDY

This section presents the outcomes derived from the qualitative and quantitative research. A thorough data assessment is necessary to effectively meet the goals and address the research questions. Furthermore, this section delves into the process of data analysis to interpret the results and highlights the significance of the findings.

For the purpose of quantitative analysis, questionnaires were distributed among 200 orphaned children. Of these, completed responses were received from 150 participants, forming the basis of the data analysis presented in this chapter. The data collection process is summarized and presented in tabular form for clarity. Table 5.1 provides a detailed breakdown of the living arrangements of the respondents, including those residing in orphanages, attending schools, involved in legal proceedings (courts), or living with extended family members. This classification helps contextualize the findings and allows for a more nuanced understanding of the diverse circumstances in which orphaned children live.

Table 5.1 Summary of data collection

S. No	Organizations	No. of orphans
1.	Pakistan Sweet Home Islamabad	25
2.	Faiz-ul-Islam	15
3.	Kashana	15
4.	Edhi Homes Islamabad	15
5.	Child Protection Bureau	10
6.	F.G Tariq Abad School	20
7.	F.G Sir Syed School, Rawalpindi	20
8.	F.G Abid Majeed School, Rawalpindi	15
9.	District Courts	10
10.	Silver Oaks School	5

The details of the study design, target population, data collection methods, and modes of analysis were discussed in Chapter 1. This chapter constitutes the core of the

research, presenting the analysis and interpretation of the collected data. To enhance clarity and facilitate understanding, the results are illustrated using tables and charts. These visual tools support the textual analysis by providing a clear representation of the findings.

5.3.1 Profile of the Orphans

The demographic data of the selected orphans includes different variables like age, religion, fathers' education and occupation, mothers' education and occupation, grandfathers' occupation, and paternal family economic status. Table 5.2 presents the percentage distribution of orphans by demographics.

Table 5.2: Background of the Orphans

Demographic characteristics	Orphans	
	Frequency	Percentage
Age (years)	12	8
10–12		
13–15	77	51.3
16–18	61	40.7
Total	150	100
Father's Education		
Primary	65	43.3
Matric	51	34
Intermediate	12	8
Bachelor	17	11.3
Master	4	2.7
PhD	1	0.7
Total	150	100

Father's Occupation		
Forces personnel	41	27.3
Teacher	11	7.3
Business and self-employed	22	14.7
Farmers and others	76	50.7
Total	150	100
Mother's Education		
Primary	84	56
Matric	24	16
Intermediate	22	14.7
Bachelor	17	11.3
Master	3	2
PhD	Nil	Nil
Total	150	100
Mother's Occupation		
Housewife	79	52.7
Teachers	33	22
At-home services (maid) and others	38	25.3
Total	150	100
Grandfathers' Occupation		
Farmers	89	59.3
Retired armed personnel	36	24
Retired teacher	7	4.7
Business or self-employment	10	6.7
Others	8	5.3
Total	150	100
Paternal Family Economic Status		
Rich	5	3.3
Middle Class	97	64.7
Poor	48	32

Total	150	100
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5.3.1.1 Age of the Orphans

Categorizing and analyzing the distribution of orphans based on their age groups allows for a comprehensive understanding and insights into their age-specific needs, challenges, and support requirements.

The data show that more than half (51.3%) of the orphans were aged between 13 and 15, more than one-third (40.7%) were aged 16 to 18, and less than one-tenth (8%) fell under the age group of 10-12. Therefore, it can be concluded that the majority of the orphans are within a more mature age group.

5.3.1.2 The Education Level of the Orphans' Fathers

It is vital to grasp the education levels of the orphans' fathers as it sheds light on the extent of their schooling or academic qualifications. This information helps to gauge the family's educational background and, to some extent, the potential influence of the father's education on the family's overall well-being.

It is indicated from the data that less than half (43.7%) of the orphans' fathers had primary education, more than one-third (34%) completed their matriculation, and less than one-tenth (8%) attained intermediate level. In addition, more than one-tenth (11.3%) of the fathers completed their bachelor's degree, and those who obtained a master's degree were less than one-tenth (2.7%). Only one father held a PhD.

The educational and literacy levels of the majority of the orphans' fathers are significantly low, which has significant implications for the orphans. These fathers might have been unable to secure stable employment, thereby impacting their eligibility for pensions and other benefits.

5.3.1.3 The Occupation of the Orphans' Fathers

Understanding the specific professions practiced by the deceased fathers provides valuable information in assessing the financial stability and resources available to the family before the father's passing.

The data indicate that 50.7% of the orphans' fathers were engaged in agricultural activities, primarily as farmers. Furthermore, 27.3% served as soldiers in the armed forces. Less than one-tenth (7.3%) pursued careers in teaching, while around one-eighth (14.7%) were involved in business or self-employed.

Considering Pakistan's status as an agricultural country, 50% of the fathers were engaged in agricultural pursuits. Their demise may potentially result in the orphans facing financial struggles.

5.3.1.4 The Education Level of the Orphans' Mothers

Orphans' mothers play a crucial role in the orphan's lives and upbringing. Educated mothers have a higher chance of securing stable employment, thereby enabling them to contribute financially to the household after the passing of their husbands. This financial stability provides orphans with security and independence from external assistance.

The data revealed that more than half (56%) of the orphans' mothers had only received education up to the primary level. Additionally, nearly one-fifth (16%) of them completed their secondary (matric) education. The figures further indicate that approximately one-eighth (14.7% and 11.3%) attained intermediate and bachelor's level, while less than one-tenth (2%) of the mothers obtained a master's degree.

In summary, the education level of the orphans' mothers is notably low, which makes supporting orphaned children challenging. This situation raises serious concerns about the orphans' future.

5.3.1.5 The Occupation of the Orphans' Mothers

Examining the occupation of the orphans' mother can provide valuable insights into the economic and professional status of the primary caregiver as well as the financial stability and resources available within the household. It helps to determine whether the mothers' professions can adequately support the families' needs, including those of the orphaned children.

The data show that more than half (52.7%) of the mothers were primarily housewives, while over one-fifth (22%) were involved in the teaching profession. In addition, one-fourth (25.3%) of the mothers worked as maids.

It can be inferred that a significant number of mothers in Pakistan are predominantly housewives, with some employed as teachers and some providing at-home services as maids. This shows that the majority of the orphans' mothers potentially lack the financial stability to support their children after their father's demise, thereby affecting the future.

5.3.1.6 The Occupation of the Orphans' Grandfathers

Examining the occupation of the orphans' grandfathers provides critical insights into their financial status, particularly their ability to assist orphaned grandchildren. In essence, this demographic element serves as an essential indicator to gauge the potential support system within the context of grandfather-grandchild relationships, offering a clearer understanding of the financial dynamics that play a pivotal role in the well-being of orphaned grandchildren.

The data illustrate that since Pakistan is an agricultural country, more than half (59.3%) of the orphans' grandfathers are involved in farming activities. Nearly one-

fourth (24%) are retired from the armed forces, and less than one-tenth (4.7%, 6.7%, and 5.3%) are retired teachers, businessmen, self-employed, and others, respectively.

The findings revealed that the orphans' grandfathers are primarily engaged in agricultural activities; as such, they may face limitations in their capacity to provide substantial support for their orphaned grandchildren in various aspects, such as access to education and healthcare, which are pivotal in ensuring the well-being of orphaned grandchildren and their future endeavors.

5.3.1.7 The Status of the Orphans' Paternal Families

Paternal family status may serve as a critical indicator in assessing their ability to provide support within their households and the potential financial and emotional resources available to meet the needs of orphans.

The data reveals that a significant majority of orphans—approximately two-thirds (64.7%)—belong to middle-class paternal families, while nearly one-third (32%) come from low-income households, and only a small fraction (3.3%) originates from affluent backgrounds. This indicates that orphans in Pakistan predominantly come from middle-class families who are already grappling with economic pressures. It is important to note that middle-class families in Pakistan are experiencing severe financial constraints, mainly due to persistent inflation. White-collar workers, in particular, are facing stagnant wages amid a sharp rise in the cost of living. As a result, many are silently struggling to afford essential needs such as food, education, and healthcare. The previously stable lifestyle of the middle class has become increasingly unsustainable, forcing families to make difficult compromises, particularly in matters related to their children's well-being and prospects.³

³ Muhammad Mohsin Iqbal, "Pakistan's Middle-Class Struggles Under Inflation: The Silent Crisis of White-Collar Workers," *Friday Times*, 9 April, 2025.

5.3.2 Data Analysis of the Challenges Faced by the Orphans

This sub-section presents the six challenges orphans face: the right to well-being(life), the right to birth registration and family name recognition, the right to health, the right to education, the right to property and shelter, and the right to religion.

Addressing these challenges is essential for creating a supportive environment that upholds the rights and well-being of orphans, enabling them to lead fulfilling lives despite their adversities.

5.3.2.1 The Right to Well-being(life)

The data gathered in this section are further divided into nine challenges imposed on orphans by paternal families: the security provided by paternal family, being threatened, being forced to leave home, drug addiction, physical torture, emotional torture, self-isolation, anxiety, depression, and suppression of personal desires.

Table 5.3 presents the frequency and percentage distribution of the challenges faced by orphans concerning the right to life.

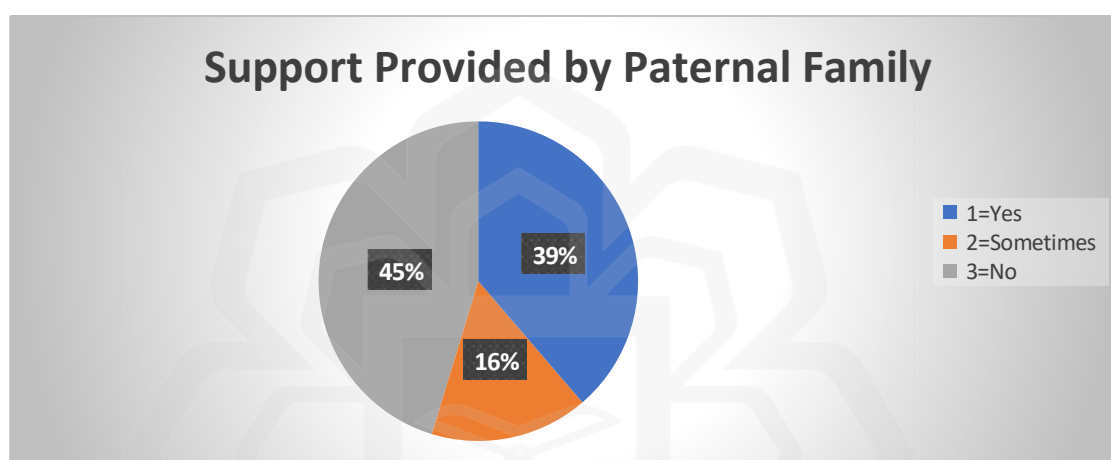
Table 5.3: The Right to Life

S. No	Types of Challenges	Response	Frequency	Percentage
1.	Did the paternal family provide support?	Yes=1	58	38.7
		Sometimes=2	24	16.0
		No=3	68	45.3
		Total	150	100
2.	Did they threaten you?	Yes=1	39	26.0
		Sometimes=2	27	18.0

		No=3	84	56.0
		Total	150	100
3.	Were you pressured to leave the home?	Yes=1	40	26.7
		Sometimes=2	20	13.3
		No=3	90	60.0
		Total	150	100
4.	Did your paternal family try to make you drug-addicted?	Yes=1	10	6.7
		Sometimes=2	10	6.7
		No=3	130	86.6
		Total	150	100
5.	Did they physically torture you?	Yes=1	35	23.3
		Sometimes=2	25	16.7
		No=3	90	60.0
		Total	150	100
6.	Did they exploit you emotionally?	Yes=1	40	26.7
		Sometimes=2	26	17.3
		No=3	84	56.0
		Total	150	100
7.	Have you passed through the phase of self-isolation?	Yes=1	58	38.7
		Sometimes=2	22	14.7
		No=3	70	46.6
		Total	150	100
8.	Did you face anxiety and depression?	Yes=1	66	44.0
		Sometimes=2	28	18.7
		No=3	56	37.3
		Total	150	100
9.	Did you start withdrawing your desires?	Yes=1	72	48.0
		Sometimes=2	30	20.0
		No=3	48	32.0
		Total	150	100

5.3.2.1.1 Support Provided by the Paternal Family

Orphans require support to meet the demands of their daily lives. Without support from their paternal families, they might face emotional distress, financial instability, and challenges in accessing education or essential resources due to their vulnerability. A lack of support could hinder their ability to navigate life challenges and reach their full potential.



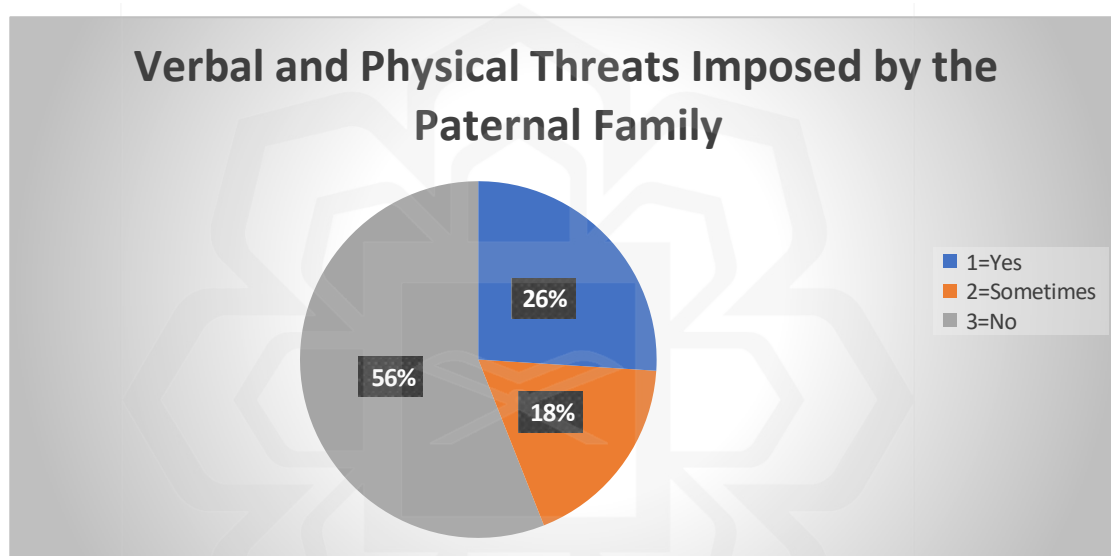
Pie Chart 5.1

Pie Chart 5.1 revealed that over one-third (39%) of the orphans received adequate support from their paternal families. Approximately one-fifth (16%) received occasional support, and nearly half (45 %) did not receive any support from their paternal families.

The data indicate that only a small percentage of paternal families provide support to orphans, while a significant majority of orphans receive no assistance, neither financial nor emotional, from their families. This lack of familial support further exacerbates the vulnerabilities faced by orphaned children and highlights critical gaps in their care and protection.

5.3.2.1.2 Verbal and Physical Threats Imposed by the Paternal Family

After the death of their fathers, orphans require protection from their paternal families. Being deprived of a secure environment, they may encounter life hardships that impede their ability to navigate the world effectively. Furthermore, paternal families may jeopardize their lives, property, and essential resources, thereby putting them at risk. In some circumstances, orphans may face direct verbal or physical threats from their paternal families, highlighting the potential dangers present in their living environment.



Pie Chart 5.2

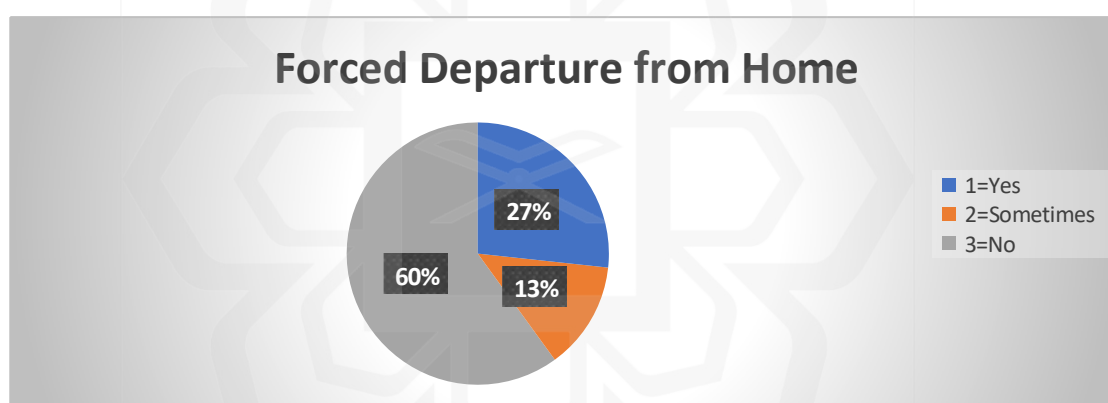
According to the findings in Pie Chart 5.2, nearly one-fourth (26%) of the orphans affirmed receiving threats from their paternal families, while almost one-fifth (18%) answered sometimes, and more than half (56%) denied receiving any threats from their paternal families.

The data indicate that while more than half of the orphans reported not being threatened by their paternal families, it is important to acknowledge that a significant number did experience such threats. This highlights the presence of familial hostility in

some instances, which contributes to the orphans' sense of insecurity and psychological distress.

5.3.2.1.3 Forced Departure from Home

Some orphans encounter forceful attempts or coercion to depart from their paternal homes. Forced departure can arise from various factors, including family dynamics, disputes, and other factors influencing the orphans' living situations with the paternal families. The pressure to leave home significantly impacts orphans' well-being, stability, and development. This can lead to feelings of rejection, insecurity, and displacement. Additionally, forced separation from paternal family can impact orphans' sense of identity and belonging.



Pie Chart 5.3

The data indicate that paternal families generally do not force orphans to leave their homes. The figures displayed in Pie Chart 5.3 show that around one-fourth (27%) of the orphans confirmed being forced by their paternal families to leave their homes, while one-eighth (13%) were occasionally pressured to leave, and more than half (60%) denied ever being forced to leave.

As depicted from the data, while the majority of orphans residing with their paternal families are not forced to leave their ancestral homes, there remains a notable

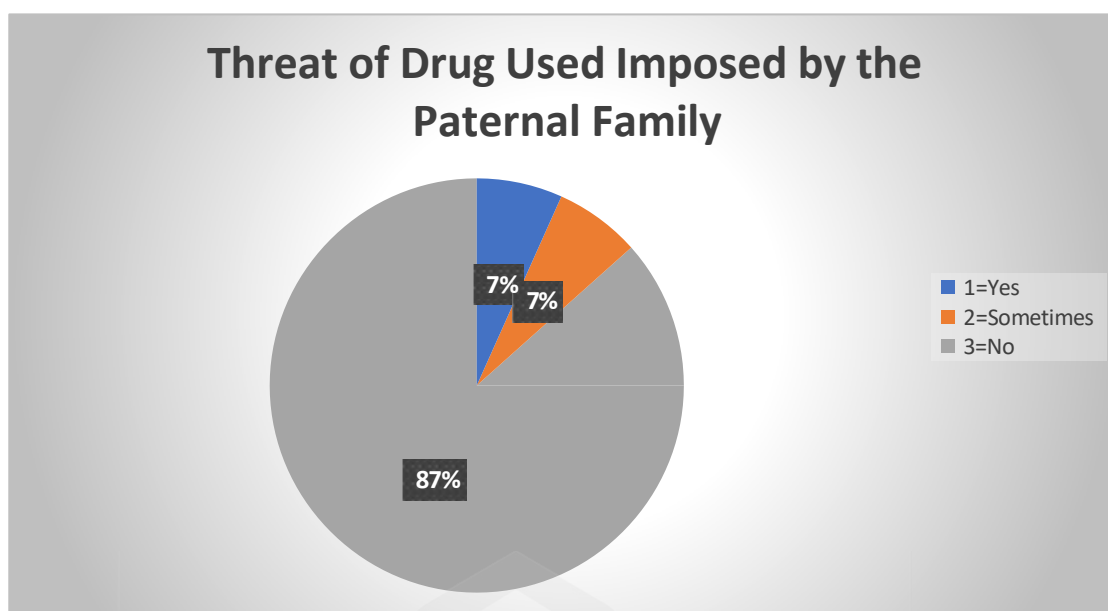
number of cases in which orphans were forcibly displaced. Although not the dominant trend, these incidents highlight a concerning pattern of vulnerability. The existence of such cases underscores the need for stronger protective mechanisms to ensure the security and stability of orphaned children within extended family settings. Under Section 2(k)(vii) of the Punjab Destitute and Neglected Children Act, 2004,⁴ orphans are recognized as a category of children in need of care and protection. However, the implementation of these legal safeguards remains inconsistent, and such cases of forced eviction demonstrate the urgent need for more robust enforcement and monitoring mechanisms to uphold the rights and welfare of orphans.

5.3.2.1.4 Threat of Drug Used Imposed by the Paternal Family

Drug addiction can adversely affect orphans' physical, mental, and emotional health. Substance abuse within a family may create an unhealthy and unsafe environment for orphans. Orphans who have lost one or both parents may find themselves in situations where drug addiction is prevalent in their paternal families. This could involve family members, caregivers, or individuals within the household who are struggling with substance abuse.⁵

⁴ Punjab Destitute and Neglected Children Act, 2004, s 2(k)(vii).

⁵ World Health Organization Africa, "Substance Abuse," <<https://www.afro.who.int/health-topics/substance-abuse#:~:text=Substance%20abuse%20refers%20to%20the,on%20individuals%2C%20families%20and%20society>> "Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs. One of the key impacts of illicit drug use on society is the negative health consequences experienced by its members. Drug use also puts a heavy financial burden on individuals, families, and society." (accessed on 18 April, 2023).



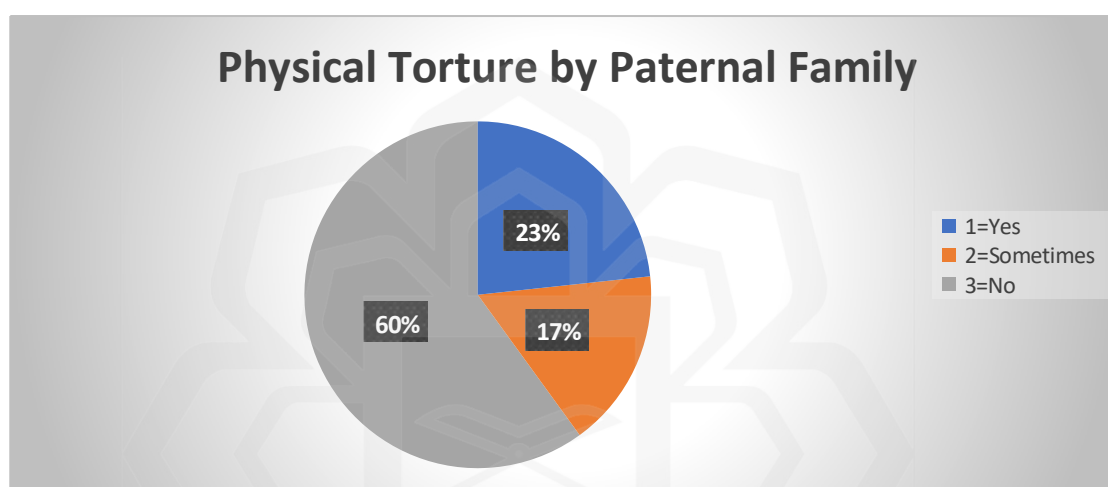
Pie Chart 5.4

The data in Pie Chart 5.4 indicate that less than one-tenth (7%) of the orphans confirmed that their drug addiction was influenced by their paternal families. Less than one-tenth (7%) affirmed that they were occasionally influenced by their paternal families to take drugs, and more than three-fourths (86%) denied the influence of the paternal families on drug addiction.

The data reveal that their paternal families or caregivers did not influence the majority of orphans to engage in drug use. However, a small proportion of cases do exist where orphans reported exposure to such harmful influences from within their familial environment. This is an alarming indicator and calls for urgent state intervention to protect vulnerable children from substance abuse and exploitation. At the same time, the overall trend is a positive sign, suggesting resilience among orphaned children and a potential for healthy development when appropriately supported. This finding offers hope for the future, indicating that with the right protections and opportunities, orphans can become a valuable and productive part of Pakistan's social and economic fabric.

5.3.2.1.5 Physical Torture by Paternal Family

Physical torture⁶ refers to the occurrence of physical abuse and violence directed at orphans by their paternal families. Instances of such mistreatment reveal the harsh conditions these orphans may endure. This form of abuse involves the intentional infliction of bodily harm or pain and highlights a significant challenge faced by orphans living with paternal families.



Pie Chart 5.5

The data show that nearly one-fourth (23%) of the orphans admitted to being physically tortured by their paternal families. More than one-eighth (17%) claimed that they sometimes faced physical abuse. However, more than half (60%) of the orphans denied any physical torture from their paternal families.

Since more than half of the orphans reported not experiencing physical abuse from their paternal families, this may indicate the existence of relatively positive relationships in those households. However, it is concerning that over one-third of orphans disclosed incidents of physical abuse, which poses a serious threat to their

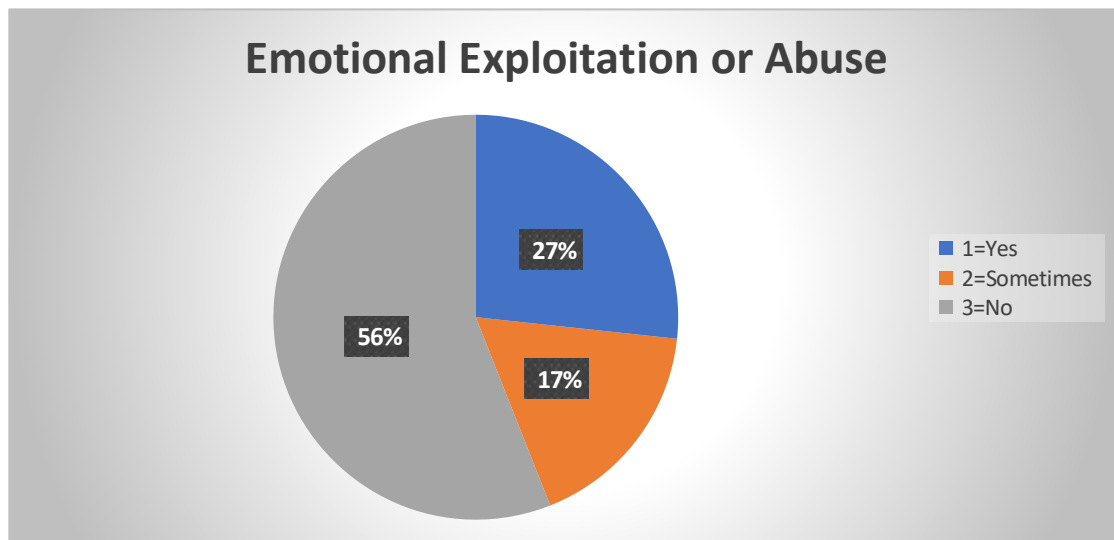
⁶ Saeeda Shah, Taniya Ahmed, and Ghulam Mujtaba Malik, "Understanding the Prevalence of Child Abuse in Pakistan: A Comprehensive Study," *Pakistan Social Sciences Review*, vol. 7, no. 3 (2023): 72–86.

physical and psychological well-being and undermines their sense of security and self-confidence. Such abuse falls within the scope of child protection concerns under laws such as the Punjab Destitute and Neglected Children Act, 2004, which defines a "neglected child" as one who is subjected to cruelty or harm by a caregiver (Section 2(k)). Additionally, Section 328-A of the Pakistan Penal Code criminalizes cruelty to children by parents or guardians, providing a legal basis for prosecuting such offenses. These findings highlight the urgent need for effective enforcement of existing child protection laws and the strengthening of institutional mechanisms to safeguard orphans from intra-familial violence.

5.3.2.1.6 Emotional Exploitation or Abuse

Emotional exploitation or abuse⁷ refers to the adverse emotional treatment and mental stress experienced by orphans within their paternal households. Emotional abuse may involve humiliation, manipulation, or constant criticism. Acknowledging and addressing this challenge is vital for safeguarding the overall welfare and mental health of orphaned children.

⁷ Saeeda Shah, Taniya Ahmed, and Ghulam Mujtaba Malik, "Understanding the Prevalence of Child Abuse in Pakistan: A Comprehensive Study," *Pakistan Social Sciences Review*, vol. 7, no. 3 (2023): 72–86. The term "abuse" conjures up images of violence and cruelty. It infers a deliberate action, an intention to harm and to damage.



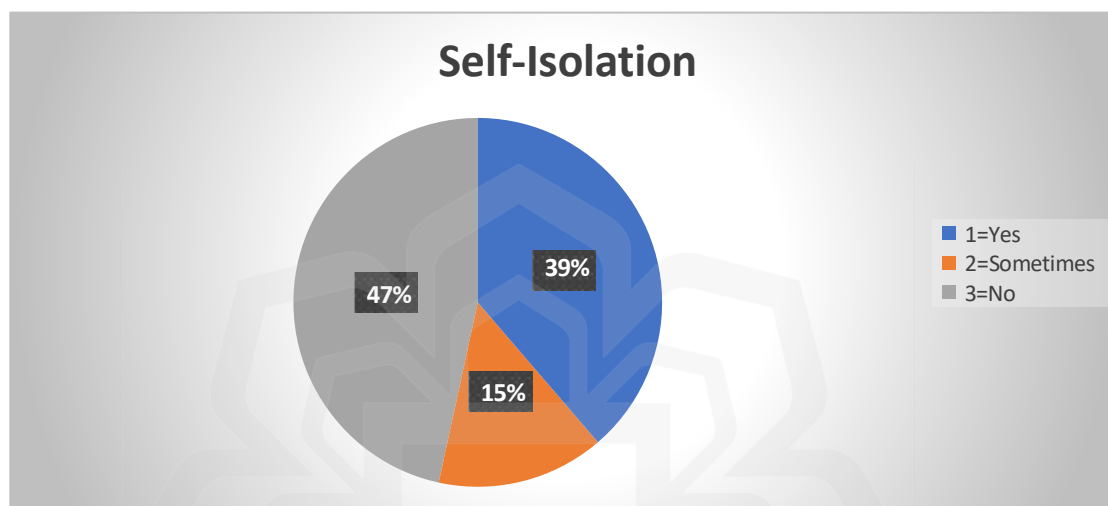
Pie chart 5.6

Pie Chart 5.6 indicates that more than one-fourth (27%) of the orphans affirmed receiving emotional abuse from their paternal families, and more than one-eighth (17%) stated that they occasionally faced emotional exploitation. More than half (56%), however, denied being emotionally exploited by their paternal families.

A significant proportion of orphans reported not experiencing emotional exploitation, which may be viewed as a positive indicator of their psychosocial environment. However, it is equally important to acknowledge that nearly half of the respondents disclosed experiencing emotional trauma, often inflicted by their paternal families. Emotional abuse, though less visible than physical harm, can have long-lasting effects on a child's mental health and development. Under the Punjab Destitute and Neglected Children Act, 2004, such children may be classified as "neglected" if they are subjected to persistent emotional harm or psychological neglect (Section 2(k)). These findings underscore the importance of broadening the scope of child protection interventions to include not only physical safety but also emotional and psychological well-being.

5.3.2.1.7 Self-Isolation

Orphans often struggle with self-isolation—a state of emotional or social detachment that can impact their sense of belonging, interpersonal relationships, and emotional well-being.



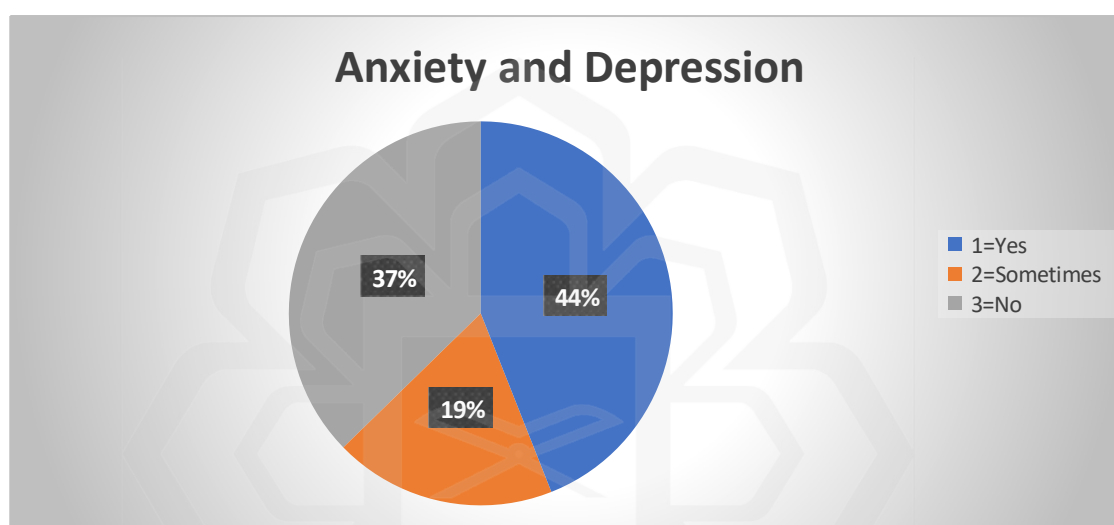
Pie Chart 5.7Top of Form

The findings show that over one-third (39%) of the orphans experienced self-isolation following the death of their fathers. Nearly one-fifth (15%) encountered such circumstances intermittently. Almost half (46%) of the orphans responded that they never experienced self-isolation.

In summary, the data suggests that orphans in Pakistan commonly face the challenge of self-isolation at some point in their lives. A significant number of orphans in Pakistan frequently experience difficulties related to self-isolation at some stage of their lives. This could imply that the loss of their fathers contributes to periods of isolation.

5.3.2.1.8 Anxiety and Depression⁸

An orphan may experience anxiety and depression within their paternal family, which implies that the child is struggling with significant mental health challenges in that specific family environment. Anxiety often involves heightened worry, fear, or unease about future uncertainties or potential threats. Depression is characterized by persistent feelings of sadness, hopelessness, and a lack of interest or pleasure in daily activities.



Pie Chart 5.8

The findings of the data indicate that almost half (44%) of the orphans experienced anxiety and depression, whereas one-fifth (19%) admitted to experiencing anxiety and depression occasionally. More than one-third (37%) of the orphans denied ever experiencing these mental challenges.

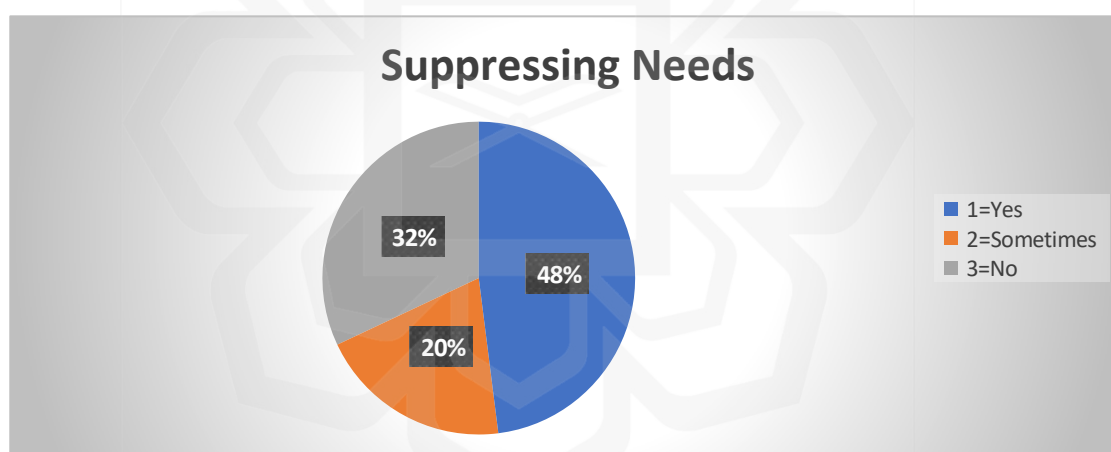
These figures indicate that a significant proportion of orphaned children in Pakistan are affected by psychological distress. This is a matter of grave concern, as prolonged anxiety and depression can hinder a child's emotional development, educational attainment, and social integration. In light of these findings, the state must

⁸ Shahbaz Akhtar, "Child Abuse in Pakistan: A Study of Prevailing Laws," via ResearchGate, <https://www.researchgate.net/publication/388189312_Child_Abuse_in_Pakistan> (accessed 18 July, 2025).

prioritize mental health interventions tailored to the needs of orphans. This includes access to counseling services, school-based psychological support, and community awareness programs aimed at promoting the mental well-being of vulnerable children.

5.3.2.1.9 Suppressing Needs

The phrase suppressing needs refers to orphans withholding from voicing or pursuing their basic needs or desires. This withdrawal could manifest in various ways, such as a reluctance to communicate their needs, a decline in seeking help or support, or an overall silence in expressing their wants and necessities. Understanding and addressing this behavior is crucial to ensure that orphans receive the necessary care, support, and resources for their well-being and development.



Pie Chart 5.9

The data reveals that nearly half (48%) of the orphans suppressed their needs, with an additional one-fifth (20%) occasionally refraining from seeking their needs. Less than one-third (32%) of the orphans reported that they never suppressed their needs and desires.

These findings suggest that a significant proportion of orphaned children are reluctant or unable to articulate their personal needs and preferences. This behavior may stem from a combination of psychological, social, and structural factors, including lack of familial support, institutional limitations, or fear of rejection. The prevalence of such suppression underscores the urgent need for targeted state interventions and comprehensive support mechanisms aimed at fostering safe, inclusive, and empowering environments where orphans feel encouraged and supported in expressing their needs. Addressing this issue is essential for promoting the overall well-being, emotional development, and rights of orphaned children.

5.3.2.2 The Right to Name and Registration

Orphans have the right to be registered with the National Database and Registration Authority (NADRA). They can access their family names from their respective families through registration, and their father's death must be recorded, thereby ensuring their access to inheritance rights.

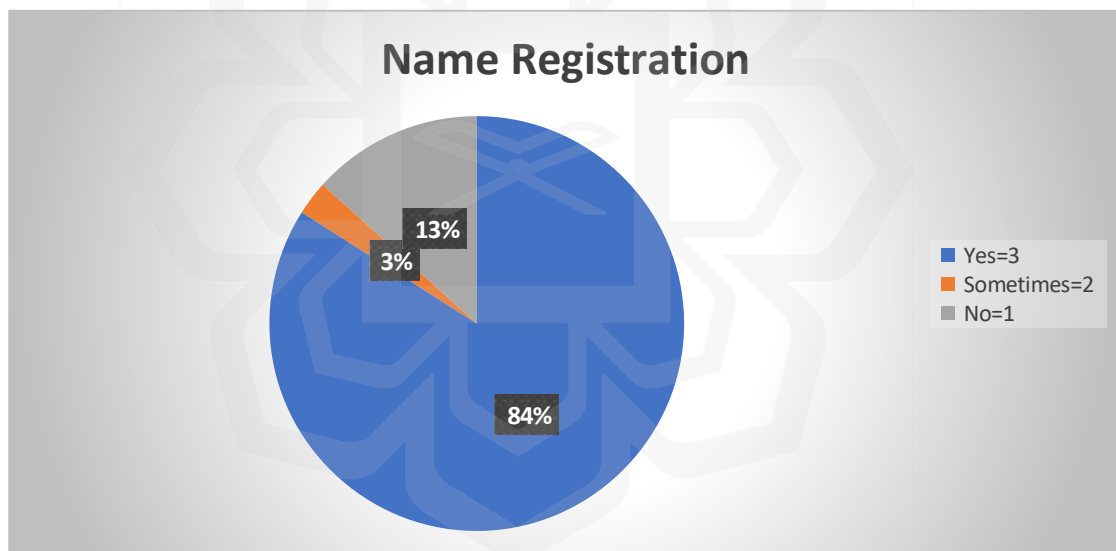
Table 5.4: The Right to Name and Registration

S. No	Types of Challenges	Responses	Frequency	Percentage
1	Was your name registered with NADRA?	Yes=1	126	84
		Sometimes=2	4	2.3
		No=3	20	13.7
		Total	150	100
2	Was your father's death officially recorded with NADRA?	Yes=1	120	80
		Sometimes=2	2	1.3
		No=3	28	18.7
		Total	150	100
3	Was your family name bestowed	Yes=1	113	75.3

	upon you by your paternal relatives?	Sometimes=2	4	2.7
		No=3	33	22
		Total	150	100

5.3.2.2.1 Name Registration

Name registration is an orphan's inherent fundamental right. Following their father's demise, individuals must have their names duly registered with the National Database and Registration Authority (NADRA) to secure other rights, such as citizenship and inheritance. Orphans retain the right to bear their family names throughout their lifetimes.



Pie Chart 5.10

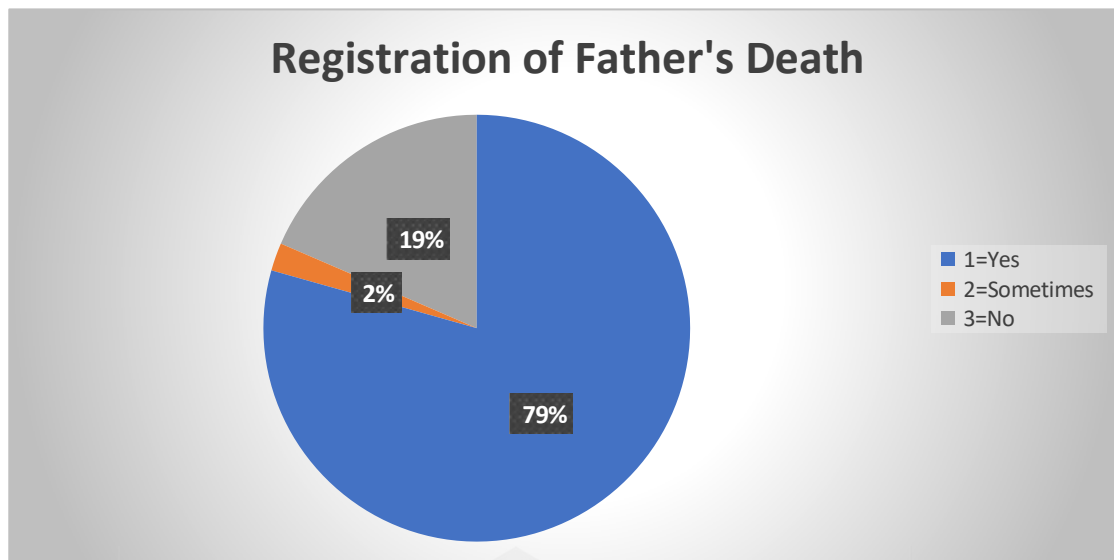
The results indicate that more than three-quarters (84%) of the respondents confirmed that their names were registered with the NADRA, while less than one-fifth (13%) were unsure, and less than ten percent (3%) reported that their names were not registered with the NADRA.

The data indicate that a large number of orphans are registered with the National Database and Registration Authority (NADRA), which is a positive sign in terms of legal identity and access to rights. However, it must also be acknowledged that a portion of orphaned children remain unregistered. This concern aligns with findings from UNICEF⁹ which reports that only approximately 34% of children in Pakistan are officially registered at birth, leaving a significant number, including orphans outside the formal system of state recognition. Under Section 10 of the NADRA Ordinance, 2000, the Authority is legally mandated to establish and maintain a system for the registration of all citizens, including children. Birth registration is not only a legal requirement but also a critical gateway for accessing fundamental rights such as education, healthcare, and protection. The continued exclusion of orphans from registration frameworks reflects a systemic gap that requires urgent policy attention and institutional reform to ensure every child is visible and protected under the law.

5.3.2.2.2 Registration of Father's Death

Registering a death with NADRA is obligatory for legal heirs. Therefore, it is necessary to register any deaths that occur. Following the registration, orphaned children and other legal heirs may claim their inheritance. In cases where the deceased father was a government employee, the pension is transferred to the orphaned children.

⁹ UNICEF Pakistan, "Child Protection: Protecting All Children in Pakistan from All Forms of Violence, Neglect and Exploitation," <<https://www.unicef.org/pakistan/child-protection-0>> (accessed 15 July, 2025). Only 34 percent of children under five are registered at birth nationally.



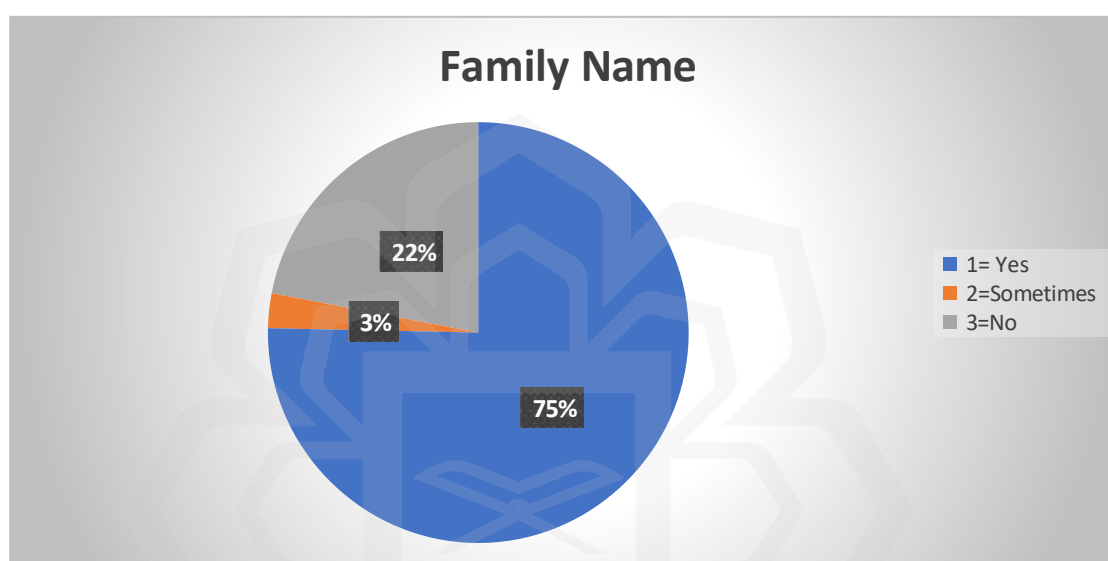
Pie Chart 5.11

Pie chart 5.11 shows that over three-quarters (79%) of the orphans' fathers' deaths have been registered with the NADRA. Less than one-tenth (2%) indicated that registration was sometimes done, while less than one-fifth (19%) revealed that the death of the father had not been recorded.

This suggests that, in the majority of cases, the death of the father is formally registered, which is a crucial step in securing the legal rights of orphaned children. Registration enables heirs to access entitlements such as inheritance, pensions, and other subsequent benefits linked to the deceased. Under the NADRA Ordinance, 2000, it is the legal responsibility of the Authority to maintain accurate records of vital events, including deaths, which form the basis for accessing civil rights and social protections. However, the absence of registration in a notable minority of cases highlights a legal and administrative gap that may hinder orphans from claiming their rightful entitlements, including inheritance, pensions, and other benefits.

5.3.2.2.3 Family Name

The family name is significant as it provides a sense of belonging and commands respect for an individual's heritage. Following the father's death, orphans often experience insecurity. The paternal family can provide reassurance and restore a sense of belonging.



Pie Chart 5.12

The data reveals that two-thirds (75%) of the orphans stated that they carry their family names. Only a small number of the orphans (3%) sometimes used their family name, while more than a fifth (22%) did not take their family names.

According to the findings revealed in the pie chart, most of the orphans residing in Pakistan prefer to use their family names after the loss of their fathers. This practice provides a sense of security and instills confidence in the orphans, maintaining their sense of belonging and inclusion within their families.

5.3.2.3 The Right to Health

Health is a vital aspect of an individual's life and is equally significant for children and orphans. Prioritizing their health by addressing their physical, mental, and emotional needs is crucial to ensuring their holistic development. A comprehensive approach is necessary to help orphans overcome challenging circumstances.

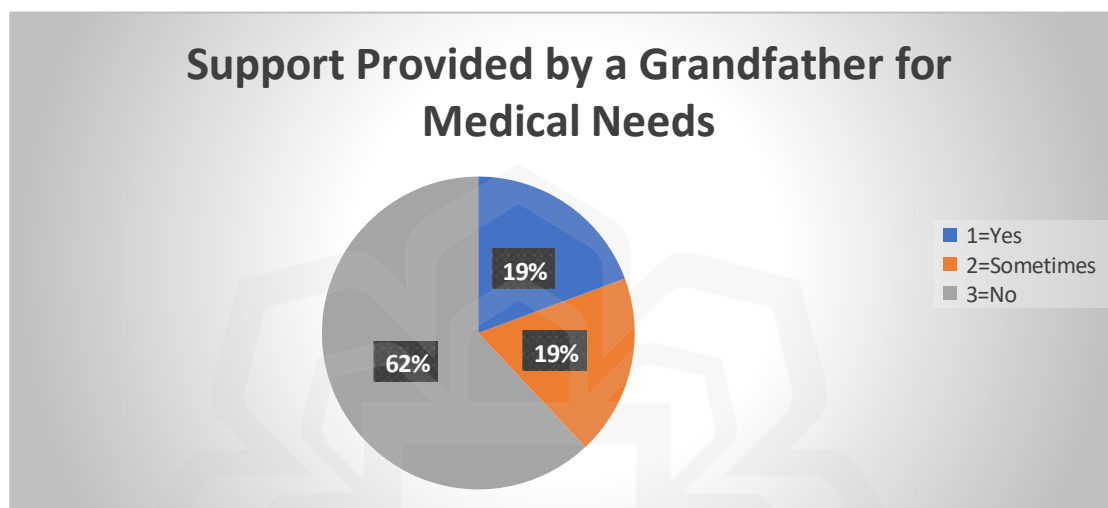
The survey conducted gathered information about the healthcare benefits orphans receive from paternal families, grandfathers, and mothers. The responses were then analyzed and presented in Table 5.5 and the pie charts below.

Table 5.5: The Right to Health

S. No	Questions	Responses	Frequency	Percentage
1	Did your grandfather support you in case of medical needs?	1=Yes	29	19.3
		2=Sometimes	28	18.7
		3=No	93	62.0
		Total	150	100
2	Did your paternal family support you in case of a medical emergency?	1=Yes	39	26
		2=Sometimes	31	20.7
		3=No	80	53.3
		Total	150	100
3	Did your mother afford medical expenses?	1=Yes	79	52.7
		2=Sometimes	39	26
		3=No	32	21.3
		Total	150	100

5.3.2.3.1 Support Provided by a Grandfather for Medical Needs

Orphans often rely on their grandfathers when they need any necessities, including medical care. Therefore, it is crucial to determine whether grandfathers promptly provide necessary medical support to orphans in need.



Pie Chart 5.13

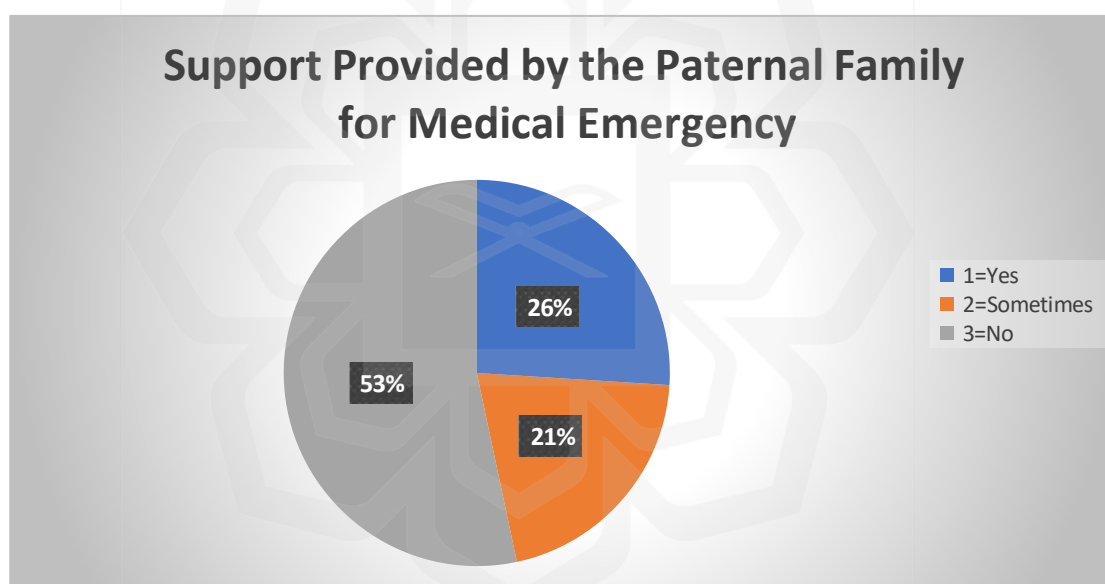
According to the data, only a small proportion of orphans, less than one-fifth (19%), received medical support from their grandfathers. A similar percentage (19%) also occasionally received such support. However, more than half (62 %) did not receive assistance or support from their grandfathers in the event of a medical emergency.

This finding suggests that a significant number of orphans did not receive medical support from their grandfathers, which may be attributed to financial constraints and familial pressures. In many cases, elderly grandfathers themselves depend on their other children for financial and emotional support, limiting their capacity to care for orphaned grandchildren. Given that access to healthcare is fundamental to a child's overall well-being, the absence of such support places orphans in an increasingly vulnerable position. Without adequate medical care, these children face heightened risks to their health and are less capable of protecting themselves from

harm. This situation highlights the urgent need for state intervention and comprehensive child welfare policies to address the health-related needs of orphaned children.

5.3.2.3.2 Support Provided by the Paternal Family for Medical Emergency

Orphans often become vulnerable after losing their fathers, making them reliant on their paternal families for essential needs. During medical emergencies, they usually seek financial assistance to cover the medical expenses. It is important to examine the support they received from their paternal families in emergency cases to thoroughly understand their situations.



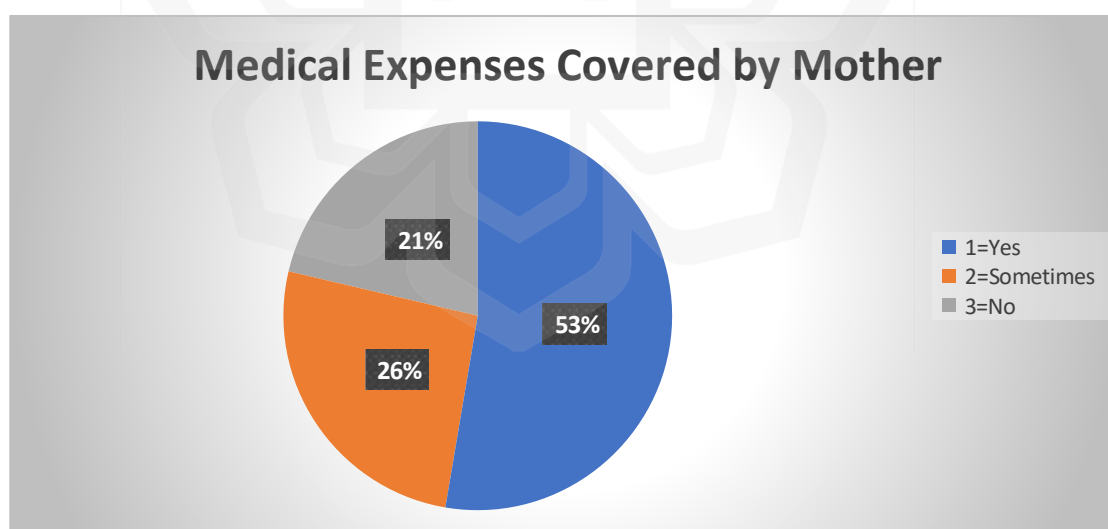
Pie Chart 5.14

According to the data, approximately one-fourth (26%) of the orphans received assistance from their paternal families for medical expenses, while about one-fifth (21%) received occasional support. However, more than half (53%) of the orphans did not receive any assistance from their paternal families for their medical needs.

This suggests that the majority of orphaned children are left without familial financial support for medical care, increasing their dependency on external sources, including public healthcare services or charitable organizations. This concern is consistent with findings from UNICEF¹⁰ which highlights that many children in Pakistan—especially those from marginalized or vulnerable groups—lack access to adequate healthcare due to poverty, weak health infrastructure, and limited social safety nets. The lack of support for orphans in particular exposes them to increased health risks and underscores the need for targeted health interventions and stronger integration of child protection within the national healthcare framework.

5.3.2.3.3 Medical Expenses Covered by the Mother

Orphans who have lost their fathers do rely on their mothers to meet their needs. In such cases, the mother often becomes the sole provider who shoulders both financial and emotional responsibilities.



Pie Chart 5.15

¹⁰ UNICEF Pakistan, “Health,” <<https://www.unicef.org/pakistan/health#:~:text=Each%20year%20about%2091%2C000%20children,the%20children%20survive%20and%20thrive>> (accessed 15 July, 2025).

The data revealed that over half (53%) of the orphans reported that their mothers covered their medical expenses. In comparison, about one-fourth (26%) stated that their mothers occasionally covered these expenses, and about one-fifth (20%) indicated that their mothers could not.

These findings highlight the critical role that mothers play in fulfilling the healthcare needs of their children, including expenses related to doctor visits, medications, vaccinations, and other essential treatments. However, it is equally important to acknowledge that nearly half of the orphans indicated that their mothers were unable to afford such expenses, primarily due to financial constraints. This underscores the economic vulnerability of single mothers, particularly in the absence of adequate social safety nets or extended family support, and points to the urgent need for targeted health and welfare interventions for orphaned children and their caregivers.

5.3.2.4 The Right to Education

Education is a fundamental right of every child, including orphans. Providing education to orphans allows them to have a brighter future for themselves and the nation. Upon the passing of their fathers, orphans depend on their grandfathers, paternal relatives, and mothers to access education. The survey conducted gathered information on the extent of educational support orphans receive from their grandfathers, paternal relatives, and mothers.

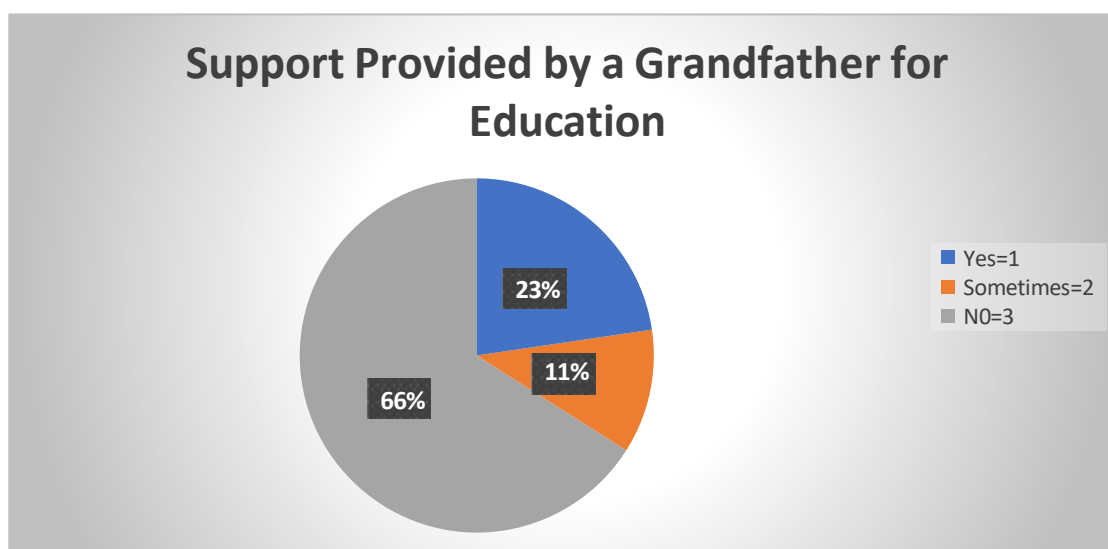
Table 5.6: The Right to Education

S. No	Questions	Responses	Frequency	Percentage
1	Did your grandfather support you in	Yes=1	34	23
		Sometimes=2	17	11
		No=3	99	66

	getting an education?	Total	150	100
2	In the absence of a grandfather, did your paternal family support you in getting an education?	Yes=1 Sometimes=2 No=3 Total	28 20 102 150	19 13 68 100
3	Did your mother afford your education expenses?	Yes=1 Sometimes=2 No=3 Total	57 43 50 150	38 29 33 100

5.3.2.4.1 Support Provided by a Grandfather for Education

Grandfathers play a vital role in the upbringing of orphaned grandchildren. They can provide access to education, among other necessities, supporting their growth with dignity after losing their fathers. The support for education provided by grandfathers to their grandchildren is clearly illustrated in Pie Chart 5.16 below:



Pie Chart 5.16

The pie chart shows that less than one-fourth (23%) of the orphans affirmed their grandfathers' support for their education, whereas about one-tenth (11%) confirmed that they received occasional support for education. However, it was discovered that two-thirds (66%) of the orphans did not receive support from their grandfathers to access education.

It can be concluded that the majority of orphaned grandchildren in Pakistan do not receive educational support from their grandfathers, despite education being a fundamental right guaranteed to all children, including orphans. This lack of support may be attributed to financial constraints, as well as the fact that many elderly grandfathers depend on their other children for their own livelihood. Consequently, orphaned children are placed in a more disadvantaged position, lacking both familial and institutional backing to access quality education. This situation highlights a critical gap in the enforcement of Article 25-A of the Constitution of Pakistan, which mandates free and compulsory education for all children between the ages of 5 and 16.¹¹

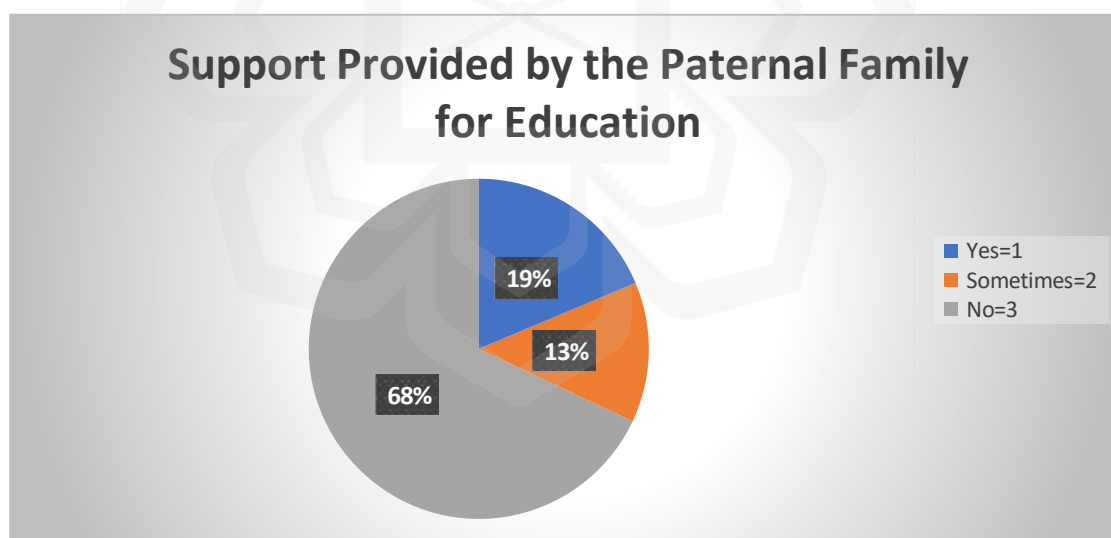
At the provincial level, various laws have been enacted to give effect to this constitutional guarantee, including the Punjab Free and Compulsory Education Act,

¹¹ The Constitution of Pakistan, 1973, Article 25-A.

2014, the Sindh Right of Children to Free and Compulsory Education Act, 2013, the Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017, and the Balochistan Compulsory Education Act, 2014. Despite these legislative efforts, implementation remains weak, particularly for marginalized groups such as orphans, who often fall through the cracks of the education system. This underscores the urgent need for targeted policies and monitoring mechanisms to ensure that orphaned children are not denied their right to education due to the absence of parental or extended family support.

5.3.2.4.2 Support Provided by the Paternal Family for Education

After the death of their fathers, orphans often seek support and assistance from their paternal families for access to education. The support by the paternal families can be seen in Pie Chart 5.17 below:



Pie Chart 5.17

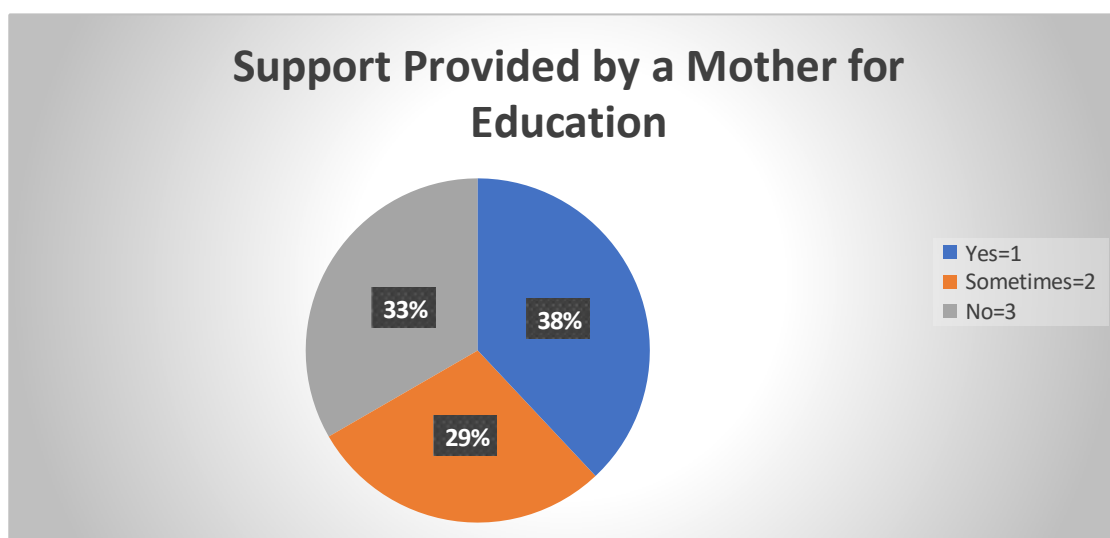
The data in the pie chart indicate that less than one-fifth (19%) of the orphans received support from their paternal families to continue their education. On the other

hand, only about one-eighth (13%) received occasional support, whereas more than two-thirds (68%) did not receive any support or help with their education.

Many orphans did not receive support or assistance from their paternal families to continue their education, although education is a right that should be available to all children without discrimination. While there is a prevailing belief that orphans can still access education and achieve success, particularly because primary education is officially free in Pakistan, this ideal does not reflect the lived realities of many orphaned children. Following the death of their fathers, these children are often left without adequate financial or emotional support and are compelled to depend on others to secure their right to education. This reliance highlights a systemic gap between the legal guarantee of free and compulsory education under Article 25-A of the Constitution and its actual implementation, particularly for vulnerable groups such as orphans.

5.3.2.4.3 Support Provided by a Mother for Education

Education should be accessible to all children, including orphans. However, with the demise of the orphans' fathers, these children may become vulnerable and face challenges in accessing their fundamental rights. In such situations, the mother serves as a vital support system for her orphaned children. The contribution of mothers to the orphans' education can be seen in Pie Chart 5.18 below:



Pie Chart 5.18

The pie chart illustrates that over one-third (38%) of the orphans' mothers covered their educational expenses, ensuring they received their fundamental rights. However, more than one-fourth (29%) reported that their mothers could occasionally afford these expenses. In comparison, another one-third (33%) stated that their mothers could not support their education costs.

These findings highlight the critical role that Pakistani mothers play in ensuring the educational continuity of their orphaned children, often under severe financial constraints. Despite economic hardship and limited resources, a significant proportion of mothers remain committed to providing their children with access to education. This reflects both the resilience of single mothers and the urgent need for state support to ease the financial burden on women who are striving to fulfill the constitutional and human rights of their children in the absence of paternal support.

5.3.2.5 The Right to Property and Maintenance

Orphans are entitled to a range of rights and benefits following the death of their fathers. These include the assets inherited, movable and immovable, from their father and the provision of maintenance from their grandfather or paternal family. It is important to

note that the responsibility to safeguard these rights and provide care for orphans' assets, shelter, and maintenance falls on grandfathers, paternal relatives, and mothers. For a better interpretation of the collected data, they are presented in Table 5.7 and the pie charts below:

Table 5.7: The Right to Property and Maintenance

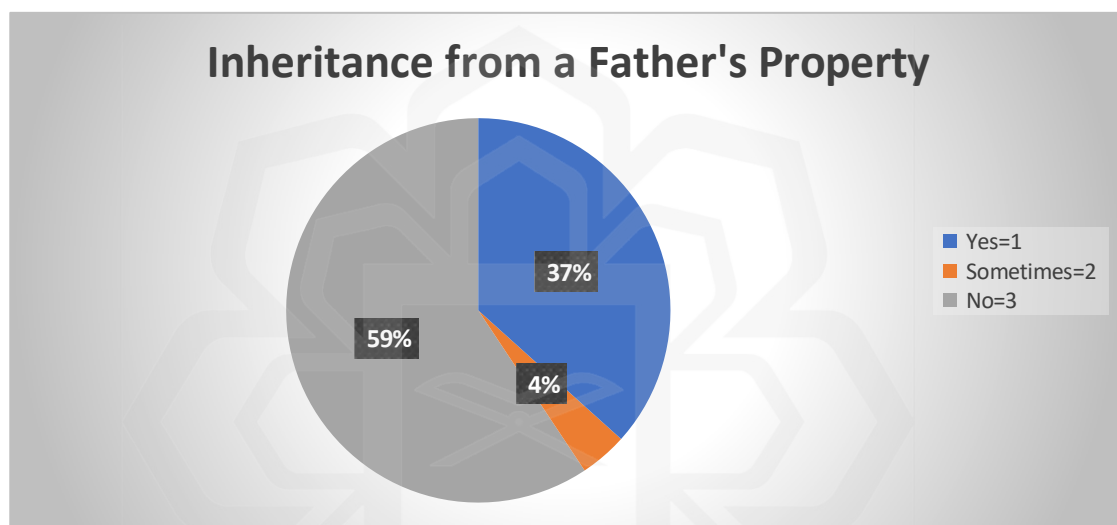
S. No	Questions	Responses	Frequency	Percentage
1	Did you receive your portion of inheritance from your father's property?	Yes=1 Sometimes=2 No=3 Total	55 6 89 150	37 4 59 100
2	Did you receive your portion of the inheritance from your grandfather's property?	Yes=1 Sometimes=2 No=3 Total	46 9 95 150	31 6 63 100
3	Did your grandfather gift you any property?	Yes=1 Sometimes=2 No=3 Total	9 5 136 150	6 3 91 100
4	Did your grandfather make any will in your favor?	Yes=1 Sometimes=2 No=3 Total	20 13 117 150	13 9 78 100
5	Did your paternal family seize your	Yes=1 Sometimes=2 No=3	66 8 76	44 5 51

	father's property?	Total	150	100
6	Did your paternal family pressure your grandfather to refrain from gifting you any property?	Yes=1 Sometimes=2 No=3 Total	45 7 98 150	30 5 65 100
7	Did your paternal family pressure your grandfather not to make any will?	Yes=1 Sometimes=2 No=3 Total	38 15 97 150	25 10 65 100
8	Did any member of your paternal family give you any property?	Yes=1 Sometimes=2 No=3 Total	10 5 135 150	7 3 90 100
9	Did your paternal family consolidate your property with their own?	Yes=1 Sometimes=2 No=3 Total	61 14 75 150	41 9 50 100
10	Did your paternal family misappropriate your property?	Yes=1 Sometimes=2 No=3 Total	64 12 74 150	43 8 49 100
11	Did your grandfather bear your basic	Yes=1 Sometimes=2 No=3	29 21 100	19 14 67

	expenses?	Total	150	100
12	Did your paternal family support you in place of your necessities?	Yes=1 Sometimes=2 No=3 Total	44 25 81 150	29 17 54 100
13	Did your paternal family provide you with shelter?	Yes=1 Sometimes=2 No=3 Total	55 17 78 150	37 11 52 100
14	Did your mother provide maintenance?	Yes=1 Sometimes=2 No=3 Total	97 24 29 150	65 16 19 100
15	Did your mother manage to provide for your essential needs?	Yes=1 Sometimes=2 No=3 Total	72 33 45 150	48 22 30 100
16	Did you receive your father's pension?	Yes=1 Sometimes=2 No=3 Total	28 5 117 150	19 3 78 100
17	Did you receive the pension of your grandfather?	Yes=1 Sometimes=2 No=3 Total	5 3 142 150	3 2 95 100

5.3.2.5.1 Inheritance from a Father's Property

After the passing of their fathers, the orphaned children are entitled to receive their inheritance as legal heirs. This is an inherent right that cannot be revoked. Even if the orphans are minors, they have the right to the property, and their guardians can utilize it for their maintenance. The data collected is presented in Pie Chart 5.19 to determine the number of orphans who received their share.



Pie Chart 5.19

The data show that one-third (37%) of the orphans inherited their father's property as legal heirs, while a small fraction (4%) occasionally received their share. However, more than half (59%) of the orphans did not receive their legal inheritance from their fathers' property.

Most orphans do not receive their legally-guaranteed share of inheritance, even though such rights are protected under both Islamic principles and the national legal framework of Pakistan. The orphans' rightful shares are part of joint family property, often controlled by other co-owners, typically paternal relatives. Due to their limited legal awareness and lack of access to representation or institutional support, orphans are frequently unable to assert their rights or demand partition of the inherited property.

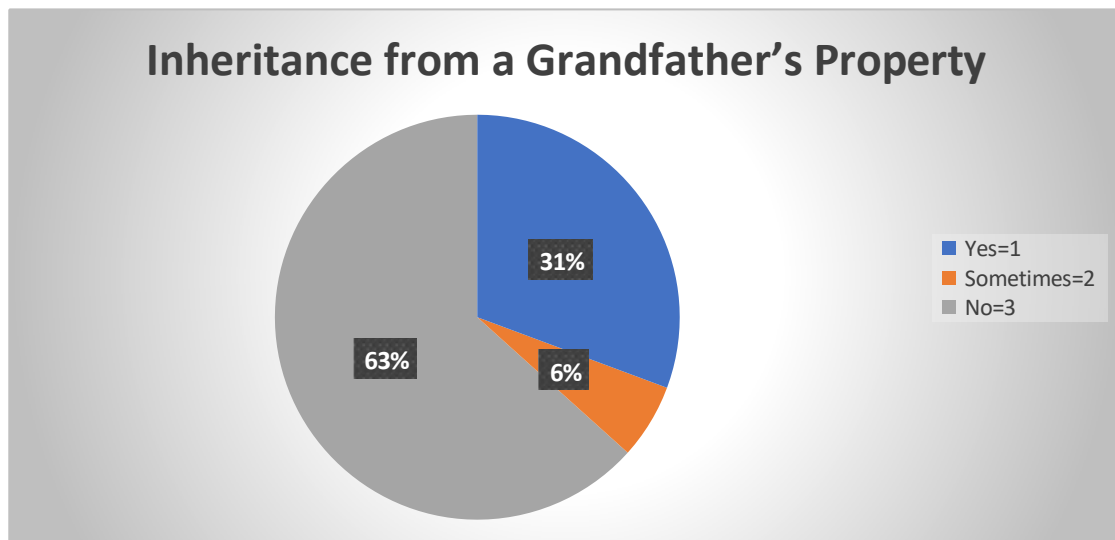
Under the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, property inheritance among Muslims must follow Islamic principles, which explicitly guarantee orphans their deceased father's share. Furthermore, the Succession Act of 1925, applicable in some instances (especially for non-Muslims), lays down the procedures for succession and estate distribution. Despite these protections, enforcement remains weak, especially when orphans lack a guardian or legal support.

In addition, under provincial child protection laws—such as the Punjab Destitute and Neglected Children Act, 2004, the Sindh Child Protection Authority Act, 2011, and the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010—orphaned and neglected children are entitled to state protection, including in matters where their legal rights (such as inheritance) are threatened or denied. However, these frameworks often lack precise enforcement mechanisms for inheritance-related grievances, leaving orphans vulnerable to exploitation.

Therefore, ensuring that orphans receive their rightful inheritance is not only a matter of religious and legal compliance but also essential to protecting their dignity, economic security, and prospects.

5.3.2.5.2 Inheritance from a Grandfather's Property

The death of the father left orphans dependent on their grandfathers for their livelihood. However, after the passing of their grandfathers, they need to protect and support themselves financially. Under Pakistani law, they assume their father's role and are entitled to claim a portion of their grandfather's property as legal heirs. Pie Chart 5.20 below illustrates the data gathered from the survey regarding this matter.



Pie Chart 5.20

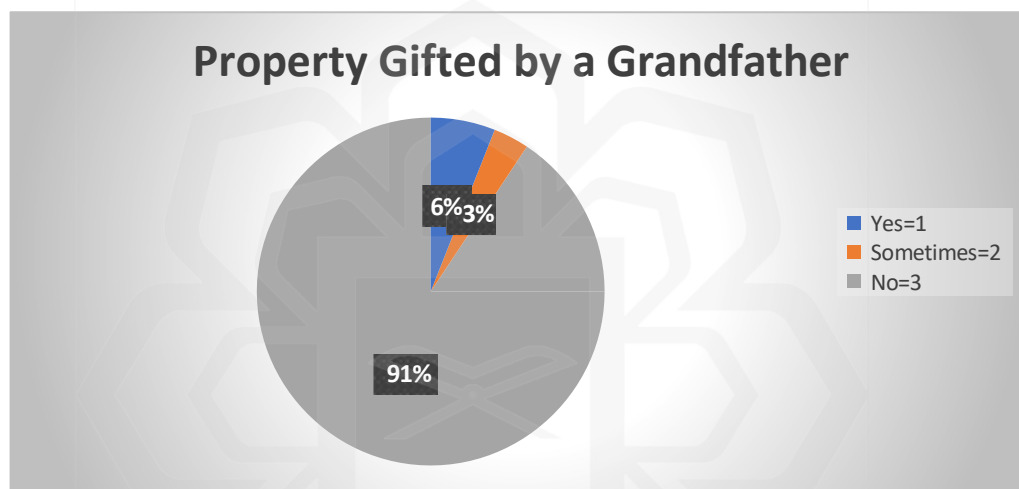
The data reveal that only one-third (31%) of the orphans received a share of their grandfather's property. Furthermore, less than one-tenth (6%) received their share occasionally, while nearly two-thirds (63%) did not receive any share at all.

Under the Muslim Family Laws Ordinance, 1961,¹² orphans may succeed to the rights of their deceased fathers and are legally entitled to inherit their respective shares as legal heirs. Specifically, Section 4 of the Ordinance allows the children of a predeceased son or daughter to inherit the share their parent would have received, ensuring that grandchildren (including orphans) are not excluded from inheritance. Despite this legal protection, the data suggest that most orphans, who fall within the second category of legal heirs under the Islamic law of inheritance (i.e., descendants of the deceased through a predeceased son), are frequently denied an equitable share of their property rights. This denial may be due to a combination of socio-cultural practices, lack of legal awareness, and weak enforcement mechanisms, leaving orphans economically marginalized and vulnerable to exploitation.

¹² The Muslim Family Law ordinance, 1961, s 4.

5.3.2.5.3 Property Gifted by a Grandfather

Orphans often rely on their grandfathers for their basic needs, and as their natural guardians, the grandfathers provide them with life's necessities. If the grandfathers gifted some of their property to their orphaned grandchildren to secure their future, the orphans would no longer require external assistance for their livelihood. Pie Chart 5.21 illustrates the data.



Pie Chart 5.21

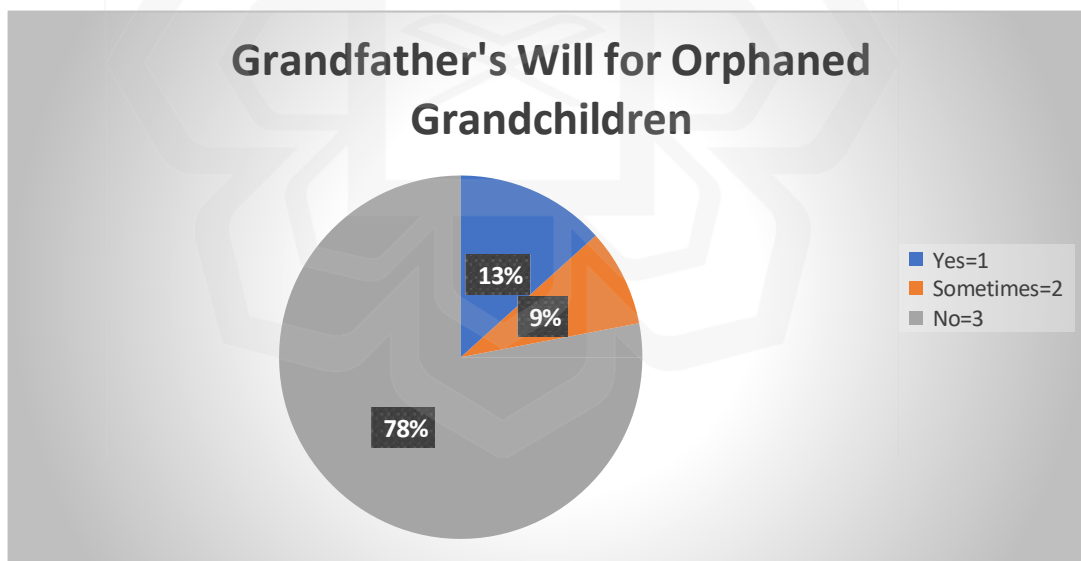
The results indicate that less than one-tenth (6%) of the orphans received property as a gift from their grandfathers, while a lesser percentage (3%) received gifts occasionally. However, the majority of the orphans (91%) did not receive property as a gift from their grandfathers.

This observation reveals that most orphans do not receive any property as gifts from their grandfathers. Under Islamic law, while orphaned grandchildren may not always be direct legal heirs in the presence of closer male relatives, grandfathers possess the discretionary authority (*hiba*) to gift property to them during their lifetime. Such gifts can provide crucial financial security and stability to orphans, notably when they are excluded from inheritance under the fixed shares of the Islamic law of succession.

However, in Pakistan, there is limited public awareness about this legal and religious allowance. Many families are unaware that gifting property to orphaned grandchildren is not only permissible but also morally and socially beneficial, as it can ease their hardships and support their future well-being. This highlights the need for public legal education and advocacy to promote the use of lawful gifts (*hiba*) as a means to protect orphans' rights and ensure their dignified development.

5.3.2.5.4 Grandfather's Will and its Provisions for Orphaned Grandchildren

Out of affection, a grandfather may choose to include orphaned grandchildren in his will, ensuring they receive support and care in his absence. Such provisions are made to provide for their future well-being, particularly after they have lost their parents. The data collected from this survey are illustrated in Pie Chart 5.22 below:



Pie Chart 5.22

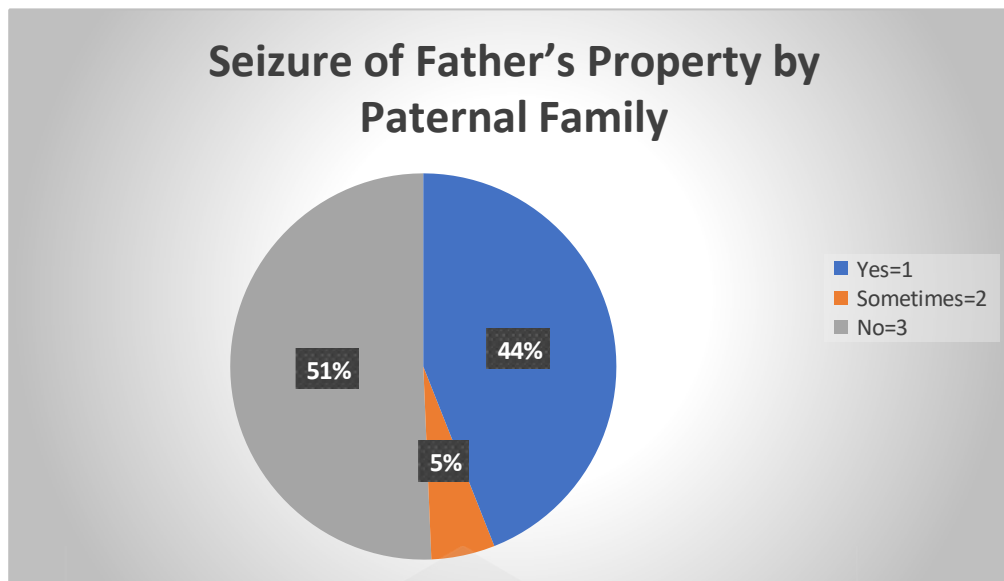
The data illustrated in the above pie chart show that approximately one-eighth (13%) of the orphans were included in their grandfathers' wills, whereas less than one-

tenth (9%) were sometimes bequeathed a will in their favor. On the other hand, more than three-quarters (78%) were not included in their grandfathers' wills.

This finding highlights a significant gap in the use of *waṣiyyah* (Islamic will) as a means of support for orphaned grandchildren. Under Islamic law, a person may bequeath up to one-third of their estate to individuals who are not direct heirs, including orphaned grandchildren, as a form of discretionary support. The widespread absence of such wills suggests that many grandfathers do not exercise this option, either due to a lack of awareness or prevailing cultural practices. As a result, many orphans are left without access to resources that could have substantially contributed to their care, education, and long-term well-being. This underscores the need for greater public education on the role of wills in protecting vulnerable family members, particularly orphans, within both religious and legal frameworks.

5.3.2.5.5 Seizure of Father's Property by Paternal Family

Orphans who are defenseless and lack assistance may encounter difficulties in their lives. In Pakistan, a custom of joint property inheritance exists, in which assets are passed down from generation to generation. Although orphans may be listed as property owners on paper, they may not have control over the property as they are still underage. Therefore, possessions remain with paternal families, allowing them to benefit from the property. As a result, orphans may face hardships in their lives. Pie chart 5.23 illustrates the data regarding the seizure of the father's property by the paternal family.



Pie Chart 5.23

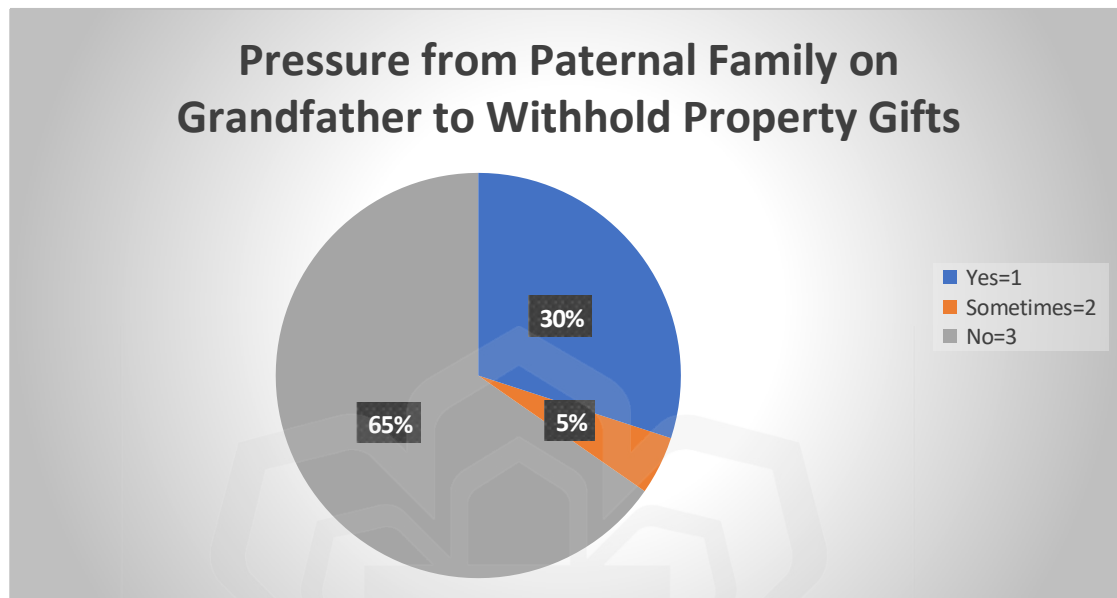
This dataset shows that over one-third (44%) of the orphans affirmed that their paternal families seized the property they had inherited from their fathers. Less than one-tenth (5%) reported that their inherited property was occasionally seized, and half (51%) of the orphans claimed that their paternal families did not seize their property.

It can be assumed from the findings that most paternal families do not seize the property of orphans. However, it cannot be denied that in Pakistan, more than one-third of orphans have experienced hardship because of this situation in their lives. Their paternal families control and use their properties for their own interests, and orphans may not benefit from the property.

5.3.2.5.6 Pressure from Paternal Family on Grandfather to Withhold Property Gifts

Grandfathers frequently encounter pressure from other paternal family members not to provide property to their orphaned grandchildren. Although these grandchildren are part of the family, this pressure does exist. In these situations, grandfathers must make a decisive choice in the best interests of their orphaned grandchildren. However, it is

essential to note that this gift does not diminish the legal share of the other heirs. Pie Chart 5.24 below illustrates the data regarding this matter.



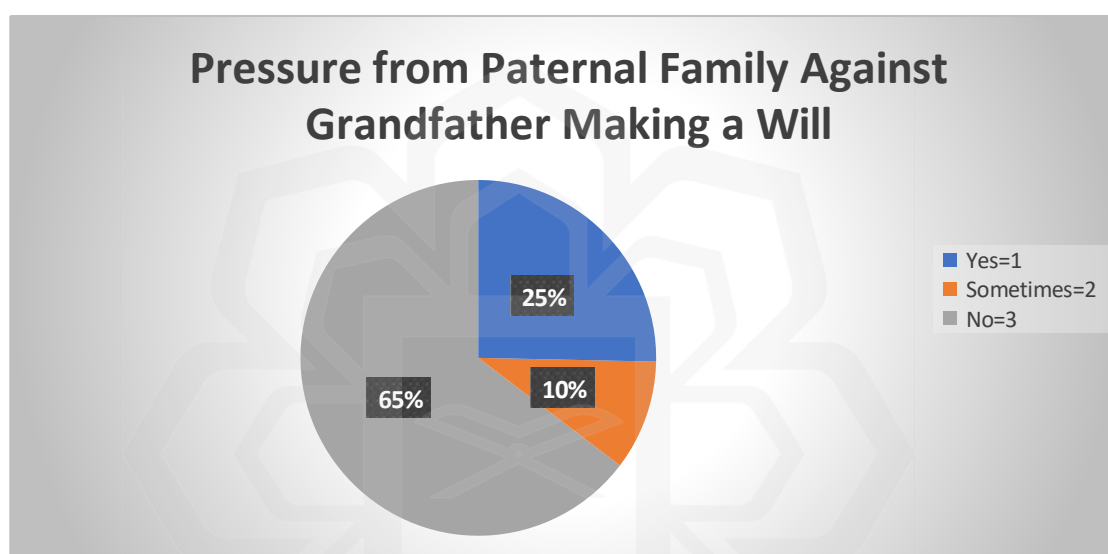
Pie Chart 5.24

Based on the data, fewer than one-third (30%) of the orphans' paternal families pressured their grandfathers not to create any gift deed in favor of their grandchildren. Less than one-tenth (5%) of the orphans occasionally faced this situation, and nearly two-thirds (65%) denied that their paternal families pressured the grandfathers to withhold property gifts.

Most paternal families of orphans did not exert pressure on the grandfather of the orphaned grandchildren to refrain from creating gift deeds in their favor. This lack of interference allows the grandfather to make independent decisions and indicates the paternal family members' cooperation in ensuring the well-being of the orphans.

5.3.2.5.7 Pressure from Paternal Family Against Grandfather Making a Will

Paternal family members may exert pressure on the grandfather of orphaned grandchildren to prevent him from creating a will that would benefit the orphan. However, in Pakistan, where this situation is less common, grandfathers know the importance of a will and its benefits for their orphaned grandchildren. This situation is presented in Pie Chart 5.25 below.



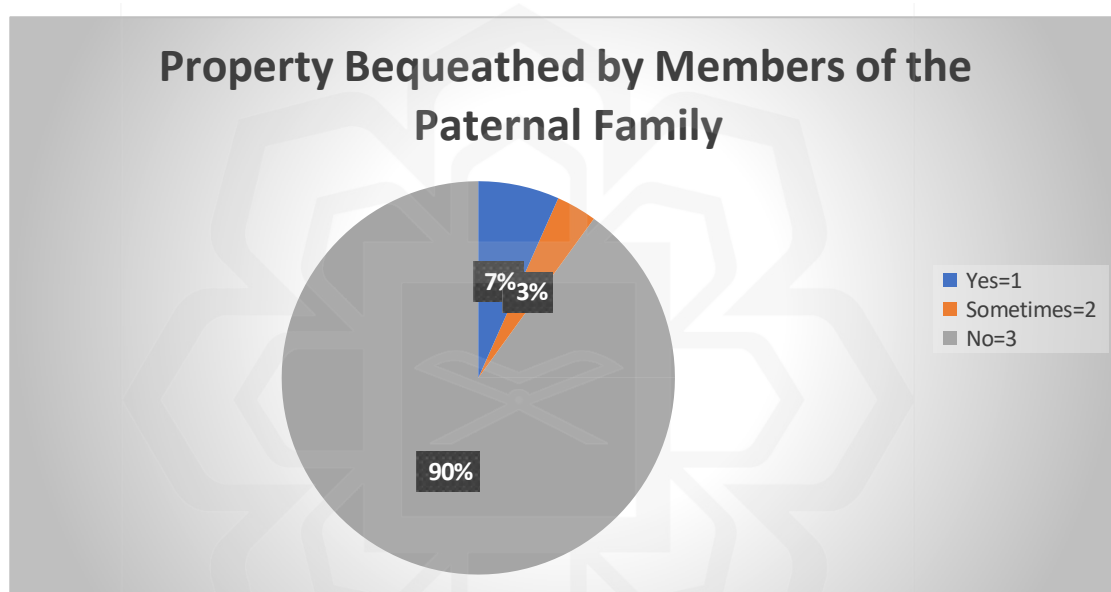
Pie Chart 5.25

The data show that one-fourth (25%) of paternal families pressured the grandfathers of orphans not to include their orphaned grandchildren in their wills. In addition, one-tenth (10%) of the orphans reported occasionally facing this pressure. However, less than two-thirds (65%) did not face this situation with their paternal families.

The study shows that most paternal families of orphaned children did not exert pressure on grandfathers to exclude them from their wills. As a result, if the grandfather were to create a will, it could provide a more hopeful future for orphans.

5.3.2.5.8 Property Bequeathed by Members of the Paternal Family

Orphaned children typically seek support from their grandfathers and paternal families following the loss of their fathers. In some cases, relatives would provide them with property that could be useful in times of need. To determine the percentage of paternal families who gave property to their orphan relatives, data were collected and visually represented in Pie Chart 5.26 below.



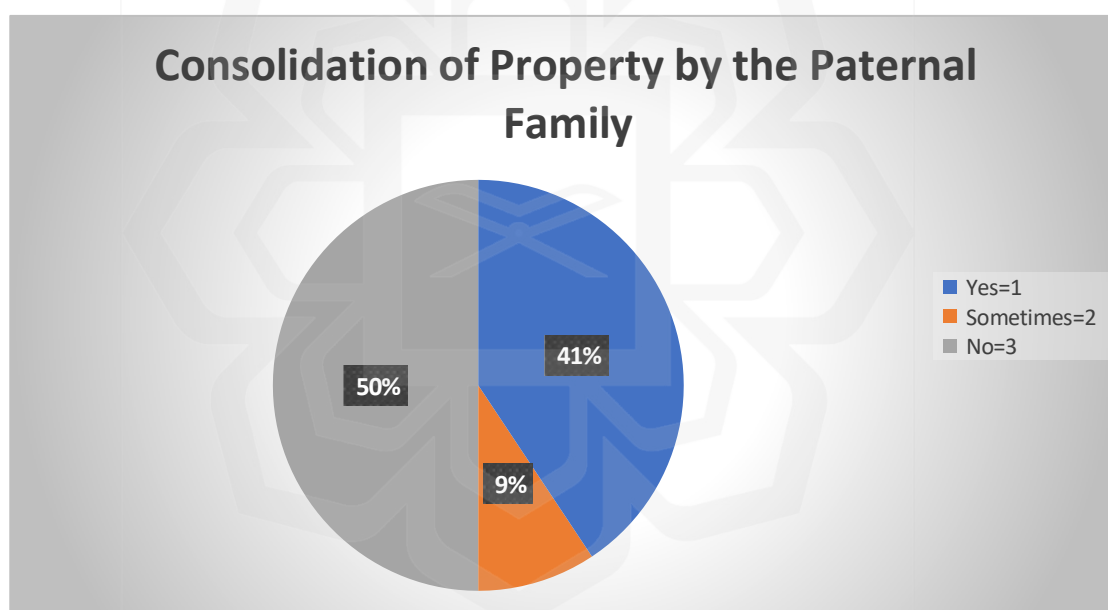
Pie Chart 5.26

The findings indicate that only a small portion of orphans, less than one-tenth (7%), received any property as gifts, and less than one-tenth (3%) sometimes received property as gifts. However, most (90%) did not receive property from paternal families as gifts.

These findings indicate that many orphans did not receive property or gifts from their relatives, leaving them without resources to help meet their future needs. The lack of inheritance or familial support may exacerbate their vulnerability and access to other potential opportunities.

5.3.2.5.9 Consolidation of Property by the Paternal Family

Following the inheritance from their deceased fathers and grandfathers, legal heirs divide the property among themselves. Usually, elderly members of paternal families take charge of managing the property during its cultivation and use. In Pakistan, orphans often receive a small portion of wheat and other grains when they inquire about their share, and they usually remain as nominal owners on paper. Meanwhile, the paternal families take physical possession of the property. Pie Chart 5.27 below illustrates the data regarding the consolidation of property by the paternal families.



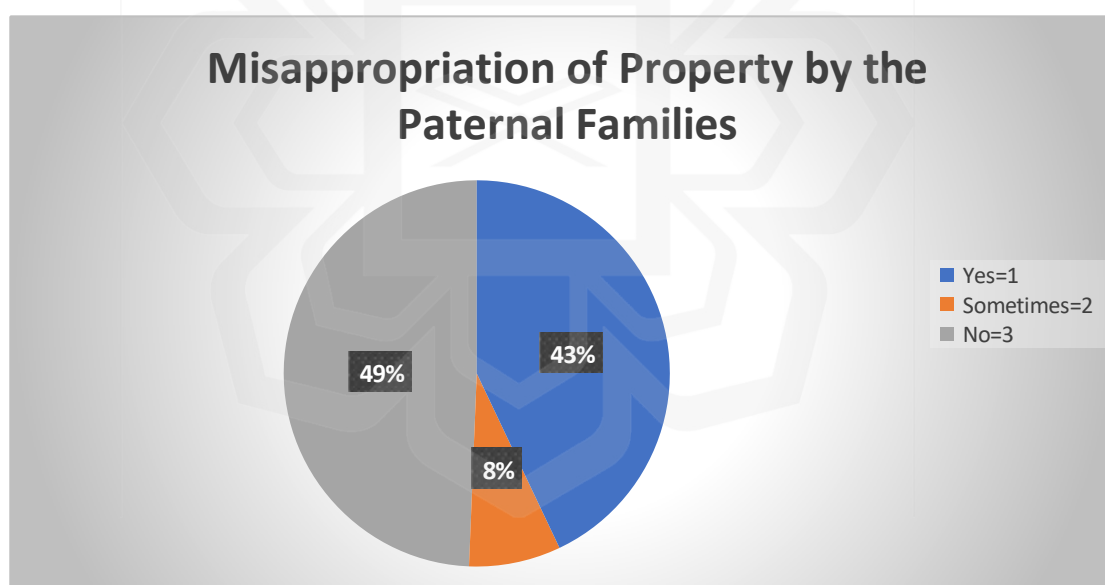
Pie Chart 5.27

The data indicates that approximately half (41%) of the orphans have experienced situations where their paternal families consolidate their property with theirs. In contrast, only a small proportion, less than one-tenth (9%), sometimes faced this issue. Meanwhile, half of the orphans (50%) did not face such a situation.

Thus, half of the orphans did not experience this problem, while the rest encountered it. One possible reason for denying property consolidation is the lack of ownership knowledge. Simultaneously, researchers have highlighted that merging assets can be a contentious issue and that the state can protect orphans against these practices.

5.3.2.5.10 Misappropriation of Property by the Paternal Families

Orphans living in Pakistan may face various obstacles from both society and their families. When they inherit property from their deceased father and grandfather, their paternal families often take control of and utilize all the advantages associated with the property. This position is clearly illustrated in Pie Chart 5.28 below.



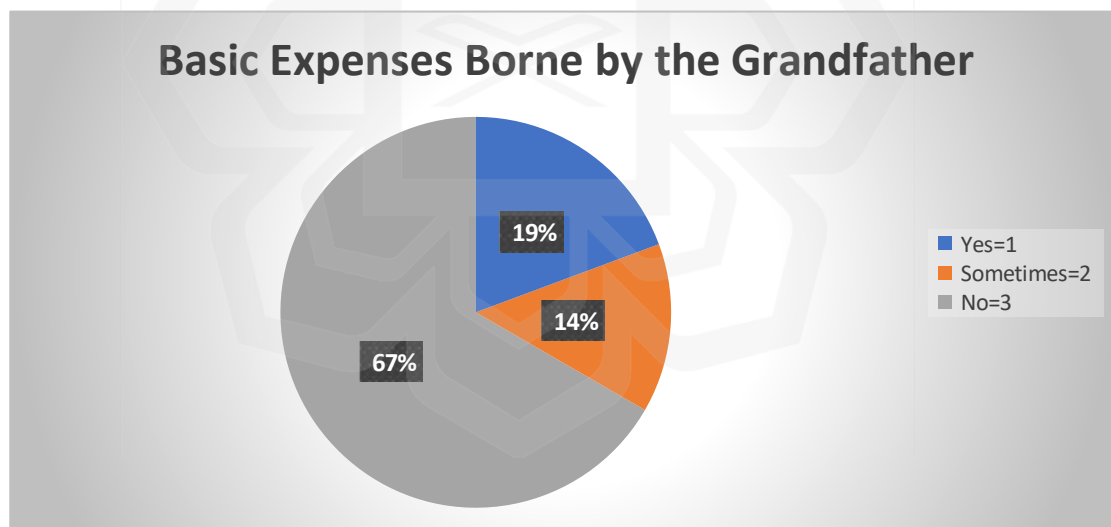
Pie Chart 5.28

The data indicate that approximately half (43%) of the orphans reported that their paternal families misappropriated their inheritance. Less than one-tenth (8%) reported to have faced this issue sometimes, and approximately one-half (49%) did not encounter such a situation.

The analysis reveals that approximately half of the orphans encountered situations in which their paternal families misappropriated their property. However, the other half denied having this issue. The state must assist orphans affected by these problems.

5.3.2.5.11 Basic Expenses Borne by the Grandfather

Orphaned grandchildren usually reside with their paternal grandfathers, and as their natural guardians, it is the grandfathers' responsibility to support and cover the expenses of these orphaned grandchildren. This obligation is mandated by both divine law and national legislation, and the researcher aims to investigate the extent to which grandfathers fulfill this duty. The findings are presented in Pie Chart 5.29 below.



Pie Chart 5.29

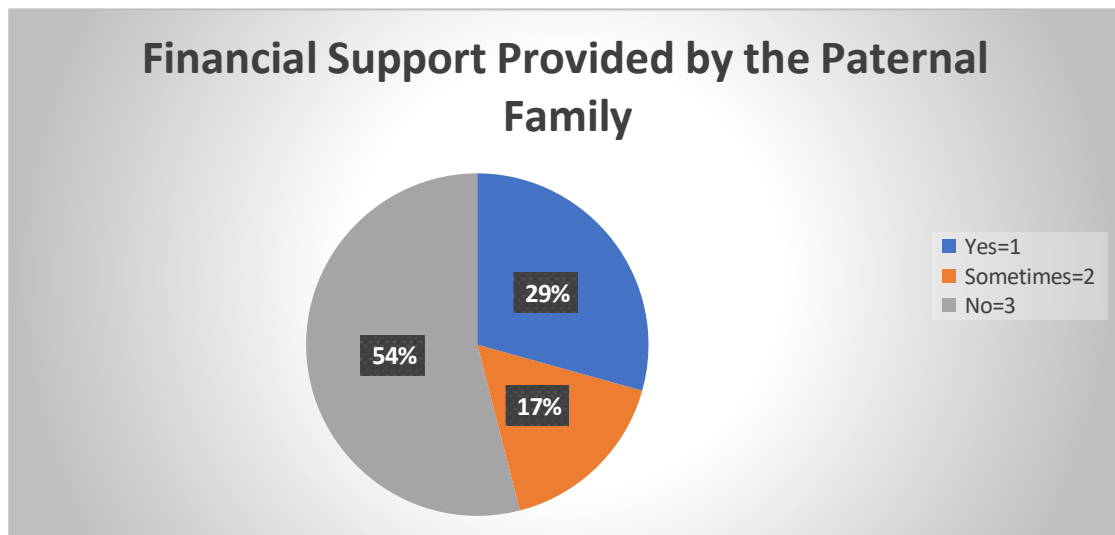
The data indicate that approximately one-fifth (19%) of the orphans' grandfathers bear their cost of living, and more than one-eighth (14%) of the orphans reported that their paternal grandfathers occasionally bear the costs. In comparison,

two-thirds (67%) of the orphans affirmed that their paternal grandfathers did not provide such expenses.

This finding suggests a widespread lack of financial assistance from paternal grandfathers, despite their moral and familial responsibility to care for orphaned grandchildren. This lack of support may be attributed to several factors, including limited financial resources or dependency on others, such as their children, for sustenance. Nonetheless, under Islamic ethical principles and social protection norms, elder family members are expected to contribute to the welfare of orphaned children within the extended family structure. The absence of such support reflects both economic hardship and systemic gaps in child welfare provisions, underscoring the need for state intervention and more explicit legal mandates to ensure orphans receive adequate care and protection.

5.3.2.5.12 Financial Support Provided by the Paternal Family

One major obstacle faced by orphans is their financials; it is difficult for them to make ends meet after the passing of one or both of their parents. They may need help from their paternal families in some situations. Pie chart 5.30 illustrates the financial support provided by the paternal families.



Pie Chart 5.30

The data illustrate that over one-fourth (29%) of the orphans received financial support from their paternal families. Approximately one-fifth (17%) of the orphans received occasional financial support, and more than half (54%) of the orphans did not receive any financial help from their paternal families.

Most orphans in Pakistan are compelled to seek assistance from external sources due to lack of support from paternal family members, who often perceive them as a financial burden. As a result, some orphans are forced to engage in labor activities to sustain themselves. For example, a 2018 report from Khyber Pakhtunkhwa's Shangla district documented orphaned children entering the coal mining industry immediately after their fathers' deaths, foregoing education to earn a livelihood.¹³ Similarly, The Guardian reported that at Balochistan's Mach and Shahrag coal mines, many child laborers are orphans, working long hours under hazardous conditions merely to survive.¹⁴ Such data demonstrate that orphaned children are disproportionately involved in child labor, often in exploitative and dangerous environments.

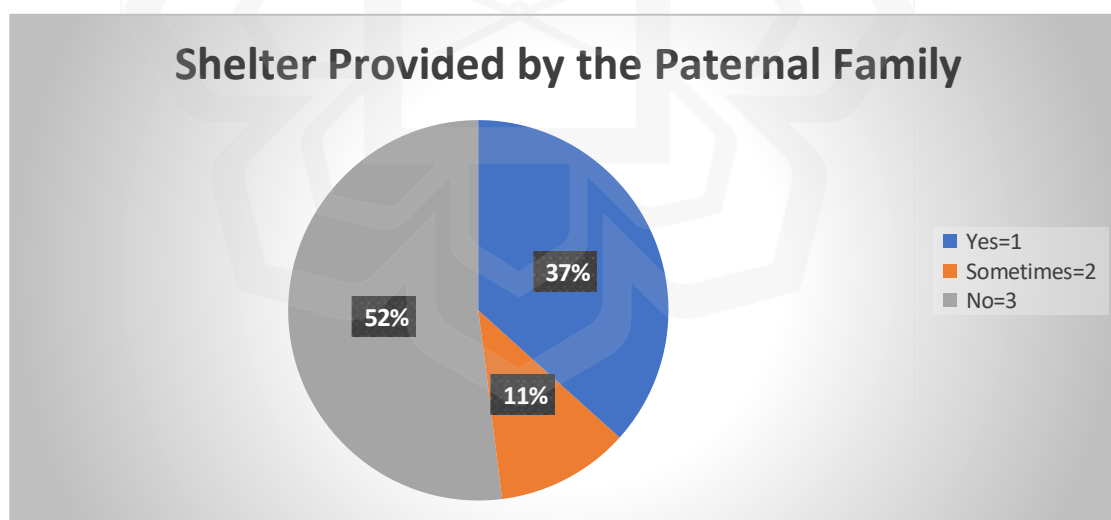
¹³ Mohammad Faaz, "Orphans of the Mines: Shangla's Coal Miners and the Children Left Behind," *Dawn*, 17 September, 2018, <https://www.dawn.com/news/1433354>.

¹⁴ Ellis-Petersen, Hannah, and Shah Meer Baloch, "'Coal Workers Are orphans': The Children and Slaves Mining Pakistan's Coal," *The Guardian*, 19 February, 2020, <https://www.theguardian.com/global-development/2020/feb/19/coal-workers-are-orphans-the-children-and-slaves-mining-pakistans-coal>.

Given these realities, the state must fulfill its responsibility to provide support and ensure the maintenance of orphaned children after the demise of their fathers. State-led welfare programs, education access initiatives, and stringent enforcement of child labor laws are essential to safeguard their rights and prevent premature entry into the workforce.

5.3.2.5.13 Shelter Provided by the Paternal Family

The challenges faced by orphans following the death of their father can be particularly daunting, especially in cases where they previously resided in rented accommodations with their father or were part of a joint family system with limited living space. Under such circumstances, ensuring secure and stable shelters is imperative. To gain insight into this challenge, Pie Chart 5.31 below illustrates the data on the shelter provided by the paternal families for orphaned children.



Pie Chart 5.31

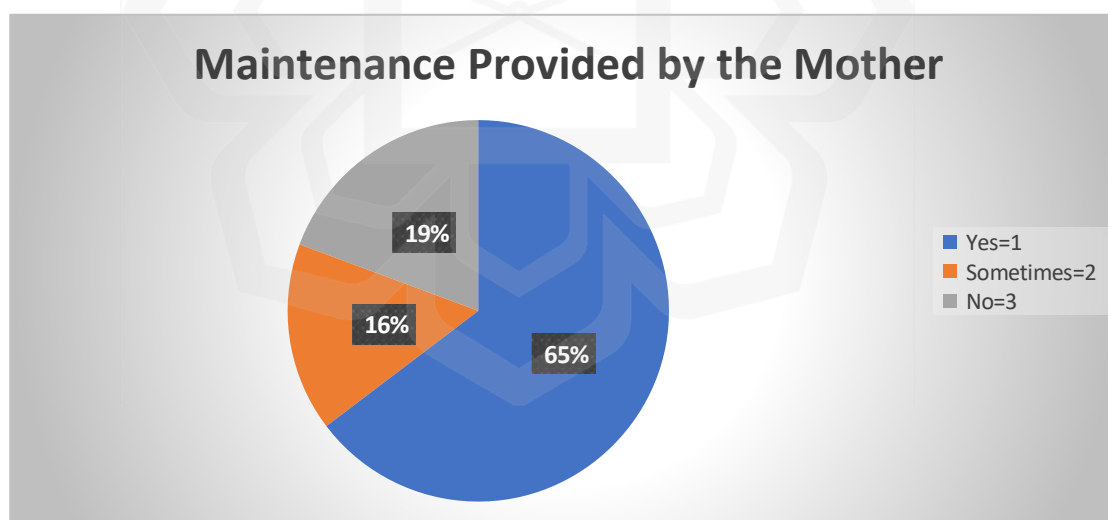
The data showed that more than one-third (37%) of the orphans received shelter from their paternal families, whereas around one-tenth (11%) were occasionally

sheltered. More than half (52%) of the orphans were not provided any shelter by their paternal families.

In conclusion, the data reveal that over half of the orphans were not given shelter by their paternal families, who may perceive them as a burden. In some cases, due to poverty, they may have limited space to accommodate the orphaned children in their homes, leaving the orphans without adequate protection.

5.3.2.5.14 Maintenance Provided by the Mother

Following the death of their father, orphans generally rely on their mothers for sustenance. Unfortunately, Pakistani mothers often lack the financial means to support their families and their orphaned children. Pie Chart 5.32 presents the extent to which mothers provide maintenance for their orphaned children.



Pie Chart 5.32

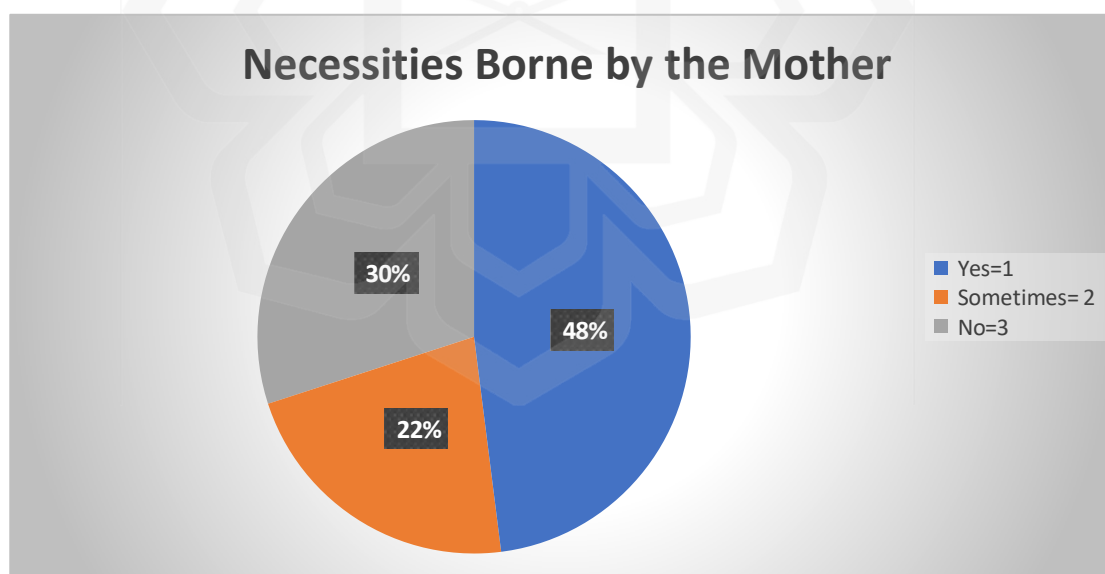
This information indicates that a significant proportion of the orphans' mothers, almost two-thirds (65%), provided maintenance for their children, while approximately

one-eighth (16%) occasionally provided maintenance for their children. The remaining, nearly one-fifth (19%), did not provide such support to their offspring.

Irrespective of their circumstances, mothers have consistently endeavored to meet the needs of their orphaned children—be it financial, physical, emotional, or educational needs. Their efforts in ensuring the proper maintenance of the orphaned children help the children navigate the difficulties of losing a parent.

5.3.2.5.15 Necessities Borne by the Mother

Orphans are often supported by their mothers, who strive to ensure that their basic needs are fulfilled and that they have adequate access to their entitlements such as housing, education, and healthcare. The data presented in Pie Chart 5.33 provides an overview of the mothers' efforts to meet the needs of their children.



Pie chart 5.33

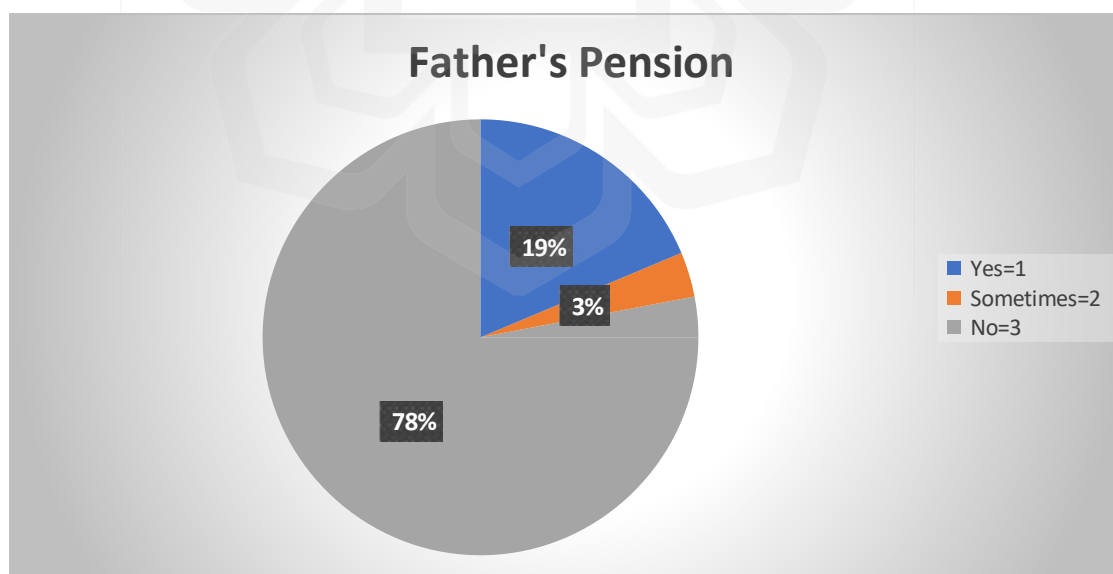
According to the data, almost half (48%) of the orphans' mothers took the responsibility to provide for the children. Additionally, around one-fifth (22%) of the

orphans' mothers occasionally cover their necessities, while about one-third (30%) did not bear any responsibility.

According to the information presented, nearly half of the orphans' mothers are putting considerable effort into meeting their children's needs. On the other hand, the remaining half may be struggling financially, rendering them unable to meet their children's necessities adequately.

5.3.2.5.16 Father's Pension

Following the passing of their fathers, orphans naturally depend on their mothers and relatives for support. In cases where the deceased father was previously employed as a government officer, his orphaned children and widowed mother may become eligible for pension benefits. This financial assistance can greatly help vulnerable families, enabling them to lead a better and more respectable life. Pie Chart 5.34 presents the data regarding the extent to which orphans receive their father's pensions.



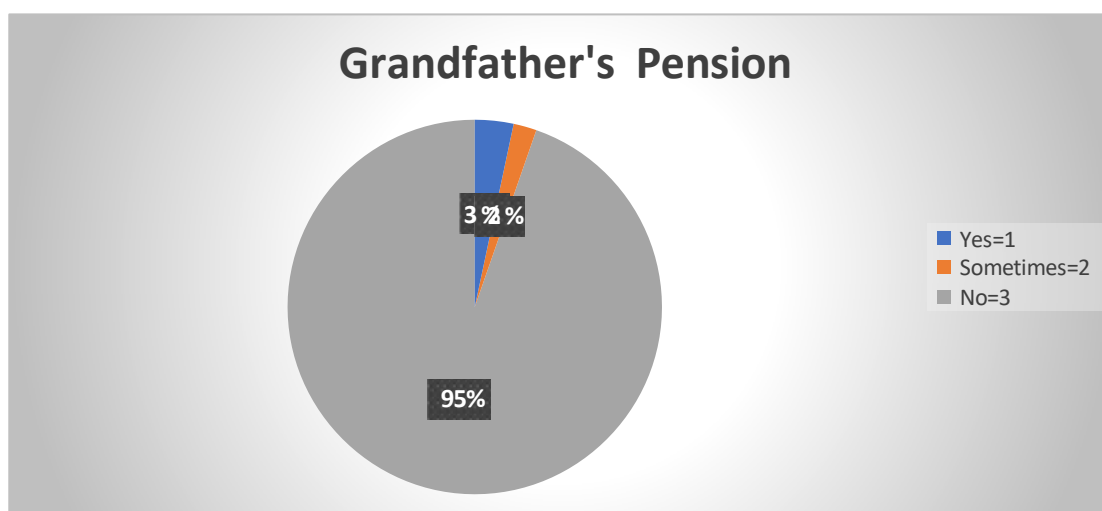
Pie Chart 5.34

The data show that about one-fifth (19%) of the orphans received the father's pension, less than one-tenth (3%) received it occasionally, and more than three-quarters (78%) did not.

This data indicates that most orphaned children in Pakistan do not benefit from pension entitlements, primarily because their fathers were not employed in government or formal sector jobs that offer subsequent pension schemes. In the absence of such employment-linked benefits, these families are left without any form of regular financial support following the breadwinner's death. Consequently, it becomes the responsibility of the state to establish and strengthen alternative welfare mechanisms to support orphaned children and their caregivers. This could include expanding the reach of social protection programs, introducing non-contributory pensions, or providing targeted cash assistance to families with orphans, particularly those in the informal sector or without stable income sources.

5.3.2.5.17 Grandfather's Pension

In cases where a deceased grandfather was previously employed as a government officer, the orphaned grandchildren are entitled to receive the grandfather's pension until they reach adulthood and, in the case of a granddaughter, until they marry. Pie Chart 5.35 below illustrates how many orphaned grandchildren received their grandfather's pension.



Pie Chart 5.35

The data indicate that less than one-tenth (3%) of the orphans received their grandfathers' pension for necessities, and a much lesser percentage, 2%, occasionally received it. The majority (95%) was not provided with it entirely.

This outcome reflects the broader socioeconomic reality in Pakistan, where many grandfathers are either retired from informal sector jobs or engaged in agricultural or daily wage labor, and thus do not receive any formal pension. Since pensions in Pakistan are typically limited to government or formal sector employment, the vast majority of families, especially in rural or lower-income communities, are excluded from this safety net. Consequently, orphaned children in such families are left without reliable financial support, increasing their vulnerability. These findings underscore the need for state-led financial assistance programs that extend beyond traditional pension systems and specifically target orphans and their caregivers in informal or agrarian sectors.

5.3.2.6 Right to Religion

The right to practice one's religion is inherent to all human beings, but it is especially essential for children, including orphans. This is because children are born on the path

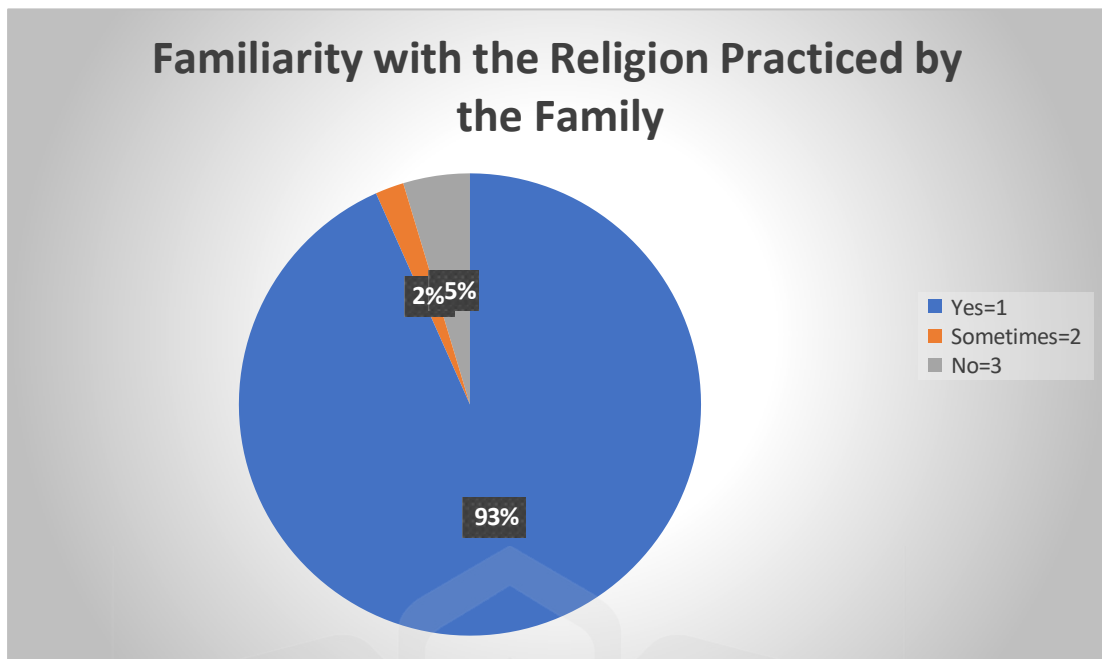
of *fitrah*, not belonging to any specific religion, such as Islam, Christianity, or Judaism. As a result, they usually embrace the faith practiced by their fathers and ancestors. For orphans whose fathers have passed away, paternal families are responsible for introducing them to the family's religious beliefs. The data gathered in this section aims to explore whether the orphans were practicing their fathers' religion voluntarily and without coercion. The data analyzed can be found in Table 5.8.

Table 5.8: The Right to Religion

S. No	Questions	Responses	Frequency	Percentage
1	Are you familiar with your family's religion?	Yes=1	140	93
		Sometimes=2	3	2
		No=3	7	5
		Total	150	100
2	Are you following your family's religion?	Yes=1	140	93
		Sometimes=2	3	2
		No=3	7	5
		Total	150	100

5.3.2.6.1 Familiarity with the Religion Practiced by the Family

Orphans living after the death of their fathers generally live under the supervision of their grandfathers or paternal families. Thus, paternal families must familiarize the orphaned children with their family's religions. Pie Chart 5.36 visually presents the data on orphaned children's familiarity with their family's religion.



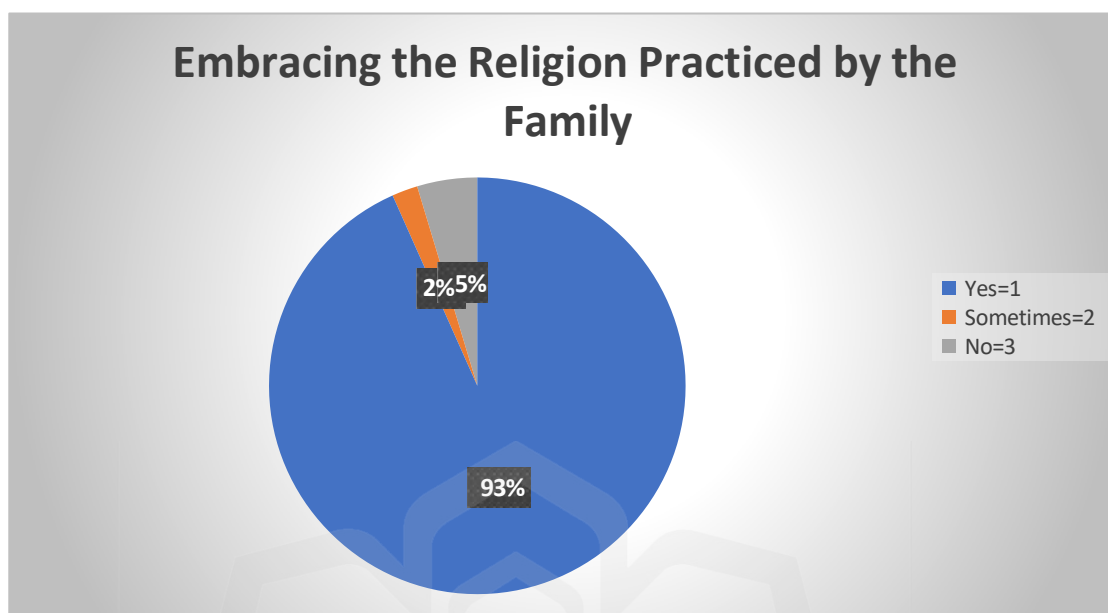
Pie Chart 5.36

The results indicate that a significant majority (93%) of the orphans were familiar with their family's religious beliefs, a small proportion (2%) had occasional exposure, and only a small segment (5%) was unaware of their family's religious background.

As a result of having knowledge of the family's religious practice, the orphans are more likely to maintain and practice their religious values, which can influence their behavior, social interaction, and sense of identity, potentially leading to a stronger sense of community and belonging.

5.3.2.6.2 Embracing the Religion Practiced by the Family

Orphans may be vulnerable in adopting religious beliefs because, despite being familiar with their family's religion, they are expected to follow it. When parents adopt different religious beliefs, it raises the question of how the orphans can embrace their fathers' religion, even if they are aware of its teachings. Pie Chart 5.37 below shows the percentage of orphaned children who embrace the religion practiced by their families.



Pie Chart 5.37

The data illustrate that most (93%) of the orphans followed their family's religion, whereas only 2% followed it occasionally, and a small portion (5%) did not.

Based on these findings, orphaned children often continue to follow their family's religion, even while living in orphanages or with adoptive parents. Their right to religion is protected and provided without any interference.

The preceding findings and in-depth analysis of various questions reveal that orphans face significant challenges in ensuring their well-being and stability. Their difficulty in having their basic needs fulfilled is further aggravated by the considerable absence of support from their paternal families and, in many instances, from their grandfathers. It is imperative to address the precarious financial conditions of the orphans as well as of the families supporting them.

This research has uncovered the harsh realities that orphans are forced to endure. They face significant hurdles in sustaining their daily lives. The absence of assistance

from paternal family members leaves them in uncertain predicaments, struggling to meet the essential requirements of life, such as food, shelter, clothing, and education. Adding to these circumstances, it is disheartening to observe that even the customary expectations of care and support from their grandfathers are not consistently met. This forces orphans to shoulder the burden of self-reliance, facing the harsh realities of life at an early age.

Furthermore, it is crucial to acknowledge that the financial stability of the families of these orphans is far from secure. The lack of sound financial standing within these family units and the absence of external assistance places enormous strain on these orphans. This strain negatively affects their prospects for personal growth and development, especially in the critical areas of education and healthcare, which are essential for a brighter and more promising future.

From a legal stance, the Constitution of Pakistan, under Article 38(d), obliges the State to provide necessities to citizens who are unable to earn a livelihood due to circumstances beyond their control, which would include orphaned children. Similarly, Article 25(3) emphasizes the protection of vulnerable groups, including children. At the federal level, the Zakat and Ushr Ordinance, 1980, and the Bait-ul-Mal Act, 1992, provide mechanisms for financial assistance to destitute individuals, including orphans, but these programs often suffer from underutilization or mismanagement.

In addition, several provincial laws are relevant, such as the Punjab Destitute and Neglected Children Act, 2004, the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, the Sindh Child Protection Authority Act, 2011, and the Balochistan Child Protection Act, 2016. These laws create institutional frameworks to identify, support, and rehabilitate vulnerable children, including orphans. However, despite the existence of these legislative instruments, gaps remain in implementation, outreach, and specialized protection mechanisms tailored specifically for orphaned children.

The cumulative findings of this research suggest that while legal structures for child protection exist, they lack operational integration and targeted support for orphans, who face compounded vulnerabilities due to both economic instability and familial

neglect. Addressing these deficiencies is not only a moral and religious responsibility but also a constitutional and legal imperative. Strengthening state institutions, increasing budget allocations for child welfare, and designing policy interventions specific to orphans are essential steps toward ensuring that these children can realize their rights and grow as empowered citizens.

5.4 QUALITATIVE ANALYSIS OF INTERVIEWS WITH GOVERNMENT INSTITUTIONS OFFICERS AND SELECTED CASE STUDIES

For qualitative analysis, an insightful and informative interview was conducted on 4th September 2023 and 6th September 2023 with officials from two influential entities: the National Child Rights Committee (NCRC), a government institution, and the Child Protection Institute, Islamabad, a governmental organization. This interview aimed to delve deeply into their roles, functions, and responsibilities in their collective pursuit of improving orphan welfare in Pakistan. The dialogue sheds light on critical work and the complex web of challenges and duties associated with ensuring the country's well-being and protecting orphaned children.

The National Child Rights Committee (NCRC) is a governmental institution that advocates and safeguards children's rights in Pakistan. During the interview, representatives from the NCRC clarified their pivotal functions, emphasizing their role in overseeing the implementation of child protection policies. They elaborated on the significance of developing and enforcing policies tailored to address orphaned children's unique needs. The discussion includes advocacy efforts to bring about legislative changes that would strengthen the country's legal framework for child protection. Furthermore, they emphasized their mission of raising awareness about the rights and needs of orphans, ensuring that these children receive the support and protection they deserve.

The Child Protection Institute, Islamabad, a recognized governmental organization, plays a significant role in child welfare in Pakistan. Interviews with the representatives from the institute revealed their multifaceted responsibilities. They

explained their direct involvement in providing vital services, such as shelter, education, healthcare, and psychological support to orphaned children. The organization's efforts extend beyond immediate assistance, focusing on rehabilitating and reintegrating orphaned children into society. Moreover, they highlighted their role in training caregivers, teachers, and social workers in the best practices for caring for orphaned children. Their comprehensive approach encompassed vulnerable young adults' physical and emotional well-being.

5.4.1 National Commission on the Rights of Children

The interview with the Deputy Director¹⁵ of the National Commission on the Rights of Children (hereafter referred to as the interviewee) was conducted over the telephone on 4th September 2023 at 11:00 a.m. Subsequently, written questions were sent via email to the interviewee, who responded in writing.

Regarding the establishment of the NCRC under the 2017 NCRN Act and its impact, the NCRC focuses on four major areas to strengthen the protection of children's rights: advocacy, awareness raising, legal and policy reforms, and research. It works at various levels to improve the safety of children's rights. The NCRC aims to establish a solid legal and institutional framework to safeguard children's rights. Furthermore, it is also working towards creating awareness among children, the public, and relevant stakeholders regarding the existing mechanisms to protect children's rights. Public and social dialogue on pressing issues concerning children's rights is encouraged.

When asked about the issue of orphans' rights violations, the Deputy Director emphasized that the NCRC addresses all issues related to children's rights and pays special attention to vulnerable groups among children, particularly orphans. Currently, it is in the process of visiting shelter homes. The visits are part of the said process to evaluate whether these shelter homes meet minimum standards of care and to recommend proper remedial measures in case they fall below such standards. Recently,

¹⁵ Interview with the Deputy Director of the National Commission on the Rights of Children over the telephone on 4th September, 2023, at 11:00 a.m.

the NCRC has started visiting orphanages to ensure adherence to the minimum requirements of childcare at care institutions.

Further discussion also revealed that the commission does not communicate with the NADRA about the parentage and biodata of orphaned children. At the NCRC, international child rights standards are upheld, meaning the privacy of any child cannot be compromised.

The NCRC, as a leading authority in child welfare, upholds the highest norms and protocols to protect and promote children's rights. Their commitment to these principles is unwavering, grounded in the universal declaration that every child deserves to grow in an environment of respect, safety, and dignity. In this regard, the NCRC strictly follows international standards meticulously designed to safeguard these rights, ensuring that every action and policy is in the best interest of the children they serve.

The interview further revealed that there are two-way communications between the NCRC and the families of orphaned children. The NCRC affirms receiving contacts from parents or families of orphans.

Regarding the provision of educational facilities to orphaned children, the Deputy Director emphasized that the NCRC is unable to act as a service provider but may work on the advisory side. Among other functions, it examines the factors restricting the fulfillment of children's rights and recommends remedial measures. It works at all levels to promote children's education, especially for vulnerable groups of children, particularly orphans, and sensitizes the relevant stakeholders on the importance of this issue.

In addition, as part of its mandate, the NCRC conducts reviews of laws and policies and recommends changes if needed. In this regard, it has produced policy briefs on street children, forced conversions, child marriages, and child domestic labor. A policy brief on child trafficking and online abuse is currently being prepared. At the same time, it is in the process of reviewing other laws, too. Regarding orphans, the

NCRC is presently visiting different orphanages to assess their needs so that necessary legal and policy reforms can be proposed.

When asked about the necessities of life provided to orphans, the Deputy Director emphasized that the NCRC does not provide such services; according to its mandate, the NCRC cannot act as a service provider and only assumes an advisory role.

Regarding the NCRC's role in identifying gaps in legislation and renewing its commitments to protect and promote all children's rights, the interviewee emphasized that as part of its legal mandate under Section 15(a) of the NCRC Act 2017, the NCRC reviews laws and policies about children's rights and recommend suitable changes. The aim is to strengthen the protection of children's rights at all levels.

The interview concluded with a discussion on the overlapping role between the NCRC and the NCCWD in terms of child rights and welfare. The interviewee extensively explained that the NCCWD oversees the coordination, monitoring, and facilitation of implementing the UNCRC and other national and international obligations. Besides, the NCCWD must submit mandatory periodic reports on the implementation of the UNCRC to the UN Committee on the Rights of Children. Furthermore, it also evaluates the impact of constitutional, legal, and administrative provisions related to the welfare and development of children, offering recommendations for their enhancement. It also proposes amendments to national laws per the United Nations Convention on the Rights of the Child. Besides, it also works towards protecting children who are disabled or otherwise in need of social protection and services. The NCRC, on the other hand, besides working towards legal and policy reforms, has a crucial mandate to investigate child rights violations and recommend initiating proceedings in this regard. Moreover, it promotes and encourages research on child rights issues while maintaining a database of these topics.

The interview conducted with the Deputy Director of the National Commission on the Rights of the Child (NCRC) provided crucial insights into the institutional efforts being made to address the challenges faced by orphaned children in Pakistan. Established under the National Commission on the Rights of the Child Act, 2017, the

NCRC serves as the federal oversight body mandated to monitor, promote, and protect children's rights in line with the UN Convention on the Rights of the Child (CRC). However, as highlighted in both the interview and the analysis, Pakistan lacks specific legislation exclusively focused on the protection and welfare of orphans. The existing legal framework, comprising general child protection laws and welfare policies, does not sufficiently account for the unique vulnerabilities or structural disadvantages faced by orphaned children. This legal and policy vacuum places orphans in a precarious position, often leaving them dependent on inconsistent family support or under-resourced welfare institutions. Hence, it is evident that despite the presence of national institutions like the NCRC, the issue remains largely in a legislative grey zone. This is an alarming situation that calls for urgent legal reform and the introduction of comprehensive, orphan-specific legislation to ensure that no child is left behind in accessing their fundamental rights and protections guaranteed under the Constitution and international human rights commitments.

5.4.2 Child Protection Bureau

A deep analysis of qualitative research was conducted, complemented by a vital interview with one of the directors of the Child Protection Institute. He graciously shared his insights via email on September 6th, 2023.¹⁶ The purpose of this institute is primarily to protect children, irrespective of whether they are orphans, street children, or children in other vulnerable situations. Thus, under the Islamabad Capital Territory Child Protection Act of 2018, the Child Protection Bureau must provide them with all life necessities. The institute coordinated with government departments to collect data on children.

The first question explored the operations of the Child Protection Bureau, which was established under the Islamabad Capital Territory Child Protection Act of 2018. When asked if the Bureau complies with the law in child protection activities, the interviewee confirmed that it does.

¹⁶ The interview was conducted with the Deputy Director of Child Protection Bureau, Islamabad on 6th September, 2023.

Since the Islamabad Capital Territory Child Protection Act of 2018 has a detailed definition section, the interview explored whether the Bureau uses this information to improve child protection efforts. Highlighting the term 'unattended children,' the director emphasized that 'unattended' refers to a child with no guardian/parent to care for and includes an orphan. The interviewee affirmed that they were working to improve child protection by providing the necessities of life, such as shelter, food, education, health facilities, and freedom to profess their religion.

When asked about the communication between the Bureau and relevant departments, such as NADRA, to gather information about the parentage and biodata of orphaned children, as well as the communication between the Bureau and the families of orphaned children, the interviewee affirmed that the CPI has close coordination with the line departments. However, data are frequently shared to verify the identity of children and find their parents.

Regarding the provision of educational facilities to orphaned children, the interviewee asserted that the CPI coordinates with formal education systems where children are sent for education. The institute ensures that orphaned children get an education up to the level of matriculation and finances (through donations) eligible students who want to continue their studies and secure stable employment. Further, individuals not interested in continuing their studies after matriculation may acquire any skills.

The interview continued with a discussion on the Bureau's role in addressing the challenges faced by orphans in Pakistan, such as the right to life, name and identity, education, health, inheritance, maintenance from their paternal families, and the right to religion. The interviewee asserted that the bureau is able to provide services to children without discrimination. The CPI primarily offers essential services to all children, such as shelter, maintenance with possible resources, education and health facilities, and freedom to practice the religion of their choice. However, the institute is not involved in issues like inheritance and property.

The interview further revealed that the bureau has not received any report regarding any danger and challenges orphaned children face from their families. Orphans live in a very protected environment, and no one is allowed to meet them without prior permission from the institute. Their names are listed in the official record.

Regarding the bureau's role in identifying gaps in legislation and renewing its commitments to protect and promote all children's rights, the interviewee emphasized that no such legislation is currently being processed and enacted; however, any such amendment can be initiated as and when required.

This interview provided critical insights into the institutional landscape of child welfare in Pakistan. The discussion reaffirmed that while child protection bureaus operate federal legal frameworks, such as the Islamabad Capital Territory Child Protection Act, 2018, there is no specific federal or provincial legislation exclusively addressing the rights and protection of orphans. Orphans continue to be treated as part of the broader category of "vulnerable" or "destitute" children, without recognition of their distinct legal and social vulnerabilities. Institutions like the Child Protection Bureau are working actively to highlight these gaps and push for legal reforms. However, the absence of targeted legal provisions for orphans reflects a disconcerting legislative and policy vacuum. Hence, the above discussion clearly shows that Pakistan remains in a grey zone regarding orphan-specific legal protections. This is an alarming situation that calls for urgent attention by lawmakers and child welfare authorities to develop comprehensive, enforceable legislation that recognizes orphans as a uniquely vulnerable group requiring focused legal, social, and economic safeguards.

In conclusion, the interviews conducted with officials from both the National Commission on the Rights of the Child (NCRC) and the Child Protection Bureau served as vital sources of insight into the institutional responses concerning the protection and welfare of orphaned children in Pakistan. These discussions highlighted the critical roles these bodies play—not only in delivering direct support and rehabilitation services, but also in advocating for long-overdue policy and legislative reforms. Both institutions emphasized the need for orphan-specific legal protections, recognizing the limitations of the current general child protection frameworks. Furthermore, the

interviews revealed ongoing efforts to foster inter-agency collaboration, raise awareness, and push for systemic change aimed at securing the rights and well-being of orphaned children across the country. These findings collectively underscore the urgent need for a unified, comprehensive legal framework to address the unique vulnerabilities of orphans and to ensure that their rights are fully realized within the national child protection agenda.

5.4.3 Selected Interviews of Orphaned Children and Others

To gain a deeper understanding of the lived experiences, challenges, and coping mechanisms of orphaned children in Pakistan, this chapter incorporates selected case studies as part of the qualitative research approach. These case studies offer rich, contextual insights that quantitative data alone cannot capture. By closely examining individual narratives, particularly those of orphans and their caregivers, this section highlights the multidimensional nature of their vulnerability. It sheds light on their interactions with familial structures, state institutions, and societal attitudes, and reveals the gaps in legal, economic, and social support systems. Through this method, the study aims to humanize statistical findings and provide a grounded basis for evaluating the effectiveness of current child protection frameworks in addressing the specific needs of orphaned children.

There are several interviews in which orphaned children encountered difficult situations following the passing of their fathers, often exposing them to life-threatening circumstances.

Interview 1:

The first interview was with Habib Akhtar S/O Ch. Nawaz,¹⁷ who was a resident of Sangral Village, Tehsil, district of Rawalpindi. He was 11 years old when he lost his father, who was murdered by his maternal uncle while working on a family farm. After

¹⁷ Habib Akhtar, “interview by Munazza Razzaq,” Rawalpindi, 15 October, 2022.

the incident, his mother decided to move back to her parent's home, taking him and his brother Noman, who was nine years old, given that her own family was responsible for her husband's murder.

Habib, the eldest son, grew up in his maternal grandfather's home, where he endured verbal abuse from his maternal relatives. One day, he flew to his maternal family's house, where he witnessed a plotted murder against him. Fortunately, he contacted his paternal family, alerting them of the evil scheme. The police apprehended the murderer, and a death sentence was declared. Although the sentence has not yet been carried out, his safety is protected since the perpetrator is in custody. Presently, Habib has completed his intermediate education and lives happily with his brother under the care of his paternal family. They were fortunate to have their extended paternal family supporting them and fighting the case on their behalf. As in the case study above, it can be concluded that it is challenging to live without a father figure. Children suffered greatly because of the loss of their fathers.

Although the right to life is an inherent right, after the loss of their fathers, orphans are exposed to threats because of an adversary's financial and health issues. In these situations, the state assumes the role of custodian of their rights, and the Pakistani state must enact legislation to protect orphans.

Interview 2:

This interview¹⁸ was conducted in August 2025, with the consent of the interviewee, at 10:00 a.m. in an orphanage. The participant, referred to here as Ayesha (pseudonym), is a 14-year-old girl from Kashmir. She has been residing in the orphanage since the death of her father two years ago. Ayesha is the eldest among five siblings, with two brothers and two sisters.

Following an initial formal discussion, Ayesha shared her personal circumstances and concerns. She explained that her paternal family decided to place

¹⁸ The interview was conducted on 5 August, 2025, at 10 am in a Rawalpindi orphanage.

her, along with one of her sisters and one brother, in the orphanage. The youngest brother remains with their mother. After their father passed away, the family had no independent source of income. Initially, they resided in a shared household under a joint family system, relying on the paternal family for shelter. According to Ayesha, her mother undertakes all household chores to maintain the goodwill of the paternal family, which in turn allows them to stay in the family home.

Ayesha reported that her paternal relatives have not supported their education or assumed other responsibilities for their care. Consequently, the decision was made to send her and two of her siblings to the orphanage. She further stated that all property left by her late father is collectively held under the control of the paternal family. She is unaware of the exact share to which she and her siblings are entitled. She confirmed that all siblings' names were registered with the National Database and Registration Authority (NADRA) during their father's lifetime.

Regarding her current living situation, Ayesha expressed that the orphanage provides for all their basic needs, including education, clothing, food, and medical assistance in case of emergencies. Concluding her account, she reflected emotionally that since the death of her father, she has never received the same level of respect and regard that she experienced during his lifetime.

Interview 3:

This interview¹⁹ was conducted on August 6, 2025, at 11:00 a.m. in the village of Ladiyan, Tehsil Rawalpindi, District Rawalpindi with formal consent. The participant, a widow, has two sons. Her husband passed away in 2015, at which time her children were approximately three and one years old.

Following her husband's death, she initially resided with the paternal family of her children. However, she reported that their treatment towards her was unsuitable,

¹⁹ The interview was conducted on 6 August, 2025, at 11:00 a.m. in the village of Ladiyan, Tehsil Rawalpindi, District Rawalpindi.

making it difficult for her to continue living there with her children. As a result, she decided to relocate to her mother's home. She further explained that her maternal family did not provide financial support for the upbringing of her children.

In 2020, her sister arranged her second marriage. Her second husband, who had no prior family, accepted her children as part of their new household. However, upon learning of her remarriage, the paternal family forcibly took the children from her. The participant subsequently filed a custody case in court, with the support of her second husband. During the proceedings, the children's paternal grandfather appeared and sought custody of both grandchildren.

Ultimately, a mutual agreement was reached—the elder child resides with the grandfather, while the younger child lives with the mother. The participant stated that she is unaware whether the children received any inheritance from their father, as all assets are under the control of the paternal grandfather.

Interview 4:

This interview²⁰ was conducted on August 7, 2025, at 11:00 a.m. with a 16-year-old girl with formal consent who shared details of her personal circumstances. In 2020, her family relocated from Chakwal to Rawalpindi in pursuit of better educational opportunities for the children. The family comprised her parents, one brother, and two sisters. At the time, their father, a retired army personnel, had secured employment as a driver, and they began residing in a rented house. All the siblings were enrolled in government schools.

In April 2021, the participant's father passed away suddenly due to a heart attack. She reported that during the funeral, the paternal family accused her mother and siblings of causing his death. Following this confrontation, the immediate family returned to their rented residence. At that time, the mother was a housewife, and the brother was 18 years old.

²⁰ The interview was conducted on 7 August, 2025, at 11:00 a.m. at Peshawar Road, Rawalpindi.

Given the sudden financial strain, the family began relying on a limited pension to pay rent. The mother subsequently took a job as an assistant in a beauty parlor. The sisters started providing tuition services to younger children, and the brother found work as an assistant in a store. The family collectively contributed to household expenses. Over time, the eldest sister gained admission to a university. The family also received zakat and donations from various individuals. Meanwhile, their paternal uncles and aunts provided no financial support.

The participant stated that the paternal family took over all property left by their father. She emphasized that despite these challenges, they are determined to work hard to fulfil their father's dreams, with their mother remaining their sole source of emotional and practical support.

Interview 5:

This interview²¹ was conducted on August 7, 2025, at 2:00 p.m. with the person in charge of an orphanage whose name was not disclosed. The participant explained that the orphanage was established in 2015 by a couple residing in the United Kingdom, in memory of their only daughter. The couple funded the construction of the building and, thereafter, began admitting only orphan girls without any age restrictions. The orphanage follows a caregiving model whereby every seven girls are placed under the responsibility of one "mother". At present, the orphanage accommodates more than 300 children.

The person in charge reported that daily operational expenses are supported by community-provided zakat and sadaqat. Additionally, the founding couple actively seeks donations from their overseas community to support the institution. The orphanage has an in-house school that provides education from nursery to matriculation,

²¹ The interview was conducted on 7 August, 2025 at 2 pm at Rawalpindi.

with its teachers and principal. After completing matriculation, the girls are enrolled in nearby colleges for higher education.

Regarding healthcare, the orphanage maintains a transport facility for medical emergencies. In such cases, the responsible “mother” escorts the girl to the hospital. During summer vacations or Eid holidays, girls may be temporarily taken home by their families or guardians if they wish. The person in charge emphasized that the orphanage does not involve itself in property rights matters or related disputes. Furthermore, religious freedom is respected; for example, two Christian girls reside in the orphanage and are not compelled to embrace another religion.

5.5 CONCLUSION

This chapter delved into the multifaceted challenges faced by orphans in Pakistan—the central inquiry of this comprehensive research study. Orphans residing in institutional orphanages and those living with extended families have provided valuable data to analyze their challenges comprehensively. The primary aspects that have been examined include the right to life, name and registration, maintenance, property, education, health, and religion.

The results obtained from this extensive data collection underscore the significant challenges that orphans in Pakistan face. Notably, while the government has established institutions for the welfare of children, these institutions often lack the jurisdiction necessary to address the specific needs of orphans. There is no dedicated legal framework that comprehensively addresses the rights and protection afforded to orphans in Pakistan.

The data from this research emphasize the pressing need to develop a distinct legal framework tailored to orphans in Pakistan. This initiative holds the potential to set a global standard for the protection and rights of orphans, marking a significant milestone in child welfare.

The subsequent chapter explains the provisions of such a legal framework for orphans and elucidates the rights the State of Pakistan should accord and safeguard. This critical exploration will provide insights into the steps needed to secure the rights and well-being of orphans, thereby addressing the gap in the existing legal landscape.



CHAPTER 6

PROTECTION OF ORPHANS' RIGHTS IN MUSLIM STATES

6.1 INTRODUCTION

In the context of this research, the significance of examining the legal frameworks of Muslim-majority countries concerning the protection of orphans cannot be overstated. This study is specifically focused on the rights of orphans and aims to propose legal reforms within the Pakistani context. To inform this analysis, a comparative review of the state laws governing orphans in selected Muslim countries has been undertaken. Egypt, Morocco, and Malaysia were chosen as benchmark countries due to their relatively early adoption of child welfare legislation rooted in Islamic principles and their practical efforts to implement these laws effectively. In particular, Malaysia holds unique relevance, as it also serves as the location for this research, warranting a more detailed examination of its legal and institutional framework. By analyzing the strengths and approaches of these countries, this research seeks to establish meaningful benchmarks to guide and inform potential legal reforms in Pakistan aimed at enhancing the protection and welfare of orphaned children.

6.2 EGYPT

Egypt is the most populated Arab country with a population reaching around 105.2 million in 2023, according to the estimates of the CAPMAS (2023). As of December 2023, CAPMAS Statistical Yearbook indicates that the proportion of children (0-17 years) is 38 per cent of the total population and around 9.8 per cent are children under-five years old. Around 32.2 per cent of the total population are in the age group 0-14 years.¹

¹ United Nations Children's Fund (UNICEF), "Situation Analysis of Children and Adolescents in Egypt

Children are a significant part of the Egyptian state; hence, Egypt ratified several significant human rights treaties, notably the Convention on the Rights of the Child (CRC), becoming one of the first 20 countries to do so. In 1996, Egypt enacted a comprehensive Childhood Law that led to significant advancements for Egyptian children. The Egyptian Parliament further demonstrated its commitment to child rights with the 2008 amendments to the Childhood Law. In addition, President Hosni Mubarak initiated the Second Decade for the Protection of the Egyptian Child, which included objectives such as extending health insurance coverage to 90% of children and ensuring vaccination coverage for over 95% of children.²

The Children's Act (Law No.12 of 1996)³ is a comprehensive law in Egypt that safeguards the well-being of children. The law ensures the security of childhood and motherhood, provides appropriate upbringing, and guarantees the child's rights, as stated in the Convention on the Rights of the Child and other relevant international covenants enforced in Egypt.⁴

The law expressly mentions that care and welfare are provided to children less than 18 years of age, and age is determined through birth registration.⁵ Moreover, the rights ensure the following principles and rights: a) Every child's right to a safe and nurturing environment, access to protective measures, and protection from all forms of violence, including physical, sexual, or mental abuse, neglect, and mistreatment, b) the right to be protected from discrimination among children based on factors such as birthplace, religion, race, gender, disability, or any other status, as well as to ensure equal opportunities for all children to benefit from their rights, and c) the rights of children capable of forming their own opinions to access information that enables them

2024, UNICEF Egypt, 2024,” <https://www.unicef.org/egypt/media/12431/file/SitAn%20of%20Children%20and%20Adolescents%20in%20Egypt%202024_Eng.pdf.pdf> (accessed 16 July, 2025).

² See Universal Periodic Review – Human Rights Council UNICEF Inputs – Egypt, 1 Information from UNICEF-Egypt CPD, 2008 Annual Report and 2009 Mid-term Report, 2005 & 2008 Egypt Demographic and Health Survey (EDHS), UN Joint Program Documents, Egypt Inputs to CEDAW Report, Egypt Mid-Term Assessment Report 2008 (UNCT), GOE and World Bank Report (2009).

³ *The National Council for Childhood and Motherhood*, “The Official Journal”, Issue no. 13 -supplement of 28 March 1996; amended by Law no. 126 of 2008, “The Official Journal”, Issue no. 24-bis of 15 June 2008, and Issue no. 28 of 10 July 2008.

⁴ The Children’s Act of 1996, Article 1.

⁵ The Children’s Act of 1996, Article 2.

to express their opinions and have their voices heard on all matters related to them, including judicial and administrative procedures. All decisions and procedures must prioritize the child's best interests and protection, irrespective of the department or authority issuing or executing them.⁶

Additionally, it is crucial that children have access to both legitimate paternal and maternal lineages and that parents are responsible for providing this care. However, when a child is unable to receive family care, it is the state's responsibility to offer alternative care options. This provision primarily focuses on the critical topic of prohibiting adoption.⁷

Furthermore, the law states that the child's name should be registered with a competent authority, dignified, and not contrary to religious beliefs.⁸ Moreover, every child had the right to Egyptian nationality.⁹ The Children's Act of 1996 encompasses a wide range of fundamental rights across various provisions. It includes detailed requirements for specific areas, such as Part Two, which comprises five chapters from Articles 8 to 30 and addresses different aspects of child health care. Part Three contains three chapters, Articles 31 to 52. This section's significance lies in exploring orphaned children and the state's provision of alternative care. Article 49 enshrines the principle that eligible children have the right to receive a monthly pension from the relevant Ministry of Social Insurance, provided that the pension amount is no less than sixty (60) Egyptian pounds and adheres to the specified rules and regulations in the Social Insurance Law. This pension applies to three categories of children: orphaned children or those with unknown fathers or parents, children of female-headed households, or those of a divorced mother who remarries, dies, or is imprisoned for more than a month. Additionally, it covers children of legally detained or imprisoned mothers, as well as three children of female-headed households who are imprisoned for at least one month.¹⁰

⁶ The Children's Act of 1996, Article 3.

⁷ The Children's Act of 1996, Article 4.

⁸ The Children's Act of 1996, Article 5.

⁹ The Children's Act of 1996, Article 6.

¹⁰ The Children's Act of 1996, Article 49.

Part Four comprises three chapters from Articles 53 to 63, discusses different stages of children's education, and provides free education to all children in public schools under Article 54.¹¹ Other sections of the document addressed issues related to children's functioning and child culture and the application of penal laws for minors. Notably, the establishment of the National Council for Childhood and Motherhood was mandated to ensure the effective implementation of these laws. Egypt does not have a specific law outlining a framework for protecting orphans' rights. However, the Children's Act of 1996 protects orphaned children in alternative care settings and mandates a minimum pension of 60 Egyptian pounds for these children. The law also ensures free education for all children, including orphans. However, the law prohibits certain adoption practices essential to the adoption process.

6.2.1 Obligatory Bequest for Orphans in Egypt

The concept of the obligatory bequest for orphans in Egypt represents a significant evolution in Islamic inheritance law. Egypt is the first country to completely reform its laws and enact a number of laws, including the Egyptian Law of Will 1946. Almost all of the provisions of the Egyptian Law of Will 1946 regarding inheritance were taken from the *Ḥanafī* school of thought. However, in some cases, there are different laws that have been considered based on the *Shāfi'ī* and *Mālikī* schools of thought. The obligatory bequest stated in the Egyptian Law of Will 1946 is derived from one of the religious laws that must be complied with (*taklifi*). The heirs in title are then required to put into effect the law. If the heirs do not implement it, the will shall be executed according to the regulations established by the law.¹²

The entire development of obligatory bequests is found in Egyptian Law of Wills No. 71 of 1946, which applies to the children of predeceased daughters and those of predeceased sons.

¹¹ The Children's Act of 1996, Article 54.

¹² Abas, All-Mu'izz, Noor Mohamed Said, and Mohd Muda, "A Comparative Study on Legislative Provisions for Obligatory Bequest in Egypt and Malaysia," *International Journal of Academic Research in Business and Social Sciences*, vol. 13, no. 5 (2023): 1961–1974. <<https://doi.org/10.6007/IJARBSS/v13-i5/16945>.p.6.>

Article 76 of Egyptian Law of Wills No. 71 of 1946 states:

"If the deceased did not bequeath to the descendant of his child who died during his lifetime—or died with him—even if it was prior to the testator's death, and that descendant would have inherited if alive at the time of the testator's death, then that descendant is entitled to an obligatory bequest from the estate, equal to the share his father or mother would have received, within the limits of one-third, provided that he is not already an heir and the deceased has not given him an equivalent amount gratuitously by another disposition; if what was given is less than that amount, a *waṣiyyah* is obligatory to make up the difference.¹³"

Concisely, the 1946 law provides that the propositus is obliged to make a bequest in favor of grandchildren by any son or daughter who has predeceased him (if they would not be entitled to any share on intestacy) provided that this bequest does not exceed the limit of one-third for legacies or the equivalent of the share of the predeceased son or daughter, whichever is less. Should the grandfather fail to make such a bequest, the court will act as if he had, and such an implied or obligatory bequest will have priority over any voluntary bequests the propositus may have provided for in his will.¹⁴ In Egypt, the rules regarding obligatory bequests apply to all grandchildren, regardless of whether they are from a deceased son or a deceased daughter. The regulations regarding obligatory bequest in Egypt are as stated in Articles 76, 77, 78, and 79 of the Egyptian Law of Wills 1946.¹⁵

Egyptian jurists and lawmakers utilized *ijtihad* to create a legal framework that aligns with the ethical imperatives of Islamic law while addressing modern social challenges. By incorporating the obligatory bequest into Egyptian inheritance law, they provided a mechanism to uphold the welfare and rights of orphaned grandchildren.

In conclusion, Egypt has made commendable strides in strengthening its legal and institutional frameworks for the protection of children's rights, aligning its national laws with international conventions such as the UNCRC. These reforms reflect a

¹³ Egyptian Law of Wills No. 71 of 1946, Article 76.

¹⁴ Kemal Faruki, "Orphaned Grandchildren in Islamic Succession Law: A Comparison of Modern Muslim Solution," *Islamic Studies*, vol. 4, no.3 (1965): 253, <<https://www.jstor.org/stable/20832807>> (accessed on 3 June 2022).

¹⁵ Abas, Said, and Muda, 7.

growing recognition of children's dignity, welfare, and developmental needs. Of particular importance is Egypt's implementation of the concept of *waṣiyyah wajibah* (obligatory bequest) which ensures that orphaned grandchildren are not excluded from inheritance, even when their deceased parent would have otherwise predeceased the grandparent. This legal provision exemplifies a progressive interpretation of Islamic inheritance principles, promoting justice and social welfare for vulnerable children. By combining modern child protection mechanisms with Islamic legal traditions, Egypt offers a valuable model for harmonizing religious values with contemporary human rights standards—an approach highly relevant to legal reform efforts in other Muslim-majority countries, including Pakistan.

6.3 MALAYSIA

Malaysia's total population in 2024 is estimated at 34.1 million, compared to 33.4 million in 2023, with a growth rate of 1.9 percent. Meanwhile, the composition of the population aged 0-14 years (the young age group) decreased to 22.2 percent in 2024, compared to 22.7 percent in 2023.¹⁶ Malaysia practices a federal system of governance, where legislative powers are divided between the federal government and the 13 state governments, as outlined in the Federal Constitution, particularly in the Ninth Schedule. This schedule consists of three legislative lists: the Federal List, the State List, and the Concurrent List. The Federal Parliament has exclusive authority to legislate on matters in the Federal List, such as defense, foreign affairs, education, citizenship, and criminal law. In contrast, State Assemblies may legislate on matters in the State List, which includes Islamic law, land, water, local government, and native customs. The Concurrent List allows both federal and state governments to legislate on issues like public health, town planning, and social welfare, though federal law prevails in case of conflict.¹⁷

¹⁶ *Selangor Journal*, "Malaysia's Population in 2024 Estimated at 34.1 Mln — DOSM," 10 July, 2024, <https://selangorjournal.my/2024/07/malaysias-population-in-2024-estimated-at-34-1-mln-dosm/>.

¹⁷ Government of Malaysia, *Federal Constitution of Malaysia* (Kuala Lumpur: Percetakan Nasional Malaysia Berhad, 2006), Ninth Schedule.

This dual legislative structure ensures a balance of power while also accommodating Malaysia's diverse cultural, religious, and regional needs. For the protection of children's rights, Malaysia adopts a unique plural legal system that combines federal and state legislation, along with Islamic (*Sharī'ah*) law, particularly in matters related to Muslim personal and family law. This system plays a significant role in the protection and welfare of children, including orphaned, abandoned, and neglected children.

Furthermore, the Federal Constitution of Malaysia, which is the supreme law of the land, establishes the foundation for all legislative and administrative actions, including those related to children's rights. Malaysia ratified the Convention on the Rights of the Child on 17 February 1995.¹⁸ In fulfilling Malaysia's obligation under the CRC, Malaysia enacted the Child Act 2001 [hereafter called Act 611].

6.3.1 Malaysian National Child Policy 2024

Malaysia's National Children's Policy, launched in November 2024, is a comprehensive, rights-based framework designed to enhance child welfare across four pillars: survival, protection, development, and participation.¹⁹ Spearheaded by the Ministry of Women, Family and Community Development (KPWKM) and coordinated through the Child Development Department (JPKK) and National Council for Children (MKBKK), the policy sets forth 16 strategic priorities aimed at protecting children from violence, exploitation, neglect, and ensuring universal access to health, education, and a safe environment. While praised for aligning with the UN Convention on the Rights of the Child, civil society has urged for greater clarity in the accompanying action plan, including defined timelines, accountability mechanisms, and inclusive implementation—particularly for marginalized children such as refugees, stateless persons, and migrants. The policy represents a significant shift in Malaysia's

¹⁸ *United Nations Human Rights Treaty Bodies*, "Ratification Status for Malaysia," <https://tbinter.net.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN> (accessed 4 November, 2022).

¹⁹ Dr. Amar-Singh HSS, "The New National Children's Policy," *CodeBlue*, November 2024, <https://codeblue.galencentre.org/2024/11/the-new-national-childrens-policy-dr-amar-singhhss/#:~:text=Finally%2C%20I%20would%20like%20to,and%20even%20possibly%20the%20disabled.>>

commitment to child rights, moving from legislation like the Child Act 2001 [Act 611] towards a holistic, multi-stakeholder, and participatory governance model. However, successful outcomes will depend on transparent execution, sufficient resources, and sustained engagement from the civil society.²⁰

6.3.2 The Federal Constitution of Malaysia

The Federal Constitution of Malaysia stands as the supreme law of the land, forming the foundation of the nation's legal and governance framework. It guarantees a range of fundamental rights to all citizens, irrespective of age, gender, ethnicity, or status. These rights include the right to life and personal liberty (Article 5),²¹ equality before the law (Article 8),²² and protection against slavery and forced labor (Article 6),²³ among others. Although the Constitution does not contain specific provisions exclusively dedicated to the rights of children, its guarantees are broadly framed to encompass all individuals, including children, as part of the general citizenry.

In this respect, children in Malaysia benefit from the same constitutional protections afforded to adults, particularly in matters of dignity, security, and liberty. For instance, the protection against exploitation under Article 6(2) prohibits compulsory labor and has clear implications for safeguarding children against child labor and trafficking. Similarly, the guarantee of equality and equal protection under Article 8 reinforces the principle of non-discrimination, which is a core element of both domestic and international child rights frameworks.

²⁰ “New National Children’s Policy Ensures Child Protection, Welfare: Nancy,” *Bernama*, 24 November, 2024, <https://www.bernama.com/en/news.php?id=2367026#:~:text=BERNAMA%20%2D%20New%20National%20Children's%20Policy,the%20well%2Dbeing%20of%20Malaysia>

²¹ Federal Constitution of Malaysia, Article 5 “Liberty of the person 5. (1) No person shall be deprived of his life or personal liberty save in accordance with law.”

²² Federal Constitution of Malaysia, Article 8 “Equality 8. (1) All persons are equal before the law and entitled to the equal protection of the law.”

²³ Federal Constitution of Malaysia, Article 6 “6. (1) No person shall be held in slavery. (2) All forms of forced labor are prohibited, but Parliament may by law provide for compulsory service for national purposes.”

While the absence of child-specific provisions in the Federal Constitution may be seen as a limitation, it is mitigated by the existence of specialized legislation, such as the Child Act 2001 (Act 611), which operationalizes child-specific rights in line with Malaysia's obligations under the United Nations Convention on the Rights of the Child (CRC). Therefore, the constitutional framework, when read in conjunction with child protection laws, offers a comprehensive legal basis for upholding the rights and welfare of children in Malaysia, even though these rights are not explicitly enumerated within the Constitution itself.

6.3.3 The Child Act 2001 (Act 611)

At the national level, the principal legislation for child protection is the Child Act 2001 (Act 611). This Act consolidates provisions relating to the care, protection, and rehabilitation of children. It incorporates principles from the United Nations Convention on the Rights of the Child (CRC), to which Malaysia acceded in 1995. The Child Act includes measures for children in need of care and protection, children beyond parental control, and children in conflict with the law. Furthermore, after the promulgation of the Act 611, this law repealed the Juvenile Courts Act 1947 [Act 90], the Women and Girls Protection Act 1973 [Act 106], and the Child Protection Act 1991 [Act 468].

The provisions of the Child Act 2001 (Act 611) are fundamentally grounded in the four core principles of the United Nations Convention on the Rights of the Child (UNCRC), namely non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of the child. These principles guide the interpretation and implementation of the Act, ensuring that all children in Malaysia, regardless of background, are entitled to equal protection and opportunities. The Act emphasizes the child's welfare as the paramount consideration in all legal and administrative decisions, promotes their holistic development, and safeguards their right to be heard in matters affecting them. By incorporating these principles, Act 611 aligns Malaysia's domestic child protection framework with international standards,

fostering a legal environment that upholds the dignity, rights, and well-being of every child.²⁴

The preamble of Act 611 provides protection and assistance to all children without any discrimination in terms of sex, religion, race, social or physical status. The state recognizes "that a child is not only a crucial component of such a society but also the key to its survival, development, and prosperity."²⁵

In the interpretation clause, a child is defined as follows:

"(a) means a person under the age of eighteen years; and
(b) about criminal proceedings, means a person who has attained the age of criminal responsibility as prescribed in section 82 of the Penal Code [Act 574]"²⁶

Moreover, Chapter V of Act 611 enacts the "Child in Need of Care and Protection" and categorizes children accordingly. Section 17 (1) (e) describes children in need of care and protection as follows:

"The Child
(i) has no parent or guardian; or
(ii) has been abandoned by his parent or guardian, and after reasonable inquiries, the parent or guardian cannot be found."²⁷

This provision is crucial as it recognizes the vulnerability of orphaned or abandoned children and mandates state intervention to ensure their safety and welfare. By legally categorizing these children as needing care and protection, the Act empowers child protection authorities to take appropriate action, such as placing the child in a safe environment or under institutional or foster care. This legislative measure not only affirms the state's responsibility toward vulnerable children but also aligns with broader principles of child welfare and the right of every child to protection and care, particularly when family support is absent.

²⁴ UN Committee on the Rights of the Child (CRC), "UN Committee on the Rights of the Child: Initial Report of States Parties Due in 1997", <<https://www.refworld.org/docid/4631bb9d4.html>> (accessed 22 December, 2006).

²⁵ Child Act, 2001, Preamble.

²⁶ Child Act, 2001, Section 2.

²⁷ Child Act, 2001, Section 17(1)(e).

Furthermore, Section 30²⁸ of the Child Act 2001 (Act 611) specifically addresses the issue of custody and placement of children who are in need of care and protection. It empowers the Court for Children to make appropriate custody orders after determining that a child requires state intervention due to circumstances such as neglect, abuse, or abandonment. Under this provision, the court may order that the child be placed under the supervision of a welfare officer, admitted into a place of safety or a registered institution, or returned to a fit and proper guardian, depending on what is deemed to be in the best interests of the child. This section reflects the Act's broader commitment to ensuring that all custody decisions prioritize the child's safety, well-being, and developmental needs, consistent with the child-focused principles of the UNCRC.

Section 31 of the Child Act criminalizes abuse, neglect, abandonment, and exposure of children to physical or emotional harm, with penalties including fines up to RM50,000 and/or imprisonment up to 20 years. Section 43 prohibits any indecent, obscene, or sexually exploitative acts against a child, while Section 48 addresses the use of children for begging, deeming it a form of exploitation.

6.3.4 Other Penal Laws

For trafficking offences, the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM) provides a dedicated legal framework, and under Section 14²⁹ of this Act, child trafficking is a specific offence punishable by imprisonment of not less than 3 years and up to 20 years, along with whipping.

²⁸ Child Act, 2001 (Act 611), s 30 “(c) in the case of a child who has no parent or guardian or who has been abandoned as described in paragraph 17(1)(e), make an order— (i) placing the child in the care, custody and control of a foster parent found to be suitable by the Director General for a period of two years from the date the child is placed in the care, custody and control of the foster parent or until he attains the age of eighteen years, whichever is the shorter, and pending that, place the child in a place of safety; or (ii) placing the child in the care of a fit and proper person for a period of two years from the date of the order or until he attains the age of eighteen years, whichever is the shorter.

Regarding labor, the Children and Young Persons (Employment) Act 1966 [Act 350] prohibits the employment of children under 15³⁰, except in specific light work or family businesses, and restricts hazardous work for those under 18. Section 2³¹ of this Act defines a child as being under 15, and a young person as being between 15 and 18, with further restrictions outlined in Sections 3 to 6, which prohibit specific industries and working conditions. Collectively, these laws ensure that children are legally protected from violence, exploitation, trafficking, and unlawful labor, in line with Malaysia's obligations under the UN Convention on the Rights of the Child (CRC) and ILO conventions.

6.3.5 Adoption of orphaned children

6.3.5.1 Federal Law for Non-Muslims

In Malaysia, the legal framework for the adoption of orphaned children operates within a dual legal system, comprising both civil and Islamic laws. For non-Muslim citizens, the Adoption Act 1952 (Act 257) provides the primary mechanism for formal adoption through the civil courts. Under Section 9³² of this Act, once the High Court grants an

²⁹ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, s 14 “Offence of trafficking in children or a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition 14. (1) Any person, who traffics in persons being a child or a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition, commits an offence and shall, on conviction, be punished with *imprisonment for life or with imprisonment for a term which shall not be less than five years, and shall also be liable to whipping.

³⁰ Children and Young Persons (Employment) Act 1966 [Act 350], s 2 “Employment in which children and young persons may be engaged 2. (1) No child or young person shall be, or be required or permitted to be, engaged in any hazardous work, or any employment other than those specified in this section”.

³¹ Children and Young Persons (Employment) Act 1966 [Act 350], s 1A “child” means any person who has not completed his fifteenth year of age.

³² Adoption Act, 1952 (Act 257), s 9 “9. Effect of adoption order (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock: Provided that, in any case where two spouses are the adopters, such spouses shall in respect of the matters

adoption order, the adopted child is deemed to be the legitimate child of the adoptive parents for all legal purposes, and all legal ties with the biological parents are severed. This provision applies equally to orphans, allowing guardians or caretakers to initiate the adoption process through the court, subject to the welfare principle outlined in Section 6³³. Additionally, the Registration of Adoptions Act 1952 (Act 253) permits an administrative form of adoption, which is handled by the National Registration Department (NRD).

6.3.5.2 State Laws for Muslims

In contrast, for Muslim children, adoption in the Western legal sense is not recognized under Islamic law. Instead, the concept of *kafālah* (guardianship or care) is practiced. Although Islamic law does not have a codified statute on adoption, the Islamic Family Law (Federal Territories) Act 1984 provides mechanisms for custody and guardianship. For instance, Section 88 covers *hadanah* (custody of children), while Section 90 outlines the appointment and responsibilities of a guardian of the person and guardian of property. These provisions ensure that Muslim orphan children can be placed under the care of suitable guardians while preserving their *nasab* (lineage) and inheritance rights from their biological family. They do not become legal heirs of the guardians unless specific arrangements, such as a *hibah* (inter vivos gift) or *waṣīyyah* (will), are

provided in this subsection and for the purpose of the jurisdiction of any Court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother, respectively. (2) Where, at any time after the making of an adoption order, the adopter or the adopted child or any other person dies intestate in respect of any movable or immovable property, that property shall devolve in all respects as if the adopted child were the child of the adopter born in lawful wedlock and were not the child of any other person”.

³³ Adoption Act, 1952 (Act 257), s 6 “6. Matters with respect to which Court to be satisfied The Court before making an adoption order shall be satisfied-- (a) that every person whose consent is necessary under this Act, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; (b) that the order if made will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child; (c) that neither the applicant nor the parent or guardian has received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant or the parent or the guardian any payment or other reward in consideration of the adoption except such as the Court may sanction; and (d) that there has been a substantial change in the circumstances, if it appears that the applicant has made a previous application under this Act in respect of the same child.

made. Collectively, these laws reflect Malaysia's effort to provide comprehensive care for orphaned children in a manner that is both legally sound and sensitive to religious principles.

6.3.6 Obligatory Bequest is the State law

As discussed earlier, the obligatory bequest is a significant legal mechanism in Islamic inheritance law designed to ensure that vulnerable family members, particularly orphaned grandchildren, receive their due share of the inheritance. This section will elaborate on the concept and its applicability in Malaysia, highlighting how Islamic jurisprudence and local legal reforms have shaped its implementation.

Based on the legislation in Malaysia, specifically under Section 27 of the Muslim Wills Enactment (Selangor) 1999, the Muslim Wills Enactment (Negeri Sembilan) 2004, the Muslim Wills Enactment (Melaka) 2005, Muslim Wills Enactment (Kelantan) 2009, Muslim Wills Enactment (Pahang) 2017, and the Muslim Wills Enactment (Sabah) 2018, the rightful beneficiaries of an obligatory bequest are the grandchildren, whether male or female, of the deceased father. In addition, the father must have predeceased his parents, or both the father and the grandparents must have died simultaneously in a way that it cannot be determined.³⁴

However, two Malaysian states, Selangor and Pahang, extended the benefit to the children of the predeceased daughter by amending their Muslim Wills Enactments. Obligatory bequest in Malaysia is restricted to the grandchildren only and does not extend to the great-grandchildren.³⁵

Implementing the obligatory bequest in Malaysia is a testament to the commitment to upholding the principles of justice, equity, and social welfare in Islamic law. By ensuring that orphaned grandchildren receive a share of the inheritance,

³⁴ Abas, Said, and Muda, 8-10.

³⁵ Haseeb Fatima, "A Critical Appraisal of Obligatory Bequest as Prevalent in Muslim Countries," *Islamic Studies*, vol. 63, no.2 (2024): 213–240, <<https://doi.org/10.52541/isiri.v63i2.3071>> (accessed 7 August, 2024).

Malaysian legal reforms not only address the gaps left by traditional inheritance rules but also significantly protect the rights of vulnerable family members. This positive impact of legal reforms should instill hope for a brighter future for orphans in Malaysia.

6.4 MOROCCO

The material and information regarding the legal framework and child protection system in Morocco have been primarily gathered through reliable internet-based sources, including academic publications, government portals, and credible reports from international organizations such as UNICEF and Human Rights Watch. Due to limitations in direct field research or access to official Moroccan legal databases, the reliance on online resources provided an accessible and informative means to examine the country's approach to child welfare, guardianship (*kafālah*), and adoption practices within the broader context of Islamic and civil law. These sources offer valuable insights into the policies, institutional structures, and implementation challenges in Morocco's child protection system. Although secondary in nature, the collected materials reflect the most recent developments and reforms undertaken by Moroccan authorities and international stakeholders and thus serve as an important foundation for comparative legal analysis and discussion in this study.

6.4.1 Morocco Public Policy for Children

Morocco's child protection framework is anchored in its Integrated Public Policy for Child Protection (PPIPEM), launched in 2015 as a national response to growing concerns about violence, neglect, exploitation, and institutional gaps affecting children. This policy reflects Morocco's commitment to the UN Convention on the Rights of the Child (CRC) and its 2011 constitutional reforms, which elevated child rights to a national priority. Coordinated by the Ministry of Solidarity, Social Development,

Equality and Family, in collaboration with other ministries, judicial bodies, and civil society, PPIPEM adopts a multi-sectoral and decentralized approach.³⁶

Its key objectives include embedding child protection principles in all public policies, establishing local and regional mechanisms for prevention and intervention, standardizing services for vulnerable children, and improving data collection and monitoring systems. As part of this policy, Morocco has set up regional child protection committees, court-based child protection units, and support centers to respond to cases of abuse and neglect.³⁷

In recent years, the policy has been further strengthened by a proposed law to establish a National Agency for Child Protection, aimed at enhancing coordination and implementation nationwide. While the policy is a significant step forward, challenges remain in ensuring adequate resources, trained personnel, and effective data systems across all regions. Nonetheless, PPIPEM stands as a comprehensive and progressive model in the Arab-Muslim world, reflecting Morocco's efforts to align Islamic values with international child protection standards, particularly in the care and guardianship of orphaned and vulnerable children.³⁸

6.4.2 Morocco's legal framework on child Protection

Morocco has developed a fairly comprehensive legal framework for child protection, influenced by both Islamic law and international human rights instruments, particularly the UN Convention on the Rights of the Child (CRC), which Morocco ratified in 1993. The country has enacted and reformed various laws to safeguard children from neglect, abuse, exploitation, and ensure their welfare. Below is a structured overview of the key

³⁶ *EU Neighbours South*, "Child Protection Support – Morocco." <<https://south.euneighbours.eu/opportunity/child-protection-support-morocco/>> (accessed 16 July, 2025).

³⁷ *UNICEF Morocco and Morocco Ministry of Economy and Finance*, "Politique Publique Intégrée de Protection Sociale 2020–2030," <<https://www.unicef.org/morocco/media/2531/file/POLITIQUE%20PUBLIQUE%20INTEGREE%20DE%20PROTECTION%20SOCIALE%202020-2030.pdf>> (accessed 16 July, 2025).

³⁸ *Ibid.*

Moroccan child protection laws, with specific relevance to orphans and vulnerable children:

Domestically, several key laws form the foundation of child protection in Morocco. The Family Code (Moudawana), reformed in 2004, includes provisions for the *kafālah* system, a form of legal guardianship for abandoned or orphaned children, outlined in Articles 163³⁹ to 179. This system ensures care without severing the child's lineage, in line with Islamic principles.

Morocco has implemented several child-focused social support mechanisms to safeguard vulnerable children and enhance family welfare. The Family Mutual Support Fund (Fond d'Entraide Familiale), established under Law No. 41-10 (Dahir No. 1-10-191 of 13 December 2010), provides monthly financial assistance to divorced women and their children when the father does not pay court-ordered maintenance. Eligible families receive up to MAD 350 per child, with a maximum of MAD 350 per child, helping to reduce child poverty and abandonment risks (Social Protection, 2023). In addition, Morocco launched a Direct Social Support Program in 2023 under Framework Law 09.21, which expanded monthly financial aid and universal health coverage to nearly 80% of children, significantly improving access to health and protection services.⁴⁰ Complementing state-led programs, the Mohammed V Foundation for Solidarity, a public-benefit institution created in 1999, provides financial, educational, and healthcare support to orphans, abandoned children, and children with disabilities, reinforcing Morocco's child welfare infrastructure. These initiatives reflect Morocco's

³⁹ The Family Code (Moudawana), Article 163, Custody preserves the child from harm and ensures his or her education and the protection of his or her interests. The custodian must take all necessary measures to guarantee the physical and psychological security of the child in his or her custody, manage his or her interests in the absence of the legal tutor, and as necessary when then interests of the child in his or her custody are jeopardized. Article 171 "Article 171 Child custody shall be awarded first to the mother, then to the father, then to the maternal grandmother of the child. If this proves difficult, the court shall decide, in light of the evidence before it and in view of what would serve the interests of the child, to award custody to the most qualified of the child's relatives, while guaranteeing the child suitable lodging as one of the custody obligations".

⁴⁰ *Social Protection*, "Fond d'Entraide Familiale (Mutual Family Support Fund)," <<https://socialprotection.org/discover/programmes/fond-d%E2%80%99entraide-familiale-mutual-family-support-fund>> (accessed 16 July, 2025).

growing commitment to integrated child protection through targeted financial instruments and inclusive social policies.⁴¹

Furthermore, the Penal Code, strengthened by Law No. 24-03 (2003) and Law No. 103-13 (2018), criminalizes physical abuse, sexual violence, exploitation, and trafficking of children. It also enhances protections for child victims in the judicial process. Law No. 14-05 (2006) regulates the conditions under which childcare institutions operate, mandating state oversight, licensing, and monitoring to prevent institutional neglect or abuse. In addition, Law No. 27-14⁴² on Combatting Human Trafficking (2016) includes specific provisions for child victims, emphasizing prevention, protection, and reintegration services. The Labour Code Law No. 65-99⁴³ strictly prohibits the employment of children under the age of 15 and regulates working conditions for adolescents to prevent exploitation.

In conclusion, Egypt, Morocco, and Malaysia each present unique yet complementary models of child protection shaped by their legal traditions, religious values, and international commitments. Egypt has integrated progressive child protection measures through national legislation and institutions, notably incorporating the principle of *waṣiyyah wajibah* to safeguard the inheritance rights of orphaned grandchildren. Morocco, through its Integrated Public Policy for Child Protection and a combination of statutory reforms—such as the Family Code, Penal Code, and anti-trafficking laws—emphasizes multi-sectoral collaboration and decentralized protection mechanisms, especially for abandoned and vulnerable children under the *kafālah* system. Malaysia, operating under a dual legal system, ensures child welfare through the Child Act 2001 and Islamic Family Law, offering a protective framework against abuse, exploitation, and trafficking, while also recognizing Islamic guardianship

⁴¹ *Hespress English*, “UNICEF: 80% of Children in Morocco Now Benefit from Health Coverage,” <<https://en.hespress.com/105105-unicef-80-of-children-in-morocco-now-benefit-from-health-coverage.html>>

⁴² *United Nations Office on Drugs and Crime*, “High-level Workshop on Morocco’s Law 27-14 on Combating Human Trafficking and Its Associated Institutional Framework,” <<https://www.unodc.org/unodc/en/human-trafficking/glo-act/high-level-workshop-on-moroccos-law-27-24-on-combating-human-trafficking.html>> (accessed 16 July, 2025).

⁴³ *Wage Indicator Foundation*, “Decent Work Check – Morocco,” <<https://wageindicator.org/documents/decentworkcheck/africa/morocco-english.pdf>> (accessed 16 July, 2025).

principles over orphaned children. While their approaches differ in legal structure and implementation, all three countries demonstrate an evolving commitment to balancing *Sharī'ah* principles with international child rights standards, offering valuable benchmarks for legal reform in other Muslim-majority nations, including Pakistan.

6.5 CONCLUSION

Muslim states must incorporate these provisions into their legal frameworks and create specialized laws that directly benefit orphans. These three countries—Egypt, Morocco, and Malaysia—serve as valuable benchmarks for Pakistan in reforming and strengthening its child protection framework, particularly in the area of orphan rights, due to the shared Islamic legal foundations, socio-cultural contexts, and diverse approaches to harmonizing *Sharī'ah* law with international human rights obligations. Egypt offers a notable example with its codification of *waṣiyyah wajibah* (obligatory bequest) in its Law of Wills No. 71 of 1946, ensuring that orphaned grandchildren who would otherwise be excluded from inheritance receive a mandatory share of the deceased grandparent's estate—an area of concern in Pakistan where such legal protection is absent. Morocco, on the other hand, demonstrates a holistic and decentralized child protection system through its Integrated Public Policy for Child Protection (PPIPEM), incorporating community-based mechanisms, inter-ministerial coordination, and protective laws against abuse, trafficking, and neglect, while preserving the Islamic *kafālah* framework. Malaysia offers a dual model that combines civil statutory protections under the Child Act 2001 with Islamic guardianship practices under state-level *Sharī'ah* laws, including the limited application of obligatory bequests in some states (e.g., Selangor and Pahang). These countries demonstrate how Islamic values can coexist with modern child rights standards, providing Pakistan with practical, contextually relevant examples to guide reforms in inheritance laws, institutional care systems, child protection laws, and social welfare frameworks for orphans. By adapting and localizing these models, Pakistan can move toward a more comprehensive, equitable, and Shariah-compliant legal system that ensures both legal recognition and welfare protection for orphaned and vulnerable children.

CHAPTER SEVEN

CONCLUSION AND RECOMMENDATIONS

7.1 INTRODUCTION

This final chapter synthesizes the key findings of the study and offers well-grounded conclusions drawn from the analysis presented in the preceding chapters. It revisits the research objectives and questions to assess how effectively they have been addressed. Based on the empirical data, doctrinal review, and comparative analysis conducted throughout the study, this chapter reflects on the broader implications of the research, particularly in the context of legal and policy reforms aimed at improving the protection of Pakistani orphans' rights in the areas of well-being, education, health, inheritance, and religion.

The chapter then proceeds to offer practical and policy-oriented recommendations aimed at addressing the identified gaps, strengthening institutional mechanisms, and ensuring more effective implementation of relevant laws. These recommendations are grounded in both national realities and international human rights standards, and they seek to inform stakeholders, policymakers, and future researchers. Ultimately, this chapter not only concludes the thesis but also seeks to make a constructive contribution to ongoing discourse and reform efforts in the field.

7.2 FINDINGS FROM THE LEGAL FRAMEWORKS

The study undertakes a comprehensive examination of the legal frameworks relevant to the protection of orphaned children, with particular emphasis on the Islamic legal framework. Rooted in the primary sources of Islamic law—the Qur'an and Sunnah—this framework provides extensive guidance on the rights and protection of orphans,

positioning their welfare as a central moral and legal concern. These protections are often integrated within broader provisions for the welfare of all children. Given Pakistan's identity as an Islamic republic, its legislative system is significantly influenced by Islamic injunctions, which underscores the relevance and application of this framework in the national context. Accordingly, the Islamic legal framework has been explored in depth in this thesis to highlight its strengths and continued significance for the Muslim ummah. This legal approach directly supports and aligns with the study's first and second objectives, which focus on identifying legal protections and assessing their implementation for orphaned children in Pakistan.

The second legal framework examined in this thesis pertains to Pakistan's international commitments concerning the rights and protection of children. This framework includes a detailed discussion of relevant international instruments, particularly the United Nations Convention on the Rights of the Child (UNCRC) and the Covenant on the Rights of the Child in Islam (OIC-CRC). These conventions offer comprehensive guidelines for State Parties to develop and implement domestic legislation aimed at enhancing child protection mechanisms. A notable strength of this framework lies in its capacity to accommodate diverse legal and cultural contexts while promoting universally accepted child rights standards. Of particular relevance to this study is the concept of *kafālah*, which is recognized under the UNCRC in accordance with Islamic legal principles. In the context of orphaned children, *kafālah* emerges as a vital mechanism for ensuring care and guardianship, consistent with their rights and welfare. Given Pakistan's status as a Muslim state and its adherence to Islamic principles, the incorporation of *kafālah* into the national child protection system is both appropriate and necessary. This framework, therefore, directly supports and aligns with the first and second objectives of the study, which focus on examining existing legal protections and proposing contextually relevant reforms for orphan care in Pakistan.

The third legal framework analyzed in this thesis pertains to Pakistan's domestic legal system, encompassing child protection laws at both the federal and provincial levels. This framework includes an examination of the Constitution of Pakistan, which, as the supreme law of the land, provides foundational guarantees for the protection and welfare of all children. The study explores various legislative measures enacted to fulfill

the country's international obligations, including those derived from instruments such as the UNCRC and the OIC-CRC. It is evident that Pakistan has developed a comprehensive legal framework for child protection, with numerous laws addressing issues such as child welfare, education, health, and protection from abuse and exploitation. Additionally, child protection institutions have been established at various levels, tasked with implementing these legal protections.

However, a critical analysis reveals significant gaps between the existence of legal provisions and their effective implementation. While orphans are included within the general category of children in these laws, they are not recognized as a distinct group requiring targeted interventions. Legislation at both federal and provincial levels, such as those concerning neglected and destitute children, includes provisions for free education and birth registration. Yet, practical challenges—including limited resources, infrastructural deficiencies, and administrative shortcomings—impede the realization of these rights, especially for orphaned children.

The data collected during this study underscores that orphans often remain marginalized within the broader child protection regime. Their specific needs—such as access to free education, resolution of inheritance disputes, provision of healthcare, and financial support—are frequently unmet. As a result, while the legal framework in Pakistan is extensive on paper, its implementation lacks the depth and precision necessary to safeguard the rights of orphans effectively. This analysis of strengths and weaknesses of the national legal framework aligns directly with the primary objectives of this study, particularly in assessing existing protections and identifying gaps that hinder the comprehensive protection of orphaned children in Pakistan.

7.3 COMPARATIVE OVERVIEW (OBJECTIVE 3)

A comparative analysis of the benchmark countries—Malaysia, Morocco, and Egypt—reveals diverse yet complementary approaches to the protection of orphaned children, drawing upon a combination of Islamic legal principles and international human rights obligations. These countries demonstrate how Islamic concepts such as *kafālah*,

waṣiyyah wajibah (obligatory bequest), and public welfare funds can be harmonized with the standards of the United Nations Convention on the Rights of the Child (UNCRC), resulting in more contextually grounded and effective child protection mechanisms.

In Malaysia, *kafālah* is recognized within the child protection system, particularly through Act 611, which reflects the four core principles of the UNCRC while respecting Islamic values. In addition, certain Malaysian states have adopted the principle of *waṣiyyah wajibah* within their respective Islamic family laws, mandating a fixed share of inheritance for orphaned grandchildren, thereby ensuring financial protection for orphans who would otherwise be excluded under classical Islamic inheritance rules. These state-level initiatives illustrate the capacity of federal systems to incorporate progressive Islamic legal concepts through localized legislation.

Egypt, with its civil law system influenced by Islamic jurisprudence, has formalized the principle of *waṣiyyah wajibah* at the national level. This provision ensures that orphaned grandchildren receive a statutory share of inheritance from their deceased grandparents, thereby safeguarding their financial rights within the bounds of Islamic law. Furthermore, Egypt has established national orphan care funds, managed by public authorities, to support orphaned children through provisions for education, healthcare, housing, and vocational training. These institutional mechanisms reflect a proactive state commitment to orphan welfare.

Similarly, Morocco has embedded *kafālah* within its family law system and has developed state-funded programs to support children in vulnerable situations, including orphans. These initiatives include financial assistance, social reintegration programs, and institutional care facilities. The Moroccan government's policy framework integrates both Islamic traditions and international child rights norms, supported by institutional infrastructure to ensure implementation.

In comparison, Pakistan has an extensive legislative and constitutional framework for child protection, aligned with its international commitments under the UNCRC and OIC-CRC. However, orphans are not legally recognized as a distinct

category, and targeted legal protections—such as the adoption of *waṣiyyah wajibah* or a dedicated *kafālah* law—remain absent. Although several laws address the welfare of destitute and neglected children and establish protection institutions at both federal and provincial levels, the lack of a national orphan care fund, coupled with implementation challenges, limits the efficacy of these measures. Orphans in Pakistan often face compounded vulnerabilities due to inheritance issues, lack of access to education, and minimal institutional support, despite the existence of legal provisions in theory.

The comparative analysis underscores the potential for Pakistan to strengthen its child protection regime by adopting best practices from these benchmark countries. The integration of *kafālah* as a formal care alternative, the incorporation of *waṣiyyah wajibah* to address inheritance inequalities, and the establishment of a national fund for orphan care would enhance both the legal and practical protection of orphaned children. Such reforms would align with Islamic legal traditions, fulfill international obligations, and advance the core objectives of this study, particularly in identifying gaps and recommending actionable improvements within Pakistan’s legal framework for orphan care.

7.4 SUGGESTIONS AND RECOMMENDATIONS FOR LEGAL REFORMS (OBJECTIVE 4)

Safeguarding the rights of orphans is a serious matter that demands an immediate focus from policymakers, international entities, and the worldwide community. This research has examined the status and inadequacies of existing policies and legal frameworks in protecting orphans’ rights and identified certain areas for improvement, consequently leading to the following recommendations and suggestions. These recommendations include both general measures applicable to all children and specific strategies targeting the unique needs and vulnerabilities of orphaned children.

7.4.1 General Recommendations for Children

7.4.1.1 Constitutional Reforms

The Constitution of Pakistan, 1973, provides a framework for the protection of fundamental rights; however, it lacks an explicit provision exclusively dedicated to the rights of children. While general rights such as equality before the law (Article 25) and protection of minorities and vulnerable groups are applicable, the unique needs and vulnerabilities of children, particularly orphans, remain underrepresented. In light of this, it is strongly recommended that a constitutional amendment be introduced to expressly recognize children's rights as fundamental rights within the Constitution. Such an amendment would align Pakistan with international best practices and set a binding legal obligation on the State to prioritize the welfare and development of children.

A relevant comparative example is Norway's Constitution, which explicitly safeguards children's rights under Section 104, affirming their right to protection, participation, and development. A similar provision in Pakistan's Constitution would formally acknowledge children, including orphans, as rights-holders and ensure their ability to influence decisions affecting them.

Additionally, the proposed constitutional amendment could empower existing institutions such as the National Commission on the Rights of the Child (NCRC), or establish a dedicated Office of the Child Ombudsman, with oversight authority under Article 199 (writ jurisdiction of High Courts) or Article 184(3) (original jurisdiction of the Supreme Court in matters of public interest). This would institutionalize accountability mechanisms for the enforcement of child rights and provide orphans with a direct avenue for legal redress in cases of neglect, exploitation, or denial of entitlements.

7.4.1.2 Harmonization of Federal and Provincial Laws

The division of legislative powers between the federal and provincial governments after the 18th Amendment has led to inconsistencies in child protection laws across provinces. There is a need to harmonize legislation to ensure uniform standards of protection for orphans nationwide. Provincial laws should be aligned with international standards and coordinated with federal objectives to avoid jurisdictional gaps.

7.4.1.3 Incorporation of Islamic Legal Principles

Given the religious and cultural context of Pakistan, reforms should integrate Islamic principles on orphan care, particularly in matters relating to inheritance (*mirath*), guardianship (*kafālah*), and equitable treatment. Legal provisions should ensure that orphans are not deprived of their *Sharī'ah*-based rights due to administrative or procedural obstacles.

7.4.2 Specific Reforms for Orphans

7.4.2.1 Legislative Reforms Affecting Orphans

Despite Pakistan's constitutional guarantees and its ratification of international instruments such as the United Nations Convention on the Rights of the Child (UNCRC), the legislative landscape concerning orphaned children remains fragmented and insufficiently protective. Current laws either provide limited coverage or fail to address the specific needs and vulnerabilities of orphans. Accordingly, there is an urgent need for comprehensive legislative reform. The following recommendations outline key areas where legal development is critically required.

1. Enactment of a Federal Orphan Protection and Welfare Act

There is currently no specific federal law that exclusively addresses the rights and welfare of orphans in Pakistan. A dedicated Orphan Protection and Welfare Act should be introduced, providing a legal definition of "orphan", establishing minimum standards for both institutional and non-institutional care, and recognizing orphans as a vulnerable group that requires special protection. The Act should ensure their access to education, healthcare, inheritance rights, shelter, and psychosocial support.

2. Strengthening Inheritance and Guardianship Rights

Orphans are often deprived of their rightful inheritance due to a lack of legal awareness or administrative hurdles. The law should establish mandatory registration for guardianship and succession cases, impose strict penalties for depriving orphans of their inheritance, and streamline the procedures of family courts to expedite such matters.

3. Mandatory Registration and Monitoring of Orphanages

Many orphanages in Pakistan operate without proper oversight, leading to cases of neglect, abuse, or exploitation. A legal framework must mandate the registration, licensing, and regular monitoring of all childcare institutions, with clear accountability standards and penalties for non-compliance. A national regulatory authority could be established for this purpose.

4. Provision for Non-Institutional Care and Community-Based Alternatives

Legislation should promote and regulate alternative care models, including foster care, kinship care, and community-based support systems, to ensure the well-being of

children and families. Non-institutional care should be prioritized wherever possible to ensure family-like environments and long-term social integration.

5. Access to Legal Aid and Representation

The law should provide mechanisms for free legal aid to orphans in matters concerning guardianship, inheritance, and protection from abuse or exploitation. Specialized child protection units and trained legal officers must be available to assist them in navigating legal processes.

6. Data Collection and Legal Identity

Many orphans are excluded from public services due to lack of identification documents. Legislation should mandate timely birth registration and NADRA enrollment for all orphans, with simplified procedures for children in institutional care. Accurate data collection is essential for policy planning and targeted interventions.

7.4.2.2 Judicial Reforms

While legislative and constitutional reforms form the foundation of child protection, the judiciary plays a pivotal role in ensuring that laws are interpreted and applied in a manner that safeguards the rights and welfare of orphans. The recommendation that the judiciary act as the custodian of orphans' persons and property underscores the state's responsibility to protect one of the most vulnerable groups in society. As custodians, the judiciary should take on a proactive role in ensuring that orphans' rights are safeguarded, their welfare is prioritized, and their interests are protected. However, this role is not just administrative; it requires active judicial oversight to ensure that the law upholds the rights of orphans.

The judiciary, through the National Commission on the Rights of Children and child welfare departments at the provincial levels, should initiate legal proceedings to establish guardianship over orphans. This involves petitioning the courts to officially recognize the State as the child's legal guardian, especially in cases where no suitable family members can fulfill this role. The judiciary would then assess the petition, ensuring that the state's appointment as guardian aligns with the child's best interests. Once a guardian is appointed, the court retains supervisory powers. This means that any significant decisions regarding the orphan's upbringing, education, health, or property management must be reported to and approved by the court. This oversight helps prevent any potential abuse or neglect. Orphans often have property or inheritance rights that require protection. Hence, judicial intervention is crucial to manage the administration of these assets, ensuring that they are managed prudently and in the child's best interest. The courts can provide checks and balances to prevent mismanagement or exploitation of the orphan's property.

The judiciary should be empowered to exercise periodic oversight over orphanages and child welfare institutions, particularly through inspections and *suo motu* actions in cases of reported abuse or neglect. High Courts can issue binding directions to ensure compliance with minimum standards of care and protection.

By positioning the judiciary as the custodian of orphans and involving active judicial intervention, Pakistan can establish a robust system that ensures orphans are protected and allowed to thrive, with their rights and interests vigorously defended by the state and the judiciary.

7.4.2.3 Educational Reforms

Education is a fundamental right guaranteed under Article 25-A of the Constitution of Pakistan, which mandates the state to provide free and compulsory education to all children between the ages of five and sixteen. However, orphaned children remain among the most disadvantaged in terms of access to quality education due to systemic neglect, lack of financial resources, and institutional barriers. To bridge this critical

gap, targeted educational reforms are required to ensure inclusive, equitable, and quality education for orphans, thereby enabling their long-term empowerment and social integration.

1. Guaranteed Free and Compulsory Education for Orphans

While Article 25-A provides a broad guarantee of free education, the state must adopt specific implementation mechanisms to ensure orphans are not left behind. This includes issuing official notifications or policy directives that prioritize orphaned children in public school enrollments and direct education departments to maintain orphan-specific enrollment data. Special government-funded scholarships should be established to cover school fees, uniforms, textbooks, transportation, and examination costs.

2. Integration of Orphans into Mainstream Education

In many cases, orphans are isolated within institutional care and denied the opportunity to integrate with mainstream schooling. Educational reforms should aim to mainstream orphaned children by encouraging their inclusion in regular schools rather than segregated or under-resourced orphanage schools. Inclusive classroom environments foster social cohesion, emotional development, and reduce the stigma often associated with orphanhood.

To promote equitable access to quality education for orphaned children, it is recommended that the government introduce a policy mandating a minimum 50% fee concession for orphans enrolled in private educational institutions. While public schools offer free education under Article 25-A of the Constitution, many orphaned children, especially those residing in urban areas or institutional care homes—could benefit significantly from the better facilities, curriculum, and learning environments often available in private schools.

This reform would require the Ministry of Education, in collaboration with provincial education departments and private school regulatory authorities, to enact binding regulations under existing laws governing private education. Schools registered with the relevant education boards should be legally obligated to reserve a specific quota of seats for orphans, with at least 50% tuition and related fee waivers.

3. Monitoring and Data Collection

The government should establish a national database of school-aged orphaned children to monitor their access, attendance, and educational progress. NADRA, in collaboration with the Ministry of Education and provincial education departments, can play a key role in tracking educational outcomes and formulating data-driven policies for the inclusion of orphans.

4. Vocational and Life Skills Training

For older orphans, particularly those nearing the age of exit from institutional care, educational reforms must incorporate vocational training and life skills programs to facilitate self-reliance and employment readiness. Partnerships with technical education boards (e.g., the National Vocational and Technical Training Commission, NAVTTC) and industry stakeholders can support training in trades, digital literacy, and entrepreneurship.

7.4.2.4 Health Reforms

Access to healthcare is a fundamental human right and an essential component of child protection and development. Orphaned children, due to the absence of parental care, are particularly vulnerable to physical and mental health challenges.

The government should ensure general health coverage for all orphaned children, irrespective of their institutional status or geographic location. This can be achieved by including orphans as a special beneficiary group under national health insurance schemes such as the *Sehat Sahulat Program*. Orphans should receive free or heavily subsidized medical care, including consultations, hospital treatment, medications, and diagnostic services at both public and empaneled private hospitals.

7.4.2.5 Social Reforms

For social reforms, it is recommended that mothers of orphaned children be empowered and that the State create a mechanism for mothers' empowerment. For this, the state should make a policy in which qualified mothers may obtain employment in place of their deceased husbands in the government and the private sector. Furthermore, the government should fix a quota for widows, and age relaxation should be given. This may empower women, particularly orphans' mothers, to bear the expenses of their children.

1. Establishment of a National Orphan Welfare Fund

To ensure sustainable and institutionalized support for orphaned children, it is recommended that the Government of Pakistan establish a National Orphan Welfare Fund (NOWF), specifically dedicated to the financial, educational, health, and social needs of orphans across the country. This fund should operate under the auspices of the Ministry of Human Rights, in collaboration with the National Commission on the Rights of the Child (NCRC) and relevant provincial departments.

i. Direct Financial Assistance to Orphans

As a core component of this fund, a monthly stipend of PKR 20,000 should be provided to each eligible orphan to cover necessities, including food, shelter, clothing, education, and healthcare. This financial assistance may be disbursed either directly to the child's legal guardian or caregiver, or to the managing institution (in the case of institutionalized children), with strict monitoring mechanisms to ensure transparency and prevent misuse.

ii. Eligibility and Registration

Eligibility for the fund should be determined through registration with NADRA, verified through a simplified process that acknowledges children without formal documentation, orphans from low-income households, and those living outside the formal care system.

iii. Funding Sources

The National Orphan Welfare Fund may be financed through:

- Annual budgetary allocations by the federal and provincial governments;
- *Zakat* and *Bait-ul-Mal* contributions;
- Corporate social responsibility (CSR) funds from private enterprises;
- Donations from international agencies, philanthropists, and waqf institutions.

A public-private partnership model may also be explored to ensure long-term sustainability and engagement of civil society.

iv. Governance and Oversight

A central coordinating body should be established to manage the fund, develop standard operating procedures (SOPs), and publish annual audits. A portion of the fund should also be allocated to monitoring orphan care institutions, supporting foster care initiatives, and funding capacity-building programs for caregivers.

v. Linkage with Social Protection Programs

The orphan welfare fund should be integrated into the broader social protection framework, including linkage with the *Ehsaas Program*, *Sehat Sahulat* health insurance, and educational scholarships, to ensure a holistic and rights-based approach to orphan support.

As the guardian of its citizens, the state assumes crucial responsibility in ensuring the well-being of its most vulnerable members, particularly orphans. By taking proactive steps to protect and assist orphans, the state contributes to cultivating a society that values compassion, equality, and justice. This commitment involves establishing comprehensive support systems encompassing education, healthcare, emotional well-being, and social integration. The state's efforts should foster an environment where orphans can survive and thrive, ensuring they have equal opportunities to fulfill their potential.

The government is investing in the nation's long-term prosperity by identifying the comprehensive development of its disadvantaged children. An educated and well-supported youth population, which includes orphans, is more likely to contribute positively to society, drive advancements in various sectors, and strengthen the fabric of the community.

7.5 FUTURE RESEARCH

Through this study, the researcher identified gaps that ought to be researched to improve the situation of orphaned children. This study aims to investigate the challenges orphans face and provide legal protection against these challenges in Pakistan, hence the proposal of legal reforms that align with constitutional, Islamic, and international legal principles.

The effectiveness of legal reforms in protecting the rights of orphans in the future remains uncertain, mainly when their sociocultural context is considered. Additionally, government and non-governmental organizations must work together to sustain orphan support initiatives.¹

Additional research is necessary to thoroughly understand the challenges affecting the effectiveness of legal reforms in safeguarding orphans' rights. The findings of this study can be utilized to devise legally sound and culturally appropriate policies, thus improving the protection of orphans in Pakistan.

Further, orphans with special needs form a critical area for future research. It is crucial to have a thorough understanding of their challenges as individuals with special needs and, most importantly, without parents. Future research will be significant for safeguarding their rights.

7.6 CONCLUSION

The research concludes that orphans, as a distinct and vulnerable segment of the child population, require specific attention and protection within both international and national legal frameworks. As future leaders, orphan children are at a critical stage of life and need strong protection from both adults and the state.

¹ Alana Rosenberg, Kari Hartwig, Michael Merson, "Government-NGO Collaboration and Sustainability of Orphans and Vulnerable Children Projects in Southern Africa," *Evaluation and Program Planning*, vol. 31, no. 1 (2008): 51-60, <<https://www.sciencedirect.com/science/article/pii/S0149718907000742?via%3Dihub>>

The study highlights that while orphans' rights are often subsumed under the broader category of children's rights, this approach fails to address their unique needs and vulnerabilities adequately. In Pakistan, the lack of specific legislation focused on orphans exacerbates these challenges, leaving them insufficiently protected.

Furthermore, Islamic law, with its rich tradition of safeguarding the rights and welfare of orphans, offers a comprehensive framework that emphasizes the importance of caring for these vulnerable children. The research underscores the significance of integrating Islamic principles into Pakistan's national legislation to ensure that orphans receive the targeted protection they deserve. As a Muslim country, Pakistan has both cultural and religious obligations to draw upon Islamic law in shaping policies that specifically address the needs of orphans.

This research may bring about change in both Pakistan and internationally while adhering to Islamic principles. This may protect orphaned children, the most vulnerable and deserving human beings on earth. May Allah S. W. T. accept this study for the more significant interest of orphans living in Pakistan and internationally.

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APPENDIX A

PROPOSED DRAFT OF LEGAL PROVISIONS FOR THE PROTECTION AND WELFARE OF ORPHANS

Legal Reforms for the Protection of Orphans' Rights in Pakistan

A Bill to Provide for the Assistance and Welfare of the Orphaned Children

WHEREAS, it is expedient to protect the rights, provision of facilities, services, and welfare of orphaned children by Islamic injunctions and international obligations and for matters connected in addition to that or incidental to it.

It is hereby enacted as follows:

1. **Preliminary: Short title and Extend**
2. This bill may be called the Protection of Orphans Rights (Assistance and Welfare) Bill, 2024.
3. This extends to the whole of Pakistan.
2. **Definitions:** This Act is not applicable unless there is anything repugnant in the subject or context.
 - a. "Child" means any person under the age of eighteen years. "Child right" as per the definition given in Section 2(c)⁶⁰⁵ of the National Commission on the Rights of the Child Act, 2017.
 - b. "Orphan" means any child whose father has died and lives with extended family or in an orphanage.
 - c. "Welfare Fund" means the Fund established under this Bill.
 - d. "Government" means the Federal Government; and
 - e. "Prescribed" means prescribed by rules under this bill.
3. **Right to life:** Every orphan has an inherent right to life, liberty, and security.

⁶⁰⁵ Section 2(c) "child rights" mean and include, but are limited to, rights of the child in the United Nations' Convention on Rights of the Child and in any other domestic law.

4. **Right to registration and name:** The orphan shall be registered with the National Database and Registration Authority (NADRA) and have the right to name and preserve his family's identity.
5. **Right to free education:** Every orphan shall have access to free education. The government should ensure that no orphans are deprived of their educational rights.
6. **Right to health:** Every orphan shall receive appropriate medical care and support. The government should ensure that orphans are not deprived of this right.
7. **Right to maintenance:** Every orphan shall have the right to receive a maintenance allowance from the government as an inherent right to life.
8. **Right to monthly stipend:** Every orphan shall have the right to receive a monthly stipend of 20,000/-PKR for their basic needs.
9. **Right to property:** (1) The right to property includes orphans inheriting their father's property without gender-based discrimination. (2) Every orphan shall have the right to receive property as a gift or will from their grandfather for shelter and rehabilitation. The government shall ensure no orphans are deprived of this right under the law. (3) The Government shall ensure that at the time of opening a succession of grandfathers, the orphaned grandchildren of those not receiving any property as legal heirs may claim the property as a gift or will not more than 1/3 as a successor of their grandfather.
10. All orphans can profess their family's religion or choices without discrimination.
11. **Kafālah:** The state follows the Islamic principle of *kafālah* and provides exceptional protection and assistance to any child, including orphans, who are temporarily or permanently deprived of their family environment.
12. **Welfare Fund:** (1) The Government shall, as soon as practicable, by notification in the official gazette, establish a welfare fund for this bill with an initial grant of a hundred million rupees, and after that, shall contribute to the welfare fund from time to time. (2) They shall also be credited to welfare funds; such sums may be received through donations, contributions,

assistance, or otherwise from individuals, corporate bodies, financial institutions, and other organizations.

13. **Record to be maintained:** The Government shall maintain records of all orphans.
14. **Responsibilities of the Government:** The Government shall be responsible for the welfare of orphans.
 - (a) Provide security and protection to orphans without discrimination.
 - (b) Provide free education to every orphan.
 - (c) Provide every orphan with books, writing materials, uniforms, and other relevant articles free of cost.
 - (d) Provide health facilities free of cost to every orphan.
 - (e) Provide property rights to every orphan through a gift or will from their grandfather.
 - (f) Custody of every unattended orphan identified by the government is taken and sent to orphanages in such a manner as may be prescribed.
 - (g) Provide religious freedom to every orphan to follow their family religion.
15. Other measures necessary for orphan rehabilitation and welfare should be taken.
16. Power to make rules: the government may make rules for carrying out the purpose of this bill by notifying the public in the official gazette.

Regarding the discussion above and the legislative proposal aimed at protecting orphans and safeguarding their rights, the ensuing recommendations are intended to alleviate the suffering experienced by orphaned children following the loss of their beloved fathers. These recommendations are solely for the welfare and safeguarding of orphans residing in Pakistan.

APPENDIX B

FOURTH SCHEDULE

[Article 70 (4)]

LEGISLATIVE LISTS

Federal Legislative List

PART I

1. The defence of the Federation or any part thereof in peace or war; the military, naval and air forces of the Federation and any other armed forces raised or maintained by the Federation ; any armed forces which are not forces of the Federation but are attached to or operating with any of the Armed Forces of the Federation including civil Armed Forces; Federal Intelligence Bureau; preventive detention for reasons of State connected with defence, external affairs, or the security of Pakistan or any part thereof ; persons subjected to such detention; industries declared by Federal law to be necessary for the purpose of defence or for the prosecution of war.
2. Military, naval and air force works; local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas, and the delimitation of such areas.
3. External affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan.
4. Nationality, citizenship and naturalisation.
5. Migration from or into, or settlement in, a Province or the Federal Capital.
6. Admission into, and emigration and expulsion from, Pakistan, including in relation thereto the regulation of the movements in Pakistan of persons not domiciled in Pakistan, pilgrimages to places beyond Pakistan.
7. Posts and telegraphs, including telephones, wireless, broadcasting and other like forms of communications; Post Office Saving Bank.
8. Currency, coinage and legal tender.

9. Foreign exchange; cheques, bills of exchange, promissory notes and other like instruments.
10. Public debt of the Federation, including the borrowing of money on the security of the Federal Consolidated Fund; foreign loans and foreign aid.
11. Federal Public Services and Federal Public Service Commission.
12. Federal pensions, that is to say, pensions payable by the Federation or out of the Federal Consolidated Fund.
13. Federal Ombudsman.
14. Administrative Courts and Tribunals for Federal subjects.
15. Libraries, museums, and similar institutions controlled or financed by the Federation.
16. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.
17. Education as respects Pakistani students in foreign countries and foreign students in Pakistan.
18. Nuclear energy, including—
 - (a) mineral resources necessary for the generation of nuclear energy;
 - (b) the production of nuclear fuels and the generation and use of nuclear energy;
 - (c) ionizing radiations. 1[; and]2
 - (d) [boilers.]
19. Port quarantine, seamen's and marine hospitals and hospitals connected with port quarantine.
20. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.
 - 1 Subs. by the Constitution (Eighteenth Amdt.) Act, 2010 (10 of 2010), s. 101 for the full stop.
 - 2 New sub-entry (d) added *ibid*.
21. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.
22. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

23. Carriage of passengers and goods by sea or by air.
24. Copyright, inventions, designs, trade-marks and merchandise marks.
25. Opium so far as regards sale for export.
26. Import and export across customs frontiers as defined by the Federal Government, inter-provincial trade and commerce, trade and commerce with foreign countries; standard of quality of goods to be exported out of Pakistan.
27. State Bank of Pakistan; banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Province and carrying on business only within that Province.
28. The law of insurance, except as respects insurance undertaken by a Province, and the regulation of the conduct of insurance business, except as respects business undertaken by a Province; Government insurance, except so far as undertaken by a Province by virtue of any matter within the legislative competence of the Provincial Assembly.
29. Stock exchanges and futures markets with objects and business not confined to one Province.
30. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Province and carrying on business only within that Province, or cooperative societies, and of corporations, whether trading or not, with objects not confined to a Province, but not including universities.
31. [International treaties, conventions and agreements and International arbitration.]
32. National highways and strategic roads.
33. Federal surveys including geological surveys and Federal meteorological organisations.
34. Fishing and fisheries beyond territorial waters.
35. Works, lands and buildings vested in, or in the possession of Government for the purposes of the Federation (not being military, naval or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides.

36. Establishment of standards of weights and measures.

* * * * *

41. Elections to the office of President, to the National Assembly, the Senate and the Provincial Assemblies; Chief Election Commissioner and Election Commissions.

42. The salaries, allowances and privileges of the President, Speaker and Deputy Speaker of the National Assembly, Chairman and Deputy Chairman of the Senate, Prime Minister, Federal Ministers, Ministers of State, the salaries, allowances and privileges of the members of the Senate and the National Assembly; and the punishment of persons who refuse to give evidence or produce documents before committees thereof.

43. Duties of customs, including export duties.

44. Duties of excise, including duties on salt, but not including duties on alcoholic liquors, opium and other narcotics.

* * * * *

47. Taxes on income other than agricultural income.

48. Taxes on corporations.

49. Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed 2 [, except sales tax on services.]]

50. Taxes on the capital value of the assets, not including taxes on 3 * * * on immovable property.

51. Taxes on mineral oil, natural gas and minerals for use in generation of nuclear energy.

52. Taxes and duties on the production capacity of any plant, machinery, undertaking, establishment or installation in lieu of the taxes and duties specified in entries 44, 47, 48 and 49 or in lieu of any one or more of them.

53. Terminal taxes on goods, or passengers carried by railway, sea or air; taxes on their fares and freights.

54. Fees in respect of any of the matters in this Part, but not including fees taken in any court.

55. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List and, to such extent as is expressly

- authorised by or under the Constitution, the enlargement of the jurisdiction of the Supreme Court, and the conferring thereon of supplemental powers.
56. Offences against laws with respect to any of the matters in this Part.
 57. Inquiries and statistics for the purposes of any of the matters in this Part.
 58. Matters which under the Constitution are within the legislative competence of [Majlis-e-Shoora (Parliament)] or relate to the Federation. Matters incidental or ancillary to any matter enumerated in this Part.
-

PART II

1. Railways.
2. Mineral oil and natural gas; liquids and substances declared by Federal law to be dangerously inflammable.
3. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest; institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the Commencing day, including the [Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation]; all undertakings, projects and schemes of such institutions, establishments, bodies and corporations, industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation.
4. [Electricity.
5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of port authorities therein.
6. All regulatory authorities established under a Federal law.
7. National planning and national economic coordination including planning and coordination of scientific and technological research.
8. Supervision and management of public debt.
9. Census.
10. Extension of the powers and jurisdiction of members of a police force belonging to any Province to any area in another Province, but not so as to enable the police of one Province to exercise powers and jurisdiction in

another province without the consent of the Government of that Province;
extension of the powers and jurisdiction of members of a police force
belonging to any Province to railway areas outside that Province.

11. Legal, medical and other professions.
12. Standards in institutions for higher education and research, scientific and technical institutions.
13. Inter-provincial matters and co-ordination.]
14. Council of Common Interests.
15. Fees in respect of any of the matters in this Part but not including fees taken in any court.
16. Offences against laws with respect to any of the matters in this Part.
17. Inquiries and statistics for the purposes of any of the matters in this Part.
18. Matters incidental or ancillary to any matter enumerated in this Part.

* * * * *

APPENDIX C

Questionnaire Form

Title of Research: Protection of the Rights of Orphans in Pakistan: Challenges and Legal Reforms

Researcher: Munazza Razzaq

This research focuses on protecting the rights of orphans in Pakistan. Hence, this study aims to discuss the challenges faced by orphans, and this questionnaire helps identify these difficulties and challenges. Legal reforms according to the challenges will then be elucidated at the end of the research.

Demographics:

Name: _____ Age: _____

Father's Education: _____ Father's occupation: _____

Mother's Education: _____ Mother's occupation: _____

Grandfather's occupation _____

Paternal family economic status: _____

S.No	Questions	Yes	Sometimes	No
		3	2	1
1	Right to life			
1.1	Did the Paternal family provide support?			
1.2	Did they threaten you?			
1.3	Were you pressured to leave the home?			
1.4	Did your paternal family try to make you drug-addicted?			
1.5	Did they Physically torture you?			
1.6	Did they exploit you emotionally?			
1.7	Have you passed through the phase of self-isolation?			
1.8	Did you face anxiety and depression?			
1.9	Did you start withdrawing your desires?			
2	Registration and Name			
2.1	Was your name registered with Nadra?			
2.2	Was your father's death officially recorded with			

	NADRA?			
2.3	Was your family name bestowed upon you by your paternal relatives?			
3	Right to Health			
3.1	Did your grandfather support you in case of medical needs?			
3.2	Did your paternal family support you in case of a medical emergency?			
3.3	Did your mother afford medical expenses?			
4	Right to Education			
4.1	Did your grandfather support you in getting an education?			
4.2	In the absence of a grandfather, did your paternal family support you in getting an education?			
4.3	Did your mother afford your education expenses?			
5	Right to Property and Maintenance			
5.1	Did you receive your portion of inheritance from your father's property?			
5.2	Did you receive your portion of the inheritance from your grandfather's property?			
5.3	Did your grandfather gift you any property?			
5.4	Did your grandfather make any will in your favor?			
5.5	Did your paternal family seize your father's property?			
5.6	Did your paternal family pressure your grandfather to refrain from gifting you any property?			
5.7	Did your paternal family pressure your grandfather not to make any will?			
5.8	Did any member of your paternal family gift you any property?			
5.9	Did your paternal family consolidate your property with their own?			
5.10	Did your paternal family misappropriate your property?			
5.11	Did your grandfather bear your basic expenses?			
5.12	Did your paternal family support you in place of your			

	necessities?			
5.13	Did your paternal family provide you with shelter?			
5.14	Did your mother provide maintenance?			
5.15	Did your mother manage to provide for your essential needs?			
5.16	Did you receive your father's pension?			
5.17	Did you receive the pension of your grandfather?			
6	Religion			
6.1	Are you familiar with your family's religion?			
6.2	Are you following your family's religion?			



APPENDIX D

Title of Research: Protection of the rights of Orphans in Pakistan: Challenges and legal reforms

Researcher: Munazza Razzaq

This research focused on the protection of the rights of Orphans in Pakistan. Hence, the study aims to discuss the challenges faced by orphans, and this focus group interview helps to find the difficulties and challenges faced by orphans in Pakistan. In addition, what do the government and non-governmental organizations provide the facilities and rights to orphans? Thence, legal reforms according to the challenges and the rights provided by the governmental and non-governmental organizations will be elucidated at the research's end. Further, the data gathered through interviews will be utilised only for academic purposes and remain confidential according to research ethics.

Demographic Information

Name: _____

Gender: ☐ Male ☐ Female

Name of the Institution: _____

Designation: _____

Qualification: _____

Professional work experience in years: ☐ 1-10 ☐ 11-20 ☐ 21 and above

National Commission on Child Rights:

1. NCRC was established under the NCRC Act 2017 and applied to Pakistan. How did it impacts the children living in Pakistan?
2. Did NCRC focus on orphan rights violations while monitoring child rights violations?
3. While inquiring into child rights violations, did the commission ask the concerned departments (Like NADRA) about the parentage and biodata of orphan children?
4. Does NCRC in contact with families of orphan children?
5. Does NCRC provides education facilities to orphan children? Further, At which level are they providing education?

6. The mission of the NCRC is to mandate legislative, institutional, and social reforms for children. Is NCRC provides any legal reforms for the children and specifically for orphans?
7. While providing shelter to orphans, is NCRC notice that there is a danger to the life of orphan children from their families?
8. Is NCRC providing necessities of life to orphan children?
9. Does NCRC identify gaps in the legislation and renew its commitments to protect and promote all children's rights?
10. Does NCRC and NCCWD overlap regarding child rights and their welfare?



APPENDIX E

Title of Research: Protection of the rights of Orphans in Pakistan: Challenges and legal reforms

Researcher: Munazza Razzaq

This research focused on the protection of the rights of Orphans in Pakistan. Hence, the study aims to discuss the challenges faced by orphans, and this focus group interview helps to find the difficulties and challenges faced by orphans in Pakistan. In addition, what do the government and non-governmental organisations provide the facilities and rights to orphans? Thence, legal reforms according to the challenges and the rights provided by the governmental and non-governmental organisations will be elucidated at the research's end. Further, the data gathered through interviews will be utilised only for academic purposes and remain confidential according to research ethics.

Demographic Information

Name: _____

Gender: ☐ *Male* ☐ *Female*

Name of the Institution: _____

Designation: _____

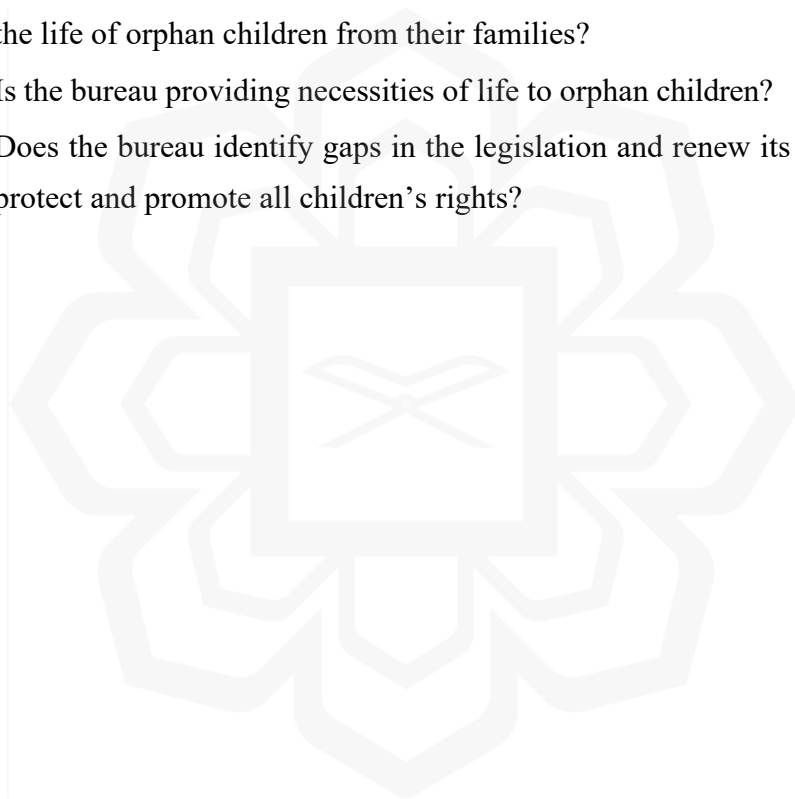
Qualification: _____

Professional work experience in years: ☐ 1-10 ☐ 11-20 ☐ 21 and above

Child Protection Bureau

1. The Child Protection Bureau is established under the Islamabad Capital Territory Child Protection Act, 2018. Does the Bureau mandate the law regarding their activities towards child protection?
2. The definition clause is quite extensive in nature and covers all the possible definitions. Does the bureau follow this information for the betterment of child protection?
3. The word 'unattended children' includes the orphans used in the definition clause. Does the bureau consider orphans and provide them with their fundamental rights?

4. While inquiring into orphan rights violations, did the bureau ask the concerned departments (Like NADRA) about the parentage and biodata of orphan children?
5. Does the bureau contacts families of orphan children?
6. Does the bureau provide education facilities to orphan children? Further, at which level do they provide education?
7. Does the bureau consider the Pakistan orphans' challenges, like the right to life, name and identity, education, health, inheritance, and maintenance from their paternal families, and the right to religion?
8. While providing shelter to orphans, is the bureau notice that there is a danger to the life of orphan children from their families?
9. Is the bureau providing necessities of life to orphan children?
10. Does the bureau identify gaps in the legislation and renew its commitments to protect and promote all children's rights?



APPENDIX F

LIST OF ORPHANS HOMES

Orphan homes in Islamabad Capital Territory:

1. National Child Protection Centre (**Governmental**)
2. Pakistan Sweet Home (NGO)
3. Edhi Homes (NGO)

Rawalpindi

1. Child Protection and Welfare Bureau Rawalpindi (**Punjab Government**)
 - I. Model Children's Homes (orphanages)
2. Anjuman e Faiz ul Islam (NGO)
3. Aghoush Al-Khidmat (NGO)
4. Bait-e- Mariam (NGO)
5. Amna Orphanage (NGO)
6. Saba Trust Homes

APPENDIX G

TABLE OF TRANSLITERATION

Table of the system of transliteration of Arabic words and names used by the International Islamic University of Malaysia

ء	'	خ	Kh	ش	Sh	غ	Gh	ن	N
ب	B	د	D	ص	s	ف	F	هـ	H
ت	T	ذ	dh	ض	d	ق	Q	و	W
ث	Th	ر	r	ط	t	ك	K	ي	Y
ج	J	ز	z	ظ	z	ل	L		
ح	h	س	s	ع	c	م	M		

Short Vowels		
اَ		a
اِ		i
اُ		u

Long Vowels	
اَ + اِ	a
اِ + اِ	i
اُ + اِ	u