

ACCOUNT OF THE ISLAMIC TEACHINGS ON CHILD ABUSE AND CUSTODY

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Abstract

Child abuse is generally known to be one of the social ills playing human society whether in advanced developing nations, the trend has received global notice leading to promulgation of several laws act or view to protecting and safeguarding child rights. The present paper with the Islāmic viewpoints on the issue of child abuse. It discusses Islāmic concern for human dignity generally, the phenomenon of child abuse in human environment. Islamic Principles on protection of child rights are examined and some recommendations are given for amelioration. The paper is concluded with expression that Islām has positive concern for child's personality and frowns at his abuse in any form.

Introduction

The history of human race lends credence to the fact that human nature sometimes is dominated by aggressive impulses. Invariably, this creates social disturbance that adversely affects socio cosmological orderliness. These impulses could be of selfish motives or oppressive tendencies based upon this proposition, has been popular belief that injustice is ubiquitous, and it is inextricably linked with abuse in one form or the other. As a result, human abuse is a global phenomenon that many religious bodies and international organizations have made serious efforts reduce its occurrence to a minimal level Abdul-Rahman, 12.

However, historical accounts abound to show that different kinds of human abuse are committed in terms of brutal wars, slavery, raping, exploitative means of devouring human and natural resources. Child abuse in this respect, in this aspect of human abuse that tends to receive much more attention, probably because it is the most common feature of human abuse. AbdulSalam, 12.

On this note, this would be justified and examine the Islamic points of view on child abuse. It is our hope that this approach to the topical issue of human abuse would create more awareness to the audience about the sanctity of child right and humanity in general.

Islamic Consideration of Human Dignity

The Qur'ân confirms that the purpose of human existence on earth is to play the role of vicegerence with the ultimate aim of rendering Ibādah (Worship) to Allah. Al-Ilory, 2006

﴿وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً * قَالُوا أَتَجْعَلُ فِيهَا مَن يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ * قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ﴾

Behold, Thy Lord said to the angels: "I will create a vicegerent on earth. They said: "Wilt Thou place therein one who will make mischief therein and shed blood? – whilst we do celebrate Thy praises and glorify Thy holy (name)?" He said: "I know what ye know not." (Qur'ân 2:30)

Is therefore, considered in Islām a gross human abuse to coerce human being to pay servitude to humanity or any other creatures inferior human beings. For the realization of objective, Islam strikes to at the root of any human culture that could promote it, such as prostration to human beings in greeting and blind obedience to authority at the expense of Allah's displeasure (Qur'an 9:62). Similarly, Islam lays down moral sanctions and principles that ensure peaceful co-existence and social

relationships. It enjoys Muslim to show kindness, sympathy, and extension of generosity to the kith and even near and distant neighbors irrespective of religious affiliation. (Adam, 156)

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِّنْ دِيَارِكُمْ أَن تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ
الْمُقْسِطِينَ إِنَّمَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ قَاتَلُوكُمْ فِي الدِّينِ وَأَخْرَجُوكُمْ مِّنْ دِيَارِكُمْ وَظَاهَرُوا عَلَىٰ إِخْرَاجِكُمْ أَن
تَوَلَّوهُمْ وَمَن يَتَوَلَّهُمْ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

(Quran 60: v 8-9)

The Prophet Muhammad (SAW) reported in his traditions said:

Though, Islam allows Muslims to wage war against aggressive people that threaten their existence, it however shuns against strangulation of the fundamental rights and freedom of the conquered militants and it is also regarded human abuse to kill non-combative group like Women, children hermits in their hermitage except in matter of connivance, (Assibi, 1984 73) and (Abdurl-Ralhman, 1975 p. 52).

Closely related to this point is the recognition of individual right to life, property and reputation established by the religion of Islam. Islam urges Muslim to develop and nurture the moral value of scrupulous consciences in dealing with fellow human beings, That is why the Prophet (peace be upon him) was reported to have said as cited in the Islamic literature.

I have been ordered to fight against people until they testify that there is no god to be worshipped but Allah and that Muhammad is the messenger of Allah and until they perform the prayers and pay the zakat, and if they do so, they will have gained protection from me for their lives and property, unless (they do acts that are punishable) in accordance with Islām and their reckoning will be with Allah, the exalted. (AI Bukhari and Muslim). (An Nawawi p.36-37).

It should be understood from the context of the Hadith that the Prophet was not ordered to force or kill people till they embrace Islàm. Rather, the clause “fight against people” refers to his use of moral persuasion and conviction including wisdom and good admonition to deliver the divine message as attested to in the Qur’an

ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ

(Qur’an 16: 125)

Preservation of human dignity from Islamic concept is not limited to the existence in the world. Even, after the death of Muslim, he or she should not be spoken ill of the misdeeds committed during the life. This is considered a form of human abuse by the Prophet of Islam because the deceased is in need of dividend forgiveness and mercy. Aishah (RA) reports the Hadith thus:

The Messenger of Allah said: Do not abuse the deed because they have attained that which they has forwarded (i.e. their deeds good or bad) (Riyadu Salihin). (Sahihu Buhari, vol.1. 251).

The Hadith quoted above is an indication that the concept of human abuse from Islàmic perspective is comprehensive. Simply put any act that can interfere with the welfare of the members of the society in an unfair manner is an abuse, must especially when this negatively affect the weak members such as the poor, orphan, widow, physically and mentally challenged and other of their sort. It is in this respect that we consider examining the issues of child abuse since it is one of the weak members of the society.

The Islamic Viewpoint on Child Abuse

The word “abuse” is lexicographically defined as the use of something in a way that is wrong or harmful. It also includes unfair, cruel or bad treatment of somebody and by extension, rude and offensive remarks usually made in the mood of anger (Oxford Advanced Learner Dictionary 2005). Child abuse however according to Nasir (2007, .8) is defined as the wrong use of a child especially for one’s own advantage.

Child abuse may be physical, sexual, emotional or by neglect. Physical abuse of the child could be informed of inappropriate punishment by flogging, hitting with hard objects. Sexual abuse refers to any act that could lead sexual gratification of the abuser or any form of sexual dealing with minor and major offences. (Nasir, 46) asserts that sexual abuse is far more common than is generally believed because the act is mostly shrouded in secrecy (Nasir 2007, 8). He added that risk factors for sexual abuse include single parenthood syndrome, poverty, ignorance, hawking, working in a restaurant or beer parlor, and early dating. Behavior, dropping out of the school, family or community activities. This position of Nasir is seen to correspond with that of Abdus-Salam (1995 pp. 27-33) when he states that the most recent studies suggest that children in one parent families are more prone to various forms of delinquency.

Emotional abuse though not discussed by Nasir, could be understood in terms of causing psychological assault to a child. This may take the form of giving preference to a child over one another. It was reported gifts that the Prophet(SAW) scolded the father of Nu man bn Bashir for offering gifts to some of his children without consideration of others (RiyaduSolihina, 862), By expatiation, emotional abuse could be in terms of harsh statements, torrential insults, painful mocking and sarcasm directed to a child. Though the abuser might have good intention of using them as corrective measures, they can be however counterproductive.

Abuse through child neglect includes an extreme failure to provide children with adequate shelter and medical attention, Nasir (2007,9) puts it that the incidence of child abuse clothing, food, shelter and medical attention is the most common form, as it is estimated to be about three times of physical abuse and seven times that of sexual abuse. (Nasir 56) Based on this, it is clearly stated in the Quran that children are not to be neglected. Quran established that parent's fathers especially, have the responsibilities to cater for the basic necessities of their children.

والوالدات يرضعن أولادهن حولين كاملين لمن أراد أن يتم الرضاعة وعلى المولود له رزقهن وكسوتهن بالمعروف لا تكلف نفس إلا وسعها لا تضار والدة بولدها ولا مولود له بولده وعلى الوارث مثل ذلك فإن أرادا فصلا عن تراض منهما وتشاور فلا جناح عليهما وإن أردتم أن تسترضعوا أولادكم فلا جناح عليكم إذا سلمتم ما آتيتم بالمعروف واتقوا الله واعلموا أن الله بما تعملون بصير

The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. But He shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child. Nor father on account of His child, an heir shall be chargeable. In the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear Allah and know that Allah sees well what ye do. (Q2:233)

Related to this is the uranic fact that children must not be killed for the fear of poverty.

قل تعالوا أنل ما حرم ربكم عليكم ألا تشركوا به شيئاً وبالوالدين إحساناً ولا تقتلوا أولادكم من إملاق نحن
نرزقكم وإياهم ولا تقربوا الفواحش ما ظهر منها وما بطن ولا تقتلوا النفس التي حرم الله إلا بالحق ذلكم
وصاكم به لعلكم تعقلون

Say: “Come, I will rehearse what Allah hath (really) prohibited you from”: join not anything as equal with him; be good to your parents; kill not your Children on a plea of want; we provide sustenance for you and for them; - come not nigh to shameful deeds. Whether open or secret; take not Life, which Allah hath made sacred, except by way of justice and law: Thus, doth He command you, that ye may learn wisdom. (Q.6:151).

Al Ilori (1979 50) in this respect, expresses the modern form of killing them is through abandoning the children. Particularly female by not acquiring them qualitative education. Relatively stresses that the reason for child neglect is gender, as most family prefer the boy-child at the expense of girl child, and it is common to find that female children are educationally disadvantaged and are neglected on the basis that they will bear another name after marriage; even though not Islamic (MasudOredola 148- 154).

The effects of child abuse, as observed by Nasir cannot be over emphasized. He states that sexual abuse can leave emotional scars that make it difficult to establish meaningful relationship with opposite sex in later life. Abused children are more likely to develop childhood depression. Research studies often point to the fact that abused children are more likely to grow up to be child-abusers than non-abused children. They are more likely to suffer from poor educational performance, increase health problems and low level of overall achievement. Abused children suffer from symptoms of posttraumatic stress disorder such as bed wetting or night mares and are at greater risk than their peers to suffer from allergy asthma and gastrointestinal problems (Nasir, 9).

As a matter of fact, numerous Muslim scholars have discussed in great length the rights of children in the light of the Qur'ân and Sunnah. These rights are thus seen as a guarantee against any kind of child abuse (MasudOredola, 70) while examining the issue of child rights from Islamic perspective maintains that the child's rights Act 2003 was passed into law by the National Assembly of Federal Republic of Nigeria contains some rights which are not at variance with those established by Islâm among such rights are; right to good name, education, training and sound religious upbringing, protection from sexual harassment and abuse, education of disabled or handicapped children, right to sustenance and maintenance, separate bedrooms for the genders, good examples from parents among others. He adds that section 17 of the 1999 constitution of Federal Republic of Nigeria clearly outlined the right of children and young persons to be protected against any exploitation including moral and material neglect. (MasudOredola: 2008 pp. 148 - 154).

The stand of Islâm and the view of Muslim Jurist on Child Custody and Abuse

Hadâna is derived from the word hadana', which literally means to embrace or hug. In the Shari'ah it means raising or bringing up of a child. Hadâana is a form of guardianship which women are more suitable to assume because they are more experienced in the area of looking after children, and they are generally more caring and compassionate (Oredola, 56) Muslim jurists gave preference as to who has the right to care for a child taking into consideration the interest of the child. Women are preferred over men, and within the same gender preference have been given to those who are closer to the child and who are expected to be more compassionate and merciful.

- a. Right of Women to Child Custody:
 - i. The mother unless she is unfit.
 - ii. Grandmothers: from the mother's side first and then from father's.

- iii. Sisters: Full sister, half-sister from the mother's side and then half-sister from the father's.
- iv. Aunties: from the mother's side and then from the father's.
- v. Nieces: from the mother's side and then from the father's.
- b. Right of Men to Child Custody

If none of the above-mentioned women is available or available but unfit, then *hadana* according to Oredola, 65 and Asayari becomes the right of one of the men in the following order:

- (i) The father, and then the grandfathers.
- (ii) The brothers and then their children (nephews)
- (ii) The uncles and then their children (cousins) (Oredola, 65 and Asayari 87)

Women have more right to custody of children than men. In principle, custody belongs to them, because they are more compassionate and more kind, and they know better how to raise small children, and they are more patient in dealing with the difficulties involved. The mother has more right to custody of her child, whether it is a boy or a girl, so long as she does not re-marry and so long as she meets the conditions of custody. This is according to scholarly consensus. The conditions of custody are: being accountable (i.e., an adult of sound mind etc.), being free (as opposed to being a slave), being of good character, being a Muslim if the child concerned is a Muslim, and being able to fulfill all obligations towards the child. The mother should not be married to a person who is a stranger (i.e., not related) to the child. If one of these conditions is not fulfilled and there is an impediment such as insanity or having remarried, etc., the woman forfeits the right to custody, but if that impediment is removed, then the right to custody is restored. But it is best to

pay attention to the interests of the child, because his rights come first. (Maududi, 120)

The period of custody lasts until the age of discretion and independence, i.e., until the child is able to discern what is what and is independent in the sense that he can eat by himself, drink by himself, and clean himself after using the toilet, etc. When the child reaches this age, the period of custody ends, whether the child is a boy or a girl. That is usually at the age of seven or eight. With regard to the effect of travelling on transferring custody, if the parents have separated and are disputing custody, any of the following scenarios may apply to their travelling:

1. If one of the parents wants to travel without moving, i.e., he or she intends to then the parent who is staying put has more right to the child. come back,
2. If one of them wants to travel for the purpose of settling there, and the new city or the route is dangerous, then the parent who is staying put has more right to the child.
3. If one of them wants to move and settle within the same city, and the city and the route is safe, the father has right to the child than the mother, regardless of whether the one who is moving is the father or the mother.
4. If both parents want to travel to the same place, then the mother should retain custody.
5. If the place is nearby so that the father and child may see one another every day, then the mother should retain custody. (Maududi, 123)

When the child reaches the age of independence, the period of custody comes to an end, and the period of *kafaalah* or sponsorship of the young begins, which lasts until the child reaches adolescence or in the case of girls, starts her periods. (Encyclopedia of Islām, 1978). Then the period of sponsorship ends and the child is free to make his own choices. Women's right to sponsor children.

it appears from the comments of the Muslim jurist that women have the right to sponsor children in general, and that mothers and grandmothers in particular have this right. But the scholars differed as to who has more right to sponsorship if the parents are in dispute and are both qualified to sponsor the child. The Maalikis and Zahiris view that the mother has more right to sponsorship of the child, whether it is a boy or a girl. The Hanbalis view that boys should be given a choice, but the father has more right in the case of a girl. The Hanafis views that the father has more right in the case of a boy and the mother has more right in the case of a girl. Perhaps the correct view is that the child should be given a choice if the parents are disputing and they both fulfill the conditions for sponsorship (Ibrahim Saheed, 89). Base on this information Qurān comments on this:

Let the man of means spend according to His means: and the man whose resources are restricted, let Him spend according to what Allah has given Him. Allāh puts no burden on any person beyond what He has given Him. after a difficulty, Allāh will soon grant relief. (Q65:7) Imam Shawkani comments on child custody and the roles of the parents and the guardian on child sponsorship.

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ فِيهِ الْأَمْرُ لِأَهْلِ السَّعَةِ بَانَ يَوْسَعُوا عَلَى الْمَرْضِعَاتِ مِنْ نِسَاءِهِمْ عَلَى قَدْرِ سَعَتِهِمْ
وَمَنْ قَدِرَ عَلَيْهِ رِزْقُهُ أَيَّ كَانَ رِزْقُهُ بِمَقْدَارِ الْقَوْتِ أَوْ مُضِيقٍ لَيْسَ بِمَوْسِعٍ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ أَيَّ مِمَّا أَعْطَاهُ
مِنَ الرِّزْقِ لَيْسَ عَلَيْهِ غَيْرَ ذَلِكَ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا أَيَّ مَا أَعْطَاهَا مِنَ الرِّزْقِ فَلَا يَكْفِي الْفَقِيرَ بَانَ
يُنْفِقُ مَا لَيْسَ فِي وَسْعِهِ بَلْ عَلَيْهِ مَا يَقْدِرُ عَلَيْهِ وَتَبْلُغُ إِلَيْهِ طَاقَتُهُ مِمَّا أَعْطَاهُ اللَّهُ مِنَ الرِّزْقِ سَيَجْعَلُ اللَّهُ بَعْدَ
عُسْرٍ يُسْرًا أَيَّ بَعْدَ ضَيْقٍ وَشِدَّةٍ سَعَةٌ وَغْنَى

(let those who are blessed abundantly spend from their abundant wealth). It is a law for those possess abundant wealth to extend their wealth on their wives, according to their earnings possessions) (And for those who are given very little). That is, he whose earnings is no more than buying food or somebody who is poor (lack of

financial sustenance), let him spend from Allah gives him). That is, to spend (on his household) from the little given to him by Allah, so far he does not have more than that (Allah does not impose burden on a soul except from what He gives her).

Other scholars observed the position mentioned by this researcher, in which legal custody of Child remains with the mother until marriage, is apparently the position of the Maliki followers; in the Shafi' *imadhab*, until puberty (maturity), in which case she is free to choose with which of the parents to live; in the Hanbali madhhab, it is transferred to the father upon the girl's reaching puberty (maturity). Each position should be checked by teachers of that *madhahib* (Oredola,67)

Based on the discussions above, this crystal clear that Islām, does not support child abuse in the strict sense of the word. It is depicted from Islāmic viewpoint, a taint of wickedness and moral aberration to indulge in child abuse in any case it may be.

Fairness and Gift giving by the parents to their children in Islām

Islam tells us that it is important to treat children fairly. Prophet Muhammad (SAW), said:

Fear Allāh and treat your children fairly.” (Sahihu Buhari, vol.2,173)

In relation to spending this means giving each child what he or she needs to cater for his livelihood. Another example would be if one child is getting married and the parents have arranged it, they should do the same for other children when they desire to get married. It is not permissible to show preference to one gender over the other or to one child over the others. This can lead to sibling rivalry, jealousy, and bad feelings within the family. In extreme cases, it may even lead to the breaking of family members. Some of the scholars are of the opinion that it is permissible to show preference to some children in regards to gift giving under certain specific circumstances. For instance, it may be permissible if one of them is disabled or has

a large family or is preoccupied with seeking knowledge or if there is some reason that means he or she is in need of extra financial assistance. It may also be permissible to withhold gifts or money from your children if they are engaged in forbidden actions. Ibn Uthamien, noted Islamic scholar of the 20th century said, “If a parent granted one of his children financial remuneration to fulfill a necessity, such as a medical treatment coverage, the cost of a marriage, the cost of initializing a business, etc. then such a grant would not be categorized an act of injustice and unfairness. Such a gift will fall under the right to spend in the essential needs of the children, which is a requirement that a parent must fulfill. (Ibrahim Saheed, 89)

And let not the hatred of others to you make you swerve to wrong and depart from justice. Be Just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do(Q5:8)

Islam is a religion concerned with justice and respect. It is a religion that places great emphasis on rights and responsibilities. It is a religion concerned with individual needs only as far as they do not impinge on the needs of a cohesive community. (Maududi,89). Children have certain rights, the most important being that they are able to know and love Allāh. It is the parents (caregivers and guardians) responsibility to feed, clothe, educate, and nurture the children that have come under their cares.

Recommendations

- i. Islam in a totality critically condemns the abuses of whatever Muslims owns, eat, drinks, and the children. This is the fact that children represent the future of any nation. It is on this basis that we recommended that government should continue to intensify efforts in creating more awareness about the sanctity of human right in particular.

- ii. The religious bodies have enormous roles to play in educating the congregation about leading a moral life and giving respect to the individual. Moral instructions and religious teachings are as important as other conventional discipline. The religion leaders in collaboration with government should promote the value of religious education from primary schools to tertiary institutions.
- iii. Parents, teachers and educators need to sensitize the general public about the significance of protecting child's right. This could be informed of organizing educative for a symposia and seminar and other means of reaching public awareness.
- iv. The government should lay down stringent policies and deterrent punitive measures against child abuses. It is believed that if this approach is taken by the government, the high rate of child abuse could be minimally reduced to a barest minimum.
- v. Both the Government and individual should stop human trafficking in our societies.

Conclusion

The paper, as we believe, has discussed some relevant points on the issue of child abuse. Succinctly, child abuse is revealing that it is an act of inhumanity to abuse children with food, properties, road, Islamic injunctions abhor the practice and thus, affirm basic rights which children are entitled to them. Muslim scholars are unanimous in their position that child abuse is alien to Islamic culture and civilization and that Muslims are to uphold the Islāmic guidance enshrined in the various sources of Islamic law.

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