

LEGAL RIGHTS AND RESPONSIBILITIES OF FOSTER CHILDREN :  
A COMPARATIVE STUDY.

PREPARED BY MISS M. J. ...

THE UNIVERSITY OF ...

0000019396

**LEGAL RIGHTS AND RESPONSIBILITIES OF FOSTER CHILD:  
A COMPARATIVE STUDY**

Fadzilawatey binti Mat Nassan  
(P 010218)

Perpustakaan  
Kolej Universiti Islam Malaysia

Academic Project submitted in partial fulfillment for the degree of  
BACHELOR OF SYARIAH AND JUDICIARY

Faculty of Syariah and Law  
KOLEJ UNIVERSITI ISLAM MALAYSIA  
Kuala Lumpur

GIFT / DONATION SUMBANGAN IKHLAS WITH BEST COMPLIMENTS	
FROM	Fak. Syariah & Undang-undang
DATE	2004
ACC. NO	000019396

Perpustakaan KUIM



1000012338

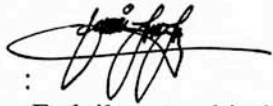
February 2004

## AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby that the work in this Academic Project is my own except for quotation summaries which have been duly acknowledge.

Date: 28 FEBRUARY 2004

Signature :   
Name : Fadzilawatey binti Mat Nassan.  
Matric number: P 010218  
Address : Lot 1665,  
Kg. Seberang Pasir Mas Salor,  
15100, Kota Bharu,  
Kelantan.

## ACKNOWLEDGEMENTS

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Firstly, grateful to Allah S.W.T and His Messenger Muhammad S.A.W with His blessings, until the writer managed to finish this Academic Project with successful. The writer made research about adopted child under title “*Legal Rights and Responsibilities of the Foster Child – A Comparative Study*”. The writers learnt and increased know ledged about this research according to Islamic Law and Custom.

Thanks a lot to Abdul Hamid bin Abdul Murad, supervisor of this research project for his continued support and guidance during the research. Thanks are due to the following deans of the faculties, Professor Abdul Samad and all staff of Faculty of Syariah and Law for co-operation.

For my brothers and sisters Che Raini and her husband, Mohd Nazri and Mohd Yusoff with their wife, Mohd Faizal, Mohd Fadzley, Noor Azliza and Mohd Azhar. Especially for my lovely parents Mat Nassan and Faridah. Thanks you very much for encouraged and giving the writer their supported to study hard, until the writer finished this academic project accurately. Thanks also for my special friend Mohd Fakhru on your supported.

The writer also wants to give appreciation to my housemate 0208, Armiwati, Asiah, Irdawatty, Rosliani, Shahidah, Siti Rohayu., Suriani, W.Aishah and Zunuraini for their cooperation. Thank you very much for all of you which cooperation and helped the writer during the research until finished this Academic Project on the time.

Finally, the writer hopes this academic project can give benefit and contribution to all students in the future.

Wassalam.

## ABSTRAK

Kajian ilmiah ini mambincangkan tentang isu pengangkatan. Ia bertujuan untuk mengenal pasti kedudukan dan tanggungjawab anak angkat terhadap keluarga angkat dan sebaliknya. Bagi melengkapkan kajian, proses pangambilan anak angkat juga perlu dikaji dan dikenalpasti samada ia selaras dengan Undang-undang Keluarga Islam atau tidak dengan berpandukan akta-akta. Hasil kajian menunjukkan isu pengangkatan ini telah berlaku sejak zaman nabi lagi di mana Nabi telah jadikan Zaid bin Harithah sebagai anak angkat beliau. Dapatan dari kajian ini juga menunjukkan keluarga yang membuat permohonan anak angkat telah berjaya menjalankan tanggungjawab yang diamanahkan dengan sempurna. Manakala anak-anak yang dijadikan anak angkat pula mendapat kasih sayang yang secukupnya daripada keluarga angkat mereka masing-masing.

## ABSTRACT

This Academic Project discussed about the adopted. Ascertain to the motive to ensure a legal right and responsibility of foster child to adopted parents and otherwise. For complete the research, processing of adopted child will be research and to be ensure either it's consistent with the family law or not, under the Adoption Act. The adopted child was has been since the period of Prophet S.A.W, which the Prophet (pbuh) adopted Zaid bin Harithah as adopted child. This researches also how the adoptive parent who can make the application of adopted child was successful in their responsibility on their adopted child. While the children who adopted child can have loving care from their adopted parents.

## ملخص البحث

يناقش هذا البحث عن التبني في ماليزيا. وغرض هذا العمل ليعلم عن حقوق المتبني وواجباته ومرتبته وعكسه. وعلاوة ذلك، يبحث عن عملية التبني من حيث تشريعه أم لا عند القانون الشخصي مع تصديق الشخصي عمال التبني حدث منذ عهد قدي وقع في الماضي، ولا شك أن التبني يقع منذ زمن الرسول صلى الله عليه وسلم بحرس زيد كالتبني. البحث أيضا يدل على أن أولياء المتبني يؤدون واجباتهم ومسؤولياتهم بالموودة والرحمة. وبذلك أيضا إلى المتبني.

## CONTENT PAGE

<b>Content</b>	<b>page</b>
AUTHOR DECLARATION	ii
ACKNOWLEDGEMENTS	iii
ABSTRAK	iv
ABSTRACT	v
<i>MULAKHAS AL-BAHTH</i>	vi
CONTENT PAGE	vii
LIST OF CASES	ix
LIST OF STATUTES	x
LIST OF APPENDICES	xi
GLOSARY	xii
ABBREVIATION	xiii
<b>BACKGROUND OF RESEARCH</b>	
Introduction of research	1
Aim of research	2
Motive of research	2
Objective of research	2
Scope of research	3
Research methodology	
i) Data sources	3
<b>CHAPTER 1: BACKGROUND OF FOSTER CHILD</b>	
1.1 Introduction	4
1.2 Meaning of Foster Child.	5
1.3 Customary Adoption.	6
1.4 Adoption in Islam.	8
<b>CHAPTER 2: LEGAL RIGHTS &amp; RESPONSIBILITIES</b>	
2.1 Who has Parental Responsibilities	11
2.2 Limits on Parental Responsibilities	13
2.3 Responsibilities of Parental	
2.3.1 Being Available for Children When Required	14
2.3.2 To love the children	14
2.3.3 To fulfill the children's Physical needs.	15
2.3.4 To fulfill the children's emotional, intellectual & Social needs.	15
2.3.5 To take care of themselves.	16

2.4	The Rights of Parents and Children in Islam.	16
2.4.1	The protection of the Lineage	16
2.4.2	The prohibition of Legal Adoption.	17
2.5	Parental Rights and Duties.	19

### **CHAPTER 3: PROCEDURE AND JURISDICTION**

3.1	Initiating adoption procedure.	21
3.2	The procedure	23
3.3	Judicial procedure and hearing	
3.3.1	Notice	25
3.3.2	Investigation	26
3.4	Adoption, legitimacy and legitimating	27
3.5	Statutory Adoptions	
3.5.1	Adoptions Act 1952 – Peninsular Malaysia.	30
3.5.2	Adoption Ordinance – Sarawak.	32
3.5.3	Adoptions Ordinance 1960 – Sabah	33

### **CHAPTER 4: CONCLUSION**

	Conclusion and Recommendation	35
	Examples of Cases	40

	BIBLIOGRAPHY	43
	APPENDICES	46

**LIST OF CASES**

	<b>page</b>
Jainah binti Semah v Mansor bin Imam Mat & Anor [1951] MLJ 62.	7
Shariffa Ummi lwn Mas Poet [1949] SCR 5.	33
Tan Kui Lim & Anor v Lai Sin Fah [1980] 1, MLJ 222.	40
T.P.C v A.B.U & Anor [1983] 2 MLJ 79.	41

**LIST OF STATUTES****Page**

Adoption Act 1952 (Revised 1981)	1,5,23,27,28,30
Adoption Ordinance Sabah 1960	33
Age of Majority Act 1971	5,32
Chapter 91 of the Laws of Sarawak 1958	32
Children Act 1989	11,12
Domicile & Matrimonial Proceedings Acts 1973	20,
Inheritance (Family Provision) Act 1971.	1,37
The Registration of Adoption Act 1952.	36,37

**LIST OF APPENDICES****page**

Appendix A: The application of the foster child form. (The questions)	46
Appendix B: List of welfare homes.	47
Appendix C: The questions normally asked regarding adoption of a foster child.	48
Appendix D: Frequently asked questions regarding adoption.	49

**GLOSARY OF TERM**

- Adoption** : Becoming a parent through a legal and social process rather than through a biological one.
- Al-Quran:** : The Holy book Revealed by Allah s.w.t to Prophet applied in Malaysia.
- Ayah** : Signs (burhan)
- Ayat** : Plural of ayah, verses of the Quran.
- De facto** : The reality
- Hadith** : The traditional of Prophet Muhammad s.a w.
- Hukm** : Legal rule.
- Islamic Law** : The laws of Islam as provided for administered .
- Jahiliyyah** : Ignorance, i.e, the period before Islam embraced by the Arabs.
- Messenger** : Arabic “Al-Rasul”, the prophet.
- Syarie** : Legally recognized by the shariah.
- Surah** : Chapter of the Quran, the number preceding colon denotes after the chapter number while the numbers after the colon denotes the verses number.

**ABBREVIATION**

Ed	: editor / edition edited by
KUIM	: Kolej Universiti Islam Malaysia
MLJ	: Malayan Law Journal
n.a	: no author / no artist
n.d	: no date / no year
N.pl	: no place
n. pb	: no publisher
P	: page
Pbuh	: peace be upon him
Pp	: pages
Prof.	: professor
S.A.W	: Salla Allah alyh Salam. It is compulsory for a Muslim to utter this blessing whenever he hears the prophet Muhammad's name being mentioned.
Sec.	: Section
S.W.T	: Subhanahu wa Ta'ala
Trans.	: Translator / translated by
Vol.	: Volume
Writ.	: Written by

## **BACKGROUND OF THE RESEARCH**

### **Introduction of research**

Based on section 2, Adoption Act 1952 (Act 25) a child is defined as an unmarried person under the age of 21 and includes female under that age who has been divorced. While for male, he has to be below 21 years of age and unmarried.

According to the Concise Oxford Dictionary, to adopts means to take (person) into a relationship he did not previously occupy, especially as one's child. Based in English Family Law, adoption is recognized as the process whereby a court exiting wishes the parental links between a child and his natural parents, and creates analogous links between him and the adopter.

In the Inheritance (Family Provision) Act 1971 defines son and daughter to include a male or female child adopted by the deceased under the provision of any written law relating to the adoption of child for the time being in force. Acknowledgement of the parent of a child of unknown parentage as his or hers naturally differs from foster child, which is the taking of a child of a known or unknown parentage, but known for sure not to be his or hers, as his or hers own child.

Foster child was widespread among the Arabs before Islam and remained valid during the early days of Islam until it was prohibited under the Quranic edict.

*“Nor hath He made those whom ye claim to be your sons. This is a saying of your mouth...proclaim their real parentage. That will be more equitable in the sight of God. And if ye known not their fathers, then (proclaim them) your brethren in faith and your clients”. (Surah Al-Ahzab 33: 4-5).*

### **Aim of research**

To give more confidence for a foster child to live with his/her foster family as to his/her status. They also can get privileges, for example education, shelter, love, and affection and a better future from her foster family with the other sibling.

### **Motive of research**

To better ascertain and understand the Legal Rights and Responsibilities of a Foster Child.

### **Objective of research**

1. To know the definition of a foster child.
2. To expose the procedure of adopting a foster child and what are the conditions attached to the procedure.
3. To educate all foster families on the privileges that should be given to a foster child.

## **Scope of research**

The scope of the study that the researcher wishes to explain is “*Legal Right and Responsibilities of the Foster Child*”. What are the rights and responsibilities of the foster child to his/her foster family?

All potential foster parents must know the procedure of adopting a foster child and what are the conditions that must be fulfilled, who may apply for an foster child order and who may be adopted. Those issues can be raised and discussed detail with comparison under Islamic and Civil Law and explained by case-law study.

## **Research Methodology**

### **i) Data Sources**

The researcher wishes use both sources primary and secondary sources. Which the researcher go to library especially National Library. The researcher also looks at the past thesis for references and also the Internet to search any article and journal on the topic. For the procedure, the researcher will go to the Registration Department to research on the procedure in adopting a foster child by foster family. Information obtained from them is important for this research.

# CHAPTER ONE

## CHAPTER 1:

### BACKGROUND OF FOSTER CHILD

#### 1.1 Introduction

Ordinarily adoption is a judicial process, requiring a hearing before a judge of a competent jurisdiction. In some states, however, an exception is made in the case of a father wishing to ‘*adopt*’ an illegitimate child. In these jurisdictions a father may adopt an illegitimate child merely by publicly acknowledging that the child is his own, without being required to go through extended judicial proceedings.

As in the case of marriage, divorce and other aspects of family law, state or territorial law rather than federal governs adoption practice. As adoption almost always involves the preparation of legal documents, as well as a formal hearing in court, the advice and service of a competent attorney is usually essential.<sup>1</sup>

The most famous orphan in Islamic culture is, without doubt, the Prophet Muhammad, peace be upon him. His father died before he was born and by the time he was eight he had lost both his mother and the grandfather who named him. His uncle Abu Talib who continued to be his protector until his own death, when Muhammad was an adult of almost fifty years of age subsequently raised him.

---

<sup>1</sup> Morton L. Leavy & Roy d-Weinberg. 1997. *Law of Adoption..* New York. p v.

When Muhammad's wife Khadijah gave to him a slave named Zaid, Muhammad freed the boy and raised him as if he were his own son. The importance of taking homeless children to care for them is well established in Islam. Given these facts, it is somewhat startling to hear Muslims assert that adoption is prohibited in Islam. The confusion is over the precise definition of term adoption. We shall seek to clarify the issues here.<sup>2</sup>

## 1.2 Meaning of Foster Child

According to the section 2 in Adoption Act 1952 (Act 25), a 'child' means an unmarried person under the age of 21 and includes a female under that age who has been divorced. For a male to come within this definition of 'child', he has to be below 21 years of age and unmarried. The male, who is below that age but is divorced, does not come to definition.

Under the Age of Majority Act 1971, a person who has attained the age of 18 years is considered an adult or one who has attained the age majority. It may be appropriate therefore for the maximum age limit of 21 years in the definition of a 'child' in the Adoption Act to be reduced to 18 years.<sup>3</sup>

Based to the *Concise Oxford Dictionary*,<sup>4</sup> to adopt means to 'take (person) into a relationship he did not previously occupy, especially as one's child'. In English Family Law, adoption is recognized as the process whereby a court extinguishes the parental links between a child and his natural parents, and creates analogous links between him and the adopters. A court order necessary for each adoption and a mere agreement whereby a parent seeks to transfer his rights and duties to someone else is

<sup>2</sup> <http://www.centralmosque.com/fiqh/adoption.htm>. the Islamic View of Adoption & Caring for Homeless Children. Imad-ad-Dean Ahmad. PHD. n.d.n.p.

<sup>3</sup> Mimi Kamariah Majid. 1999. *Family Law in Malaysia*. Malayan Law Journal. 3rd edition. p.227.

<sup>4</sup> *ibid.* p.217.

ineffective for this purpose.<sup>5</sup> In the same way, *de facto* assumption of parental rights over a child is ineffective to vest parental rights and duties in those who have put themselves in *loco parent is* to the child.<sup>6</sup>

In Malaysia, adoption may either be *de facto* or customary, or in accordance with statute. Peninsular Malaysia has the Adoption Act 1952,<sup>7</sup> whilst Sabah has the Adoption Ordinance 1960,<sup>8</sup> and Sarawak the Adoption Ordinance.<sup>9</sup>

### 1.3 Customary Adoption

There is no adoption according to the Islamic Law. If a man adopts a son or a daughter, the law does not confer on the adopted child the status or rights of a natural son or daughter. According to the Quran, if a person is not someone's real son, he does not become his natural son merely by virtue of a declaration.<sup>10</sup> It was the practice of the *jahiliyyah* before the coming of Islam that a person would adopt someone's child as his own. By doing so, the real heirs to the property of a man were deprived of their shares. This adjusts and indeed is an unfair practice and was a great departure from the Islamic Law.<sup>11</sup>

In Malay community, customary adoptions prevail where a couple may adopt a child and may proclaim that the child is a son of or the daughter of the male spouse of the couple who adopts him or her. Despite this, the links between the child and his natural parents are never severed. A Muslim girl still needs to obtain the consent of her natural father as her *wali*, or guardian for marriage, before she gets married, unless of

<sup>5</sup> SM Cretney. 1979. *Principles of Family Law*. 3<sup>rd</sup> edition. p.531.

<sup>6</sup> *Ibid.p.*

<sup>7</sup> Act 257

<sup>8</sup> No 23 of 1960

<sup>9</sup> Chapter 91 of the Laws of Sarawak 1958.

<sup>10</sup> NJ Coulson. 1971. *A History of Islamic Law*. p.157.

<sup>11</sup> Abdul Rahman I Doi. 1984. *Shari'ah: The Islamic Law*. p. 463.

course, one of the exceptions to this requirement apply. Similarly, a Malay Muslim girl will always be considered as not belonging to the same *muhrim* as her adoptive father.

In *Jainah binti Semah v Mansor bin Imam Mat & Anor*,<sup>12</sup> the High Court recognized that the practice of adoption exists among the Malays of central Pahang and regarded it as part of their personal law. The plaintiff and her husband had adopted the husband's niece and raised her from birth until the age of 11 years. The adoptive father died and shortly afterwards the natural father took the child away by force from the adoptive mother. The child thereafter lived with her paternal grandfather. The objection had actually arisen from the grandfather who obviously did not approach of the plaintiff's wish to shift to her native Terengganu, where her relatives were, taking the child with her. The High Court had to settle the issue of whether the adoption was a legal one and, if so, what was the position where the adoption father had died and the blood relatives were competing with the adoption mother for the custody of the child.

After being satisfied that the customary adoption was lawful, the court ruled that when a married couple adopts an infant, the adoption must, in the nature of things, be by the couple jointly. It is not revoked by the death of the adoptive father, if the adoptive mother survives. If it is revocable at all the rights should vest in the natural parents and not the child's grandfather. The plaintiff was awarded the custody of the child with the condition that the plaintiff shifted to Terengganu to live with her own family.<sup>13</sup>

---

<sup>12</sup> (1951) MLJ 62.

<sup>13</sup> Mimi Kamariah Majid. 1999. *Family Law in Malaysia*, Malayan Law Journal. New York. p.217.

## 1.4 Adoption in Islam

Adoption of a child has no legal effect in *Shariah*. One can adopt a child for his emotional and psychological satisfaction. He can treat him as his own son in the matters of love, affection and general behavior. Adoption of a child to provide shelter to him is a virtuous deed, which carries much reward in the Hereafter. But so far as the legal aspects are concerned, adoption has no consequence.

The child should not be attributed except to the natural father, and not to the one who has adopted him. Even in the matter of *hijab* adoption has no effect whatsoever. If a male child is adopted by a woman, she will observe *hijab* from him after he reaches the age of puberty, unless she is related to him adoptive parents, because she is not his real sister. In short, adoption does not create a new legal relationship, which did not exist before.

All these rules are inferred from the principle laid down by the Holy Qur'an in this respect. The people in *jahiliyyah* used to treat an adopted child as the real one in all respects. The Holy Qur'an condemned this practice and the following verses were revealed. Based on Surah Al-Ahzab 33: 4,

*“And Allah did not make your adopted children your sons. That is only your words coming out from your tongues. And Allah says the truth and he guides you to the right path. Call them with reference to their (real) fathers. It is more just in the sight of Allah.”*<sup>14</sup>

---

<sup>14</sup> Al-Quran. Al-Ahzab 33 : 4.

According to the Qur'an, if a person is not someone's real son, he does not become his natural son merely by virtue of a declaration. There is no legal adoption in Shariah (Islamic Law). It is *haram* (prohibited) for a person to legally adopt a son or a daughter of whom he is not the natural father. If a person adopts a son or a daughter, the shari'ah will not confer on the adopted person the status or rights of a natural son or daughter.

However, it should be remembered that although an adopted child cannot inherit from his adoptive father, but it is permissible, rather advisable, for him that he, in his lifetime, makes a will in favour of his adopted son. Through such a will he can bequeath up to one third of his property to his adopted child who cannot otherwise share his inheritance.<sup>15</sup>

The Islam form of "adoption" is called *kafala*, which literally means sponsorship, but comes from the root word meaning "to feed." If "legal fostering" in Islam requires fulfilling these parental duties, in the same way as a father would do for his son," then how does it differ from legal adoption as understood in the United States? There are three significant differences, denial or acknowledgement of identity by blood lineage, inheritance and implications for the possibilities of marriage partners.

Under Islamic law and in some states first cousins may marry, but under neither law could a father marry his daughter. Under Islamic law a man may not marry his son's ex-wife, but he may marry his adopted son's ex-wife. This fact does not mean that adoption is illegal; it only means that a legal system that imposes a prohibition on marriage to the ex-wife of an adopted son is imposing an additional constraint beyond that imposed by Islamic law.

---

<sup>15</sup> [http://www.albalagh.net/qa/child\\_adoption.shtml](http://www.albalagh.net/qa/child_adoption.shtml), Adoption In Islam. Justice Mufti Taqi Usmani..

The issue of inheritance may be dealt with briefly. In most American states, an adopted child has the same automatic rights of inheritance is not automatic but needs to be specified in the will. American law recognizes the validity of wills that specify an inheritance distribution based on Islamic law. So, this constitutes no objection to adoption by American Muslims.<sup>16</sup>

---

<sup>16</sup> [http:// ww central mosque.com/fiqh/adoption.htm](http://ww.centralmosque.com/fiqh/adoption.htm).the Islamic View of Adoption & Caring for Homeless Children. Imad-ad-Dean Ahmad.PHD.n.d.n.p

# CHAPTER TWO

## CHAPTER 2:

### LEGAL RIGHTS AND RESPONSIBILITIES

Parenthood is the most popular career in the world. Parents outnumber teachers, farmers, doctors, salespeople or any other group of workers. Not everyone views parenthood as a career, but doing so makes sense.

Parenthood also demands commitment an irreversible one. It involves many responsibilities, the biggest of which is helping a child become a mature, responsible adult. Parenthood presents new challenges everyday and offers the rewards of joy, pride and contentment.<sup>17</sup>

#### 2.1 Who has Parental Responsibilities

According to the section 2 in the Children Act 1989 about parental responsibilities for children. There are: -<sup>18</sup>

- 1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.
- 2) Where a child's father and mother were not married to each other at the time of his birth: -
  - a) The mother shall have parental responsibility for the child.
  - b) The father shall not have parental responsibility for the child, unless he requires it in accordance with the provisions of his Act.

---

<sup>17</sup> [http:// ww central mosque.com/fiqh/adoption.htm](http://ww.centralmosque.com/fiqh/adoption.htm).the Islamic View of Adoption & Caring for Homeless Children. Imad-ad-Dean Ahmad.PHD.n.d.n.p.

<sup>18</sup> Section 2,Children Act 1989.

While, based on section 3 in the Children Act 1989, it is meaning of “parental responsibility” where a person who: -

- a) Does not have parental responsibility for a particular child, but
- b) Has care of the child.<sup>19</sup>

Parental responsibility calls the rights, duties, powers, responsibilities and authority, which by law a parent of a child has in relation to the child and his property. Based on the section 3 of the Children Act 1989 is a key concept of the 1989 Act and its importance is emphasized by the fact that the Act makes it easier for unmarried fathers to acquire parental responsibility. The emphasis is on continuing parenthood and fathers whether married or not, are encouraged to assume responsibility for their children.

However, the amount of parental involvement allowed him will ultimately be left to the discretion of the court. The overriding principle in the exercise of the discretion being that welfare of the child is paramount. In section 1 of the Children Act 1989, also acquisition of any legal status it, of course dependent on paternity being established if there is a dispute. There is no presumption of parentage from cohabitation.<sup>20</sup>

The Act has replaced parental rights and duties with parental responsibility. Although the definition of parental responsibility on the section 3(1) is the very similar to the definition of parental rights, the change is more than just a semantic one. Where families are receiving services from the local authority, or have a child who is being looked after by the authority.

---

<sup>19</sup> M.E.Rodgers. 1998. *Blackstone Family Law Cases and Materials*., Press Limited: p.10.

<sup>20</sup> Chris Barton and Mary Hibbs. *Family Law Question & Answer*. 2<sup>nd</sup> edition: p.11.

The recognition that parents have continuing responsibility for their children should help professionals working with those families to see their role as helping people to meet their responsibilities. The term 'person with parental responsibility' appears throughout the Act, sometimes together with and sometimes in place of the term 'parent', from which it must be distinguished. It is important to be clear who is a parent and who has parental responsibility, and whether or not any court or local authority restrictions have been placed on the exercise of parental responsibility.

## **2.2 Limits on Parental Responsibility**

Several people can have parental responsibility for the same child at the same time. Usually this would be two parent, but if other people have acquired parental responsibility there may be three or more people who have it in section 2(5) and section 2(6) of the Children Act 1989, apply to: -

- a) Where a particular piece of legislation requires consent for an action, for example, both parents with parental responsibility need to give their consent.
  
- b) Where an order is in force under the Act, exercise of parental responsibility should not be incompatible with the order. For example: if a residence order has been made on divorce in favor of the mother, then the father, although retaining parental responsibility should not do anything that will undermine that residence order.<sup>21</sup>

---

<sup>21</sup> Mary Ryan. 1989. *The Children Act*, Putting it into Practice. p.11.

## **2.3 Responsibilities of Parenthood**

As we know the responsibilities of parenthood are very important career in the world. It can bring harmony to their families. Parent-child relationships are not based on an equal give and take basis. Parents must give their love freely and constantly to their children.

The responsibilities of parenthood are: -

### **2.3.1 Being Available for Children When Required**

The first responsibility of being a parent is deciding that you want children and deciding that you are ready to have children. Every child deserves the right to be wanted and loved. They also deserve to receive proper care and guidance. Children have these rights only when their parents have accepted the responsibilities of making rational decisions about if and when to become parents.<sup>22</sup>

### **2.3.2 To Love the Children**

Children need lots and lots of love. Parental love should be given freely and constantly to each child without any strings attached. Children need to know that they are loved for who they are, for their own special qualities. The knowledge that they are loved gives children a sense of security. Where, it helps them feel good about themselves and develop self-confidence.

---

<sup>22</sup> *ibid.*14.

While, in parent child relationships, parents do most of the giving and children do most of the talking. For the example: parent child relationships are not based on an equal give and take basis. The fact that children are basically selfish is not their fault. It is simply a developmental fact. Children are busy learning skills like walking, talking, reading and writing. It isn't until later in life that humans develop enough emotional maturity to give more than they receive.<sup>23</sup>

This is one reason why young people are often encouraged to delay parenthood. Being able to give is a basis trait of competent parents. They give their love as well as much of their time, energy, money and other resource to their children. At the same time, they expect very little in return.

### **2.3.3 To Fulfill the Children's Physical needs**

Parents have the responsibility of seeing that their children's physical needs are met. These include shelter, food, clothing and medical care. All necessary are need to give and take care for their children although the foster child, because all of them are responsibilities of parental and it must obligatory for parenthood.<sup>24</sup>

### **2.3.4 Fill the Children's emotional, intellectual, and social need**

Physical needs are usually easier to identify, but emotional, intellectual, and social needs are just as important in the overall development of children.

---

<sup>23</sup> *ibid.*11.

<sup>24</sup> *ibid.*

Parents take a big step toward the fulfillment of their children's emotional needs when they offer loving care and attention. Parents have a great influence on their children's motivation to learn. Parents have many "teachable moments" in the home. Parents also become role models for their attitudes their children develop about achievement and intellectual goals.

To help children meet their social needs, parents should give their children opportunities to interact with other people. Through such interactions, children learn valuable lessons in sharing, communication and compromising.

### **2.3.5 To Take Care of Themselves**

Parents have the responsibility of taking care of themselves so they can take care of their children. Children need all the nurturance they can get. Parents can give that nurturance only when they feel good, both physically and emotionally.<sup>25</sup>

## **2.4 The Rights Of Parents And Children In Islam**

### **2.4.1 The Protection of the Lineage**

The child is an extension of his father and the bearer of his characteristics. During his lifetime he is the joy of his father's age, while after his death the represents a constitution of his existence and an embodiment of his immortality. He inherits his features and stature as well as his mental qualities

---

<sup>25</sup> Verdene Ryder. 1987. *Parent & their Children*. p.14.

and traits, both good and the bad, the beautiful as well as ugly, from his father. The child is a part of his father's heart and a piece of his body.

Allah (s.w.t) has ordained marriage and has forbidden adultery so that paternity may be established without doubt or ambiguity and that the child may be referred to his father and the father to his sons and daughters. Through marriage woman is reserved for one man, it is *haram* for her to be unfaithful to him or to let anyone else have access to what belongs exclusively to him. Thus, every child born to her in wedlock will be her husband's child, without any need for recognition or public proclamation of the deed by him a corresponding claim on the part of the mother. "*The child is attributed to the one on whose bed it is born,*" (Reported by al-Bukhari and Muslim. Literally: "*The child belongs to the bed*"). Declared the prophet of Islam (pbuh).

#### **2.4.2 The Prohibition of Legal Adoption**

Just as it *haram* for a man to deny his paternity of a child born to his wife in wedlock, it is likewise *haram* for him to legally adopt a son of whom he is not the natural father. Like peoples of other societies during the course of history, the Arabs of *Jahiliyyah* used to add anyone they wished to their lineage and family through adoption. Before the advent of Islam, the Prophet (peace be on him) had himself adopted Zaid bin Harithah, who had been captured as a child during one of the raids on his tribe, which were common occurrences during the period of jahiliyyah. The Prophet adopted Zaid after his marriage to the Khadijah. When Zaid's father and uncle, they came to the Prophet (pbuh) to demand Zaid's return. The Prophet gave Zaid a choice, and he chose to stay with the Prophet in preference to his father and uncle. The prophet then set him free and adopted him as his son in the presence of others. Thereafter, he called Zaid bin Harithah and became the first of the freed slaves to accept Islam. Now what is the judgment of Islam concerning such a system of

adoption? Islam rightly views this sort of adoption as a falsification of the natural order and of reality.

More ever, the adopted son acquires a claim on the inheritance of the man and his wife, depriving the rightly, deserving relatives of their inheritance. That is why the Qur'an abolished this jahiliyyah system, prohibiting it totally and eradicating all its consequences. According to Surah al-Ahzab 33: 4 - 5.

*Says Allah Ta'ala: Nor has He made your adopted sons your (real) sons that are simply a saying of your mouths. But Allah speaks the truth, and He guides you to the (right way). Call them by (the names of) their father's that is more just in the sign of Allah. But if you do not know their fathers, they are your brother in-faith and your wards.<sup>26</sup>*

Let us ponder the Quranic, this signifies that the declaration of adoption consists of words having no corresponding objective reality. A mere pronouncement does not change realities, alter facts, or make a stranger a relative or an adopted individual a son. A mere verbal expression or figure of speech cannot make the blood of a man run in the veins of the adopted son. Produce feelings of fatherly affection in the man's heart or filial emotions in the heart of the boy, or transfer either the genetic characteristics or physical mental or psychological traits.<sup>27</sup>

Islam abolished all the effects of this system of adoption, which relate to inheritance and to prohibition of marriage to the widowed or divorced wife of the adopted son. In matters of inheritance, the Quran does not recognize any

---

<sup>26</sup> Al-Quran. Al-ahzab: 4-5.

<sup>27</sup> Internet: The Rights of Parents & Children in Islam.

claim except those based on relationship through blood and marriage. “*But blood relatives are never to each in the ordinance of Allah.*”<sup>28</sup>

With regard to marriage, the Quran declared that only the wives of one’s real sons, “*The wives of your sons who are from you (own) loins*”,<sup>29</sup> not the wives of the adopted sons, are permanently forbidden in marriage. Accordingly, it is permissible for a man to marry the divorced wife of his adopted son, since she has been in actually, the wife of a ‘stranger’ not related by blood.

## 2.5 Parental Rights And Duties

Adoptions order which vests parental rights and duties relating to a child in the adopters. The adoption order the child becomes the child of the adopters who acquire all the rights and duties of a natural parent or parents. The adoption also order extinguished any parental right and duty relating to a child which is vested in a person (not being one of the adopters) who was a parent or guardian of the child immediately before the adoption order. It also order is a final order. It cannot be revoked or varied.

The effects and implications are not as final and complete as an adoption order: -<sup>30</sup>

- I. **Relationship** – The relationship between the child and its adopters is that of natural parents and their natural child, and continues throughout the life of the parties.

---

<sup>28</sup> Al-Quran. Al-Anfal 8:75

<sup>29</sup> Al-Quran. An-nisa’ 4:23

<sup>30</sup> Nasreen Pearce. 1986. *Custodianship: the Law & Practice*, 1st published: p.9.

- II. **Domicile** – According to the section 3, on the Domicile and Matrimonial Proceedings Acts 1973 means the adopted child acquires and retains that domicile until he or she attains the age of 16.
- III. **Nationality** – An adopted child takes on the nationality of the adoptive parents or male adopter, is a citizen of the United Kingdom the child becomes a citizen of the United Kingdom from the date of the adoption order.<sup>31</sup>
- IV. **Change of name** – The adoptive parents may choose a forename for the child, which is different to that which appears on the birth certificate. If it is intended to change the name a request for this is made on the originating summons. The child also assumes the surname of the adoptive parents.

**Consent** – on an application for an adoption order the natural parents have to give their consent to the adoption. The consent must be given voluntarily subject to the court's powers to dispense with consent.<sup>32</sup>

---

<sup>31</sup> Section 19 Adoption Acts 1958.

<sup>32</sup> Nasreen Pearce. 1986. *Custodianship: the Law & Practice*, 1st published: p.10.

# CHAPTER THREE

## CHAPTER 3:

### PROCEDURES OF ADOPTION

0000019396

#### 3.1 Initiating Adoption Procedures

The process of adoption begins by filing in the proper court a formal document known as petition. In some states a written agreement of the adoption must filed with the petition. The petition is signed by the person seeking to adopt and sets forth appropriate information respecting the child, its natural parents, and the adopting parents, and requests the court to approve the adoption. It may so include a request for a change of the child's name, if this should be desired.

The states statutes usually indicate specifically what information should be included in the petition. While these statutes vary in detail, the information generally required is as follows: -

#### **As to the child: -**

- a) Name, residence and age or date of birth.
- b) A description of property, if any possessed by the child.
- c) If the child is in custody of an agency or organization, a statement as to how such custody was acquired.
- d) If a guardian has been appointed in place of the natural parents, his name and address is usually required.
- e) In addition, many state require information as to sex, race, religion, place of birth, length of time the child has resided with the adopting parents, how the child came to their home and so on.

**As to the Natural Parents: -**

- a) Name and residence, and perhaps additional information as to race, religion, marital status and so on. In many states, however the name and address of the father need not be stated if the child is illegitimate.

**As to the Adopting Parents: -**

- a) Name, age, residence and marital status.
- b) In many states, information as to race, religion, financial resources, employment and other sources of income. In some states, certain consents must be filed with the petition. In addition, documents concerning guardianship, relinquishment of rights of natural parents, commitment of child to agency or institution, and similar matters, may also have to be presented with the petition.

Being a legal document, the petition should be prepared by the attorney handling the proceeding for the prospective adopters. He has to be conversant with the proper procedure and be able to advise his clients with respect to information required to be included under the particular state law.

The consent of certain parties must be obtained before an adoption may be approved. While, here again, the various state laws differ in detail, the general classes of persons whose consents are required are much the same in all states. These fall into three separate groups: -

- a) The child – if deemed old enough to give consent.
- b) The natural parents unless for good reasons, this consent may be dispensed with.
- c) If the natural parents are dead, or their consent of the guardian, next of kin, “next friend” appointed by the court or authorized agency to which the child has been surrendered.<sup>33</sup>

### 3.2 The Procedure

To adopt a child is a very commendable thing to do. Islam does not prohibit adoption of a child. Two ways in which a child can be adopted: -

- a) To adopt a child during his suckling age so that he can drink the milk of the mother who has adopted him. In this case, the child will be her foster son and there will be no difference between him and the mother’s real children in any manner. He will possess the same rights in all affairs. For example, inheritances as the real children possess.
- b) To adopt a child when he is past his suckling age. In this case, he of course will not be the son of the parents who have adopted him in the legal sense. He will be called by the name of his previous father. The parents who have adopted him can of course address him as ‘son’. The child will consequently not inherit their wealth after them, unless of course they make a will in his favor.

---

<sup>33</sup> Morton L. Leavy & Roy d. Weinberg. 1979. *Law of Adoption*. 4<sup>th</sup> edition: New York. p.21.

According to the section 4(4)(b), the applicant has to inform the Social welfare Department of the State in which he is for the time being resident, of his intention to apply for an adoption order in respect of a child at least three months before the date of the adoption order. The notification has to be in writing. The application for an adoption order is to be presented in duplicate to the court on the prescribed form accompanied by any documents required by the said form.<sup>34</sup>

Generally, when the application and documents earlier mentioned are lodged, the attendance of the application in person is not necessary. According to the Adoption Rules 1955, all documents filed in the court must be confidential and be kept secret by the registrar of the court.

When the application is made to the court for an adoption order, the court will appoint a guardian *ad litem* of the child in respect of whom the application is made. When the appointment is made, the duplicate of the form mentioned in section 11(1) will be delivered to the guardian *ad litem*.<sup>35</sup> The respondents to the application are: -

- a) The child in respect of whom the application is made.
- b) The guardian *ad litem* of the child.
- c) Every person who is a parent or guardian of the child or who is liable to contribute to the support of the child, and
- d) Where the applicant has a spouse who is not an applicant, the spouse of the applicant.

---

<sup>34</sup> Mimi Kamariah Majid. 1999. *Family Law in Malaysia*. , Malayan Law Journal Sdn.Bhd,3<sup>rd</sup> edition: p.233.

<sup>35</sup> Section 11(1), Adoption Act 1952(Act 25).

As soon as the guardian *ad litem* has been appointed, the court will fix a time for the hearing of the application, and will issue a notice in the prescribed form addressed to the respondents.

An adoption order or an interim order cannot be made, except after the personal attendance before the court of the applicant and all the respondents, notwithstanding that written consent has been obtained from any of the respondents. Thus, if the natural parents of a child have given a written consent to the adoption of their child, the court will still require that they be present. Only three exceptional situations are provided for where personal attendance may be dispensed with by the court. They are:

- a) In the case of the child, if the court is satisfied by the report from the guardian *ad litem* that special circumstances exist, which renders it inexpedient or unnecessary that, the child should personally attend before the court.
- b) In the case of any other respondent, if the court is satisfied that the respondent cannot be found or is incapable of giving consent, or
- c) For any reason which the court may deem sufficient.<sup>36</sup>

### **3.3 Judicial Procedure And Hearing**

#### **3.3.1 Notice**

After the petition has been prepared and filed in court, notice of the adoption proceeding must be given. The question of notice is a highly technical one, and while the statutes of the various states differ considerably, as a general rule notice should be given to all persons whose consent is deemed necessary.

---

<sup>36</sup> *ibid.* Sec.12(1).