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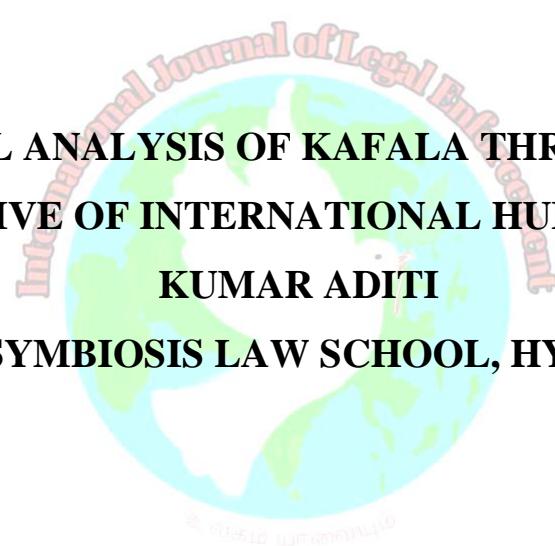
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“Dharma is to protect the Needy”

**CRITICAL ANALYSIS OF KAFALA THROUGH THE
PERSPECTIVE OF INTERNATIONAL HUMAN RIGHTS**
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ABSTRACT

“In literal terms, Kafala means 'sponsorship,' which hales from the root word meaning ¹to feed”. *“If translated most accurately would come out to mean legal fostering/foster parenting”*.²

Islam's dictates mostly considered adoption as something practiced and attracted towards the western world and undoubtedly alien to Islam. This view precisely has held to be conventional wisdom equally by both Muslims as well as non-Muslims. This further tends to scorn the implications and sophistication of both Islamic dictates and western law. “Gradually bypassing years, the rise in the Muslim population has been quite mushrooming in the west.”³ The adoption rights activists who already struggled enough to find out the cause of difficulty magnate around this binary face by prospective adoptive parents and few children. Now that there is an increase in the population figure, it certainly brings out the urgency to tackle the issue. “There are also groups of Muslim populations who wish to adopt children via jurisdictions governed by Islamic laws.”⁴

INTRODUCTION

Along with the rise of such urgency to tackle the issue it also came with additional challenges in Muslims' context, apart from all the other persisting challenges, which resulted in the actual perceived conflict with the Islamic dictates. The sources of tension between the two systems can be pondered upon briefly, appearing in categorical distinctions.

Firstly, amongst adoption, such as traditional or closed adoption of the Muslims, open adoptions, and the kafala system. Traditional or closed adoption runs the

¹ Imad-ad-Dean Ahmad, ‘The Islamic View of Adoption and Caring for Homeless Children’ in Adoption Fact Book III (Washington: National Council for Adoption 1999).

² Ibid

³ Islamic Law, Adoptions And Kafala, November 6, 2012, The Jurist (At Jurist.Org) <https://www.jurist.org/commentary/2012/11/faisal-kutty-adoption-kafalah/>

⁴ <https://web.archive.org/web/20130719080929/http://www.kafala.fr/la-kafala>

procedural aspect of adopting the Islamic rule besides emphasizing lineage. Accordingly, “Islamic jurists stand unanimous in their decision to adopt in the manner mentioned above adoption as violating Islam's norms.”⁵ To consider such religious restrictions imposed via the system of guardianship model known as the Islamic jurists to work around accordingly devised 'kafala.' Some parts of the west have recently begun to gain increasing traction due to their championing in open adoptions by replacing closed adoptions, which started to bring significant concerns and setbacks. There has been some recent development both in the context of adoption and Islam out of which one of the decisions given in a case by the ECHR can partially be taken forward as being at the cusp of a sea change in the area. The case is of “Harroudj vs. France”⁶ where the decision given by the European court of human rights on 4th of October in the year 2012 laid some key guidelines in the context of Islamic adoption in respect to intercountry adoption.

With respect to intercountry adoption “Article 370-3, Para 2, of the civil code, inserted by the law of 6 February 2001 on intercountry adoption, stipulates: ‘adoption of a foreign minor may not be ordered where his/her personal law prohibits that institution, unless the minor was born and resides habitually in France’.”⁷

The case in its judgment held that the “kafala system preserves the child's interest by conferring legal status on the care provided by guardians. The kafala system is also expressly recognized by various international conventions such as article 3 and 20 of the convention of the rights of the child 20 November 1989”.⁸

“Also, the ECHR upheld France's refusal to allow the Algerian woman to adopt the Algerian baby, who was already under her control and care, pursuant to the Islamic kafala guardianship system”.⁹ It was also observed that the kafala system is accepted as well as defined as an ‘alternative care’ in the united nation convention on the rights of the child deemed to be at par with adoption. Further kafala being acknowledged

⁵ *supra*.

⁶ Harroudj vs. France judgment of 4 October 2012, No 43631/09.

⁷ <http://hudoc.echr.coe.int/eng?i=001-113819> (accessed on 12.02.2021 07:34 pm.)

⁸ <http://hudoc.echr.coe.int/eng?i=001-113819> (accessed on 12.02.2021 08:00 pm.)

⁹ Islamic Law, Adoptions And Kafala, November 6, 2012, The Jurist (At Jurist.Org) <https://www.jurist.org/commentary/2012/11/faisal-kutty-adoption-kafalah/>

under the international law was taken notice of and declaring it as a decisive factor that a state should take into account while dealing with any kind of conflict that may arise along with the pattern of how it should be accommodated in one's state's domestic law. At last, it was decided that Harroudj was not deprived of any rights not even of being allowed to change kafala into an adoption as the French law accepted kafala completely granting guardianship to Harroudj enabling her to take all the decisions concerning the child's interest. The acknowledgement resulted in opening several closed doors towards the direction of mutually accommodating framework in Islamic adoptions.

What is the historical background of the Islamic kafala? What are the implications and the literal meaning of the term kafala? What are the links connected to kafala with regards to adoption? How is it recognized via the international laws/international human rights? What is the difference between kafala and other alternate adoption options?

To understand the practice and prevalence of kafala (international laws/international human rights). To understand its tracings through the historical background. To understand the meaning and implications of kafala. To understand the link of kafala attached to adoption. To know the difference between kafala and other alternate adoption options.

The research methodology that has been used in this research paper is Doctrinal legal research. This method is based on collecting theoretical data and forming propositions, arguments etc. on the basis of extensive research from secondary resource materials like case laws, journals, articles, textbooks, online materials etc.

Historical legal research in this method is based on the importance of historical data. It involves the analysis and collection of historical records, data, etc. in order to forge connections with present events and make reasonable assumptions about the future.

Doctrinal methods work by using such information that is already present in the online or print format and aims to achieve a final output by working on such materials. Along with this the data also need to be analyzed and interpreted which will conclude in producing a balance between quality and quantity.

Historical method generally provides a collection of data, which is gathered from the historical time by the historians, that helps us with the histories of the past. This method includes two types of sources i.e. primary sources and secondary sources.

CHAPTER I: UNDERSTANDING THE HISTORICAL BACKGROUND OF THE ISLAMIC KAFALA-

The Pre-Islamic Arab countries not only recognized adoption but eventually started to practice it too. When an adoptive parent was adopting a son, after the completion of the adoption procedure the legally adopted son became, one as being originally born to the adoptive parents.

Soon after adoption, the rule consanguinity and affinity become applicable to the adopted child. The rule lays down the restriction upon the marriage of an adopted a sister, mother etc. However, one of the earliest stories dating back to the historical times of prophet Mohammed has something contradictory to state.

“Prophet Mohammed, himself, once had an adopted son (Zayd), the wife of whom he once had occasion to see unveiled and got attracted to. Subsequently, his adopted son divorced his wife in favour of his father.”¹⁰ “Controversy thus arose among the Prophet’s followers concerning the marriage between the Prophet and the divorced wife of his adopted son, subsequent to which a revelation followed that adoption constituted ‘no real relationship’.”¹¹

“According to the Holy *Qur'an*:

... nor hath He made those whom ye claim [to be your sons] your sons. This is but a saying of your mouths. But Allah sayeth the truth and he sheweth the way. Proclaim their real parentage. That will be more equitable in the sight of Allah. And if ye know not their fathers then (they are) your brethren in the faith and your clients.”¹²

This further led to the abolition of the concept of adoption legally prevailing and similarly understood by the laws of the western world. The act of abolition further

¹⁰ AA Sonbol ‘Adoption in Islamic society: A historical survey’ in EW Fernea (ed) *Childhood in Muslim Middle East* (1995) 52; Roberts (n 27 above) 50.

¹¹ D Pearl & W Menski *Muslim family law* (1998) 408; Sonbol (n 28 above) 52; Roberts (n 27 above) 50

¹² Ch 4 Holy *Qur'an* 33:4-6, quoted in D Olowu ‘Children’s rights, international human rights and the promise of Islamic legal theory’ (2008) 12 *Law, Democracy and Development* 73; Roberts (n 27 above) 50.

gained widespread recognition and momentum along with gaining support due to a major reason, which can also be called a huge setback in terms of adoption laws. It was also due to certain acts were practiced in Pre-Islamic Arabia together with the adoption laws not being supported by Islam.

“As an example of the practice that prevailed where a family could disclaim a member along with a person renouncing his biological family only made possible because adoption was always a possibility into another family.”¹³ At that time such actions were regarded as unacceptable in Mecca and Medina in order to create a new Islamic community.

“In Islam adoption being prohibited was accepted as a popular yet general position whose practice amounts to a sin of apostasy (kufr).”¹⁴ Some scholars argued and were of the view that adoption in Islam is Mubah, subsequently calling for reform of Muslim legal traditions conforming to adoption’s formal notion. Eventually, kafala’s inclusion in CRC reflected upon the contemporaneous Islamic populist position on adoption.

CHAPTER 2: IMPLICATIONS AND MEANING OF KAFALA-

2.1. Meaning of kafala

“The term kafala is traced to the Islamic law of obligations, which ‘permits a person to enter into a contract committing himself to certain undertakings in favour of another person provided that person has a material or moral interest in such undertaking’.”¹⁵

“Through kafala, a family takes in an abandoned child, a child whose natural parents or family are incapable of raising him or her or who is otherwise deprived of a family environment, without the child being entitled to the family name or an automatic

¹³ Olowu (n 30 above) 73; Sonbol (n 28 above) 52. [1]

¹⁴ Sonbol (n 28 above) 51; Gonzalez (n 23 above) 4. [1]

¹⁵ Olowu (n 30 above) 54. [1]

right of inheritance from the family.”¹⁶

“By definition, kafalah is ‘the commitment to voluntarily take care of the maintenance, of the education and of the protection of a minor, in the same way as a father would do it for his son’.”¹⁷

2.2 Implications of Kafala

In matters of property and inheritance the holy Quran stands to be quite particular and very specific in wealth distribution which devolve only on the basis of blood relationship. The allotments of the property are specific and limited for each member of a family. “In such a case an individual can only control the inheritance of about one-third of his estate/property.”¹⁸

“Consequently, kafala creates the following effects: exercise of parental authority and the obligation of maintenance of the caregiver on the one hand, and persistence of the family bonds and preservation of the child’s family status on the other.”¹⁹

Categorically, kafala can also be understood as an alternative care provision without amending the original kinship status of the child. “This is also because in Islam the link between an adopted child and his biological parents must remain unbroken.”²⁰ This does not mean that the children adopted into the families by the way of kafala are left out. Rather as per the Quran that enjoins the property distribution through a process

¹⁶ Van Bueren (n 9 above) xxi. [L] [SEP]

¹⁷ Art 116 Family Code of Algeria, quoted in ISS/IRC ‘Fact Sheet No 50: Specific case: KAFALAH’ (2007) 1 <http://www.iss-ssi.org/2009/assets/files/thematic-facts-sheets/eng/50.Kafala eng.pdf>

¹⁸ Sonbol (n 28 above) 48-50. [L] [SEP]

¹⁹ ISS/IRC (n 51 above) 1. [L] [SEP]

²⁰ K Nundy ‘The global status of legislative reform related to the Convention on the Rights of the Child’ (2004) vii http://www.unicef.org/policyanalysis/files/The_Global_Status_of_Legislative_Reform_Related_to_CRC.pdf (accessed 10 April 2021); Hashemi (n 18 above) 221. [L] [SEP]

where the Muslims assign property out of their own share of wealth to those being equally dependent on them despite being unrelated through blood. "Consequently, such persons are provided for from the required one-third portion of an individual's personal estate, which is subject to the owner's prerogative and which can be exercised through a will or given as an outright gift (sadaqa)." ²¹

A child stands no legal right to inherit from the family he has been adopted into through kafala. Although in practice an inheritance through testamentary succession is assigned to the child. The act further seems to appear as a deliberate attempt in covering the gap that can usually be felt between an adopted and a natural child in a manner seeking to minimize the prevailing differences between that of kafala and adoption. Significantly kafala does not tend to permit or to even establish for that matter any kind of discrimination which would somehow allow a sense of deficiency between the household born and kafala children leaving the former with a feeling of inferiority.

Kafala is not only taken as alternative care for the abandoned children and the orphans in Islam, but is considered to be the highest form of protection that can be served to any such child. Similarly it also presupposes an 'unlimited entrustment' of a child into a new family attaching the similar nature of importance with kafala to a religious duty.

"There exist three possible features extinguishing kafala from adoption-

- I. Non-severance of family ties.
- II. Non-transference of inheritance rights.
- III. No change in the child's family name." ²²

As a consequence kafala is accepted to be the main primary obligation of Muslims towards such abandoned and orphaned children requiring proper care and attention for an overall growth and development.

²¹ Sonbol (n 28 above) 48-50. [SEP]

²² ISS/IRC (n 51 above) 1. [SEP]

CHAPTER 3: THE LEGAL ARRANGEMENT OF KAFALA IN ISLAMIC LAW
REFERENCE IN INTERNATIONAL INSTRUMENTS-

3.1 Legal Arrangement Of Kafala In Islamic Law

“Adoption, emanating from classical Roman law, which based it on the ‘imitation of nature’ (the principle of *adoptio naturam imitatur* in the Institutes of Justinian) creates, between the adopter and the adoptee, a legal relationship that is identical to that existing between parent and child. Although certain States make a distinction between several levels of adoption (most often between full adoption and simple adoption), this characteristic is always present.

Under Islamic law adoption is prohibited (haraam). However, the right is accorded a special institution: kafala or ‘legal care’. In Muslim States, with the exception of Turkey, Indonesia and Tunisia, kafala is defined as a voluntary undertaking to provide for a child and take care of his or her welfare, education and protection.

The procedural arrangements for establishing kafala depend on the domestic law of each Muslim State. The relevant provisions of the Algerian Family Code thus read as follows:

Article 46- Adoption (tabanni) is prohibited by the Sharia and by legislation.

Article 116- Kafala is an undertaking to assume responsibility for supporting, educating and protecting a minor child in the same manner, as a father would care for his son. It is established by a legal act.

Article 117- Kafala is granted upon appearance before the judge or notary, with the child’s consent when he or she has a father and mother.

Article 118- The holder of the right of kafala (the kafil) must be a Muslim, a sensible and upright person, and be in a position to support the fostered child (the makfoul), with the capacity to protect him or her.

Article 119- The fostered child may be of known or unknown parentage.

Article 120- The fostered child shall retain his or her original legal parent-child relationship if of known parentage. Otherwise, Article 64 of the Civil Status Code shall be applied in respect of the child.

Article 124- Should the father and mother, or one of them, request the reinstatement under their guardianship of the fostered child, it will be for the child, provided he or she is of an age of discernment, to choose whether or not to return to his parents.

If the child is not of such an age, he may be returned only with the judge's authorization, taking into account the interests of the fostered child.”²³

III.2. Reference To Kafala In International Instruments

“Articles 20 and 21 of the United Nations Convention on the Rights of the Child, of 20 November 1989, read as follows:

Article 20- ‘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.

‘States Parties shall in accordance with their national laws ensure alternative care for such a child.

‘Such care could include, inter alia, foster placement, Kafala 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.’

²³ Harroudj V. France (Application No.43631/09), European Court Of Human Rights, Fifth Section, judgment, Strasbourg 4 Oct. 2012, Relevant Domestic And International Law And Practice.

Accessed at <http://hudoc.echr.coe.int/eng?i=001-113819>

Accessed on 18-04-21 03:12:13 PM.

Article 21- ‘States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration...’²⁴

CHAPTER 4: KAFALA- SPONSORSHIP/LEGAL FOSTERING/FOSTER PARENTING-

Adoption in Islam is invariable to the concept of kafala. Whenever there is discussion on matters related to adoption the focus directly shifts to kafala. According to Imad-ad-Dean Ahmad “The literal meaning of kafala is ‘sponsorship’ that hails from the root word meaning ‘to feed’.”²⁵ “Most accurately translated to mean ‘legal fostering’ or ‘foster parenting’.”²⁶ “Algerian family law, for instance, defines the concept thusly: Kafala, or legal fostering, is the promise to undertake without payment the upkeep, education and protection of a minor, in the same way as a father would do for his son.”²⁷ “Adoption scholar Jamila Bargach defines it as primarily a gift of care and not a substitute for lineal descent.”²⁸

Kafala automatically tends to bring the responsibility of looking after and taking care of the child as one’s own with itself. with this it also attempts to achieve a certain level of balance with not letting the child’s identity to absorb into the adoptive family while ensuring the adoptive child’s very identity. The concern and care for upbringing

²⁴ Harroudj V. France (Application No.43631/09), European Court Of Human Rights, Fifth Section, judgment, Strasbourg 4 Oct. 2012, Reference To Kafala In International Instruments.

Accessed at <http://hudoc.echr.coe.int/eng?i=001-113819>

Accessed on 18-04-21 03:18:50 PM.

²⁵ Imad-ad-Dean Ahmad, ‘The Islamic View of Adoption and Caring for Homeless Children’ in Adoption Fact Book III (Washington: National Council for Adoption. 1999)^[1]

²⁶ Ibid.

²⁷ International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC), “Specific Case: Kafalah,” Fact Sheet No51, (Geneva: ISS, 2007)

²⁸ Bargach, *supra*, note 98 at 27.

and of foundlings and orphans is what was seen as the driving force towards the development of the practice of kafala, which is also an inherent part of the Islamic teachings. There prevail some key differences between the western or contemporary understanding of adoption in the non-muslim world and kafala. “To point a few:

- Identification and protection of bloodlines and lineage.
- Rights of inheritance, and
- Possibility of marriage partners.”²⁹

CHAPTER 5: ISLAMIC KAFALA RECOGNIZED BY THE INTERNATIONAL LAW-

“For the first time kafala was referred as a subject in the international law in the year of 1986 in an UN Declaration on social and legal principles which related to the welfare and protection of the children with Special Reference to Foster Placement and Adoption Nationally and Internationally (1986 Declaration).”³⁰

International standards for care were set and agreed upon for the children whose parents were either incapable or inappropriate. This was also the very first international standards of care to be set as well as agreed upon which was contained in the 1986 Declaration.

Kafala can also be traced in the 1996 Hague Convention on Jurisdiction Measures for the Protection of Children in respect of parental responsibility were contained in the form of enforcement, applicable law, co-operation along with recognition.

“The UN guidelines recognizes kafala as a permanent and appropriate solution for those children who neither can be returned to their original families nor can be kept in.”³¹

²⁹ Ibid. Rizvi, *supra*, note 6 at 18.

³⁰ <http://www.un.org/documents/ga/res/41/a41r085.htm> (Accessed 18 April 2021).

³¹ Para 2(a) UN Guidelines.

With all such effects its completely correct to regard kafala as a form of alternative care for children recognized internationally working towards children deprived of a healthy family environment or altogether a family environment contributing in the global system by providing measures for improving the protection of children along with the improvement of the international situations in the process.

CHAPTER 6: COMPARATIVE STUDY OF KAFALA WITH THAT OF ALTERNATIVE CARE OPTIONS-

6.1. Foster care and kafala:

Before carrying out a comparison between the two it is essential to know what exactly is foster care?

A system through which children deprived of a family or parental support and care are placed under certain people or individuals who are technically not related to the child in any manner should be the best way of explanation. Through a recent development another term 'kinship Foster Care' where a child instead of being placed with an unknown/unrelated individual is rather placed with a known or to say under one's own relative care, has also been in the question.

The category has grown to gain interest because of its transformed method of adoption. Generally, a child placed with foster parents under foster care does not confer full parental responsibility upon them but only a temporary pending renunciation with the family. In the other way a child placed with its own relative evolved in a manner where it could not only be considered as a temporary setup but can be taken into as an alternative care option that can be permanent further transforming into adoption. "Due to the sharing of the parental responsibilities between that of the foster parents and the state it becomes a form of social parenting that is subject to legal controls by the state."³² Kafala in the similar setup can be understood as an extended foster care with partial conferment of parental rights and not full along with the responsibility of not only the child as person but also his property. Fostering stands distinct from kafala and is also permissible under Islam and recognized. "Both kafala and foster children have no rights

³² A Bainham Children: The modern law (1998) 191. 

of inheritance except as sadaqa (gift)."³³

6.2. Kinship Care and Kafala

Kinship care can be either formal or informal where the child is placed with and is taken care of by the child's extended family or close friends of that extended family related in blood. Such extension of family can also include people related in marriage, adoption, and as earlier stated by blood. "Kinship care is also based on the assumption that blood relationship is central to the definition of family."³⁴ It is generally regarded as an informal practice where it can either prevail on the request of the parents or will be completely spontaneous without conferring any legal responsibility upon the caregivers.

"Consequently, until quite recently, in modern children's statutes there were no specific state obligations to children without parental care who have been informally absorbed into kinship care, since its role and status are not expressly provided for."³⁵

"An exception to this general trend is Namibia where the (draft) Child Care and Protection Act expressly recognizes the role and status of kinship care as an alternative care form for children without parental care."³⁶ For the best interest of the child and as a practice that is widely recognized as an alternate form of adoption care, the state in this respect is expected to ensure proper welfare and means to make arrangements and to devise appropriate measures in order to serve the best interests of the child along with its rights. "In addition, other person's apart from parents are also recognized by

³³ Sonbol (n 28 above) 64. [SEP]

³⁴ E Barthelet Nobody's children: Abuse, neglect, foster drift and the adoption alternative (1999) 2; Van Bueren (n 9 above) xxii. [SEP]

³⁵ ISS (n 80 above) 7. [SEP]

³⁶ Ch. 8 of Namibia's draft Child Care and Protection Act; the Bill was approved [SEP] by cabinet in 2012, and was mentioned during the opening of parliament in [SEP] February 2013, signifying imminent adoption into law. [SEP]

the African children's charter.”³⁷

Kinship care attaches with itself positive values by promoting the continuity of care that it provides even during distress times of separation and divorce. However, in some country's kinship care has witnessed certain setbacks like in Africa where strain in family ties due to various kinds of reasons and conflicts, the effect is directly felt upon the kinship ties leading to the worsening of situation for the children. This was also the reason why it was the need for it to be recognized legally by the state.

Kafala and kinship care both progresses towards the growth and development of a child by promoting stability and through the involvement of continuity. The role of continuity here plays the most crucial role and also serves as the similarity between both the aspects. Due to blood or religion or culture it also tends to share several elements between the child and the relatives involved further providing desirable results in overall upbringing of the child.

6.3. Adoption and Kafala:

Adoption generally refers to the creation of a kind of permanent legal relationship between that of the adoptive parents and the adoptive child. Once the procedure is completed the child's biological ties are severed and is conferred with all the new ties of the adoptive family equivalent to the biological ties. Whereas kafala is an alternate adoption method under Islam. Broadly adoption can be categorized under two heads, 'simple' and 'full'. A simple adoption is where the old parent child relationship is not terminated and exists even after the establishment of the new parent child relationship with the adoptive parents. On the other hand, a full adoption is where the old parental relation of the child and the parent is severed and the new relationship is established with the adoptive parents. “Mostly the African countries prefer a simple adoption because as per their traditional African culture complete severance of ties with the original family is something looked up to as alien in their culture.”³⁸

³⁷ Article 20 The African Children's Charter On Parental Responsibilities. [17 SEP]

³⁸ Vite & Boechat (n 21 above) 17 [17 SEP]

“Two features of an adoption can be observed in kafala: permanence and elements of a simple and/or open adoption. As already discussed, kafala creates a permanent bonding relationship between the child and the caregivers and the child is integrated into the new family as though that was the case from the outset. Hence, kafala, like adoption, results in the creation of a new and permanent family relationship. Additionally, as with simple and open adoptions, the child under kafala maintains the legal bond (and a continuing relationship, albeit informally) with his family of origin in terms of identity, coupled with the possibility of remaining vested with a right of inheritance or support in relation to his original family’s estate, if any.”³⁹ “However, kafala is distinguishable from adoption in that the process is usually not as formal and rigorous as a formal adoption. In addition, the general rule applicable to adoptions revolves around the severing of links with birth parents and, in fact, many legal systems of the world do not provide for simple adoptions.”⁴⁰

CONCLUSION AND RECOMMENDATION

With all the aspects discussed above the need of the hour can be understood with a clear picture. For the development and growth of any child a healthy family environment along with parental care is extremely necessary. While growing up the child requires special care and attention on various steps of life, which eventually help mold his/her life in the similar direction. For a meaningful and bright future education as well plays the most crucial part in a child’s upbringing influenced by a good surrounding and disciplined behavioral environment which can lack in children who lack such environment and care. Thus, the state should take utmost care and prime responsibility in exploring this area of adoption to find out desired ways to help such children find a home and prepare them for a better future. It is also evidently true that parental care cannot be achieved while practicing cultural and religious isolation. Considering this fact, it also makes the task of exploring Islamic Kafala as an alternative adoption care option extremely important and relevant. There are ideas and areas which still stands unexplored and unidentified by the world to the world such as the legal

³⁹ Duncan (1998) (n 97 above) 36; Vite & Boechat (n 21 above) 19. [L]
SEP

⁴⁰ Permanent Bureau (n 99 above) 121.

implications, its distinguishing features, its uniqueness, advantages along with the disadvantages which when explored would prove to be a great asset in the international diaspora for placing such category children with desired homes and parents. This is not one way but a two-way structure that works in favor of both the parties such as the prospective adoptive parents who are struggling with childlessness due to said reasons and the child who lacks a family and is struggling from homelessness. Lastly the best interest of the child should be catered to base on the most appropriate category of alternative care being the best idea or the best.

