

The Concept of Kafalat Al-Yateem and its Application on Children with Unknown
Parents in Saudi Arabia

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Abstract

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Kafalat alyateem is a significant Islamic law concept that emphasizes caring for orphans by providing them with financial and educational support. This study investigates the concept of Kafalah in Shari‘ah law and its practical application to orphans with unknown parents, focusing on home-based kafalah in Saudi Arabia. Although contemporary Saudi families have been reluctant to take in orphaned children with unknown parents, home-based kafalah is a more common practice among Saudi families than initially expected.

The study uses a mixed-methods approach: legal doctrinal analysis, and qualitative grounded theory methodologies, to understand the challenges of implementing home-based kafalah for children with unknown parents in Saudi Arabia. The legal doctrinal analysis examines the legal frameworks governing kafalah in Saudi Arabia. At the same time, the qualitative component uses grounded theory and intensive interviewing to investigate Saudi families' attitudes toward home-based kafalah. The goal is to provide a comprehensive

understanding of the challenges in implementing home-based kafalah for this specific group of children in Saudi Arabia.

The study found that home kafalah is predominantly female-driven, and the foster mother assumes full responsibility for the child's care. However, legal constraints, social prejudices, and racial biases are significant factors that impact the practice of home-based kafalah in Saudi Arabia. The study results highlight that the primary legal constraint of home-based kafalah for orphans of unknown parentage is the Mahramiyah limitations, which affect the dynamic of the relationship between the foster family and the orphan when it reaches the age of puberty. Another legal impediment to home-based Kafalah for orphans with unknown parentage is the condition of breastfeeding the orphan by the foster family (*Redhaa'*). Social stigmas attached to orphans of unknown parentage also represent a significant challenge, leading to cases of rejection by extended family and society. The study findings shed light on the complex and interrelated legal, social, and cultural factors that impact the practice of home-based kafalah for children of unknown parents in Saudi Arabia.

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Glossary

Term	Definition
<i>Fard ‘ayn</i> ¹	Individual obligation
<i>Fard kifāya</i>	Communal obligation; Collective duty
<i>Fatwa (n.)</i>	A <i>responsum</i> by a trained Muslim jurist on an issue to approach what Islamic ruling is on the matter.
<i>Fiqh (n.)</i>	The collection of scholars’ legal understandings of the sacred texts.
<i>Fuqaha’ (pl.)</i>	Jurists
<i>Ijmā’ (n.)</i>	Jurists’ consensus
<i>Ijtihād (n.)</i>	The process of deriving the rule from the sacred text performed by religious scholars.
<i>Madh’hab (n.) madhāhib (pl.)</i>	A doctrine or school of legal interpretation based on a certain methodology

¹ **“n.”: noun; “s.”: singular; “pl.”: plural; “adj.”: adjective.

<i>Mahram (n.) Maharim (p.)</i>	Unmarriageable kin
<i>Mujtahid (n.)</i>	A religious scholar who performs <i>Ijtihād</i>
<i>Qiyās</i>	Analogical reasoning
<i>Redha‘‘a</i>	Breastfeeding a child by a non-biological mother
<i>Ṣaḥābiyy (n.)</i>	A Companion; is defined as an individual who met the Prophet Muhammad (pbuh), believed in him and his message, and died adhering to that belief.
<i>Sharī‘ah (n.)</i>	Islamic jurisprudence
<i>Sunnah (n.) Sunan (pl.)</i>	The words, actions, and approvals of Prophet Mohammed; peace be upon him.
<i>Tābi‘ī (s.) Tābi‘īn (pl.)</i>	A person who was conversing with one of the prophet's companions, even though he was an unbeliever at the time but died a Muslim
<i>‘Ulamā’ (pl.) ‘ālim (s.)</i>	Religious scholars

CHAPTER ONE

Introduction

1.1 Introduction

In accordance with Islamic law, *Kafalat al-Yateem* is considered a crucial responsibility for Muslims, which entails providing sponsorship and care for orphans. As an Islamic nation, Saudi Arabia applies Sharī'ah principles in its legislation and regulations. Although the Saudi government has established a well-developed system of orphanages, orphans in Saudi society often find themselves in challenging circumstances. Typically, infants and children residing in orphanages are abandoned and classified as children with unknown parents within the Saudi legal system and society. Despite religious obligations, Saudi families are reluctant to take in orphans and raise them alongside their children. Instead, to attain the spiritual rewards of fostering orphans, most families prefer to offer financial support by sending money monthly or yearly to orphanages to aid children. However, this limited financial sponsorship creates a barrier between society and institutionalized orphans, who are often isolated and subjected to social and psychological difficulties.

The primary aim of this study is to compare and contrast the Islamic legal doctrines applied in Saudi Arabia concerning the responsibility of Muslims to provide care for orphans and the present attitudes of Saudi families towards orphans with unknown parents. The current chapter presents a brief overview of the research under study. It begins by examining the background and context of the research, followed by a discussion on the research problem,

objectives, and questions, and concludes by highlighting the research's significance and thesis structure.

1.2 Background and The Research Problem

Islamic law has provided clear guidance on the care of orphans through the concept of "*kafalah*." The term "*yateem*" (orphan) is mentioned frequently in the Holy Qur'an, highlighting the importance of caring for parentless children. In Islamic jurisprudence, an orphan is defined as a child who has lost their father before reaching the age of puberty or maturity. In addition, the orphaned child with unknown parents is named "*Laqeeet*," which means foundling. Muslims believe caring for orphans is a great virtue that leads to divine reward. The Prophet Muhammad emphasized the importance of caring for orphans, and *Hadith* literature provides numerous examples of the rewards of providing for them.

During the early days of Islam, caring for orphans involved accepting them into one's home, as orphanages did not exist. However, the legal concept of adoption does not exist in Shari'ah law. Instead, *Kafalah* is the mechanism used to provide care for orphans, where the child is cared for in a family setting without establishing a legal parent-child relationship.

Despite the Islamic emphasis on caring for orphans, in modern Saudi Arabia, people tend to support orphanages financially instead of taking orphaned children into their homes. This noble goal of home-based *Kafalah* is culturally and legally challenging. Therefore, this research aims to study the concept of *kafalat alyateem* and its application to children with unknown parents in Saudi Arabia. The focus is on understanding the meaning of *kafalah* under Islamic law and how Saudi families interpret and apply the concept to children with unknown parents, who

are traditionally referred to as orphans. These children are usually born out of wedlock, abandoned, and their identity is unknown.

1.3 Thesis Goal and Research Questions

This study seeks to compare the Islamic legal tenets related to the responsibility of Muslims to provide for orphans in Saudi Arabia with the prevailing attitudes of contemporary Saudi households towards orphaned children without known biological parents. The central research queries to be addressed are as follows:

- 1. How has the concept of *kafalat Alyateem* been practiced in Saudi Arabia? What are the legal principles of exercising kafalah in Saudi law?**
- 2. What are the legal obstacles to practicing home-based kafalah for children with unknown parents in Saudi Arabia?**
- 3. What are the perceptions and attitudes of Saudis towards kafalat alyateem, and how do they engage with its principles? What are their perceived social obstacles to practicing home-based kafalah versus institutionalized kafalah?**

This study employs a mixed-methods approach incorporating theoretical and empirical components to answer the research questions. Specifically, legal doctrinal analysis and qualitative grounded theory methodologies are utilized. The doctrinal analysis involves an examination and analysis of the legal frameworks governing kafalah in Saudi Arabia. The qualitative component uses grounded theory and intensive interviewing to investigate the Saudi families' attitudes towards home-based kafalah for children with unknown parents. This

approach aims to comprehensively understand the challenges of implementing home-based kafalah for this specific group of children in Saudi Arabia.

1.4 Significance and Contribution To Legal Scholarship

The current state of the literature regarding kafalah for children of unknown parentage in Saudi Arabia can be categorized into two main areas: the first pertains to the institutional structure of orphan care, its history, and the challenges it faces. The second area focuses on orphans' emotional and mental well-being in institutional care.

However, the literature regarding home-based kafalah in Saudi Arabia is scarce. One notable case study aimed to explore the realities and challenges these families face and the role of social institutions in supporting them.² The study found that the inability to have children was a significant factor driving some families towards home-based kafalah, with taking in infants being the most common coping strategy.³ Another study examined the contribution of foster families to reducing juvenile delinquency and concluded that home-based kafalah could protect orphans from criminal behavior by decreasing the likelihood of delinquency.⁴ The literature overlooked the problems caused by the legal and sociocultural context in which Saudi Arabian orphans grow up.

² Amal Al-Somali, "Alternative Family in Jeddah City," *University of Sharjah Journal for Humanities and Social Sciences*, Volume 14, Issue 1. (2017): 261-298. doi: 1996-2339.

³ Al-Somali, *Alternative Families in Jeddah*, 261.

⁴ Hamdan Al-Otaibi, *The experience of alternative families to care for juvenile delinquency, a diagnostic study from the point of view of social workers*. (Naif Arab University for Security Sciences, 2010).

The current research will contribute to the body of knowledge on orphan care in Saudi Arabia by primarily focusing on the socio-legal challenges that arise in practicing home-based kafalah for children with unknown parents. This contribution will help address the current research shortage in this area and provide real-world value to organizations operating in such a dynamic environment.

1. 5 Thesis Structural Organization

This thesis comprises eight chapters that examine the concept of kafalah in Saudi Arabia. **Chapter One** provides a concise summary of the research project. It starts by exploring the surrounding circumstances and context, then delves into the research problem, aims, and inquiries. Lastly, the chapter emphasizes the importance.

Chapter Two explains the Saudi legal system and its relation to Sharī‘ah. It begins by outlining the Saudi Basic Law of Governance, followed by an illustration of the government structure, sources of law, and the role of the Sharī‘ah Court in family issues.

Chapter Three establishes the basis for the research by explaining three basic jurisprudential concepts. It starts with the family concept in Sharī‘ah, its structure, and the relationship between its members. Then, it delves into the concept of adoption in Islam, followed by *Kafalat al-Yateem* (sponsoring an orphan), explaining its meaning and the difference between kafalah and adoption.

Chapter Four extensively analyzes the Islamic legal views on *Redha‘‘a* (Breastfeeding), outlining its provisions and significance in creating a legal and familial relationship.

Chapter Five explores the origins of institutional care as a foreign system to Muslim culture and Saudi society. It also outlines the legal framework for orphan care in the Saudi Kingdom, describes the various forms of care provided, including institutional care and alternative care, and highlights the challenges of institutional care in the Saudi context.

Chapter Six discusses the methodology of the qualitative research portion of the current study, examining the sample and participant selection. The chapter explains the primary data collection method and the analysis of the obtained data, exploring the principles of reflexivity, gatekeeping, and access. Finally, the chapter summarizes the research approach used to gather primary data.

Chapter Seven provides a thematic analysis of interviews conducted with Saudi Arabian individuals experienced with the kafalah system. The analysis focuses on identifying legal and social obstacles that impede the practice of home-based kafalah for children with unknown parents. The chapter discusses and interprets the results of the analysis.

Chapter Eight concludes the study, highlights its contribution and limitations, and recommends policy and practice to improve home-based kafalah and future studies.

CHAPTER TWO

Saudi Legal System and its Relation to Sharī'ah

2.1 Introduction

Saudi Arabia is a nation that follows Islamic principles, with Sharī'ah impacting its governance system, societal and national identity, norms, regulations, and values.⁵ Sharī'ah, also called Islamic law, comprises divine guidance that Muslims abide by, outlining religious and secular obligations to lead a virtuous life and draw closer to God. The country's Basic Law affirms that the Qur'an and Sunnah serve as its supreme laws, while Ijmā' and *Qiyās* are viewed as secondary sources of Sharī'ah.⁶ All laws and regulations in the country must align with these sources.

Over the past few years, there have been notable advancements in Saudi Arabia's legal system. Significant reforms have been implemented, and fresh legislation has been enacted. Among the crucial reforms was the restructuring of the judiciary, which paved the way for creating specialized courts such as the personal status or family Court. The passing of the Regulation of Personal Status also marked a qualitative improvement in promoting human rights, preserving family stability, and empowering women.

The opening section of this chapter delves into the Basic Law of Governance, serving as the Kingdom's constitution. Following that, the second section provides an overview of the government's organizational structure, encompassing its regulatory, executive, and judicial

⁵ Hossein Esmaeili, *On A Slow Boat Towards the Rule of Law: The Nature of Law in The Saudi Arabian Legal System*, 26 *Ariz. J. OF INT'L & COMP. L.* 1-7, (2009).

⁶ The Qur'an, Sunnah, Ijmā', and *Qiyās* are the primary sources of Islamic law. More explanation is provided below in the chapter.

functions, as well as the lead role of the King. In the third section, readers can gain insight into the sources of law within Saudi Arabia, thereby better understanding the nation's legal system. Lastly, the concluding section highlights the role of Sharī'ah Courts in adjudicating family disputes and the significance of customs in issuing a fatwa or juristic opinion.

2.2 The Basic Law of Governance

During King Fahad's reign, the Basic Law of Governance was promulgated on March 1st, 1992.⁷ It is considered equivalent to the constitution in other countries regarding content, according to some Saudi constitutionalists, or a constitutional document, according to others.⁸ The Basic Law contains nine chapters, articulates the government's rights and responsibilities, confirms the land's monarchical system, and provides a detailed definition of each state's authority. The document reaffirms that governance principles are justice, consultation, and the equality of citizens under the Islamic Sharī'ah.⁹

The first Article of the Saudi Basic Law of Governance indicates that “God's Book, the ‘Qur'an’ and the ‘Sunnah’¹⁰ of his Prophet (peace be upon him) is the government

⁷ The Saudi Basic Law of Governance was enacted by Royal Decree No. A/90, 29 *Sha'aban* 1412 A.H. (March 2, 1992).

⁸ Ahmed bin Abdullah Ibn Baz, *The political and constitutional system of the Kingdom of Saudi Arabia* (Dar El Khereiji for publication and distribution, 1998).

⁹ Article 8 of the Basic Law of Governance (*nizām al-asāsī li-l-ḥukm* 1412/1991). The statute is available on the website of the Bureau of Experts at the Council of Ministers: <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/16b97fcb-4833-4f66-8531-a9a700f161b6/1>

¹⁰ Refers to the traditions and practices of the Prophet Muhammad, peace be upon him. More explanation is provided below in th chapter.

constitution.”¹¹ Article 7 affirms that Sharī‘ah (Islamic law) is the cornerstone of the Kingdom, and the government derives its authority from the Qur’an and Sunnah, the primary sources for all the state’s administrative regulations.

The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution, Arabic is its language, and Riyadh is its capital.¹²

The secondary sources of the legal system are *Ijma*¹³ (*consensus*) and *Qiyas*¹⁴ (analogy). Both methods of jurisprudence were developed and are used by classically-trained Muslim jurists, *fuqaha*’, in the legal field or court. The Basic Law of Governance also emphasizes that the state’s role and goal is to protect the principles of Islam and implement Sharī‘ah.¹⁵ The Basic Law has also indicated three other law and regulation sources: the Royal Decree, the Council of Ministers,¹⁶ and the *Shura* (Consultative) Council,¹⁷ as will be discussed in greater detail below.

¹¹ See Article 1 of the Basic Law of Governance (niḡām al-asāsī li-l-ḡukm 1412/1991).

¹² The Saudi Basic Law of Governance, Article 7.

¹³ Jurists’ consensus on the meaning of the Qur’an and Sunnah developed after the Prophet’s (peace be upon him) death.

¹⁴ Analogical reasoning applied to the principles of the Qur’an, Sunnah, and *Ijma*’.

¹⁵ The Saudi Basic Law of Governance, Article 23.

¹⁶ The Law of the Council of Ministers, Royal Order No. A/13 (2/3/1414H, Aug. 21, 1993).

¹⁷ The Shura Council Law, Royal Order No. A/91, (27/8/1412H, Mar. 1, 1992), O.G. Umm al-Qura No. 3397 (2/9/1412H, Mar. 5, 1992).

The political system of Saudi Arabia is an absolute monarchy, where the King is at the top of the power pyramid in the Kingdom. He acts as the Prime Minister and the Supreme Commander of the Army. Legally, the King dominates the regulative, executive, and judicial powers. According to Article 44 of the Basic Law, the King is the final arbiter of the country's three authorities. The Basic Law of Governance provides a detailed definition of each authority in the country, including the regulative, the executive, and the judiciary branches.¹⁸ It also discusses their interrelationships; however, there is no separation of powers, particularly between the legislative and the executive branches.¹⁹

2.3 The Government Structure

The three branches of the Saudi government consist of the Executive, Regulatory, and Judicial bodies [see Figure 1], all of which are under the King's authority, as elaborated in the following explanation.

2.3.1 The Executive Authority

The executive branch consists of the King, the Council of Ministers (also known as Cabinet), local governments, branches of ministries, and other public agencies.

¹⁸ See The Saudi Basic Law of Governance, Article 44.

¹⁹ See Gause, F. Gregory, *Oil Monarchies: Domestic and Security Challenges in the Arab Gulf States*, Council on Foreign Relations Press, 1994; Abdullah Ansary, "Update: A Brief Overview of the Saudi Arabian Legal System" GLOBALEX (Aug (2015)).

The King administrates national policy in conformity with Islam's principles.²⁰ The King exercises ultimate authority over the executive branch,²¹ supervises the Council of Ministers, the ministries, and the government agencies, and appoints and dismisses ministers. The King also is the commander-in-chief of all the military forces.

The Council of Ministers (the Cabinet) consists of the King (the Prime Minister), the Crown Prince (Deputy Prime Minister), and Cabinet ministers. The Cabinet can determine the nation's domestic, external, financial, economic, educational, and defense policies. The Cabinet also has the final authority over all ministries and other government agencies' executive and administrative affairs.²² It is also concerned with monitoring the implementation of laws, regulations, and decisions, establishing and organizing public institutions, and following up on public development plans.²³

The Law of Provinces divides the country into 13 administrative provinces and governorates to improve organizational efficiency and development and maintain security.²⁴ Each province is administered by a governor and deputy governor appointed by royal decree on the Minister of the Interior's recommendation. Most of the governors and deputies are members of the royal family. Most administrative regions' offices are open to the general public regularly.

²⁰ See The Saudi Basic Law of Governance, Article 55.

²¹ Ibid, Article 45.

²² See The Law of the Council of Ministers, Royal Order No. A/13, art. 19 (2/3/1414H, Aug. 21, 1993).

²³ Ibid, Article 24.

²⁴ The Law of the Provinces, Royal Order No. A/91 (27/8/1412H, Mar. 1, 1992), O.G. Umm al-Qura No. 3397 (2/9/1412H, Mar. 5, 1992).
<https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/93f81644-fbbc-49ca-b33c-a9a700f16701/2>

Theoretically, local community members can submit requests and petitions to the governor to review or intervene in them.²⁵

2.3.2 The Regulatory (Legislative) Authority

The Basic Law uses the term “Regulatory Authority” to refer to the Kingdom’s legislative authority, administered by the **King, the Council of Ministers, and the Consultative Council (*Majlis al-Shura*)**. In the Kingdom of Saudi Arabia (KSA), the term "legislation" is not employed due to its association with secular law. Article 1 of the Basic Law states that God is the sole legislator. As per Article 67, the regulatory authority establishes laws and regulations that serve the public interest or eradicate corruption in state affairs following Sharī‘ah principles. This authority is authorized to create statutory laws and regulations and ratify international treaties, agreements, and concessions. Sharī‘ah forms the foundation of statutory laws in criminal, administrative, and commercial domains. These codified rules are referred to as regulations (*anzīma*, sing. *nizām*) instead of laws (*qawānīn*, sing. *qānūn*) since God is regarded as the only source of legislation. The state's regulations are deemed legitimate and enforceable if they do not contradict divine law.

The King plays an essential role in supporting the implementation of Islamic law. As the head of an Islamic state, the King is granted broad discretion over matters of public interest according to the concept of ‘*al-siyāsa al-shari’yya*’.²⁶ The King can promulgate regulations

²⁵Abdullah Ansary, "A Brief Overview of the Saudi Arabian Legal System" GLOBALEX (Aug 2015).

²⁶ The concept of *al-siyāsa al-shari’yya* was mainly developed in the post-classical period by Ibn Taymiyyah (d. 728 A.H. /1328 C.E.) and developed by Ibn al-Qayyim al-Jawziyyah (d. 751 A.H. /1350 C.E.) *Siyāsa* means statecraft or governance, and *shar’iyya* is the adjective form of Sharī‘ah. Therefore, *al-siyāsa al-shari’yya* means “governing in conformity with Sharī‘ah.”

(*anzīma*) that serve the public interest (*al maslahah al mursalah*)²⁷ when there is no explicit text in Islamic law regulating a given issue and where regulation is nevertheless necessary.²⁸ In other words, the King has a primary and independent rule-making function; he is empowered to enact, revoke, or amend any laws and regulations by Royal Order. The legislative process is approved or amended by Royal Orders or Decrees after being reviewed by the Kingdom's legislative bodies (Council of Ministers and Consultative Council). The King can consent to or reject proposals from those two legislative bodies.

The Council of Ministers simultaneously undertakes both executive and legislative functions. Each minister has the right to propose a bill of law or regulation relating to the affairs of his ministry. No meeting of the Council of Ministers is considered valid unless it attains a quorum of at least two-thirds of its members. Resolutions are not regarded as valid without majority approval, and the decisions are not considered final until the King approves. The Prime Minister (the King) has the casting vote in a tied vote.

For more information about the concept of *al-siyāsa al-shari'yya*, see in Arabic Ibn Taymiyyah, *al-Siyāsa al-Shari'yya fi Islah al-Ra'i we al-Ra'iyyah*, (Makkah: Islamic Fiqh Academy, Dar A'lam al-Fawa'ed, 1429 A.H.); Ibn al-Qayyim al-Jawziyyah, *al-Turuq al-Hukmiyah Fi al-Siyasat al-Shariyah* [Administration within the Limits Assigned to it by the Divine Law] 13 (1986); Sobhi Mahmansani, *Falsafat al-Tashri fi al-Islam* [The Philosophy of Jurisprudence in Islam] 127 – 130 (Farhat J. Ziadeh trans., by, Beirut; 1952); see in English Muhammad F. al-Nabhan & Kathryne Lydiatt, *The Islamic View of the Legislative Role of the State*, 557-561 Arab L. Q., 1, No. 5 (Nov., 1986); Vogel, Frank, *Islamic Law and Legal System: Studies of Saudi Arabia*, Brill, Leiden, 2000; Lombardi, Clark B. *State Law as Islamic Law in Modern Egypt : the Incorporation of the Shari'ah into Egyptian Constitutional Law*. Brill, 2006.

²⁷ Article 67 of the Basic Law stipulates that: “The regulatory authority shall lay down regulations and proposals to further the interests of the State, or remove what might be prejudicial thereto, in conformity with the Islamic Shari'ah. The said authority shall exercise its functions in accordance with this Law and the Council of Ministers and the Consultative Council Laws.”

²⁸ See Royal Decree No. 19746 (22/9/1379H, Mar. 20, 1960).

The Shura (Consultative) Council is an institution intended to exercise oversight functions, allow citizens to participate directly in the administration and planning of national policies, and monitor the performance of government agencies.²⁹ Every four years, the King issues a Royal Order inaugurating a new term of the Council; 50% of the Council's membership must be replaced by newly selected members every four years.³⁰ The Council is composed of a chairman and 150 members. The King appoints the Shura Council members among scholars and men or women of learning. Functions and powers of the Shura Council include:

1. Submitting opinions regarding public policy if so requested by the King.
2. Exercising its broad mandate to comment on State affairs, international law treaties, the interpretation of State laws, and annual reports submitted by ministries and other governmental bodies.³¹
3. Proposing new bills of law or amendments to existing laws and debate them within the Council.
4. Submitting its resolutions regarding new or amended laws to the King through the Speaker of the Council.³²

Two-thirds of the Shura Council's members must approve a legislative proposal or amendment to be adopted. At the same time, resolutions are not considered valid unless

²⁹ See the Basic Law of Governance, *supra* note 2, Article 68.

³⁰ See the Shura Council Law, *supra* note 9, Article 13.

³¹ See the Shura Council Law, art. 15, amended by Royal Order No. A/198 (2/10/1424/Nov. 27, 2003).

³² *Ibid*, Article 23.

approved by a majority of the Council's members.³³ The opinions of the Shura Council are subject to review by the King, who decides which resolutions will be referred to the Council of Ministers. If the Council of Ministers endorses the Shura Council's views, the resolutions are issued once the King approves. The King and two Councils must approve every legislative proposal or amendment which becomes law. If the two Councils' views vary, the matter is referred back to the Shura Council to adopt the appropriate resolution. Then, the new resolution is presented to the King, who finalizes it.³⁴ Finally, the statutory laws and regulations are published in the Official Gazette (*Umm al-Qura*).³⁵ It is important to note that the legislative authority³⁶ must ensure that the legislation does not contradict an explicit text of the Qur'an or valid Sunnah since they are the Kingdom's Constitution and take precedence over all other enactments, including the Basic Law.

The Advisory Authority (The Council of Senior *Ulama*) is the head of the religious establishment in Saudi Arabia. It is an authoritative government body created in 1971 to issue *fatwas* on questions submitted to it by the Government or by the general public.³⁷ *Fatwa* is a *responsum* by a trained Muslim jurist on an issue to approach what Islamic ruling is on the matter. Although it is not part of the legislative authority, The Council of Senior Ulama,

³³ Ibid, Article 16.

³⁴ Ibid, Article 17.

³⁵ Umm al-Qura Newspaper; <http://www.uqn.gov.sa/>

³⁶ Practiced by the King, the Council of Ministers, and the Consultative Council.

³⁷ See Royal Order No. 1/137 (8/7/1391H, Aug. 30, 1971); Helen C. Metz, ed., *Saudi Arabia: A Country Study* (Washington, DC, Library of Congress, (1992); Mordechai Abir, *Saudi Arabia: Government, Society, and the Gulf Crisis* 9 – 10 (1993); Ansary, Abdullah F. "A Brief Overview of the Saudi Arabian Legal System." GLOBALEX (Aug (2015).

hereinafter "the CSU," participates in the legislative process of enacting statutory laws; its participation is crucial in gaining public support for such laws.

In February 2009, King Abdullah expanded the Council to 21 members; extended membership to representatives from all four schools of Sunni jurisprudence, not just the Hanbali *madhab*.³⁸ In August 2010, King Abdullah declared a Royal Order stipulating that only officially approved clerics associated with the CSU would be competent to issue *fatwas*.³⁹ The order affirmed that issuing fatwas by unqualified individuals violates Islamic law since that would undermine the official State institutions and infringe on the State's jurisdiction. The order also directed the Grand Mufti, the chief issuer of fatwas in the country, to assign qualified scholars to issue fatwas.⁴⁰ Individual fatwas on matters such as worship and personal relations are exempt from this ruling, but they should concern only the questioner. The Council has established a new Fatwa Committee, affiliated with the Standing Committee, to supervise the issuance of fatwas and prevent unauthorized scholars from interfering therein.

³⁸ See Royal Order No. A/4, (Feb. 14, 2009); Sultan Al-Obthani, [The Major Features of the New Board of Senior Ulama Formation](#), Al-Sharq Al-Awsat Newspaper, Issue No. 11037 (Feb. 15, 2009).

The Hanbali school of Islamic jurisprudence is one of the four significant traditional Sunni schools known as *madhahib*. It was founded by Ahmad ibn Hanbal, an Arab scholar who died in 855 AD and was established by his pupils. Compared to the other three primary Sunni schools, namely the Hanafi, Maliki, and Shafi'i, the Hanbali *madhhab* is the least populous. The Hanbali school of jurisprudence is the country's dominant *Madhhab*.

³⁹ See Royal Order No. 13876, (Aug. 12, 2010); Christopher Boucek, [Saudi Fatwa Restrictions and the State-Clerical Relationship](#), Sada Carnegie Endowment for International Peace (Oct. 27, 2010).

⁴⁰ Royal Order No. 13876, (Aug. 12, 2010).

2.3.3 The Judicial Authority

The judiciary in the Kingdom is a dual system of two independent judicial bodies to adjudicate disputes; Sharī'ah Courts and Administrative Courts. The Sharī'ah Court has jurisdiction to hear all cases involving disputes between individuals, and the Administrative Court hears cases of disputes arising between individuals and administrative or governmental bodies. The King appoints and dismisses judges upon recommendation of the Supreme Judicial Council, and he acts as the highest instance of appeal and has the power to pardon.⁴¹

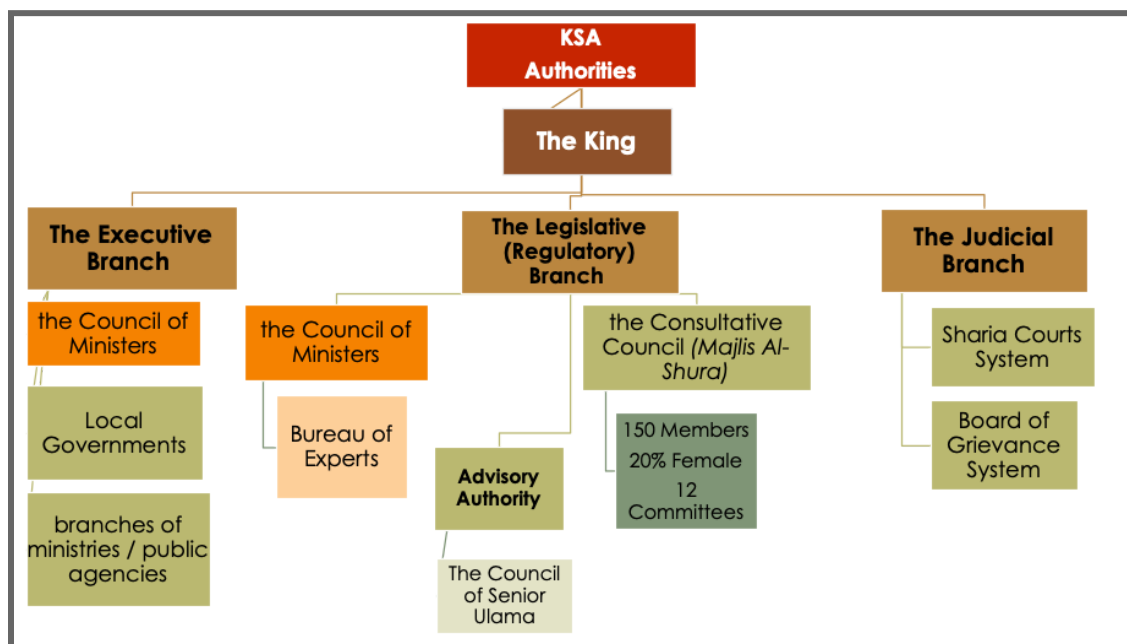
Whether family, civil, criminal, or commercial, all disputes are resolved by law in the Quran, Sunnah, and *Ijma*⁴². The royal order or decree regulations cover contemporary issues, such as intellectual property and corporate law. Nevertheless, Sharī'ah remains the primary source of law, especially in criminal, commercial, and contract law. Family law is not codified in a single statute. All cases concerning marriage, divorce, inheritance, and children's status fall under the general jurisdiction of the Sharī'ah Courts.⁴³ Sharī'ah Courts are made of judges who graduated from Sharī'ah colleges, where they are trained in Islamic law by senior jurists. In these courts, the judge rules according to their own legal reasoning and interpretation of what Islamic law is on the matter. Precedents are not binding, and what carries more weight is the fatwas from authoritative jurists and the school of jurisprudence they follow rather than any other source.

⁴¹ See the Basic Law of Governance, Article 50 and 52.

⁴² The Law of Procedure Before Sharī'ah Courts, issued by a royal decree number (M/21), (2000).
<https://laws.boe.gov.sa/BoeLaws/Laws/Viewer/fe492fc1-8fdf-4b97-8b67-ebd27fec9376?lawId=d7c8e4c4-014c-4d73-a38e-a9a700f268b3>

⁴³ In March, 2022, the Saudi government approved the The Regulation Personal Status, as a part of legal reforms in the kingdom.

(Figure 1: The Saudi Government Structures)



2.4 The Sources of Law in Saudi Arabia

Legal materials in Saudi Arabia can be categorized under three primary sources: Islamic Law, Statutory Law, and Royal Orders, as depicted in Figure 2 below. The last two categories have been described, and in the following section, I demonstrate the sources of Islamic law in more detail.

2.4.1 Islamic Law and its Sources

Islam is based on revelation, preserved in the Qur'an and the Sunnah of the Prophet Muhammad (PBUH). Islamic law is known as the *Sharī'ah*, which means the path to follow God's law. It is a system legislated by God Almighty for the Islamic nation in the Holy Qur'an, Sunnah, and jurists' jurisprudence (*Ijtihād*). *Sharī'ah* includes all provisions, whether it is related

to belief, morals, or transactions, while *Fiqh* relates to practical legal rulings only.⁴⁴ What is proved by a legal text is called *Sharī‘ah*, and what is decided through *Ijtihād* in the light of the text is called *Fiqh* (jurisprudence). Moreover, *Sharī‘ah* is more general than *fiqh*, and *fiqh* is part of *Sharī‘ah*.

Sharī‘ah is a holistic approach to guiding Muslim individuals in daily matters and regulating all public and private behavior. The sources of Islamic legislation are the legal evidence from which legal rulings are derived. It leads to an absolute practical legal judgment, whether the deduction is by way of certainty or conjecture (which is the preponderance of one of the two possibilities over the other with evidence). The legal evidence becomes of two parts: definitive of indication and conjectural of indication. This difference is very similar to the difference between direct evidence and circumstantial evidence in the US legal system.

The primary sources of *Sharī‘ah* are the Qur'an, supplemented by the Sunnah. According to the four Sunni schools (Hanafi, Maliki, Shafi‘i, and Hanbali), *Sharī‘ah*'s primary **sources of law** are the Qur'an, Sunnah, *Ijma‘*, and *Qiyās*.

1. The Qur’an

The chief source of *Sharī‘ah*, defined as the Almighty God's unmediated words revealed to the Prophet Muhammad (pbuh) by the Angel Gabriel in the Arabic language; in its precise meaning and precise wording, over twenty-three years, to verify that Muhammad is God’s

⁴⁴ Abaas Shoman, *The Sources of Islamic Law (Massader al-Tashri' al-Islami)*, Cultural House for Publishing (a-Idaar a-lthaqafiah lil nashr), Cairo, (2000), 31.

Messenger.⁴⁵ The Noble Qur'an consists of a hundred and fourteen *sūrahs*, the first of which is *Surat Al-Fatihah* and the last of which is *Surat Al-Nas*.

During the twenty-three years, the Prophet spent thirteen years in Mecca - the Holy place- and ten years in Medina. Thus, the verses in the Quran are categorized as Makkah and Medina's verses (*sūrahs*) based on the revelation's location. The Makkah's *sūrahs* are the verses God revealed to His Prophet Muhammad while he was in Makkah Al-Mukarramah before the Prophet's migration. The Medinan *sūrahs* are the verses God revealed to the Prophet Muhammad when he was mainly in Medina after he migrated from Makkah to Medina, even if it was revealed while the Prophet was elsewhere. Also, Makkah's verses focus on establishing God's monotheism, the confirmation of resurrection, reckoning, resurrection, hellfire, and paradise. Medinan verses deal with worship, transactions, *Hudud*⁴⁶ in Islam, the family system,

⁴⁵ See, e.g., *Mohammed I Jubair*, 'Criminal Law in Islam: Basic Sources and General Principles', in: *Tahir Mahmood et al. (Eds.), Criminal Law in Islam and the Muslim World: A Comparative Perspective* (Delhi: Institute of Objective Studies, 1996), 42; *Imdm Muhammad M. Al-Ghazali, Al-Mustafa min Alam Al-Ustfil* (Cairo: al-Matbaah al-Amiriyyah) at 1/68; and *Denfer Ahmad, Ulfim al-Qurdn* (London: The Islamic Foundation, 1989), 17.

⁴⁶ In Arabic it means "borders, boundaries, limits". In Islamic law, *Hudud* refers to punishments that are mandated and fixed by God.

inheritance, the virtue of *jihād*,⁴⁷ social connections, international relations in peace and war cases, the rules of governance, and other legislative matters.

The rules derived from the Quran are regarded as the highest rules in the legal system. These rules are constant, immutable, and indisputable by other sources of Islam. The Quran also contains general principles and rules but leaves the explanations of these rules to the Sunnah. The Quranic rules can be classified into three categories. First, there are rules related to the Islamic faith, including the six pillars of faith.⁴⁸ Second are the ethical rules; “virtues every Muslim should cherish and vices from which he should abstain.”⁴⁹ Third are the practical rules regarding Muslim sayings, actions, and behavior.

2. Sunnah (Prophet Tradition)

⁴⁷ *Jihād* is an Arabic term that denotes "striving" or "struggling," often with commendable objectives. Within an Islamic framework, the term encompasses various endeavors to ensure conformity between personal and social conduct and God's guidance, including resisting immoral temptations, evangelizing, or striving for the ethical upliftment of the Muslim community (Ummah). However, it is most commonly associated with warfare. In traditional Islamic legal discourse, jihad refers to a military conflict against non-believers. In contrast, contemporary Islamic scholars of the modernist strain tend to equate military jihad with defensive warfare. See "Jihad." In *The Oxford Dictionary of Islam*, edited by Esposito, John L. : Oxford University Press, 2003. <https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-1199>; Wael B. Hallaq, *Sharī'a: theory, practice, transformations*. Cambridge University Press, 2009.

⁴⁸ Belief in the Oneness of Allah, Belief in the Existence of Angels, Belief in the Books of Allah, Belief in All of the Messengers of Allah, Belief in the Day of Judgment & Hereafter, and Belief in Qadhaa' & Qadar (Doom & Divine Decree).

⁴⁹ Abdullah Saad Alarefi, *Overview of Islamic Law*. INTER'L CRIM. L. REV. 9. 707–710. (2009).

Linguistically, Sunnah means biography, method⁵⁰, or customary practice. In legal terminology, it is the Prophetic tradition and practices, including his words, deeds, and tacit approvals.⁵¹ This definition indicates that the Sunnah is of three types:

1. Sunnah Qawliyyah (The Oral Sunnah): is generally synonymous with *hadith*,⁵² which is what the Prophet Muhammad said for various purposes and occasions, transmitted by the Companions to the next generations.⁵³ A large number of the Sunnah are of this type.
2. Sunnah Fi'liyyah (The Actual Sunnah): the Prophet's actions, including religious and worldly activities, such as performing the five daily prayers, Hajj rituals, and food and drink etiquette.

⁵⁰ The Arabic Language Academy in Cairo, *Intermediate Dictionary* (Al Shorouk International Library, 2004), 456.

⁵¹ The eyewitness account of the words, deeds, approvals of the Prophet, or his companions, reported by a witness to a listener who then passes it as a report to another listener and so on until it is written down. For more explanation, See "Sunnah." The Oxford Dictionary of Islam. Ed. Esposito, John L. : Oxford University Press, . Oxford Reference. Date Accessed 22 Jul. 2022
<https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-2279>.

⁵² Sayings of the Prophet. See "Hadith." The Oxford Dictionary of Islam. Ed. Esposito, John L. : Oxford University Press, . Oxford Reference. Date Accessed 22 Jul. 2022
<https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-758>.

⁵³ In Islamic terminology, a Companion, or *Ṣaḥābiyy* in Arabic, is defined as an individual who met the Prophet Muhammad (peace and blessings be upon him), believed in him and his message, and died adhering to that belief. The renowned scholar, Ibn Ḥajar Al-ʿAsqalānī, in his book *Al-Iṣābah*, stated that the most accurate definition of a Companion is one who met the Prophet of Allah (pbuh) while having faith in him and passed away as a Muslim. Therefore, this definition encompasses individuals who spent a considerable or brief period with the Prophet, those who transmitted his sayings (Hadith) and those who did not, individuals who saw him but did not have the opportunity to sit with him, and those who could not see him due to blindness. See Ibn Ḥajar Al-ʿAsqalānī, *Al-Iṣābah fī Tamyīz al-Ṣaḥābah* "A Morning in the Company of the Companions," ed. Adel Ahmed Abdel Mawjoud and Ali Mohamed Moawwad (Beirut: Dar al-Kutub al-Ilmiya, 1415 AH) vol. 1, 8-9

3. Sunnah Taqririyyah (The Tacit Sunnah): the Prophet's tacit approvals regarding the companions' actions occurred in two different ways. It is either what the Prophet explicitly affirmed or kept silent about denying after it happened in front of him or during his time, and he knew about it, or what appeared from him indicating his approval and satisfaction with it. For example, The Prophet does not object to the playing of the spear by two boys in the mosque.

The established Sunnah is the second source of legislation, and it is obligatory to follow, like the Qur'an, in deducing legal rulings. God Almighty urged the believers to obey the Prophet and follow his teachings and made obedience to the Messenger obedience to him. Many verses of the Qur'an command the believers to follow the Sunnah by obeying the Messenger of Allah; "*O ye who believe! Obey Allah and obey the Messenger...*" (al-Nisa'(4): 59). Also, the Qur'an points out that whatever originated from the Prophet does not come out from his desire but is a type of revelation; "*Nor does he say (aught) of (his own) desire. It is no less than inspiration sent down to him*" (al- Najm (The Star): 3-4).

Muslims are bound to follow legal injunctions derived from Sunnah and do not differentiate between the legal injunction laid down by the Qur'an and the Sunnah. Sunnah plays a significant role for the Qur'an in the explanation of legal rules as it (a) reemphasizes and reiterates the injunction of the Qur'an; (b) explains and clarifies the verses of the Qur'an; (c) lays down a legal injunction that is silent by the Qur'an, and in some cases, it (d) abrogates an older interpretation of a rule established by the Qur'an.⁵⁴

⁵⁴ For example, it was obligatory to make a will to parent and near relative without specifying as prescribed in the verse; "*It is prescribed for you, when death approaches one of you, if he leaves behind some goods to make a will for parents and near relatives.*" (al- Baqarah (2): 180). When the verses of inheritance were revealed in *Sūrah* al-Nisa', and everyone who had

3. Ijmā' (Consensus)

The literal meanings of Ijmā' are determination, resolution, and agreement upon something. Ijmā' is, the third source of Islamic jurisprudence, is known as Consensus. It is the agreement of the *mujtahids* (jurists who perform *Ijtihād*⁵⁵) from among the community of Muhammad (pbuh) after his death at a specific time upon a rule of Islamic law. The foundation of the Ijmā' as a source of Islamic law was established in the Qur'an and the Sunnah. In *Surat al-Nisa'*, Allah says;

O ye who believe! Obey Allah and Obey the Messenger and those charged with authority ('uli al-amr) among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger..."
(*al-Nisa'* (4):59)

The word “‘*uli al-amr*” means *ulama'* (scholars) of the community; thus, the agreement of the *mujtahids* is bound to follow. In the Sunnah, there is a hadith in which the Prophet Muhammad is reported to have said, “*My community will never agree on an error.*”⁵⁶

rights was given his due, the obligation to bequeath to parents and next of kin as heirs ceased. According to the majority of Muslim jurists, the hadith: “*Allah has given every person who has rights his due, and there is no bequest to an heir*” **abrogates the verse.**

The hadith was narrated by Abu Dawood (2870), al-Tirmidhi (2120), al-Nasa'i (3671) and Ibn Majah (2713), and the hadith was authenticated by al-Albani in Sahih Abi Dawood.

⁵⁵ *Ijtihād* means the independent reasoning in the interpretation of Islamic Law. The *mujtahid* is a Muslim scholar with the highest degree of learning. See more explanation by the end of this chapter.

⁵⁶ Narrated by al-Tirmidhi (4:2167), Jami' at-Tirmidhi 2167, Book 33, Hadith 10. English translation: Vol. 4, Book 7, Hadith 2167; See <https://sunnah.com/tirmidhi/33/10>; Ibn Majah (2:1303), Abu Dawood, and others with slightly different wordings.

The juristic consensus is utilized where the Quran and Sunnah are silent on a particular issue,⁵⁷ for instance, the Companions' agreement to give the grandmother a sixth of the inheritance (the Companions are the large community of people who directly and personally saw the Prophet or heard from him during their state of Islam and sound mind). According to the majority of jurists, a decision based on Ijmā' generally cannot override a statement of the Quran or the Sunnah. Moreover, it is incumbent on the Muslim to follow the Islamic law's legal rule derived from Ijmā', similar to the rule established by the Qur'an and the Sunnah text. However, the legal rule derived through Ijmā' must be supported by proof from the Qur'an, Sunnah, and according to some jurists, *Qiyās* and Public interest. The legal rule based on Ijmā' is definitive and is not permitted to oppose by other jurists.

There are two types of Ijmā'. First, **Explicit** (*Ijmā' sarīh*) requires an explicit agreement among all the mujtahids on a ruling on a particular issue. Second, (b) **Silent or tacit** (*Ijmā' sukūti*) occurs when some of the mujtahids provide a legal opinion on a specific matter, and others remain silent without denial.

4. *Qiyās* (Analogy)

Qiyās means measurement, comparison, and equation. *Qiyās*, or analogical reasoning, is regarded as the fourth source of Sharī'ah for Sunni jurisprudence. It is defined as deducing legal prescriptions from the Quran or Sunnah by analogic reasoning.⁵⁸

⁵⁷ For more explanation, See "*Ijma.*" The Oxford Dictionary of Islam. Ed. John L. Esposito. Oxford Islamic Studies Online. 28-Oct-2020. <http://www.oxfordislamicstudies.com/article/opr/t125/e989>

⁵⁸ "*Qiyās*" The Oxford Dictionary of Islam. Ed. John L. Esposito. Oxford Islamic Studies Online. 28-Oct-2020. <http://www.oxfordislamicstudies.com/article/opr/t125/e1936>

Under the method of *Qiyās*, the ruling of the Quran or Sunnah extends to a new problem provided that the precedent “*asl*” and the new problem “*far*” share the same operative or effective cause “*illah*.”⁵⁹ In any given case, the jurist must determine an action’s legal status by looking for a clear textual command in the law’s scriptural sources. If he did not find a direct text, one should utilize analogical reasoning to determine the legal or moral reason for such action. The jurist would begin with a ruling found in revealed texts; for instance, the Qur'an states that action (X) is forbidden. Then he would try to deduce the quality in the substance or action leading to the ruling, called “*illah*.” Once the jurist identified the effective cause that forbids the action (X), he could expand the ruling by analogy, stating that any action sharing the same reasoning is prohibited.

For example, the *illah* (effective cause) of consuming wine and alcoholic beverages is intoxication based on the Prophetic hadith that states, “*Every drink that causes intoxication is forbidden.*”⁶⁰ The general rule is that all intoxicants that alter an individual’s mind or affect perception, judgment, behavior, and thinking ability are impermissible under Sharī‘ah. Therefore, by applying analogy, anything that intoxicates the mind, such as narcotics, is prohibited. From this example, we can deduce that *Qiyās* has four pillars:

1. The original case (*asl*): the standard by which the rule is stated.
2. The original case legal ruling (*hukm al-asl*): the Qur’an and Sunnah must establish the ruling.

⁵⁹ The *illa* is the specific set of circumstances that trigger a certain law into action.

⁶⁰ Sahih Muslim, Book of drinks, Ch.7, Every intoxicant is wine and every wine is forbidden, No. 2001. <https://sunnah.com/muslim/36>

3. The new or parallel case (*far'*): This is the case in which there is no directly related text in the Qur'an, the Sunnah, or Ijmā regarding the issue.
4. The effective cause (*'illah*): the intention that links the original and the new case.

The Qur'an and Sunnah justify *Qiyās* as a source of Islamic law. In the Qur'an, Allah says;

*Whenever they come upon any news bearing upon either security or causing consternation, they go about spreading it, whereas if they were to convey it to either the Messenger or to those from among them who are entrusted with authority, **it would come to the knowledge of those who are competent to investigate it.***⁶¹

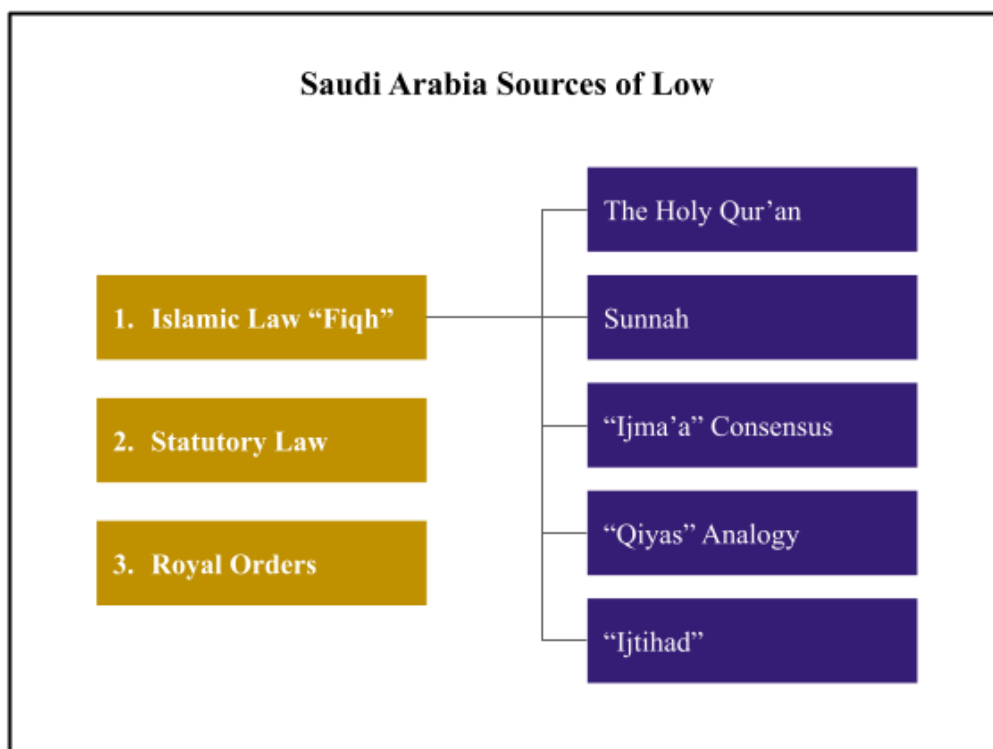
Based on the above verse, there is a directive to refer the matter to those in authority, the Ulama (jurists in this context), so they know the ruling by applying deduction, which is a type of *Qiyās*.⁶²

Sunnah reported many cases in which the Prophet, responding to queries of the Companions, gave answers in a form that was supposed to train them in legal thinking. In such cases, the method is quite similar to the analogy. For instance, a man came to the Messenger of Allah in a hadith, requesting him to give her a legal opinion (fatwa). He said: "Messenger of Allah, my father has died, and the performance of hajj was due to him. May I perform the hajj on his behalf?" Allah's Messenger said: "Tell me, if your father owed a debt and you paid it, would

⁶¹ Translated by Syed Abu-al-A'la Maududi, Tafheem-ul-Quran, Sura Al-Nisa, verse 83. <https://surahquran.com/english-aya-83-sora-4.html>

⁶² Shoman, *The Sources of Islamic Law*, 70.

that benefit him?” The man replied: “Yes.” The Messenger of Allah said: “Perform the hajj on his behalf; the debt due to Allah deserves most to be paid.”⁶³



(Figure 2: Saudi Arabia Sources of Law)

2.5 The Role of Sharī‘ah Courts

2.5.1 Family law governed by Sharī‘ah courts

Concerning family issues, Saudi Arabia follows Sharī‘ah family law, an Islamic uncodified Personal Status regulation regulating marriage, divorce, child custody, inheritance, and rights in the marriage relationship. Those rulings are preserved in the Islamic jurisprudence

⁶³ Reported by al-Nasa’i, *Sunnan al-Nasa’i, The Book of Hajj*, Chapter 11 (The Comparison of Making Up Hajj With Paying Off A Debt), Hadith No. 2639. <https://sunnah.com/nasai:2639>

books but not collected in a single statute. The Judicial Regulation of 2013 indicates that family disputes will be tried in family courts. The first Article of the system provides for judicial independence stating that judges are subject only to Islamic law and Saudi regulations.⁶⁴ Of the prominent four schools of jurisprudence that four imams developed in the eighth century (Hanafi, Maliki, Shafi ‘i, and Hanbali) in Islamic law, the Hanbali school of jurisprudence is the country’s dominant *Madhhab* (school of thought), so judges are expected to consult Hanbali jurisprudence texts before deciding.⁶⁵ Nonetheless, the judge may consult the jurisprudence of the other three primary Sunni schools⁶⁶ (1) if the answer is not found within the school’s texts; (2) if there would be a hardship in applying the Hanbali’s doctrine; or (3) if applying the Hanbali’s doctrine contradicts the public interest.⁶⁷ Furthermore, the Law of Procedure Before Shari‘ah Courts Trial Procedure Law states in Article One that

The courts shall apply in the cases before them the provisions of Islamic Shari‘ah, as indicated in the Qur’an and Sunnah, and the regulations issued by the guardian (referred to the King) which do not conflict with the Qur’an and Sunnah.”⁶⁸

The Act does not require the application of a particular doctrine. It gives judges more flexibility to choose from other schools’ jurisprudence to determine suitable and just ruling for

⁶⁴ The Saudi Judicial System, Article 1, (2013).

⁶⁵ Judicial Observation Body, resolution no. 3, (1928).

⁶⁶ *Hanafi, Maliki, and Shafi’i*.

⁶⁷ Judicial Observation Body, (1928).

⁶⁸ The Law of Procedure Before Shari‘ah Courts, issued by a royal decree number (M/21), (2000).
<https://laws.boe.gov.sa/BoeLaws/Laws/Viewer/fe492fc1-8fdf-4b97-8b67-ebd27fec9376?lawId=d7c8e4c4-014c-4d73-a38e-a9a700f268b3>

the assigned cases. However, as with most Saudi regulations, family law is not codified in a single statute. Family disputes are subjected to the judge's jurisprudence, who could apply his independent judgment and legal reasoning, practicing *Ijtihād*.

Scholars have different opinions regarding the lack of codified family law. Zainah al-Mihdar asserts that the absence of codified family law gives the judges broad discretion to decide the case, thus possibly leading to contradictory or arbitrary judgments.⁶⁹ Al-Mihdar concludes that codification guarantees women's and children's rights and removes uncertainty about their cases' outcomes.⁷⁰ Otherwise, Chibli Mallat, based on his observation of family law litigation in Saudi courts, argues that the legal system is coherent, balanced, and functioning.⁷¹ According to Mallat, even without a comprehensive family code, Saudi family law's legal norms are established and fathomable; Saudi citizens can precisely ascertain their rights and obligations.⁷²

The Regulation of The Personal Status 2022 (*nizam al'ahwal alshakhsia 1443AH*)

It seems that the Crown Prince is leaning toward acknowledging the necessity of limiting the extensive authority of judges and establishing greater uniformity in their decisions regarding family matters. In March 2022, a Royal Decree No. M/73 was issued approving the Regulation

⁶⁹ Al-Mihdar, Zainah. "Human Rights of Women and Children under the Islamic Law of Personal Status and Its Application in Saudi Arabia." *Muslim World Journal of Human Rights*, vol. 5, no. 1, 2008, pp. Muslim World Journal of Human Rights, December 2008, Vol.5(1).

⁷⁰ Ibid

⁷¹ Mallat, Chibli, *The Normalization of Saudi Family Law*. Electronic Journal of Islamic and Middle Eastern Law (EJIMEL), (2017) 5:1-27.

⁷² Ibid.

of Personal Status.⁷³ The new regulation is one of four projects announced by Crown Prince Mohammed bin Salman on February 8, 2021, to develop specialized legislative systems within a set of judicial and judicial reforms in the Kingdom of Saudi Arabia.⁷⁴ The regulation aims to preserve the family and its stability as the fundamental component of society. It also works to improve the situation of the family and the child and to control the judge's discretionary power to reduce the discrepancy of judicial rulings in this regard.

The Personal Status Regulation consists of 252 articles and legal texts to regulate in detail the provisions of engagement, marriage, and inheritance derived from interpretations of Islamic law. The statute stressed in the penultimate article that when there is no provision in the matter, the rulings of Islamic Sharī'ah that are closer to the Personal Status Regulation are applied. The Regulation singled out a chapter on the provisions of marriage as a contract with pillars and conditions, arranging rights and duties between spouses to establish a stable and transparent family cared for by both spouses with affection and mercy.

The new statute deals with family issues, starting with the mechanisms of marriage and engagement, the pillars of the contract and conditions for its validity, the rights of the spouses, alimony, and proof of parentage. Moreover, the statute discusses the regulations regarding the division between spouses, divorce, *khul'* (dissolution of marriage by request of wife to the judge), annulment of marriage by the court, the effects of division and its provisions between spouses, and the waiting period during the process of divorce. In addition, the statute explains the

⁷³ Here you can find the full text of the statute in Arabic.
<https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/4d72d829-947b-45d5-b9b5-ae5800d6bac2/1>

⁷⁴ CNBC, Saudi Arabia announces major legal reforms, paving the way for codified law, PUBLISHED TUE, FEB 9 2021 3:20 AM EST.
<https://www.cnbc.com/2021/02/09/saudi-arabia-announces-legal-reforms-paving-the-way-for-codified-law.html>

custody rules, guardianship, its conditions, and the court-appointed guardian. Finally, the law demonstrates the regulations regarding the absent individual who left the family for a long time, the missing spouse, the will and its drafting, including pillars and invalidators of the will, and detailed inheritance provisions.

2.5.2 The Rule of Customs in the Trajectory of Fatwa

In general usage, the Arabic word *ijtihād* means utmost physical or mental effort expended in a particular activity.⁷⁵ Its technical and legal connotations denote the process conducted by a trained jurist to issue an independent jurisprudential ruling derived from the Islamic revealed texts. The performer of *Ijtihād* is called “*mujtahid*,” and the opinion issued through *Ijtihād* is called fatwa. In Arabic, the word fatwa refers to the jurisprudential statement issued by a qualified Muslim jurist to respond to a question presented to them.⁷⁶ The fatwa is not exclusively related to a religious matter; it could relate to a social or political issue.⁷⁷

The classical science of legal theory (*uṣūl al-fiqh*) sets forth requirements that the individual jurist must fulfill to be a qualified *mujtahid*.⁷⁸ For example, one essential requirement to be *mujtahid* is to be “well-versed with all rulings discussed in the Quran and *Sunnah*.”

⁷⁵ Rabb, Intisar A. "Ijtihād." The Oxford Encyclopedia of the Islamic World.: Oxford University Press, 2009. Oxford Reference. Date Accessed 21 Apr. 2020 <https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780195305135.001.0001/acref-9780195305135-e-0354>

⁷⁶ *Fatwa* is a juristic responsum to a question either in a judicial or a legislative context.

⁷⁷ For more information about fatwa and its requirements and issues, see in Arabic, Ibn Al Qayyim Al Jawziyyah, *I'lam Al-Muq'een* (Dar Al-Kutub Al-'ilmiyah, 1991), 1:69.

⁷⁸ For the mufti qualities, see Ibn al-Salah, *Adab al-Mufti wal-Mustafti* (Maktabat al-‘ulum wa al-hikam, 1986) 106.

⁷⁹Another critical requirement is mastering Arabic so the scholar can read and understand both the Qur'an and the Sunnah. Ibn al-Qayyim, in his book, *I'lam al-Muqqi'een*, summarizes the prerequisites for any mufti into two qualities: understanding what happened (jurisprudence of reality) and understanding what is required (jurisprudence of the texts and traditions).⁸⁰ Muftis and jurists are socially recognized individuals who acquired their knowledge and training as muftis in reputable learning circles and schools.⁸¹

Fatwa varies in its comprehension and application from place to place and time to time.⁸² The principle of the mufti's answer is that it should result from research and diligence so that that judgment will be based on reality and linked to it, not based on mere assumption. The jurisprudential rulings that change with the times are custom-based rulings; in contrast, the judgments based on the legal texts do not change. Ibn al-Qayyim asserts the settled rule in Islamic jurisprudence that fatwas change according to the time, place, circumstances, and customs.⁸³ In a book dedicated to the rule of change in the fatwa, Ibn Abidin reminds the jurists to base fatwas on people's customs in question.⁸⁴ The Imam al-Qarafi affirms that applying fatwas based on certain customs without considering the new custom and circumstances is

⁷⁹ Abdullah Alaoudh, *Religious Institutions in the Constitutional Orders of the Post-Revolution Arab Countries: Egypt as a Case Study*, 62 (2017), Doctoral Dissertation, University of Pittsburgh. (Unpublished)

⁸⁰ Ibn al-Qayyim, *I'lam al-Muqqi'een* (Dar al-Kutub al-'Ilmiyyah, 1991), 69; see Alaoudh, *Religious Institutions in the Constitutional Orders*, 62.

⁸¹ Alaoudh, *Religious Institutions*, 62.

⁸² Ibid.

⁸³ Ibn al-Qayyim, *I'lam al-Muqqi'een*, 255.

⁸⁴ Ibn Abidin, *Nashr al-'urf Fi Bina' al-Ahkam 'ala al-'urf* (Sayyed 'illysh, nd), 14-48.

against the jurisprudential consensus and common sense.⁸⁵ In issuing a fatwa, the mufti should consider the jurisprudential school the questioner follows and the customs of the questioner's place.

2.6 Summary

The Kingdom of Saudi Arabia operates as an absolute monarchy, with the Basic Law of Governance mandating that the King adheres to Sharī'ah principles and that the Quran and Sunnah serve as the nation's constitution. In addition to these sources, Sharī'ah in Saudi Arabia draws from the juristic consensus on the interpretation of the Qur'an, the Sunnah developed after the Prophet's death, and analogical reasoning. The Hanbali legal school of thought is predominantly followed in the country as the official interpretation of Sharī'ah.

The Kingdom has adopted Sharī'ah in an uncodified form, resulting in a considerable variation in its interpretation and application. However, the Kingdom has been working on judicial reforming as part of massive reform in the country, resulting in codifying Islamic law in several subject-matter regulations, such as the Judiciary Regulation and the Regulations of Personal Status.

Royal decrees constitute one of the primary sources of law that supplement Sharī'ah, covering contemporary issues such as intellectual property, labor, commercial, and corporate law. Other regulations include Royal Orders and Decrees and Minister of Council orders and decrees. All the rules and regulations must follow Sharī'ah.

⁸⁵ Al-Qarafi, *Al-Ihkam* (Maktab al-Matbu'at al-Islamiyyah, 1995), 218.

CHAPTER THREE

Family and Orphans in Sharī‘ah

3.1 Introduction

In Sharī‘ah law, the family is the basic building block in forming Muslim societies and is the primary means of transmitting Islamic values and traditions from one generation to the next. If a family is righteous as a result of its members' righteousness, then society is also righteous, and society is righteous as a result of its ability to uphold its social, moral, and religious obligations. The Muslim family is built on a bond between a male and a female through a legal contract. Family is the institution entrusted with the responsibility of raising the children, directing them to what is in their best interest, and preparing them to assume the tasks and duties assigned to them in the various stages of their lives.

Many verses in the Holy Qur'an indicate the importance of the family in Islam, including the Almighty saying: *"And one of His signs is that He created for you spouses from among yourselves so that you may find comfort in them. And He has placed between you: compassion and mercy."*⁸⁶ Sharī‘ah established the rights and duties of the Muslim family to protect it and the rights of each member of it and to secure inner happiness and safety from problems. Relations between them are based on three essential pillars: affection, mercy, and accommodation. Their rights and duties include the husband's and wife's rights and the children's and parents' rights over each other.

⁸⁶ The Holy Qura'n, *Sūrah Ar-Rūm* (The Romans) verse 21, English Translation (Dr. Mustafa Khattab) <https://quran.com/30/21>

This chapter explains three basic jurisprudential concepts for building the basis of this research. It starts with the family concept in Sharī'ah, its structure, and the relationship between its members. Followed by the concept of adoption in Islam, and finally, kafalat al-yateem (sponsoring an orphan), its meaning, and the difference between kafalah and adoption.

3.2 Familial Relationship in Islamic Law

3.2.1 The Concept of Family (Usra)

Linguistically, the word *Usra* in Arabic is derived from the meanings of unity, tight tie, and protection.⁸⁷ *Usra* or family refers to a group connected through a close relationship that keeps them together and maintains their solidity. The Islamic definition of family is a group that arises from a relationship between a man and a woman through a marriage contract, and the subsequent offspring originates from such marriage.

The institution of the family plays a significant role in Muslim society. Family is regarded as the cornerstone of a robust and coherent community. The basis upon which the family is based is "marriage," which forms the sole basis for sexual relations and parenthood. Marriage in Sharī'ah is not a sacrament; it is a contract between a man and a woman in which the man provides the woman with financial support in return for exclusive sexual access. It is a contract that makes sex and reproduction legal in God's eyes and legitimate in society's eyes. Ibn Uthaimen, a contemporary Saudi scholar and an influential member of the Council of Senior

⁸⁷ *Usra* is the fortified shield; See Muhammad bin Makram Ibn Manzour, *Lisan Al-Arab* (The Arab's Tongue) (Beirut: Dar Sadir, 1414), vol.1. *Usra* also means the person's family and clan, and a group bound by a common affair; see The Arabic Language Academy in Cairo, *Al-Mu'jam Al-Wasitt* (Intermediate Dictionary) (Cairo: al-Shorouq International Library, 2004), 17.

Ulama who served until he died in 2001, defines marriage as "a mutual contract between a man and a woman whose goal is for each to enjoy the other, become a pious family and a sound society."⁸⁸ From here, we take that the marriage contract is not intended merely for enjoyment; another meaning is designed: forming good families and healthy societies.

Muslim family members are interrelated in three ways: marriage, blood ties, and breastfeeding. This relatedness entails familial rights and obligations based on the type of relationship. Marriage connects the husband and the wife through a contract named by Almighty Allah as "a solemn covenant."⁸⁹ Although marriage is primarily a relationship between spouses, it builds relationships between two families. The marriage union is presumed to last for a lifetime; however, a marriage's dissolution is permitted if it fails to serve its objectives.⁹⁰

3.2.2 The Structure of Family in Islam

In the family's internal organization, the man is considered the head of the family; this leadership requires him to bear economic and moral responsibility for maintaining the family. The man's primary responsibility lies outside the house, while the woman's primary responsibility lies within the house. Both men and women cooperate in parenting and educating their children. The traditional Muslim family is usually extended, not a nuclear family that consists of parents and children only; it usually has three or four generations under its umbrella.

⁸⁸ Muhammad bin Saleh Ibn Uthaimeen, *Marriage (al-Zawaj)*, Islam Way; Marriage and family relations issues, Posted on October 27, 2003). <https://ar.islamway.net/article/510/الزواج>

⁸⁹ The Holy Qura'n, *Sūrah An-Nisa* (The women) verse 21, English Translation (Dr. Mustafa Khattab) <https://quran.com/4:21/tafsirs/en-tafsir-ibn-kathir>

⁹⁰ Ibn Uthaimeen, *Marriage (al-Zawaj)*. <https://ar.islamway.net/article/510/الزواج>

The structure of the family is ternary. The **first** and closest part includes the husband, wife, children, and parents if they live with them. The **second** and broadest part consists of close relatives who have a claim upon each other, whether living together or apart. The family members of those two parts are *Maharim (plural)* and *Mahram (singular)*, an Arabic term derived from the word “*haraam*,” which refers to something sacred or prohibited.⁹¹ A woman’s *Maharim* are the men she is not permitted to marry permanently, excluding her husband, to whom the woman is already wedded. Married couples are Mahram to each other.

Nevertheless, unlike other Mahrams, the limitations and rulings on looking and touching do not apply to them; i.e., married couples are the only ones allowed to touch and look at the whole body of one another, even the private parts. Therefore, non-mahram means it is not Haram to marry. It is permissible for a woman to appear in front of her Mahram without the Hijab, shake hands, hug, and accompany him on traveling. Being a mahram allows a man to look at his female Mahram without her wearing Hijab and to be in seclusion. Enumerating the types of Mahrams, the Quran says,

*Also forbidden to you for marriage are your mothers, your daughters, your sisters, your paternal and maternal aunts, your brother’s daughters, your sister’s daughters, your foster mothers, your foster sisters, your mothers-in-law, your stepdaughters under your guardianship if you have consummated the marriage with their mothers—but if you have not, then you can marry them—nor the wives of your own sons, nor two sisters together at the same time—except what was done previously. Surely Allah is All-Forgiving, Most Merciful.*⁹²

⁹¹ Mahram." In *The Oxford Dictionary of Islam*, edited by Esposito, John L. : Oxford University Press, 2003.
<https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-1391>.

⁹² The Holy Qura’n, *Sūrah An-Nisa* (The women) verse 23, English Translation (Dr. Mustafa Khattab) <https://quran.com/4/23>

The following verse of *Sūrah An-Nur* also mentions some Mahrams,

*Let them draw their veils over their chests and not reveal their 'hidden' adornments except to their husbands, their fathers, their fathers-in-law, their sons, their stepsons, their brothers, their brothers' sons or sisters' sons, their fellow women, that 'bond women' in their possession, male attendants with no desire, or children who are still unaware of women's nakedness. Let them not stomp their feet, drawing attention to their hidden adornments.*⁹³

Imam Al-Jaṣṣās, a Hanafīte scholar and interpreter, commented on this verse, "When Allah mentioned the fathers and their marriage to these women is forbidden forever; this denotes that the same prohibition applies to other relationships of Mahram, such as the mother of the woman and those who are Mahrams by *Redha 'a*."⁹⁴ According to the explanation of the Quran, the Mahram relationship, as mentioned in the above-mentioned Quranic verses or inferred by it, emerges from three types of relationship; consanguinity⁹⁵, affinity, and "*Redha 'a*" or foster nursing as follows;

1. Relationship by Consanguinity

Consanguinity refers to the biological relationship between parents and their offspring. Individuals who are closely related through consanguinity are generally prohibited from marrying each other. Relations based on consanguinity include

(1) Father, mother, grandfather, grandmother, and other direct ascendants;

⁹³ The Holy Qura'n, *Sūrah An-Nur* (The light) verse 31, English Translation (Dr. Mustafa Khattab) <https://quran.com/24/31>

⁹⁴ Abū Bakr Aḥmad ibn 'Alī al-Rāzī al-Jaṣṣās, *Aḥkām al-Qur'ān*, ed. Muhammad Sadiq al-Qamhawi (Beirut: Dār al-Iḥyā' al-Turāth, 1405 AH) vol. 5, 174.

⁹⁵ **Consanguinity** means a blood-relationship; descent from a common ancestor. See Hey, David. "consanguinity." *The Oxford Dictionary of Local and Family History*. : Oxford University Press, 2003. [Oxford Reference. https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780198600800.001.0001/acref-9780198600800-e-345](https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780198600800.001.0001/acref-9780198600800-e-345)

- (2) Direct descendants that are sons, daughters, grandsons, and grand-daughters;
- (3) Relations of the second degree (such as brothers, sisters, and their descendants); and
- (4) Father's or mother's sisters (not their daughter or other descendants).

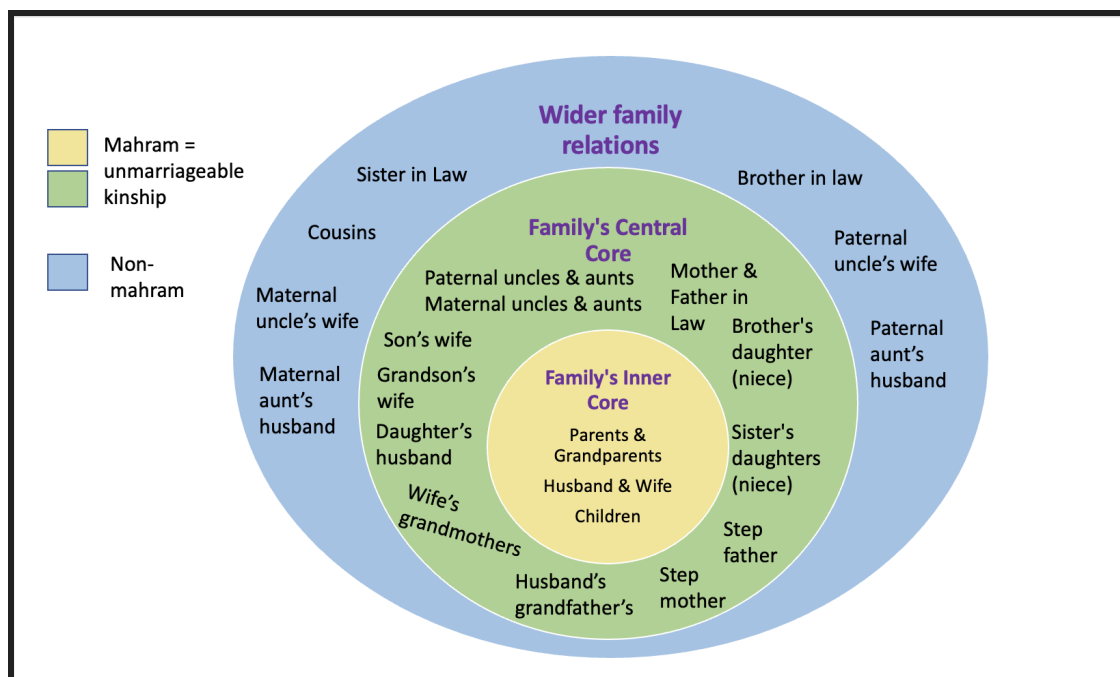
2. Relationship by affinity

Affinity refers to the relationship between two people who are related by marriage rather than by blood. Unlike consanguinity, affinity does not involve a biological connection between individuals. The relations based on affinity include

- (1) Mother-in-law, father-in-law, grandmother-in-law, grand-father-in-law;
- (2) Wife's daughters, husband's sons, or their grand or great-granddaughters or sons, respectively;
- (3) Son's wife, grandson's wife, daughter's husband, and;
- (4) Stepmother and stepfather.

Some exceptions apply the same relations through breastfeeding/foster nursing.

Figure 3 illustrates the family arrangement in Islamic law, emphasizing the distinction between mahram and non-mahram relatives.



(Figure 3: Family structure in Islamic law)
Credit: Based on “The Structure of a Muslim Family” by Khurshid Ahmad.

3. Relationship by foster nursing “Redha ‘a.”

The connection is established when a woman breastfeeds a non-biological infant, giving the nursed child the rights of a birth child. The effects of breastfeeding include prohibiting marriage and making the child the Mahram of the woman who breastfeeds him. The nursed male child is a Mahram by *Redha ‘a* to the following;

- (1) Foster mother and further female ancestors
- (2) Foster sisters, including all the children nursed by the same woman even if they were not biologically related.
- (3) Foster aunts.
- (4) Foster nieces.

However, breastfeeding does not make it obligatory to spend on the child or make him an heir or a guardian in a marriage case. This type of family relationship will be explained in detail in the next chapter.

The **third** part of the family structure in Islam includes all relations outside the fold that constitute the outer periphery of the family. The members of this group are non-Mahram, which means they are marrigable kins, such as cousins, brothers, and sisters-in-law.

According to **Mahram's concept**, there are some rules regarding the social interactions between men and women:⁹⁶

- Men and women must keep their gazes downcast and not stare at the other person when facing non-Mahrams or talking to them.
- Even Mahrams are not allowed to see certain parts of the body of each other, such as the intimate parts, except for married couples.
- It is required to cover specific body parts in the presence of a non-Mahram according to the Islamic dress code. For men, this includes from the navel to the knee. For women, the clothing should cover their hair and body, but covering the face and the hands, from the wrist to the fingers, is not mandated.⁹⁷

⁹⁶ Mahram relationships are established by Islamic law to regulate social interactions and prevent any inappropriate or illicit relationships between individuals. The concept of mahram relationships is intended to promote modesty, respect, and appropriate behavior between individuals in Islamic society.

⁹⁷ Covering the face is a controversial issue among the jurists. For more information about the dress code in Islam, see Wikipedia contributors, "Intimate parts in Islam," *Wikipedia, The Free Encyclopedia*, https://en.wikipedia.org/w/index.php?title=Intimate_parts_in_Islam&oldid=1125280952 (accessed December 7, 2022).

- Any physical contact, such as shaking hands, hugging, and touching with non-Mahrams, is forbidden, except for necessities such as curing patients.
- When speaking to non-Mahrams, the tone of voice should be serious, and the dialogue should be direct and only as much as necessary. One should also avoid telling jokes and laughing loudly.
- When being alone in a closed room (where no one else can enter, i.e., a locked place), it is forbidden for a non-Mahram man to remain alone in the company of a non-Mahram woman. The Companion Umar Ibn Al-Khattab reported the Prophet saying, *"Whenever a man is alone with a woman, the devil makes a third."*⁹⁸

3.3 Adoption in Sharī‘ah “*Tabann ī*”

Adoption was a common practice in the pre-Islamic era of the Arab Peninsula, where children who were orphaned or abandoned by their biological parents would be taken in and raised by other families. However, adoption in pre-Islamic Arabia was often associated with certain cultural practices, such as the adoption of a child in order to establish a bond of loyalty between two tribes or families. With the arrival of Islam, the concept of adoption underwent significant change and, eventually, was abolished altogether. This section will explore the historical context of adoption in pre-Islamic Arabia and examine the reasons behind its abolition under Sharī‘ah.

⁹⁸ Imām al-Khatib at-Tabrizi, *Mishkat al-Masabih*, Hadith no. 3118, Chapter 1b: Looking at a Woman who is asked in Marriage, and an Explanation of what may not be seen - Section 2, Book 13: Marriage. Translation by James Robson. <https://sunnah.com/mishkat:3118>

3.3.1 Tabannī before Islam

Tabannī literally means the act whereby one person takes another as a son or daughter⁹⁹ (*ittakhadhahu ibnan/walden*) by affiliating the lineage of an adopted child to the parentage of the adopter and considering him as a legitimate child. Idiomatically, the *fuqahaa'* (jurists) do not deviate from the linguistic use of the word Tabannī. This practice gives the adopted child the same rights and merits as the biological counterpart in terms of family relationship, rights to custody, guardianship, support, inheritance, lineage, and consanguinity.¹⁰⁰ In other words, Tabannī is the legal conception of adoption, as practiced in the Western world.

Adoption is an ancient social system that most human societies have known throughout history, mainly as a response to the problems of childlessness and parentlessness.¹⁰¹ In the pre-Islamic era, adoption was a custom recognized and practiced among Arab societies throughout the sixth and during the first quarter of the seventh-century CE.¹⁰² Arabs had adopted free men, enslaved people, captives, runaways, and the children of concubines.¹⁰³ The

⁹⁹ Eric Chaumont and P. Bearman. "Tabannin." *Encyclopaedia of Islam, second edition*. Leiden, The Netherlands: Brill. http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/tabannin-SIM_8913 (2012). For more information about the literal definition of *Tabannī*, see in Arabic, Ibn Manzour, *Lisan al-Arab* (Arab's Tongue), vol. 3, 70.

¹⁰⁰ Ella Landau-Tasseron, "Adoption, Acknowledgement of Paternity and False Genealogical Claims in Arabian and Islamic Societies." *Bulletin of the School of Oriental and African Studies* 66, no. 2 (2003): 169–92. doi:10.1017/S0041977X03000107.

¹⁰¹ David S. Powers, *Muhammad Is Not the Father of Any of Your Men* (University of Pennsylvania Press, Inc: 2011), chapter 3.

¹⁰² David S. Powers, "Adoption," in: *Encyclopaedia of Islam*, THREE, Edited by: Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, Everett Rowson. http://dx.doi.org.offcampus.lib.washington.edu/10.1163/1573-3912_ei3_SIM_0304

¹⁰³ David Powers, *Muhammad Is Not the Father of Any of Your Men*, 23.

pre-Islamic practice of adoption served several functions. For instance, an enslaved child might be manumitted and adopted by a tribe member. Also, if an Arab man admires a person for his vigor, strength, cleverness, or out of love belonging to a son of an honorable origin or great pride and prestige, he might adopt that person. Both male and female adopted children, although the recorded cases of adoptive females are limited. The adoptee would take the surname of his adoptive father or the matronymic of his adoptive mother.¹⁰⁴

Islamic sources mention several adoptees in pre-Islamic and early Islamic times, such as Sālim mawla Abī Ḥudhayfa (d. 11/632–3) and Shuraḥbīl b. Ḥasana (d. 18/639). The Prophet Muhammad (pbuh) adopted a young captive before Prophethood,¹⁰⁵ his name was Zayd bin Ḥāritha al-Kalbī. Zayd was a freeman from the south of Syria, kidnapped by horse-riding Arabs, transferred to Hijaz, and sold off in 'Ukāz market in Makkah.¹⁰⁶ The capture and enslavement of Zayd b. Ḥāritha has several versions preserved in Islamic sources.¹⁰⁷ According to Muhammad

¹⁰⁴ The Companion Shuraḥbīl b. Ḥasana took his patronym from his adopted mother, Hasana. See Yūsuf ibn 'Abd Allāh ibn Muḥammad ibn 'Abd al-Barr, *al-Isti'āb fi Ma'rifat al-Ashāb*, ed. Ali Muhammad al-Bajawi (Beirut, Dar Al-Jeel, 1412 AH - 1992 AD) vol. 2, 698; Aḥmad Ibn Ḥajar al-'Asqalānī, *Kitāb Tahdhīb al-Tahdhīb* (India: Department of Systematic Encyclopedia Press) vol. 4, 324.

¹⁰⁵ Ella Landau-Tasseron, "Adoption, Acknowledgement of Paternity and False Genealogical Claims in Arabian and Islamic Societies," 169–92.

¹⁰⁶ On the life of Zayd bin Ḥāritha in English, see David S. Powers, *Zayd (University of Pennsylvania Press, 2014)*; M. Lecker, *Zayd b. Ḥāritha*, in 11 *ENCYCLOPAEDIA OF ISLAM* 475 (P.J. Bearman et al. eds., 2002).

¹⁰⁷ For more information about different versions of the story of Zayd's enslavement, see in Arabic Abū Bakr 'Abd Allāh ibn Muḥammad Ibn Abī Shayba, *al-Kitāb al-Muṣannaf fi al-Aḥādīth wa'l-āthār*, ed. Kamal Youssef al-Hout (Lebanon: Dar al-Taj, 1409 AH - 1989 AD) vol. 7, 341, no.36604; Abū 'Abdullāh Muḥammad ibn Aḥmad ibn Abī Bakr al-Qurṭubī, *Al-Jami' li Ahkam al-Qur'an*, ed. Ahmed al-Bardouni and Ibrahim Atfayyesh (Cairo: Dar al-Kutub al-Misryya) vol.14, 118; 'Alī ibn al-Ḥasan ibn Hibat Allāh Ibn 'Asākir, *Ta'rikh madīnat Dimashq (History of Damascus)*, ed. Moheb al-Din Abu Saeed Omar bin Gharama Amrawi, (Dar al-Fikr, 1415 AH - 1995 AD), vol. 19, 342-374.

Ibn Sa‘d, Zayd was sold to Ḥakīm b. Ḥizām b. Khuwaylid acted on behalf of his paternal aunt, Khadīja bt. Khuwaylid. When Khadīja married Muḥammad (pbuh), she gave him Zayd as a gift.¹⁰⁸ The Prophet manumitted him and adopted him.¹⁰⁹ It was customary in the Arab Pre-Islamic era to celebrate the event of adoption in a special ceremony. The terms of the new relationship were formally announced in the presence of witnesses.¹¹⁰ The Prophet Muhammad declared in front of the Ka‘ba, in the presence of members of the Quraysh tribe, and in the presence of Zayd’s father and uncle that he had adopted Zayd to his fellow tribesmen and said: “*O people of Quraish, be a witness that he is my son, he inherits me, and I inherit him.*”¹¹¹ The adoption created mutual inheritance rights and protection between Prophet Muhammad as the adoptive father and Zayd as the adoptee, and the latter’s name changed to Zayd bin Muhammad. He was also known as the Beloved of the Messenger of Allah.

3.3.2 The prohibition of Tabannī

In Islamic law, Muslim scholars are unanimous on the prohibition of adoption based on the Qur’anic revelation in *Sūrah* al-Ahzab¹¹² concerning Zayd bin Ḥāritha. The matter continued as part of the tabannī practice until the revelation of verses 33:4-5 of the Qur’an:

¹⁰⁸ Abū ‘Abd Allāh Muḥammad Ibn Sa‘d, *Kitāb al-ṭabaqāt al-kabīr*, ed. Muhammad Abdel Qader Atta (Beirut: Dar al-Kutub al-Ilmiyah, 1410 A.H -1990 A.D) vol. 3, 29-34.

¹⁰⁹ Al-Qurṭubī, *Al-Jami’ li Ahkam al-Qur’an*, vol.14, 118.

¹¹⁰ Powers, *ZAYD*, chapter 1, 23.

¹¹¹ Muhammad Al-Sabuny, *Tafseer Ayatul-Ahkam min al-Qur’an* (Damascus: Maktabatul-Gazal, 1981), 249; Ibn Sa‘d, *Kitāb al-ṭabaqāt al-kabīr*, vol. 3, 31.

¹¹² (The Confederates). This chapter of the Quraṅ takes its name from the confederation of Makkan forces that carried out an unsuccessful attack on Medina in the year 5/627, the same year in which the Ptophet Muhammad repudiated Zayd.

*Allah has not made two hearts inside his body for any man. Neither has He made your wives whom you declare to be like your mothers, your real mothers (az-zihar). Nor has He made your adopted sons your real sons. That is what you are saying with your mouths. However, Allah says the truth, and He guides to the (Right) Way. Call them (adopted sons) by (the names of) their fathers: that is more just with Allah. However, if you do not know their fathers' (names call them), your brothers in faith, and mawalikum (your freed slaves). Moreover, there is no sin on you concerning your mistake, except regarding what your hearts deliberately intend. Moreover, Allah is Ever Oft-Forgiving, Most Merciful.*¹¹³

Those verses meant that a man could not have two fathers and that adopted sons do not have the same status as biological, legitimate sons. Before the revelation of these verses, Zayd was known as Zayd, the son of Muhammad. Allah wanted to put an end to this naming and attribution.¹¹⁴ Another verse later in this *Sūrah* States: “**Muhammad is not a father of any of your men, but he is the Messenger of Allah and the last (end) of the Prophets. And Allah is Ever All-Knower of everything.**”¹¹⁵ Allah’s command of attributing adopted sons to their birth fathers’ names is more fair and just.¹¹⁶ Upon the revelation of those verses, Zayd’s adoption was rescinded, and his name returned to his former name, Zayd b. Hāritha. Classical Islamic jurists have unanimously held that pre-Islamic adoption is prohibited. However, all Muslims have a communal obligation to ensure that parentless children have a guardian and family to care for them. Therefore, the concept of kafalah was developed as an alternative system providing

¹¹³ The Holy Qur’an, *Sūrah al-Ahzab* (The confederates) verses 3-4; Muhammad Al-Hilali, Taqi-ud-Din, and Muhammad Muhsin Khan, *Translation of the meanings of the Noble Quran in the English Language* (Madinah: King Fahad Complex for the Printing of the Holy Quran) Retrieved from: <https://publications-img.qurancomplex.gov.sa/?p=44>

¹¹⁴ Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, vol. 6, 155.

¹¹⁵ The Holy Qur’an, *Sūrah al-Ahzab* (The confederates) verse 40; Muhammad Al-Hilali, Taqi-ud-Din, and Muhammad Muhsin Khan, *Translation of the meanings of the Noble Quran*.

¹¹⁶ Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, vol. 6, 156.

orphans with a family environment and financial protection of a guardian without the risk of obliterating lineage (*nasab*).¹¹⁷

Islamic countries have different adoption practices within their jurisdictions. Some jurisdictions explicitly prohibit an institution under the name *tabannī*, such as Algeria, Egypt, Yemen, Kuwait, Jordan, and Bahrain.¹¹⁸ Other jurisdictions remain silent on adoption, such as Qatar, Oman, U.A.E, Iran, Iraq, Syria, Pakistan, and Afghanistan.¹¹⁹ Only two Islamic countries have regulated an institution that takes the label *tabanni*: Tunisia and Somalia.¹²⁰ Concerning Saudi Arabia, this study will explore adoption (or lack thereof) and kafalah from a legal and social perspective.

¹¹⁷ Wahbah Al- Zuhaili, *Al Wajiz fi al-Fiqh al-Islami* (Damascus: Dar-Fikr, 2006), 199; Abdurraheem Abdulwahid Yusuph, "Adoption under Islamic Law: Correcting Misconceptions." *ICR Journal* 9, no. 2 (2018): 189-204.

¹¹⁸ Nadjma Yassari, "Adding by choice: adoption and functional equivalents in Islamic and Middle Eastern law." *The American Journal of Comparative Law* 63.4 (2015): 927-962.

¹¹⁹ Ibid.

¹²⁰ For the Tunisian code, see Law No. 27 of 1958 (Law Concerning Public Guardianship, *Kafa'ala*, and Adoption), *Al-Ra'id Al-Rasmi*, 7 Mar. 1958 (Tunis.); for Somalian code, see Law No. 23 of 1975 (Family Law), *Faafin Rasmi ah*, 31 Mar. 1975 (Som.) For more information about Muslim Jurisdiction recognized adoption, see Nadjma Yassari, "Adding by choice: adoption and functional equivalents in Islamic and Middle Eastern law." *The American Journal of Comparative Law* 63.4 (2015): 927-962.

3.4 The Concept of “*kafalat alyateem*” in Sharī‘ah

3.4.1 What is Kafalah?

The term kafalah has its roots in the Islamic law of obligations, which “permits a person to enter a contract committing himself/herself to certain undertakings in favor of another person provided that person has a material or moral interest in such undertaking.”¹²¹ The word kafalah is derived from the verb “*kafala*,” which means to guarantee, and “*kafala assagheer*” means to bring up the child and spend on him. *Kafil* is the person who practices kafalah, and *makfoul* is the orphan. Therefore, kafalah, in this context, means raising and caring for the children financially and educationally. Kafalah, in this context, is mentioned in the Qur’an in the story of Mary; “*Wa kaffalaha Zakariya*”¹²² translated to (To the care of Zakariya was she assigned) meaning, Allah made Zacharias as Mary’s sponsor after the death of her parents. According to Ibn Kathir in his Tafsir, Allah made Zacharias Mary’s guardian for her benefit so that she would learn from his tremendous knowledge and righteous conduct.¹²³

As for orphan kafalah in legal terminology, the Imam ad-Dhahabi defined it as doing orphan matters, pursuing his interests by feeding and dressing him, and investing his money if the orphan has any. If the orphan had no money, the *kafil* (person practicing kafalah) sponsors the orphan, for God’s sake.¹²⁴ Ibn Uthaymeen, a contemporary scholar, defined kafalat al yateem as

¹²¹ Dejo Olowu, “Children’s rights, international human rights, and the promise of Islamic legal theory.” *Law, Democracy & Development* 12.2 (2008): 62-85.

¹²² The Holy Qur’an, *Sūrah Al-Imran* (The Family of Imran), verse 37. English Translation (Yusuf Ali). <https://quran.com/3/37>

¹²³ *Tafsir Ibn Kathir; Sūrah A’l-Imran* (The Family of Imran), verse 37. Online access: <https://quran.com/3:37/tafsirs/en-tafisr-ibn-kathir>

¹²⁴ Shams al-Deen Al-Dhahabi, *Al-Kaba’ir* (The Major Sins) (Beirut: Dar al-kutub al-Ilmiyah), 73.

doing what is in the best interest of the orphan in their religious and worldly affairs, such as education, guidance, and providing suitable food and housing.¹²⁵

The kafalah for orphans has two forms. First is the home-based kafalah, which takes the orphan to live with the caregiver and their biological children. Second, financial kafalah by paying the orphan's expenses without including him in the *kafil's* house.

3.4.2 Who is *al-Yateem* (the orphan)?

Yateem is derived from the word 'yutm,' which means solitude or father's loss. *Yateem* of the people is the one who lost his father, and of the animals is the one who lost his mother.¹²⁶ A person who has lost his mother is not called yateem. According to Ibn Berri,¹²⁷ *yateem* refers to one whose father has died, *aji* to one whose mother has died, and *lateem* to one who no longer has either parent living.¹²⁸ In legal terminology, yateem is a child who lost his father before the child attained puberty.¹²⁹ The status of yutm (orphanhood) is removed by puberty based on a

¹²⁵ Ibn Uthaymeen, *Sharh Riyadh As-salihin (Eplaination of Riyadh As-salihin)* (Riyadh,: al-Watan Publishing House, 1426 AH), vol 3, 97.

¹²⁶ Abū al-Ḥusayn Aḥmad ibn Fāris, *Mu'jam Maqāyīs al-Lughā* "Analogical Templates of Language," Chapter of Yaa and beyond (Beirut: Dar Al-Fikr, 1979 AD), vol. 6, 154.

¹²⁷ Abdullah bin Berri bin Abdul-Jabbar Al-Maqdisi [499 - 582 AH]. He was an Imam of his time and an Arabic grammarian and linguist. See Tāj al-Dīn 'Abd al-Wahhāb al-Subkī, *Ṭabaqāt al-Šāfi'īyyā al-Kubrā* (a biographical dictionary of the Shāfi'ī legal school's scholars), ed. Mahmoud Mohammed Al-Tanahi and Abdul Fattah Mohamed al-Helou (Hajr for printing, publishing, and distribution: 1413 AH).

¹²⁸ Ibn Manzour, *Lisan Al-Arab*, vol. 12, 645-646.

¹²⁹ Abū l-Sa'ādāt al-Mubārak b. Muḥammad (al-Athīr) al-Jazarī, *al-Nihāyah fī Gharīb al-Hadīth wa-al-Athar*, ed. Taher Ahmed al-Zawy and Mahmoud Mohamed al-Tanahi, (Beirut: Beirut: al-Maktabat al-Ilmiyyah, 1399 AH - 1979 AD), vol 5, 291-292; Saadi Abu Jeeb, *The Fiqh Dictionary* (al-Qamous al-Fiqhi) (Damascus: Dar Al-Fikr, 1998 AD), 392.

hadith narrated by Ali ibn Abi Talib: “I memorized (a tradition) from the Messenger of Allah: ‘*There is no orphanhood after puberty, and there is no silence for the whole day till the night.*’”¹³⁰

Islam is keen to care for orphaned children and urges Muslims to ensure and treat them kindly. Sharī‘ah instructed those who supervise the upbringing of orphaned children to treat them well, discipline, and direct them; so that they are raised on noble morals and precious virtues. Furthermore, until they find, under the care of those who care for them, sympathy and love, compensation for all the love, compassion, and tenderness they lost with their father’s death. Orphan sponsorship is considered one of the most incredible doors of benevolence urged by Sharī‘ah. Verses of the Qur’an emphasized the status of orphan care that was not limited to the Muhammadan Sharī‘ah (Islamic law) but extended its roots to the laws of previous prophets, as Almighty Allah said in the story of Moses when he denounced the act of al-Khidr,

*As for the wall, it belonged to **two youths, orphans**, in the Town; there was, beneath it, a buried treasure, to which they were entitled: their father had been a righteous man: So thy Lord desired that they should attain their age of full strength and get out their treasure - a mercy (and favor) from thy Lord.*¹³¹

In the story of Moses and al-Khidr, peace be upon them, they passed by a village and asked its people to host them, but they refused. So they went and found a wall that almost fell, and al-Khidr rebuilt it. When Moses was astonished and denounced al-Khidr’s action, the latter told him that the wall belonged to two orphan boys in this village, and their father was a righteous

¹³⁰ Sunan Abi Dawud, Wills (Kitab Al-Wasaya), Chapter 9: What Has Been Related About When One Ceases Being An Orphan, hadith no. 2873. <https://sunnah.com/abudawud:2873>

¹³¹ The Holy Qura’n, *Sūrah Al-Kahf* (The Cave) verse 82, English Translation (Yusuf Ali). <https://quran.com/18/82>

man. Under the wall buried a treasure for the two orphans, so Allah wanted to preserve it for them to retrieve when they grew up. In the pre-Islamic era, people abused the orphan, preventing him from his inheritance, and took his money and included it in their money.¹³²

What confirms the Islamic Sharī‘ah’s concern for orphans, and its continuous emphasis on caring for them and being kind to them, is the inclusion of the word “orphan” and its derivatives in twenty-three verses of the Qur’an.¹³³ The Qur’an links the issue of orphans to the belief and worship of Allah; for instance, Allah Almighty has made rebuking and oppressing an orphan a sign of denial of religion and warned against offending him in any way; *“Have you considered him who calls the Judgment a lie? That is the one who treats the orphan with harshness.”*¹³⁴ It is not permissible to subjugate, humiliate, or harm an orphan by cursing, insulting, etc. The Qur’an also urges kindness to orphans, honoring them, interfering with them, and providing them with means of righteousness and reform, as stated; *“They ask thee concerning orphans. Say: ‘The best thing to do is what is for their good; if ye mix their affairs with yours, they are your brethren.’”*¹³⁵ Furthermore, several passages in the Qur’an condemn those who misappropriate orphans’ property. In this verse, *“Those who unjustly eat up the*

¹³² Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, *Sūrah al-Kahf* (The Cove), verse 77-82. Online access: <https://quran.com/18>

¹³³ In twelve suras, with different forms. For more details about the legal text regarding orphans in the Qura’an Sunnah, see in Arabic, Muhammad Ibrahim Mushtaha, *The Orphans in the Hadith*, (Library of the University of Jordon, Center of Thesis Deposit, 2003).

¹³⁴ The Holy Qur’an, *Sūrah Al-Ma’un* (The Small Kindnesses) verse 1– 2, English Translation (Yusuf Ali) <https://quran.com/107>. The reason for the revelation of these two verses is that Abu Sufyan bin Harb used to sacrifice two camels every week, and an orphan came to him and asked for some, so he knocked the child with a stick. So Allah revealed the verses. See Abu al-Hasan Ali bin Ahmad al-Wahidi, *Asbaba Nuzul al-Qur’an* (Reasons for the revelation of the Qur’an) (Dammam: Dar al-Salah, 1412AH-1992 AD), 465.

¹³⁵ The Holy Qura’n, *Sūrah Al-Baqarah* (The Heifer) verse 220, English Translation (Yusuf Ali). <https://quran.com/2/220>

property of orphans, eat up a Fire into their own bodies: They will soon be enduring a Blazing Fire!"¹³⁶ Allah has warned against consuming an orphan's money, made it a reprehensible sin and one of the seven major sins, and threatened those who consumed it with a severe torment. However, there is an exception in approaching the orphan's money with the best quality, preserving and investing in it; *"And come not near to the orphan's property, except to improve it."*¹³⁷

In the Hadith literature, Muslims are told that the reward *kafalat alyateem* is that the person who nurtures an orphan will live close to the Prophet Muhammad, Peace Be Upon Him, in Paradise. According to one hadith,

*A person who touches the head of an orphan with compassion will be rewarded for each hair his hand touches. Whoever treats kindly a female or a male orphan who is under his sponsorship, I shall be his companion in Paradise.*¹³⁸ At that, the Prophet spaced apart his index and middle fingers.

Spacing the fingers is a way of illustration, indicating that the sponsor of an orphan will occupy a high position in heaven close to the position of the Prophet. Furthermore, Abu Hurayra reported that the Messenger of Allah (pbuh) said, *"The best house among the*

¹³⁶ The Holy Qura'n, *Sūrah An-Nisa'* (The Women) verse 10, English Translation (Yusuf Ali). <https://quran.com/4/10>

¹³⁷ The Holy Qur'an, *Sūrah Al-An'am* (The Cattle) verse 152, English Translation (Yusuf Ali). <https://quran.com/6/152>

¹³⁸ Narrated by Ahmad in his Musnad on the authority of Abu Umama; see Abū 'Abdillāh Aḥmad Ibn Muḥammad Ibn Ḥanbal al-Dhuhli, *Musnad al-Imām Aḥmad Ibn Ḥanbal*, ed. Shoaib al-Arna'out and Adel Morshed, (al-Risalah Foundation, 1421 AH - 2001 AD) vol. 36, 474, hadith no. 22153. It is also reported by Al-Tabarani on the authority of Abu Umama; see Abū al-Qāsim Sulaymān ibn Aḥmad al-Ṭabarānī, *Al-Mu'jam al-Kabir*, ed. Hamdi bin Abdul Majid al-Salafi (Cairo: Ibn Taymiyyah Library) vol. 8, 202, hadith no. 7821.

Muslims is the house where orphans are well treated. The worst house among the Muslims is the house in which orphans are ill-treated."¹³⁹ The Sunnah also urged giving money to the orphans as an act of mercy and helping them in life, "*Blessed is the wealth of a Muslim from which he gives to the poor, the orphans and to needy travelers.*"¹⁴⁰ Orphan sponsorship is an effective medicine for treating hard hearts; based on what was narrated by Abu Huraira, a man complained to the Prophet about the hardness of his heart. The Prophet replied to him: "*If you desire to soften your heart, feed the poor and wipe the head of an orphan.*"¹⁴¹

3.4.3 Who is *al-Laqeet* (the foundling)?

Linguistically, *laqeet* in Arabic is a child who was thrown on the road with an unknown father or mother.¹⁴² The term is often used to mean abandoned child.¹⁴³ Idiomatically, under the four classical Sunni schools, the Hanafis defined *laqeet* as a name of a newborn thrown away by

¹³⁹ Imām Abu Abdullāh Muhammad Ibn Ismā`īl al-Bukhārī, *Al-Adab Al-Mufrad*, Chapter 76: The best house is a house in which orphans are well, Book 7, hadith no. 137: Generosity and Orphans. <https://sunnah.com/adab:137>; Sunan Ibn Majah, *Kitab al-Adab* (Etiquette), Chapter 6: The orphan's rights, Vol. 5, Book 33, hadith no. 3679. <https://sunnah.com/ibnmajah>

¹⁴⁰ Imām Abu Abdullāh Muhammad Ibn Ismā`īl al-Bukhārī, *Al-Jāmi` al-Musnad as-Ṣaḥīḥ al-Mukhtasar min Umuri Rasulullahi sallallāhu 'alaihi wa sallam wa Sunanihi wa Ayyāmihi*, better known as *Ṣaḥīḥ al-Bukhārī*, Book 24: Obligatory Charity Tax (Zakat), chapter 47: Giving in charity to orphans, hadith no.1465 <https://sunnah.com/bukhari:1465>

¹⁴¹ Ibn Hanbal, *Musnad Ahmad*, vol 13, 22-23, hadith no. 7576.

¹⁴² Ibn Manzur, *Lisan Al-Arab*, vol. 7, 392-393; *Al-Mu'jam Al-Wasitt*, 833-834.

¹⁴³ Al-Faiyumi, *al-Mesbah al-Muneer*, vol. 2, 557.

his family due to the fear of poverty or to escape suspicion.¹⁴⁴ Ibn Arafā from the Maliki school defined the foundling as a little human whose neither father nor his servitude is known.¹⁴⁵ The Shafi'i is defined foundling as every lost child who does not have a guardian,¹⁴⁶ and the Hanbalis defined him as a child-between birth and age seven with unknown parentage and servitude who was put on the road or who lost the way.¹⁴⁷

It is understood from Hanafi's definition that the term "foundling" is limited to a newborn child ostracized by his family for fear of poverty or fleeing the charge of adultery. The definition of Shafi'i includes every lost child who does not have a guardian, which includes the child who lost his family in crowded gatherings such as the pilgrimage season. In this case, it is incumbent upon the one who finds the child to report, and if he does not locate the parents, the child becomes a foundling in the Shafi'i and Maliki's perspective. The definition of Hanbalis included the child between birth and a certain age only, and most Hanbali jurists limit the term foundling to children between the age of seven and the onset of puberty.¹⁴⁸ Therefore, a

¹⁴⁴ Muhammad bin Ali Al-Haskafī, *Al-Durr Al-Mukhtar Sharh Tanwir al-Absar*, ed. Abdel Moneim Khalil Ibrahim (Beirut: Dar al-Kutub al-Ilmiyyah, 1423 AH - 2002 AD), 353.

¹⁴⁵ Abu 'Abd Allah Muhammad al-Warghammi Ibn 'Arafā, *Almukhtasar Al-Fiqhi*, ed. Dr. Hafiz Abdul Rahman Muhammad Khair; (Dubai, UAE: Khalaf Ahmad Al Habtoor Charitable Foundation, 1435 AH - 2014 AD) vol. 9, 76.

¹⁴⁶ Abū Zakariyyā Yaḥyā ibn Sharaf al-Nawawī, *Rawdat al-Talibin wa Umdat al-Muftin*, ed. Zuhair al-Shawish (Beirut: The Islamic Office, 1412 AH / 1991 AD), vol. 5, 418.

¹⁴⁷ Maṣṣūr Ibn Yūnus Al-Buhūtī, *Kashshāf al-Qinā' 'an Matn al-Iqnā'* (Saudi Arabia: A specialized committee in the Ministry of Justice, 1421 AH- 2000 AD), vol. 9, 527.

¹⁴⁸ Sharaf ud-Din Musa ibn Ahmad al-Ḥajjāwī, *Al-Iqnaa' Letalib Al-Intifaa'*, ed. Abd al-Latif Muhammad Musa al-Sobky, (Beirut: Dar al-Ma'rifah), vol. 2, 405.

foundling could be defined comprehensively as a child with unknown parents who was ostracized by his family or lost before the age of discrimination.¹⁴⁹

The *fuqaha'* (jurists) agreed that taking a foundling is obligatory if it is known that leaving the child leads to his death, such as being in a place far from the passerby or in the desert. Whoever sees the child should pick him up to save his life. The Qur'anic verse indicates this opinion: “*And cooperate in righteousness and piety, but do not cooperate in sin and aggression*”¹⁵⁰ and because picking up the foundling is reviving his soul as Almighty Allah says: “*And whoever saves one - it is as if he had saved mankind entirely.*”¹⁵¹ However, if the foundling presents in a public place, the *fuqaha'* differed regarding the degree of the Sharī‘ah request for picking him up. Most of the *fuqaha'* -**Maliki, Shafi’i, and Hanbali**¹⁵²- opined that picking up the foundling is *farḍ kifāya*¹⁵³ (collective duties) and that if a group of the Muslim community

¹⁴⁹ In Arabic it is called ‘*sinn Al-tamyiz*’ which is seven or nine years old depends on the madhhab.

¹⁵⁰ The Holy Quran, *Sūrah al-Ma'idah* (The Table Spread), verse 2.

¹⁵¹ The Holy Quran, *Sūrah al-Ma'idah*, verse 32.

¹⁵² Abu al-Abbas Ahmad bin Muhammad al-Khalouti (known as Al-Saawy), *Bulghat al-Saalik li'aqrab al-Masalik: Hashyat al-Saawy a'la Al-Sharh Al-Sagheer* (Cairo: Dar al-M'āref), vol 4, 178; al-Nawawī, *Rawdhat Al-Talibeen*, vol. 5, 418; Muḥammad bin Ahmad al-Khaṭīb al-Shirbīnī, *Mughnī al-Muhtāj ilá Ma 'ānī Alfāz al-Minhāj* (Dar al-Kutub al-Ilmiyah, 1415 AH - 1994 AD), vol. 3, 597; Al-Buhūtī, *Kashshāf al-Qinā'*, vol. 9, 527.

¹⁵³ A type of legal obligation that must be discharged by the Muslim community (communal obligation). If sufficient members of the community have undertaken the obligation, the rest of the community members won't hold responsibility before God. On the other hand, if the obligation has not sufficiently discharged, every individual Muslim would be responsible to perform the duty. For more explanation about *farḍ kifāya* in Islamic Law, see Adnan Zulfiqar, “Collective Duties (*farḍ kifāya*) in Islamic Law,” Islamic Law Blog, Psted on October 8, 2020. https://islamiclaw.blog/2020/10/08/adnan-zulfiqar/#_ftn3

conducts it, the responsibility of the community is discharged. The **Hanafi's** opinion regarding the ruling on taking the foundling varies depending on the foundling's situation as follows: (a) *mandoub* (recommended)¹⁵⁴ if the *multaqit* (finder) presumed that the child would not likely die;¹⁵⁵ (b) *farḍ kifāya* (collective duties) if the finder presumed that the child would probably die if no one takes him;¹⁵⁶ and (c) *farḍ 'ayn* (individual obligation)¹⁵⁷ if the finders were the only person knows about the foundling.¹⁵⁸

It is that whoever finds the foundling certifies it by telling the authority where he found the child and whether the child had any possessions at the time he was discovered because it is beneficial for both the finder and the foundling. For the finder, taking witnesses on picking up the foundling would exclude the suspicion from himself even if he is known for his moral integrity. For example, after a long time, the finder might claim the foundling as his son or daughter, while adoption is prohibited in Islam. On the other hand, picking up should be certified

¹⁵⁴ 'Alā' al-Dīn abū Bakr bin Mas'ūd al-Kāsānī, *Bada'i' as-Sana'i' fi Tartib ash-Shara'i* (Beirut: Dar al-Kutub al-Ilmiyyah, 1406 AH - 1986 AD), vol. 6, 198.

¹⁵⁵ For instance, if the child was found on the masjid's doorstep or the pavement in a way that he could be seen by pedestrians. See Hanbazazah, Samia Mahmoud, "The Justice of Islam in the Judgment of Unknown Parentage, a Comparative Jurisprudential Study." *Yearbook of the College of Islamic and Arabic Studies for Girls in Alexandria* 29, no. 1 (2013): 597-713.

¹⁵⁶ For example, if the child was found in the desert. See Hanbazazah, The Justice of Islam in the Judgment of Unknown Parentage, 613-618.

¹⁵⁷ Refers to a legal obligation that must be performed by each individual Muslim such as prayer, charity, fasting in Ramadhan, and pilgrimage.

¹⁵⁸ Muḥammad Amīn ibn 'Umar ibn 'Abd al-'Azīz Ābidīn, *Radd al-Muhtār 'ala al-Durr al-Mukhtār*, known as *Hashiyat Ibn Ābidīn* (Egypt: Library and Printing Press Company Mustafa al-Babi al-Halabi and Sons, 1386 AH-1966 AD), vol. 4, 269.

because it entails preserving the foundling's rights, for instance, the fear of stealing his money that may be in possession during the picking up. Also, certification preserves the foundling's parentage due to the possibility of the child's parent's appearance or who claims the foundling's attribution with evidence may appear. It would be in the child's interest.

There is no dispute among the fuqaha' that the expense of the foundling is his own money if he has money with him at the time of finding. Suppose there is no money found with him. In that case, the expenses shall be from the treasury, based on the saying of the Companion Umar bin al-Khaṭṭāb¹⁵⁹ in the hadith of Abu Jamila when he came to Umar carrying a foundling: "Go, he is free, and his guardianship is on you, and his maintenance is on us."¹⁶⁰ If a foundling was brought in, Caliph Umar imposed for him a hundred dirhams and sustenance that his guardian takes every month. The giving for the foundling increases according to his growth stages yearly. Caliph Umar used to endow the foundlings well and make their feeding and spending from the treasury.¹⁶¹

¹⁵⁹ Umar ibn al-Khaṭṭāb (may Allah be pleased with him), a senior companion and father-in-law of the Prophet Muhammad, peace be upon him. He was the second caliph of the Rashidun Caliphate. He was also an expert Muslim jurist known for his pious and just nature.

¹⁶⁰ Muḥammad Nāṣir ad-Dīn al-Albānī, *Irwa al-Ghalil fi Takhrij 'Ahadith Manar al-Sabil* (Beirut: The Islamic Office, 1405 AH - 1985 AD), vol. 6, 23, hadith no. 1573; Malik bin Anas, *Al-Muwatta'*, Book 36: Judgements. <https://sunnah.com/urn/514220>

¹⁶¹ Ibn Saad, *Al-Tabaqat Al-Kabeer*, vol 3, 277-278; Abu Bakr Abdul-Razzaq bin Hammam Al-San'ani, *Al-Musannaf* (known as Musannaf Abdul-Razzaq), Bab al-Laqaet (India: Scientific Council (al- Majlis al-Ilmy), 1390 AH 1970 AD), vol. 7, 449-452.

3.4.4 Difference between Laqeet and Yateem

Although Sharī‘ah urged to sponsor the orphan and the foundling alike, it clearly distinguished between them in their provisions. Muslim jurists singled out a separate chapter in jurisprudence books called ‘*Bab al-Laqeet*’ or the chapter of the foundling. They called for kindness to him and to save him from destruction. And they conveyed traditions urging for that, as he was not guilty of his parents’ crime whether this foundling is of unknown parentage or known lineage.¹⁶² The most important differences between an orphan and a foundling - to mention but not limited to - are as follows:

1. The orphan is of known parentage, even if he loses his father. As for the foundling, he is usually of unknown parentage.
2. The orphan inherits from his parents, but the foundling does not inherit from the one who raised him after his death. The inheritance is proven due to the correct filiation, that is, to the child born on a valid marriage bed.
3. The orphan is often the object of mercy and pity from society because no one can support or care for and sympathize with him. It is common for people to respect the orphan and honor him for the sake of his father, not for himself. At the same time, the foundling, there is often an internal feeling of contempt and neglect among some people due to his poverty, ignorance of his lineage, and often being the son of adultery.
4. The orphan's maintenance must be from his money if he has any; otherwise, his entitled expenses must be paid by his guardian, who supervises his affairs. As for the

¹⁶² See in Arabic Tasneem Mohammad Jamal Hasan Istati, *Orphan's rights in the Islamic philology (Fiqh)* (Nablus, Palestine: An-Najah National University, Faculty of Graduate Studies, 2007); Hassan Shalgami, *Sharī‘ah Opinion on Contemporary Women's Issues* (Egypt: Dar al-Taysir for printing, 2005), 211.

foundling, his maintenance is from his money if he has any; otherwise, no one is obligated to spend on him unless he has a benefactor. Alternatively, the foundling may be placed in special centers in the country that take care of the affairs of orphans and foundlings.

5. The foundling is considered a foreigner to the one who picked him up, so he may marry the family that picked him up and raised him. In contrast, the orphan is one of the children of the family who was brought up under it.

Notably, foundlings do not have to be illegitimate children, as many believe, because the child may be ostracized by his family for many reasons. It is impossible to be sure that all the foundlings were left on the road for the same reason. For instance, the child possibly was stolen from his family while he was an infant in the cradle. It may be the fruit of an invalid marriage, and the mother cannot prove it, so she gets rid of it for fear of scandal and disgrace. Perhaps the child was born to a chronically ill mother in a low-income family with many children, so he is left in the hospital. Also, the child may be young and lose his family due to wars or disasters. So the foundling may be left for any other reason; these reasons are many and ambiguous, and the foregoing are examples.

3.4.5 The Difference between Kafalah and Adoption

In contrasting kafalah to adoption, three features distinguish kafalah from adoption. **First**, non-severance of family ties; the child under kafalah maintains the legal bond with his family of

origin in terms of identity.¹⁶³ In other words, kafalah provides alternative care without altering the child's original kinship status. A critical example is that the child under kafalah does not take the name of the providing family.

The **second** feature is the non-transference of inheritance rights. Through kafalah, a family takes the parentless child without the child being entitled to the right of inheritance. The Islamic inheritance devolves on the blood relationship basis. The Qur'an specified allotment for each family member, and an individual can only control one-third of his estate. So the orphans and foundlings could be assigned an inheritance through a testamentary succession. Although children taken into families under kafalah do not have an imposed share in the inheritance, they are not left out of the property distribution process. Allah Almighty has made an unimposed share for orphans imposed on the heirs, each according to his ability; as the Qur'an says, "*If 'non-inheriting' relatives, orphans, or the needy are present at the time of distribution, offer them a 'small' provision from it and speak to them kindly.*"¹⁶⁴ Allah commands that they should share in the inheritance as an act of kindness, charity, compassion, and mercy.

While the child's lineage remains to his biological father in the kafalah, it is transmitted from the father to the adoptee in adoption. Within the Islamic jurisprudential community, there is a big difference between them. Adoption does more harm than good for many reasons. Adoption causes the mixing of lineages, and if the lineages become mixed, it results in the loss of rights and injustice in the division of inheritances. Because the adopted son will get the money that

¹⁶³ Usang M. Assim and Julia Sloth-Nielsen, "Islamic Kafalah as an Alternative Care Option for Children Deprived of a Family Environment." *African Human rights law journal* 14.2 (2014), 322-345.

¹⁶⁴ The Holy Quran, *Sūrah An-Nisa'* (The Women) verse 8, English Translation (Yusuf Ali) <https://quran.com/4/8>

does not belong to him, which will diminish the children's and parents' rights; alternatively, it prevents the right holders, such as the deceased brothers, from obtaining the rights God Almighty imposed on them because the son blocks the brothers in the Islamic inheritance system. At the same time, adoption may open the door to unjustly consuming the orphans' money. The parents may die and leave an inheritance for their child; then another adopts him. In this case, he may spend the orphan's money because he is his father. Furthermore, if this adopted child dies, the adopter and his family will inherit all his money without rights, and if the orphan has actual relatives, they will be deprived of their right to his estate.

The **third** feature is affiliation and marriage prohibition.¹⁶⁵ Unmarriageable kin's status occurs through marriage, kinship, or milk-foster relationships. The adoptive family considers the adopted child (through *kafalah*) marriageable. Therefore, marriage between a child raised through *kafalah* and the *kafil* family's biological children is legal.

Among the effects of adoption is violating the sanctities God Almighty commanded Muslims to preserve. When God Almighty mentioned that women could show their adornment in front of their mahrams, the adopted child was not among them. The adopted boy is devoid of a parentage relationship with the women of the adoptive family, so he does not have the right to see them. If the adopted child is a girl, then none of the men who are not mahrams have the right to look at her adornment, even if he is the one who adopted her.

¹⁶⁵ Abdurraheem Abdulwahid Yusuph, "Adoption under Islamic Law: Correcting Misconceptions." *Islam and Civilisational Renewal* 274.6015 (2018): 1-16.

3.5 Summary

Islamic society is founded upon the family, which functions as a fundamental unit of society. Islamic law emphasizes organizing provisions related to the family to ensure its continued presence and cohesion within society. As a result, Islamic law has developed extensive provisions and legislation regarding the family, surpassing those related to other areas. Islam's interest in the family extends beyond the nuclear unit to encompass the extended family, comprising paternal and maternal fathers, brothers, uncles, and aunts.

According to Islamic teachings, adoption, which involves creating a familial relationship, is prohibited due to various legal violations, such as mixing genealogies and compromising the rights of heirs. Sharī'ah recognizes that an individual's lineage is solely attributed to their biological father, so adoption is not permitted. However, Islam allows for raising, caring for, and sponsoring individuals. When an individual finds an abandoned child and wishes to provide care, it is crucial not to attribute the child to themselves. If registration, naming, and issuance of a birth certificate are necessary, the child should be given a generic name rather than attributing them to the caregiver.

Kafalah is an alternative practice to adoption, which is prohibited due to legal and genealogical complications. Instead, Kafalah involves showing kindness and generosity towards orphans without claiming them as one's own. This practice aims to compensate for the loss suffered by the orphan due to the absence of their parents while also preserving their lineage and rights. Kafalah is considered an important aspect of divine legislation, as it promotes solidarity, cooperation, and interdependence among members of the same community. It highlights the

responsibility of individuals towards their society and encourages them to extend their care and support beyond their households.

CHAPTER FOUR

Islamic Legal Views on Breastfeeding “*Redha‘’a*”

4.1 Introduction

In the pre-Islamic era, the elites of Makkah observed the social tradition of wet nursing, the practice of breastfeeding someone else’s child. This involved the delegation of the breastfeeding of their infants to wet nurses, primarily of Bedouin origin. The rationale behind this custom was the perceived benefits of desert living, including the favorable climatic conditions that contributed to infant health. The bright sun and clean air were believed to create an environment conducive to healthy child development. It was the preference of the tribe nobles to raise their children in the desert environment, as it was thought to instill qualities of fortitude, bravery, and oratorical prowess.¹⁶⁶ Moreover, it was believed that children who Bedouin wet nurses breastfed would develop a refined language and etiquette due to the Bedouin's reputation for having pure language and being free from the negative influences that could arise in settled communities.¹⁶⁷

In traditional Arab society, there was a belief in the importance of carefully selecting a breastfeeding mother for an infant. This was based on the belief that the breastfeeding woman’s milk and home would significantly impact the child's development. This belief was reflected in

¹⁶⁶ Abū Muḥammad ‘Abd al-Malik ibn Hisham al-Humairi al-Ma`fari (better known as Ibn Hisham), *As-Sīrah an-Nabawiyyah* “Biography of the Prophet” known as the Biography of Ibn Hisham, ed. Umar Abdel Salam Tadmary (Beirut: Arab Book House, 1410 AH, 1990 AD) vol.1, 185.

¹⁶⁷ Safī-ur-Rahman Al-Mubarakphuri, *Ar-Raheeq Al-Makhtum* (The Sealed Nectar) (Riyadh: Saudi Arabia: Dar al-Salam Publications, 1996 AD, 1416 AH), 57.

the praise given to individuals for their breastfeeding and the purity of their milk, with the phrase "blessed is the breastfeeding woman" used to express admiration. Conversely, if a person was to be disparaged, it was said that "what a wretched one is the one who nursed him."¹⁶⁸ The biographers of Prophet Muhammad noted that three women breastfed him in addition to his mother, Amina bint Wahb. The most renowned of these wet nurses was Halimah al-Sa'diyah, who breastfed him until the completion of his breastfeeding period.¹⁶⁹

Islam came and abolished the corrupt customs of the *Jahiliyyah*¹⁷⁰ and approved of the excellent and beneficial traditions. One of the traditions that Sharī'ah agreed with is wet nursing, where the Qur'an states, "*If you decide to have your children nursed by a wet nurse, it is permissible as long as you pay fairly.*"¹⁷¹

Breastfeeding generally has a religious base in Islam, mentioned in six Qur'anic verses. The Qur'an advocates that the mother suckles her offspring for two years if feasible and states that each infant has the right to be breastfed, "*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.*"¹⁷² The majority of jurists from the Hanafi, Maliki, and Shafi'i (Sunni schools of thought) said that a mother's breastfeeding her child is a religious obligation

¹⁶⁸ Jawad Ali, *The Detailed in the History of the Arabs Before Islam* (Dar Al-Saqi, 1422 AH -2001 AD) vol. 8, 234-235.

¹⁶⁹ See Ibn Hisham, *Biography of the Prophet*, vol. 1, 160; Al-Mubarakphuri, *Ar-Raheeq Al-Makhtum*, 45.

¹⁷⁰ The Pre-Islamic era.

¹⁷¹ The Holy Qur'an, *Sūrah Al-Baqarah* (The Heifer) verse 233, English Translation (Yusuf Ali). <https://quran.com/2/233>

¹⁷² The Holy Qur'an, *Sūrah Al-Baqarah* (The Heifer) verse 233.

upon her, not a legal one.¹⁷³ The mother is obligated to comply with the commands of Allah Almighty for mothers to breastfeed their children; she sins if she refuses to breastfeed her child when she can. According to the jurist's majority, the mother is not forced to breastfeed her child, except in cases of necessity as follows:

1. There is no other woman besides her who breastfeeds him, paid or voluntarily;
2. If the child refuses to suckle another woman's breast; or
3. If the father of the young child does not have money to pay the wet nurse and there is no donor to breastfeed him.¹⁷⁴

If one of these cases applies, the judge forces the mother to breastfeed her child under compulsion to preserve the child's life from perdition.

This chapter presents the main concepts related to the Islamic ruling on forbidden marriage due to kinship by milk "*Redha'a*," the duration of breastfeeding, and the amount of milk to be breastfed.

4.2 Provisions of foster-nursing "*Redha'a*."

Before diving into the rules and provisions of foster nursing in Sharī'ah, we must understand the meaning of foster nursing or *redha'a*. The word *redha'a* is linguistically derived

¹⁷³ Muḥammad Amīn ibn 'Umar ibn 'Abd al-'Azīz al-Shāmī, *Radd al-Muhtār 'ala al-Durr al-Mukhtār* (Guiding the Baffled to The Exquisite Pearl) (Egypt: Mustafa Al-Babi Al-Halabi Press, 1966 AD), vol.2, 624; Muhammad Shams al-Din al-Ramli, *Nihayat al-Muhtaj ila Sharh al-Minhaj*, (Beirut: Dar Al-Fikr, 1984 AD); Muhammad bin Ahmed Alish, *Minah al-Jalil Sharh Mukhtasar Khalil*, Chapter of the maintenance of the slave, the beast, the relative and his servant, the nursery and what is related to it (Beirut: Dar Al-Fikr, 1409AH/1989AD) vol. 4, 419.

¹⁷⁴ Muhammad Kamal al-Din Imam, *The Provisions of Personal Status for Muslims, a legislative and judicial historical study* (Alexandria: Knowledge facility, 1999 AD), 234-239.

from the verb “*radha’a*,” which means drinking milk from the udder or the breast.¹⁷⁵ In the fuqaha’s terminology, the **Hanafi** school of thought defined it as “The sucking of the infant from the woman’s breast at a specific time.”¹⁷⁶ The **Malikis** defined *redha’a* as “The reach of a human being’s milk to a nourishment place,¹⁷⁷ and getting a woman’s milk through drench, snuff, or injection is the only way of nutrition.”¹⁷⁸ The **Shafi’is** said, “It is a name for obtaining a woman’s milk or what is obtained from it in the child’s stomach or brain.”¹⁷⁹ **Hanbalis’** definition of *redha’a* is “The suck of who has less than two years of milk, drink it and the like, such as snuff and drench, and eat it after it has turned cheese.”¹⁸⁰

¹⁷⁵ Ibn Manzur, *Lisan al-‘Arab*, (Beirut: Dar Sadir, 1414), vol. 8, 175-178; Muhammad bin Ya’qub al-Fayruzabadi, *Al-Qamus al-Muhit*, (Beirut: Muassasat al-Risalah, 2005); Ahmad bin Muhammad Al-Fayumi, *Al-Misbah al-Munir fi Gharib al-Sharh al-Kabir*, (Beirut: al-Maktabat al-Ilmiyyah); Ahmad bin Faris Al-Razi, *Mu’jam Maqayis al-Lughah*, (Damascus: Dar al-Fikr, 1399); Muhammad bin Abi Bakr Al-Razi, *Mukhtar al-Sihah* (Beirut: al-Maktabat al-Asriyyah, 1420); Muhammad Rawas Qal’ajiy, *Mu’jam Lughat al-Fuqaha’* (Beirut: Dar al-Nafa’is, 1408).

¹⁷⁶ Al-Kamal ibn al-Humam, *Fath al-Qadir* (Egypt: Mustafa Al-Babi Al-Halabi and Sons Press, 1389 AH-1970 AD), vol. 3, 438.

¹⁷⁷ Refers to the stomach.

¹⁷⁸ Muhammad ibn Muhammad Al-Hattab al-Ra’ini, *Mawāhib al-Jalīl fi Sharḥ Mukhtasar Khalīl*, (Beirut: Dar al-Fikr, 1412 AH - 1992 AD), vol. 4, 178; Muhammad bin Jamal al-Din Abdullah bin Ali al-Kharshi, *Sharḥ al-Kharshi ‘ala Mukhtasar Khalīl* (Egypt: al-Kubra al-Amiriyah Press in Bulaq, 1317 AH), vol. 4, 175-176.

¹⁷⁹ Muḥammad bin Ahmad al-Khaṭīb al-Shirbīnī, *Mughnī al-Muhtāj ilā Ma‘ānī Alfāz al-Minhāj* (Dar al-Kutub al-Ilmiyah, 1415 AH - 1994 AD), vol. 5, 123; Muhammad al-Zuhri Al-Ghamrawi, *Al-Siraj al-Wahhaj ‘ala Matn al-Minhaj* (Beirut: Dar al-Ma’rifah for printing and publishing), 460.

¹⁸⁰ Maṣṣūr Ibn Yūnus Al-Buhūtī, *Kashshāf al-Qinā’ ‘an Matn al-Iqnā’* (Saudi Arabia: A specialized committee in the Ministry of Justice, 1421 AH- 2000 AD), vol. 9, 527; Ibrāhīm ibn Muḥammad ibn Muflīḥ al-Maqdisī, *Al-Mubdi ‘fi sharḥ al-muqni’* (Beirut: Dar al-Kutub al-Ilmiyyah, 1418 AH - 1997 AD), vol. 7, 118.

Although the wording of the jurists' definitions may differ, they all agree that breastfeeding is not intended here for the mother to breastfeed her child. It is originally a legitimate matter; according to the Almighty Allah said in the Qur'an: "*The mothers shall give suck to their offspring for two whole years if the father desires to complete the term.*"¹⁸¹ Instead, the scholars meant "the milk of a nursing woman" who is not the child's biological mother. For this reason, scholars have singled out chapters on breastfeeding to clarify the rulings and issues related to breastfeeding.

It is permissible to breastfeed a child by a woman other than his mother, but two conditions must be met. The first is the nursing mother's consent and her husband's permission; because, by the agreement of the scholars, the basis for compensation or donations is the consent of the exchanger or the benefactor.¹⁸² The second condition is the permission of the child's father or guardian because the father or the guardian is the legal trustee over the child's interests, so it is not permissible to miss him and do without his advice.¹⁸³

Suppose a woman breastfeeds a non-biological child with the conditions considered by Shari'ah; this breastfeeding is called **Marriage-prohibiting breastfeeding**. In that case, she creates a relationship between the child and her, and the child becomes her Mahram.¹⁸⁴ Whosoever is a Mahram through lineage ties will also be considered a Mahram by fosterage. In

¹⁸¹ The Holy Qura'n, *Sūrah Al-Baqarah* (The Heifer) verse 233, English Translation (Yusuf Ali). <https://quran.com/2/233>

¹⁸² L.S. Shamsu and Saleh Muhammad Mhanna, J., *The Ruling of Milk Kinship in Islamic Jurisprudence: Study in Legal and Prophetic Tradition*. 'Abqari Journal. 23, 1 (Oct. 2020), 332-357.

¹⁸³ Shamsu and Saleh Mhanna, *The Ruling of Milk Kinship in Islamic Jurisprudence*, 338.

¹⁸⁴ Mahram is an unmarriageable kin.

other words, milk and blood enforce similar relationships, privileges, restrictions, and regulations.¹⁸⁵ In a hadith narrated by `Uqba bin Al-Harith, I married a woman, and later on, a woman came and said, "I suckled you both." So, I went to the Prophet (to ask him about it). He said, "*How can you (keep her as a wife) when it has been said (that you were foster brother and sister)? Leave (divorce) her.*"¹⁸⁶ As such, a foster father, grandfather, brother, uncle, and nephew will all be considered a woman's Mahram, and one will be a Mahram to a foster mother, grandmother, sister, and niece. Being a Mahram would ease contact between the mother and the nursed son or the father and the nursed daughter.

To marry a relative by nursing is prohibited as a form of incest. This notion first appears in the *Qur'an*, "*And (prohibited to you in marriage are) your foster mothers and foster sisters.*"¹⁸⁷ The verse clearly states unlawful marriage between the milk mother and her milk children. The notion was later developed in elaborate detail in *Hadith*. `Abdullāh ibn `Abbās¹⁸⁸ narrated that it was proposed that the Prophet be married to the daughter of Hamza,¹⁸⁹ after which he said: "*I am not legally permitted to marry her, as foster relations are treated like blood*

¹⁸⁵ Shivram Balkrishan, "Exploring gender: Islamic perspectives on breastfeeding." *International Research Journal of Social Sciences* 2.6 (2013): 30-32.

¹⁸⁶ Ṣaḥīḥ al-Bukhārī, hadith no. 2660, Chapter 14: The witness of a wet nurse, Book 52: Witnesses <https://sunnah.com/bukhari:2660>

¹⁸⁷ The Holy Qura'n, *Sūrah An-Nisa* (The women) verse 23, English Translation (Dr. Mustafa Khattab) <https://quran.com/4/23>

¹⁸⁸ He is also known as Ibn `Abbās, one of Prophet Muhammad's cousins, and is considered the Qur'an's greatest mufassir (interpreter). He was highly regarded for his knowledge of traditions and critical interpretation of the Qur'an. From early on, he collected information from other companions of Muhammad, gave classes, and wrote commentaries.

¹⁸⁹ Ḥamza ibn `Abd al-Muṭṭalib, was a foster brother, companion, and paternal uncle of the Prophet Muhammad, Peace be Upon Him.

relations (in marital affairs). She is the daughter of my foster brother."¹⁹⁰ Moreover, 'Aishah Umm al-Muminin¹⁹¹ (Allah be pleased with her) narrated that: Aflah¹⁹², the brother of Abu'l-Qu'ais,¹⁹³ asked permission to visit me, but I did not allow him.¹⁹⁴ He said, "Do you veil yourself before me, although I am your uncle?" 'Aishah said, "How is that?" Aflah replied, "You were suckled by my brother's wife with my brother's milk." I asked Allah's Messenger about it, and he said: "*Aflah is right, so permit him to visit you.*"¹⁹⁵ Imam Muslim also narrated this hadith; the Prophet said to her, "*Do not observe veil from him for he is Mahram on account of fosterage as one is Mahram on account of consanguinity.*"¹⁹⁶ The relationship of Mahram allows a woman to show her adornments (decent makeup or esthetics) to her relatives through redha'a

¹⁹⁰ Ṣaḥīḥ al-Bukhārī, hadith no. 2645, Chapter 7: To give witness concerning lineage, foster suckling relations, and dead persons, Book 52: Witnesses. Translation by Dr. M. Muhsin Khan. <https://sunnah.com/bukhari:2644>

¹⁹¹ Daughter of the first caliph, Abu Bakr; youngest and reputedly favorite wife of The Prophet.

¹⁹² Aflah is 'Aishah's foster uncle. See Aḥmad Ibn Ḥajar al-‘Asqalānī, *Al-Iṣābah fī Tamyīz al-Ṣaḥābah* "A Morning in the Company of the Companions," ed. Adel Ahmed Abdel Mawjoud and Ali Mohamed Moawwad (Beirut: Dar al-Kutub al-Ilmiya, 1415 AH) vol. 1, 250.

¹⁹³ 'Aishah's foster father.

¹⁹⁴ This narrative was after the Hijab had been revealed, so she refused to permit him.

¹⁹⁵ Ṣaḥīḥ al-Bukhārī, hadith no. 2644, Chapter 7: To give witness concerning lineage, foster suckling relations, and dead persons, Book 52: Witnesses. Translation by Dr. M. Muhsin Khan. <https://sunnah.com/bukhari:2644>

¹⁹⁶ Imam Muslim ibn al-Hajjaj al-Naysaburi, *Saḥīḥ Muslim*, Hadith no. 1445i, Chapter 2: The prohibition that results from breastfeeding is related to the issue of the male, Book 17: The Book of Suckling. Translation by Abdul Hamid Siddiqui. <https://sunnah.com/muslim:1445i>

and blood ties. So, it is permissible for a woman to show her adornments to those who are her fathers or sons through redha'a.¹⁹⁷

The jurists agreed that foster relations are treated like blood relations in marital affairs, so the nursed infant becomes like a relative in marriage prohibition and the permissibility of looking. However, they differed on the rules and provisions in Sharī'ah regarding the age of marriage-prohibiting breastfeeding, and the required amount of milk. Below is a detailed explanation of the jurists' rulings with their evidence and a discussion of this evidence.

4.2.1 The Age of Marriage-prohibiting Breastfeeding

There are various narrations, stories, and traditions attributed to Prophet Muhammed (pbuh) regarding the age of breastfeeding; accordingly, the jurists differed among themselves about the age at which breastfeeding is established into three opinions. The **first** is represented by the jurists of the four Sunni schools of thought (Hanafī, Maliki, Shāfi'ī, and Hanbali) that the age of breastfeeding is what happens during the period of two years. The **second** opinion is that breastfeeding for the old and the young forbids marriage, which was al-Zāhirīyah¹⁹⁸ and some Companions' opinion. The **third**

¹⁹⁷ Shihāb ad-Dīn Maḥmūd ibn 'Abd Allāh al-Ḥusaynī al-Ālūsī, *Rūh al-Ma'ānī fī Tafsīri-l-Qur'āni-l-'Azīm wa Sab'u-l-Mathānī*, ed. Ali Abdel Bari Attia (Beirut: Dar al-Kutub al-Ilmiya, 1415 AH) vol. 9, 338.

¹⁹⁸ A Sunnī school of Islamic jurisprudence and intellectual system that appeared in Baghdad in the middle of the third Hijrī century (tenth century), established by Dāwūd ibn □Alī al-Zāhirī. It was later formalised and strongly advocated by □Alī ibn Muhammad ibn Ḥazm of the Andalus. The madhhab is based on the apparent meaning of religious texts, rejecting the idea of attaching causes to rulings and rejecting analogy. See "Zahiri." In *The Oxford Dictionary of Islam*, edited by Esposito, John L. : Oxford University Press, 2003.
<https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-2553>.

opinion is that breastfeeding for the old “*redhaa’ al-Kabeer*” is a general allowance that forbids marriage with specific circumstances. This ruling is what Imam Ibn Taymiyyah, Ibn al-Qayyim, al-Shawkani, and some contemporary scholars have held.¹⁹⁹ The following is a statement of those sayings and their evidence.

1. First Opinion: Marriage-prohibiting breastfeeding is the one that occurred in the two years.

The Imams of the four schools of thought (*madhhabs*) held that breastfeeding a child must occur before it is two years old. Then they differed in limiting the period to two years. As for the **Hanafis**, their sayings are not the same; Imam Abu Hanifa held that breastfeeding takes place for thirty months.²⁰⁰ His two fellow jurists, Imam Abu Yusuf and Imam Muhammad bin Al-Hassan Al-Shaibani limited the period to only two years.²⁰¹

Two narrations were narrated on the authority of **Imam Malik**: the first is in two years

¹⁹⁹ Ibn Taymiyyah al-Qayyim were Hanbali jurists, while al-Shawkani was an independent jurist. Among the contemporary scholars, Professor Samia Hanbazazah outweighed this opinion over the other views in her research. See in Arabic Samia Mahmoud Hanbazazah, “The Justice of Islam in the Judgment of Unknown Parentage, a Comparative Jurisprudential Study.” *Yearbook of the College of Islamic and Arabic Studies for Girls in Alexandria* 29, no. 1 (2013): 664.

²⁰⁰ ‘Alā’ al-Dīn Abū Bakr Muḥammad b. Aḥmad al-Samarqandī, *Toḥfat al-foqahā’* (Beirut: Dar al-Kutub al-Ilmiya, 1414 AH - 1994 AD) vol. 2, 236-237; ‘Alā’ al-Dīn Abū Bakr b. Mas‘ūd al-Kāsānī, *Bada’i’ al-sana’i’ fi tartib al-shara’i’* (Marvels of craftsmanship in the Arrangement of shari‘a laws) (Beirut: Dar al-Kutub al-Ilmiya, 1406 AH - 1986 AD) vol. 4, 5-6; Muḥammad Amīn ibn ‘Umar Ibn Ābidīn, *Radd al-Muhtār ‘ala al-Durr al-Mukhtār*, known as *Hashiyat Ibn Ābidīn* “Guiding the Baffled to The Exquisite Pearl” (Egypt: Mustafa Al-Babi Al-Halabi and Sons Press, 1386 AH-1966 AD) vol. 3, 209.

²⁰¹ Ibid.

and a month, and the second is in two years and two months.²⁰² **Imam al-Shāfi‘ī**²⁰³ and **Imam Ahmad bin Hanbal**²⁰⁴ said that breastfeeding takes place in only two years. The prohibition applies only during this time period, whether the child is weaned or not. Because what counts is the time period, not weaning. Breastfeeding does not prohibit marriage if the child had breastfed after the time period.

Those who argued that breastfeeding of a child must occur before it attains two years of age quoted the Qur’anic verse, “*The mothers shall give suck to their offspring for two whole years if the father desires to complete the term.*”²⁰⁵ This verse is an explicit text that the completion of breastfeeding with the completion of the two years bears the proof of the prohibition of complete breastfeeding. Furthermore, Allah said in the Qur’an: “*We have commanded people to ‘honor’ their parents. Their mothers bore them through hardship upon hardship, and **their weaning takes two years.***”²⁰⁶ The verse indicates that there is no breastfeeding after weaning. Another Quranic verse states, “*We*

²⁰² Muhammad ibn Ahmed ibn 'Arafa ad-Desouki, *Hashiyat ad-Desouki 'ala ash-Sharh al-Kabir*, (Beirut: Dar Al-Fikr) vol. 2, 503; Abū al-Walīd Muḥammad Ibn ‘Aḥmad Ibn Ruṣd, often Latinized as **Averroes**, *Bidāyat al-Mujtahid* “The Distinguished Jurist's Prime” (Cairo-Dar Al-Hadith, 1425 AH - 2004 AD) vol.3, 61.

²⁰³ Abū ‘Abdillāh Muḥammad ibn Idrīs al-Shāfi‘ī, *Kitāb al-Umm* (Beirut: Dar Al-Fikr, 1403 AH - 1983 AD), vol.5, 31

²⁰⁴ Ibn Qudāmāh al-Maqdisī Muwaffaq al-Dīn Abū Muḥammad ‘Abd Allāh b. Aḥmad b. Muḥammad, *al-Mughnī*, ed. Dr. Abdullah bin Abdul Mohsen Al-Turki, Dr. Abdul-Fattah Muhammad Al-Helou (Riyadh - Saudi Arabia: Dar Alam Al-Kutub for printing, publishing, and distribution, 1417 AH - 1997 AD), vol. 11, 320.

²⁰⁵ The Holy Qur’an, *Sūrah Al-Baqarah* (The Heifer) verse 233, English Translation (Yusuf Ali). <https://quran.com/2/233>

²⁰⁶ The Holy Qur’an, *Sūrah Luqman*, verse 14, English Translation Dr. Mustafa Khattab, the Clear Quran. <https://quran.com/31?startingVerse=14>

have commanded people to honor their parents. Their mothers bore them in hardship and delivered them in hardship. Their period of bearing and weaning is thirty months."²⁰⁷

The verse indicates that the period of weaning is two years, as the minimum period of pregnancy (gestation) is six months, so the period of weaning remains two years.

According to the Sunnah, which supports the Qur'anic texts, marriage prohibiting breastfeeding occurs only during the first two years after birth. It came in the hadith of 'A'isha reported: Allah's Messenger visited me when a man was sitting near me, and he seemed to disapprove of that. I saw signs of anger on his face, and I said: 'Messenger of Allah, he is my brother by fosterage,' whereupon he said: "*Consider who your brothers are because of fosterage since fosterage is through hunger* (i. e. in infancy)."²⁰⁸ Based on the hadith, breastfeeding at a young age is what is considered in the prohibition of marriage because it is the one that prevents hunger. The Prophet made breastfeeding for the sake of hunger, and it is well known that breastfeeding an older child (older than two years) does not satisfy his hunger. Moreover, a hadith on the authority of Umm Salamah²⁰⁹ confirms this meaning when she narrated that the Messenger of Allah said:

²⁰⁷ The Holy Qur'an, *Sūrah Al-Ahqaf* (The Curved Sand-hills), verse 15, English Translation Dr. Mustafa Khattab, the Clear Quran. <https://quran.com/31?startingVerse=15>

²⁰⁸ Sahih Muslim 1455a. The Book of Suckling, Chapter: Breastfeeding is because of Hunger (meaning, during infancy). <https://sunnah.com/muslim:1455a>

²⁰⁹ Hind bint Abi Umayya, also known as Umm Salamahh or Hind al-Makhzmiyah. She was one of Prophet Muhammad's wives and one of his most impactful female companions. She is best known for memorizing numerous Hadiths, or stories about the Prophet.

“No prohibition results from suckling except for what penetrates the intestines **while on the breast before weaning.**”²¹⁰

The jurists of the four *madhhabs* confirmed their argument with several reports from the great Prophet Muhammad’s Companions, such as the saying of Ibn ‘Abbās: “There is no breastfeeding after two complete years.”²¹¹ Also, one of the Prophet’s companions and the greatest *mufassir*²¹² of the Qur’an of his time, Abd Allāh ibn Mas‘ūd said, “Fosterage is not valid except by what strengthens bone and grows flesh.”²¹³

Based on an extensive review of the opinions of jurists representing the four schools of thought, it can be concluded that the restriction on marriage due to breastfeeding that is primarily intended to fulfill the nutritional needs of infants. This prohibition generally applies to children under two, but it does not apply to older

²¹⁰ Muḥammad ibn‘Īsa at-Tirmidhi, *Jami` at-Tirmidhi* 1152, Chapter 5: What has been related about: Suckling does not make a prohibition except during infancy less than two years, Book 12: The Book on Suckling. <https://sunnah.com/tirmidhi:1152>

²¹¹ Malik bin Anas, *Al-Muwatta`* (Beirut: Dar Ihya` al-Turath al-Arabiyy, 1415 AH-1985 AD); Ali bin Umar Al-Darqutni, *Al-Sunan* (Beirut: Muassasat al-Risalah, 1424 AH-2004 AD); Abdullah bin Muhammad Ibn Abi Shaybah, *Al-Musannaf* (Riyadh: Maktabat al-Rushd, 1409 AH); Abdul Razzaq Al-Sa`aniyy, *Al-Musannaf* (Beirut: al- Maktab al-Islamiyy, 1403 AH); Sa‘īd ibn Manṣūr, *al-Sunan* (India: al-Dar al-Salafiyyah, 1403 AH-1982 AD); Ahmad bin Husain Al-Baihaqi, *Al-Sunan al-kubra* (Beirut: Dar al- Kutub al-Ilmiyyah, 1424 AH- 2003 AD).

²¹² A scholar who performs *Tafsir*, refers to the exegesis of the Qur’an. *Tafsir al-Qur’an* deals with the issues of linguistics, jurisprudence, and theology.

²¹³ Sunan Abi Dawud 2059, Chapter 675: Regarding Breastfeeding An Adult, Book 12: Marriage (Kitab Al-Nikah). <https://sunnah.com/abudawud:2059>; ‘Abd Allāh Ibn Abī Shayba, *al-Kitāb al-Muṣannaf fī al-Aḥādīth wa’l-āthār*, ed. Kamal Youssef al-Hout (Lebanon: Dar al-Taj, 1409 AH - 1989 AD), vol. 8, 548; Abū Bakr ‘Abd al-Razzāq bin Humam al-San‘ānī, *Al-Muṣannaf*, ed. Habib ar-Rahman al-Azami, (India: al- Majlis al-Ilmy, 1403 AH- 1983 AD), vol. 7, 463; Sa‘īd Ibn Manṣūr, *Sunan Sa‘īd ibn Manṣūr*, ed. Habib ar-Rahman al-Azami (India: al-Dar al-Salafiyyah, 1403 AH-1982 AD), vol. 1, 281.

children. Therefore, for children beyond the breastfeeding age, there does not impede their marriage.

2. Second Opinion: Breastfeeding infants and older age preclude marriage, also known as the issue of “*redha'a al-Kabeer.*”

A group of companions and *tābiqīn*,²¹⁴ such as 'A'isha and Ḥafṣa,²¹⁵ Alī ibn Abī Ṭālib, 'Abd Allāh ibn al-Zubayr, 'Urwah ibn al-Zubayr, al-Qāsim ibn Muḥammad ibn Abī Bakr,²¹⁶ and Aṭā' ibn Abī Rabāḥ went to the saying that breastfeeding ultimately prohibits marriage.²¹⁷ There is no difference between breastfeeding when young or old, so all are

²¹⁴ *tābiqī* [singular form of *tābiqīn*] is A person who was conversing with one of the prophet's companions, even though he was an unbeliever at the time but died a Muslim. For more information, see in Arabic al-Hakim al-Nishapuri, *Ma`rifat Anwā` 'Ulūm al-Hadīth* (Knowledge of the Different Types of the Hadīth Sciences) (Beirut: Dar al- Kutub al-Ilmiyyah, 1397 AH- 1977 AD); Ibn Ḥajar al- 'Asqalānī, *Nuzhetu'un-Nazar fī tavzīhi nuḥbeti'l-fiker* (Damascus: Al-Sabah Press, 1421 AH - 2000 AD).

²¹⁵ Ḥafṣa bint 'Umar, a Prophet Muhammad's wife and daughter of 'Umar ibn al-Khaṭṭāb, the second caliph of Islam. Ibn Ḥajar al- 'Asqalānī mentioned in his commentary of *Ṣaḥīḥ al-Bukhārī*, on the authority of Ibn Jarīr al-Ṭabarī that Ḥafṣa and 'A'isha were the only two among the Prophet Muhammad's wives who said that breastfeeding ultimately prohibits marriage, regardless of age. See Ibn Ḥajar al- 'Asqalānī, *Fath al-Bārī fī Sharḥ Ṣaḥīḥ al-Bukhārī* (Beirut: Dar al-Ma`rifah, 1379), vol.9, 149.

²¹⁶ Ibn Ḥajar al- 'Asqalānī, *Fath al-Bārī fī Sharḥ Ṣaḥīḥ al-Bukhārī*, vol.9, 149.

²¹⁷ Muhammad bin Abi Bakr Ibn Qayyim al-Jawziyyah, *Zad al-Ma`ad fī Huda Khayr al-'Ibad* (Beirut: Dar Ibn Hazm, 1440 AH-2019 AD) v. 6, 191-192; Ali bin Ahmad Ibn Hazam, *Al-Muhalla bi al-Athar* (Beirut: Dar al-Fikr), vol.10, 202-212.

equal.²¹⁸ It is also the saying of al-Layth ibn Sa‘d,²¹⁹ Dawood, and Ibn Hazm from al-Zāhirīyyah.²²⁰

The proponents of this opinion inferred the Quranic verse: “*And (prohibited to you in marriage are) your foster mothers and foster sisters.*”²²¹ The apparent meaning of the verse did not differentiate between the state of being a child or an adult. Therefore, it applies to everyone, as breastfeeding precludes marriage in these two cases. Also, they confirmed their argument with the hadith of Sahla bint Suhail, whose narrations and expressions vary, long and short.

Sahla and her husband, Abu Ḥudhayfa ibn Utba ibn Rabia, adopted Sālim (who is called Sālim mawla Abī Ḥudhayfa)²²² as the Prophet Muhammad adopted Zayd bin Ḥāritha before Islam when adoption was not yet abolished. Sālim grew up under the care

²¹⁸ Ibn al-Qayyim al-Jawziyyah, *Zad al-Ma‘ad*, v. 6, 191-192; Ibn Hazam, *Al-Muhalla*, vol.10, 202-212.

²¹⁹ The chief representative, Imam, and eponym of the Laythi school of Islamic Jurisprudence was al-Layth ibn Sa‘d ibn ‘Abd al-Raḥmān al-Fahmī al-Qalqashandī. Even decades after his death in 791 CE, he was regarded as Egypt's scholar. Despite being one of the most famous jurists of the time, his students did not record and spread his teachings as did the students of another famous jurist of the time, Malik ibn Anas. Imam al-Shafi‘i, the founder of the Shafi‘i school, considered al-Layth a more outstanding jurist than Malik ibn Anas, the founder of the Maliki Madhhab school and al-Shafi‘i's teacher. For more information about the Evolution of Madhhabs, see Abu Ameenah Bilal Philips, *The Evolution of Fiqh: Islamic Law & The Madhhabs* (International Islamic Publishing House: n.d.) https://www.google.co.id/books/edition/Evolution_of_Fiqh/l9vtE_7-rBwC?hl=en&gbpv=0

²²⁰ Ibn al-Qayyim, *Zad al-ma‘ad*, 191-192; Ibn Hazam, *Al-Muhalla*, 202-212.

²²¹ The Holy Qura’n, *Sūrah An-Nisa* (The women) verse 23, English Translation (Dr. Mustafa Khattab) <https://quran.com/4/23>

²²² A description of a narrator indicating that he belonged to those to whom he is affiliated because, in the majority of cases, they had freed him from slavery, or because his people were their allies, or because he or one of his ancestors embraced Islam through them.

of Abu Ḥudhayfa and his wife like a son to both of them, and Abu Ḥudhayfa married him to his niece, Fatima bint al-Walid ibn Utba ibn Rabia. Fatima was one of the best-unmarried women of the Quraysh at that time. When Allah the Exalted revealed in the Qur'an about Zayd bin Ḥāritha: "*Call them after their true fathers. That is more equitable in the sight of Allah. If you do not know who their fathers were, then they are your brothers in the deen and your mawali,*"²²³ adoption became forbidden. People in this position were traced back to their fathers. When the father was unknown, they were traced to their mawla.²²⁴ So Sālim is - initially - the adopted son of Abu Ḥudhayfa, and his wife Sahla is his adoptive mother, with all the consequent provisions of adoption in terms of inheritance, the obligation of alimony, and the sanctity of intermarriage. These rulings were fixed by birth, breastfeeding, or adoption.

After the adoption abrogation, it was difficult for the spouses to deny Sālim access, given their amicable relationship with him. Hence, Sahla came to the Prophet to seek a legal opinion concerning this and said:

Messenger of Allah! We think of Sālim as a son who comes to see me while I am *fudhul* (uncovered).²²⁵ We only have one room, so what do you think about the situation? So the Prophet said: "*Give him five drinks of*

²²³ The Holy Qur'an, *Sūrah* al-Ahzab (The confederates) verses 3-4.

²²⁴ *Mawla* is the emancipated slave who owes loyalty to those who freed him. See "Mawali." In *The Oxford Dictionary of Islam*, edited by Esposito, John L. : Oxford University Press, 2003.
<https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-1473>.

²²⁵ *Fudhul* in Arabic is an adjective for a woman when wearing work clothes at home, usually one garment. See The Arabic Language Academy in Cairo, *Al-Mu'jam Al-Wasitt* "Intermediate Dictionary" (Cairo: al-Shorouq International Library, 2004), 396.

your milk, and he will be mahram by it.” She then saw him as a foster son.²²⁶

Furthermore, In Sahih Muslim, several narrations on behalf of 'A'isha Umm al-muminin are reporting the story of Sahlah bint Suhail; may Allah be pleased with them. The **first narration** stated that Sahla bint Suhail came to the Prophet and said,

Messenger of Allah, I see on the face of Abu Ḥudhayfa (signs of disgust) on entering of Sālim into (our house), after which Allah's Messenger said: *“Suckle him.”* She said: ‘How can I suckle him as he is a grown-up man?’ Allah's Messenger smiled (in the narration of Ibn 'Umar, the words are: Allah's Messenger laughed) and said: *“I already know that he is a young man.”*²²⁷

In the **second narration**, 'A'isha reported that Sālim, the freed slave of Abu Ḥudhayfa, lived with him and his family in their house. Sahla came to the Prophet and said:

Sālim has attained (puberty) as men attain, and he understands what they understand, and he enters our house freely; I, however, perceive that something (rankles) in the heart of Abu Ḥudhayfa. The Prophet answered: *“Suckle him, and you would become unlawful for him, and (the rankling) which Abu Hudhaifa feels in his heart will disappear.”* Sahla came back to the Prophet after a while and said: ‘So I suckled him, and what (was there) in the heart of Abu Ḥudhayfa disappeared.’²²⁸

Zainab, the daughter of Abu Salama, reported the third narration:

I heard Umm Salamah, the wife of Allah's Messenger, say to 'A'isha: ‘By Allah, I do not like to be seen by a young boy who has passed the period of fosterage,’ whereupon she ('A'isha) said: ‘Why is it so? Sahla, daughter

²²⁶ Malik bin Anas, *al-Muwatta*, Book 30: Suckling, hadith no. 13
<https://sunnah.com/malik/30/13>

²²⁷ Sahih Muslim, Book 17: The Book of Suckling, Chapter 7: Breastfeeding an adult, hadith no. 1453a. <https://sunnah.com/muslim:1453a>. Muslim mentioned in his Sahih that Sālim participated in the Battle of Badr, which means he was an adult man.

²²⁸ Sahih Muslim, Book 17: The Book of Suckling, Chapter 7: Breastfeeding an adult, hadith no. 1453b. <https://sunnah.com/muslim:1453b>; Sunan an-Nasa'i, Book 26: The Book of Marriage, Chapter 53: Breastfeeding an Adult, hadith no. 3323. <https://sunnah.com/nasai:3323>

of Suhail, came to Allah's Messenger and said: 'Allah's Messenger, I swear by Allah that I see in the face of Abu Ḥudhayfa (the signs of disgust) on account of entering of Sālim (in the house).' Allah's Messenger said: "*Suckle him.*" She (Sahla bint Suhail) said: 'He has a beard.' However, he (again) said: "*Suckle him, and it would remove what there (expression of disgust) on the face of Abu Ḥudhayfa is.*" She said: '(I did that) and, by Allah, I did not see (any sign of disgust) on the face of Abu Ḥudhayfa.'²²⁹

The owners of this opinion cited these hadiths. They said that the Prophet ordered Sahla bint Suhail to breastfeed Sālim, knowing he was old, as evidenced by her astonishment, then asked him, "How do I breastfeed him? He is a big man." Therefore, if the adult's breastfeeding does not preclude marriage with him, then there would be no benefit from her breastfeeding him. Accordingly, the inviolability of marriage is proven by the adult's breastfeeding.

'A'isha Umm al-muminin took that as a precedent for whatever men she wanted to be able to come to see her. She ordered her sister, Umm Kulthum bint Abi Bakr as-Siddiq and the daughters of her brother to give milk to whichever men she wanted to be able to come in to see her.²³⁰ Most of the fuqaha believe that the hadith of Sahla bint Suhail is a concession to Sālim, the mawla of Abu Ḥudhayfa. What indicates his specialization is what Imam Muslim narrated on the authority of Zainab bint Abi Salamah. Zainab reported that her mother, Umm Salamah, a Messenger's wife, noted that the rest of the Messenger's wives disclaimed the idea and refused to let anyone come into them through such nursing. They said to 'A'isha,

²²⁹ Sahih Muslim, Book 17: The Book of Suckling, Chapter 7: Breastfeeding an adult, hadith no.1453e <https://sunnah.com/muslim:1453e>

²³⁰ Muwatta Malik, Book 30: Suckling, hadith no. 13.

By Allah, we do not find this, but a sort of concession given by Allah's Messenger only for Sālim, and no one is going to be allowed to enter (our houses) with this type of fosterage, and we do not subscribe to this view.²³¹ Regarding the breastfeeding method, the hadith does not mention that Sahla gave

Sālim her breast while he was a grown-up man. What is meant by breastfeeding here is that the woman empties her milk into a container and sends it to the man to drink, and this is repeated five times, thus making it forbidden for him. Ibn Saad reported on the authority of Al-Waqidi, on the authority of Al-Zuhri, on the authority of his father; he said: "Sahla was milking in a Mas'at (snuffbox) or a pot the amount of one breastfeed, and Salem drank it every day until five days passed. Afterward, he entered her while her head was exposed."²³²

The incident of Sālim mawla Abī Ḥudhayfa is one of the rulings of the Sharia, which revealed Sharia's greatness; The ruling was based on considering the complicated humanitarian situation that resulted from ending the adoption ruling. The incident created a legal way out, an exceptional rule by which Sharia maintains its provisions, with full consideration of the circumstances of reality.

²³¹ Sahih Muslim, Chapter 7: Breastfeeding an adult, Book 17: The Book of Suckling, hadith no. 1454 <https://sunnah.com/muslim:1454>; Muwatta Malik, Book 30: Suckling, hadith no.13 <https://sunnah.com/malik/30/13> ; Sunan an-Nasa'i, Chapter 53: Breastfeeding an Adult, Book 26: The Book of Marriage, hadith no. 3324 <https://sunnah.com/nasai:3324>

²³² Abū 'Abd Allāh Muḥammad Ibn Sa'd, *Kitāb al-ṭabaqāt al-kabīr*; ed. Muhammad Abdel Qader Atta (Beirut: Dar al-kutub al-Ilmiyah, 1410 A.H. - 1990 A.D), vol. 8, 212.

3. Third Opinion: *Redha'a al-Kabeer* (Breastfeeding an adult) is a general concession for everyone in such circumstances as Sahla's condition.

This ruling is the opinion of Imam Ibn Taymiyyah²³³, Ibn Al-Qayyim²³⁴, and Al-Shawkani,²³⁵ which reconciles the hadith of Sālim with the rest of the hadiths, considering the marriage prohibiting breastfeeding is what occurs during infancy. In his book, *Zad al-Ma'ad*, Imam Ibn al-Qayyim directed the hadith of Sahla bint Suhail.

The hadith of Sahla is not abrogated, nor is it specific or general for everyone. Instead, it is a concession to the need for the one who does not dispense with entering upon the woman, and it is difficult for her to hide from him, as in Sālim and Abu Hudhayfah's wife. For such an adult, if she breastfed him for need, that breastfeeding is effective. For those other than that, only breastfeeding the young one is effective.²³⁶

According to this opinion, the hadiths that prohibit breastfeeding in old age can be understood as either absolute but are restricted by the specific case of Sahla's hadith, or they are general, and this specific case serves as an exception to their general application.²³⁷

²³³ Taqī ad-Dīn Aḥmad ibn Taymiyyah, *Majmu' al-Fatawa* "A Compilation of Fatwa," (Medina, Saudi Arabia: King Fahd Complex for the Printing of the Holy Qur'an, 1425 AH - 2004 AD), vol. 34, 60.

²³⁴ Ibn al-Qayyim, *Zad al-Ma'ad*, vol. 6, 209-210.

²³⁵ Muḥammad al-Shawkānī, *Nayl al-Awtar min Asrar Muntaqa al-Akhbar*, ed. Essam Eddin al-Sababti (Egypt: Dar al-Hadith, 1413 AH - 1993 AD), vol. 6, 371-373.

²³⁶ Ibn al-Qayyim al-Jawziyyah, *Zad al-ma'ad*, vol. 6, 201.

²³⁷ Ibid at 210.

Discussion

The first opinion's proponents, who argue that nursing should occur during infancy, have disputed the hadith of Sālim and declared it abrogated.²³⁸ Additionally, they argued that it only applies to Sālim and Abī Ḥudhayfa's wife. To support their argument, they cite the hadith related by Umm Salamah on the unwillingness of the other wives of the Prophet to allow anyone to enter upon them with such nursing, explaining to 'A'isha that this was a concession made by the Messenger of God to Sālim only.²³⁹

The third opinion's proponents responded to this objection by stating that the abrogation claim requires proof; It is not permissible for anyone to say in an established text: This is abrogated, except in an established and clear text that is not probable.²⁴⁰ Furthermore, 'A'isha narrated this hadith and the hadith: "*Fosterage is through hunger.*"²⁴¹ If Sahla's hadith had been abrogated, 'A'isha would have taken it and left the abrogated one, or its precedence would have been hidden from her, even though she is the narrator of it. Both of them are abstaining or exceptionally far away.²⁴² Moreover, 'A'isha was afflicted with this issue, and she used to work on it, debate on it, and invite her companions to it, so she cared more about it. How can this ruling be repealed from the

²³⁸ Ibn Hazam, *Al-Muhalla*, vol.10, 211; Ibn al-Qayyim, *Zad al-ma'ad*, vol. 6, 209-210.

²³⁹ Sahih Muslim, Book 17: The Book of Suckling, Chapter 7: Breastfeeding an adult, hadith no. 1454 <https://sunnah.com/muslim:1454>

²⁴⁰ Ibn Ḥazm, *Al-Muhalla*, vol. 10, 211; Ibn al-Qayyim, *Zad al-ma'ad*, vol. 6, 201.

²⁴¹ Sahih Muslim, Book 17: The Book of Suckling, Chapter 8: Breastfeeding is because of Hunger (meaning, during infancy), hadith no. 1455a. <https://sunnah.com/muslim:1455a>

²⁴² Ibn Qayyim, *Zad al-ma'ad*, vol. 6, 202.

religion altogether, hidden from her and the Prophet's wives, so none of them mentioned it to her?²⁴³ None of the other Prophet's wives used the argument of abrogation against 'A'isha. Instead, they exclusively restricted the hadith application to Sālim and avoided adding more context; may Allah be pleased with them all.

As for the claim of the exclusiveness of the hadith to Sālim, it is a claim that needs evidence.²⁴⁴ There is no argument in the Prophet's wives' rejection of Sahla's hadith, just as there is no argument in their statements.²⁴⁵ They acknowledged the validity of the argument that 'A'isha brought in the hadith narrated by Muslim, on the authority of Hameed bin Nafi,' on the authority of Zainab bint Umm Salamah, who said:

Umm Salamah said to 'A'isha: 'A young boy at the threshold of puberty comes to you. I, however, do not like that he should come to me.' Whereupon 'A'isha said: 'Don't you see in Allah's Messenger, a model for you?' She also said: 'The wife of Abu Ḥudhayfa said: Messenger of Allah, Sālim comes to me, and now he is a (grown-up) person, and there is something that (rankles) in the mind of Abu Ḥudhayfa about him.' Whereupon Allah's Messenger said: "*Suckle him* (so that he may become your foster child), *and thus he may be able to come to you* (freely)."²⁴⁶

There is a difference between Umm Salamah's reasoning with her assumption and 'A'isha's reasoning with the established Sunnah and her saying to Umm Salamah: 'Don't you see in Allah's Messenger, a model for you?' The silence of Umm Salamah indicates that she has returned from her precaution to the truth.²⁴⁷ If the Sunnah were specific to

²⁴³ Ibid.

²⁴⁴ Al-Shawkānī, *Nayl al-Awtar*, vol. 6, 372.

²⁴⁵ Ibid.

²⁴⁶ Sahih Muslim, Book 17: The Book of Suckling, Chapter 7: Breastfeeding an adult, hadith no. 1453d. <https://sunnah.com/muslim:1453d>

²⁴⁷ Ibn Ḥazm, *Al-Muhalla bi al-Athar*, vol. 10, 211.

Sālim, the Messenger of Allah would have explained it explicitly as he clarified the specialization of Abu Burdah to sacrifice a goat²⁴⁸ and in considering his testimony equal to the testimony of two men.²⁴⁹

Ibn Taymiyyah commented that A'isha accepted the hadith of Sālim, and other wives of the Prophet refused to accept it. Although 'A'isha narrated from him: “*Fosterage is through hunger.*”²⁵⁰ Nevertheless, [عَبَّ]she saw that the difference lies in the intent of breastfeeding: is it to establish a mahram relationship or for feeding?²⁵¹ If the intention is feeding, then breastfeeding does not preclude marriage except before the weaning age, and this is the breastfeeding of the general public.²⁵² As for breastfeeding for the sake of prohibition, it is permissible if there is a need to make it a mahram, and it may be permissible based on the need that is not permissible for others, and this is a directed saying.²⁵³ This deduction is better than an abrogation claim and the specification claim; it reconciles all the hadiths on both sides under the rules of the Sharia.²⁵⁴

²⁴⁸ Ibn Ḥajar, *Fath al-Bārī*, vol. 10, 13; al-Shawkānī, *Nayl al-Awtar*, vol. 6, 372.

²⁴⁹ Ibn Ḥajar, *Fath al-Bārī*, vol. 8, 519; al-Shawkānī, *Nayl al-Awtar*, vol. 6, 372; Ibn Ḥazm, *Al-Muhalla bi al-Athar*, vol. 10, 211.

²⁵⁰ Sahih Muslim, Book 17: The Book of Suckling, Chapter 8: Breastfeeding is because of Hunger (meaning, during infancy), hadith no. 1455a. <https://sunnah.com/muslim:1455a>

²⁵¹ Ibn Taymiyyah, *Majmu' al-Fatawa*, vol. 34, 60.

²⁵² Ibid.

²⁵³ Ibid; al-Shawkānī, *Nayl al-Awtar*, vol. 6, 373.

²⁵⁴ Ibn al-Qayyim, *Zad al-ma'ad*, vol. 6, 210.

4.2.2 The Number of Feeds

The amount of breastfeeding is an important condition in establishing the prohibition. **Marriage-prohibiting breastfeeding** should be in a certain number of feeds, but jurists differ regarding the number of feeds. Many hadiths and juristic statements regarding the specific amount of breastfeeding prove marriage prohibition, and based on their multiplicity, the scholars' sayings have multiplied. **First**, the Hanafis and Malikis went that either few or many feeds forbid marriage. The **second** was the view of Zayd bin Thābit, Abū Thawr, Abū ‘Ubayd, and al-Zāhirīyyah, stating that three breastfeeding sessions forbid marriage. The **third** view by Shafi'is and Hanbalis requires five feeding sessions to create the Mahram relationship between the child and their foster parents. The following is a statement of those opinions and their evidence.

1. First Opinion: Either few or many feeds forbid marriage.

The Hanafis²⁵⁵, Malikis²⁵⁶, and the Hanbalis (in a narration)²⁵⁷ opined that breastfeeding precludes marriage, whether a little or much. They quoted the Almighty saying: “*And (prohibited to you in marriage are) your foster mothers and foster sisters.*”²⁵⁸ The verse is general and does not set a specific amount of breastfeeding.

²⁵⁵ Al-Kāsānī, *Bada'i' as-Sana'i'*, vol. 4, 7; Maḥmūd ibn Aḥmad Badr al-Dīn al-‘Aynī, *al-Binaya Sharh al-Hidaya*, ed. Ayman Saleh Shaaban (*Beirut: Dar al-Kutub al-Ilmiyah*, 1420 AH - 2000 AD), vol. 5, 256.

²⁵⁶ Ibn Rušd, *Bidāyat al-Mujtahid*, vol. 3, 59-60; Muḥammad bin Yūsuf al-Mawwaq, *al-Tāj wa al-Iklīl ‘alā Mukhtaṣar Khalīl* (Dar al-Kutub al-Ilmiyah, 1416 AH-1994 AD), vol. 5, 535.

²⁵⁷ Ibn Qudāmah, *al-Mughnī*, vol. 11, 310.

²⁵⁸ The Holy Qur’an, *Sūrah An-Nisa* (The women) verse 23, English Translation (Dr. Mustafa Khattab) <https://quran.com/4/23>

Therefore, it applies to both the few and the many. God has linked the proof of marriage prohibition of breastfeeding to the proof of breastfeeding, so whenever there is breastfeeding, there is prohibition.

From Sunnah, they cited a hadith on the authority of 'A'isha: *“Do not observe veil from him, for he is Mahram on account of fosterage as one is Mahram on account of consanguinity.”*²⁵⁹ The hadith indicates that little and a lot of breastfeeding precludes marriage; because the Prophet made the act of breastfeeding, in any form, the reason for the prohibition. Furthermore, Imam al-Bukhārī narrated in his Sahih that `Uqba bin al-Harith had married Um Yahya bint Abu Ihab. He said: "A black slave lady came and said, 'I suckled you both.' I then mentioned that to the Prophet, who turned his face aside." `Uqba further said, "I went to the other side and told the Prophet about it. He said, *'How can you (keep her as your wife) when the lady has said she suckled both of you?'*" So, the Prophet ordered him to divorce her.²⁶⁰ This hadith indicates that little and much breastfeeding forbids marriage; The Messenger of God did not elaborate on how and did not ask about the number of feedings, and he ordered `Uqba to divorce his wife because she was forbidden to him.

²⁵⁹ Imam Muslim, *Sahih Muslim*, Hadith no. 1445i <https://sunnah.com/muslim:1445i>

²⁶⁰ Ṣaḥīḥ al-Bukhārī, Book 52: Witnesses, Chapter 13: The witness of male and female slaves, hadith no. 2659 <https://sunnah.com/bukhari:2659>

2. Second Opinion: Marriage-prohibiting breastfeeding requires three breastfeeding sessions.

Less than three breastfeeding sessions do not prove marriage prohibition, and to this point was Zayd bin Thābit,²⁶¹ Abū Thawr, Abū ‘Ubayd,²⁶² Dawood al-Zāhirī and his companions, and Ibn al-Mundhir.²⁶³ They support their argument with 'A'isha's hadith reporting the Prophet said, “*One suckling or two do not make (marriage) unlawful.*”²⁶⁴ Also, Umm al-Fadl reported that Allah's Messenger said: “*Being suckled once or twice,*

²⁶¹ Al-‘Aynī, *al-Binaya Sharh al-Hidaya*, vol. 5, 257; **Zayd bin Thābit** was the Prophet Muhammad's scribe and the primary recorder of the Quran text. He was a prominent scholar, Quran expert, and one of the few Companions who memorized the Qur'an as it was being revealed. See Ibn Ḥajar Al-‘Asqalānī, *Al-Iṣābah fī Tamayīz al-Ṣahābah*, vol. 2, 490-492.

²⁶² Ibn Rušd, *Bidāyat al-Mujtahid*, vol. 3, 60; Ibrahim ibn Khalid al-Kalbi al-Baghdadi, better known as **Abu Thawr**. He was a jurist from Baghdad and the companion of Imam Al-Shafī'i and the transmitter of ancient sayings about him. He is considered one of the most important jurists of religion whose opinion is taken. See Shams ad-Dīn Muḥammad ibn Aḥmad Adh-Dhahabī, *Siyar A'lam al-Nubala'* (Al-Resalah Foundation, 1422 AH - 2001 AD), vol. 12, 73; **Abū ‘Ubayd** al-Qāsim ibn Sallām al-Khurāsānī al-Harawī was a philologist and the author of many standard books on lexicography, Quranic sciences, hadith, and fiqh. In his books on jurisprudence, he tends to the Malik and Shafī'i school of thought. He left several books, the most famous of which are “*Al-Gharib Al-Musannaḥ*” and “*Gharib Al-Hadith*,” in addition to the book “*Al-Ammwal*,” which is considered one of the most important books on Islamic economics. See Adh-Dhahabī, *Siyar A'lam al-Nubala'*, vol. 10, 491.

²⁶³ Ibn Qudāmah, *al-Mughnī*, vol. 11, 310-311; **Ibn al-Mundhir**: Abu Bakr Muhammad ibn Ibrahim al-Naysaburi, a diligent jurist. He was the *sheikh* of the Grand Mosque in Makkah. The madhhab of a specific person did not bind him. Instead, he took the saying supported by the evidence, and he did not become fanatical about anyone or against anyone. See Adh-Dhahabī, *Siyar A'lam al-Nubala'*, vol. 14, 491.

²⁶⁴ Sahih Muslim, Book 17: The Book of Suckling, Chapter 5: One or Two sucks, hadith no.1450 <https://sunnah.com/muslim:1450>

or one suckling or two, does not make marriage unlawful.”²⁶⁵ These hadiths indicate that the three feedings or sucking entail prohibition.

3. Third Opinion: Marriage-prohibiting breastfeeding requires five breastfeeding sessions.

The Shafi'is,²⁶⁶ and the Hanbalis, according to the correct view of their madhhab,²⁶⁷ and Ibn Hazm²⁶⁸ from al-Zāhirīyyah, are of the view that five feeds and more prove the marriage prohibition.²⁶⁹

They cited the narration of Umm al-Mu'minin 'A'isha that she said: it had been revealed in the Holy Qur'an that ten clear sucklings make the marriage unlawful, then it was abrogated (and substituted) by five sucklings and Allah's Messenger died, and it was before that time (found) in the Holy Qur'an (and recited by the Muslims).²⁷⁰ The hadith explicitly indicates that the prohibition of breastfeeding is only with five known feedings.

²⁶⁵ Sahih Muslim, Book 17: The Book of Suckling, Chapter 5: One or Two sucks, hadith no. 1451c <https://sunnah.com/muslim:1451c>

²⁶⁶ Al-Shāfi'ī, *Kitāb al-Umm*, vol. 5, 31; Yahyā ibn Sharaf al-Nawawī, *Rawdat al-Talibin wa Umdat al-Muftin*, ed. Zuhair al-Shawish (Beirut: The Islamic Office, 1412 AH / 1991 AD), vol. 9, 7.

²⁶⁷ Ibn Qudāmah, *al-Mughnī*, vol. 11, 310-311; Al-Buhūtī, *Kashshāf al-Qinā'*, vol. 13, 84-85.

²⁶⁸ Ibn Ḥazm, *Al-Muhalla bi al-Athar*, vol. 10, 189.

²⁶⁹ This saying is narrated by 'A'isha, Ibn Masoud, Ibn Al-Zubayr, Ata, and Tawoos.

²⁷⁰ Sahih Muslim, Book 17: The Book of Suckling, Chapter 6: Becoming Mahram is established by Five Breastfeedings, hadith no. 1452a <https://sunnah.com/muslim:1452a>

They also inferred the hadith of Sahla bint Suhail and the Messenger's answer to her:

*"Give him five drinks of your milk, and he will be mahram by it."*²⁷¹

From those mentioned above, it became clear that the Hanafī and Maliki schools expanded greatly in the extent of proving the prohibition of breastfeeding, followed by the doctrine of Zayd bin Thābit, Abū Thawr, Abū 'Ubayd, and al-Zāhirīyyah, and finally, the Shafī'i and Hanbali schools. The conflict between the Qur'an's generality and the hadiths contained in the limitation and the opposition of the hadiths in that to one another is the reason for the disagreement between the jurists' sayings regarding the forbidden amount of milk.

4.3 Summary

Breastfeeding is profoundly respected in Sharī'ah. It is regarded as a sign of mother-child love by the Qur'an and the child's fundamental right. The Qur'an urges the mother, on the one hand, to breastfeed her child for two whole years if she has the physical and moral capacity, and on the other hand, it contains an order for the father to take care of the nursing mother. If the mother refuses to nurse a child or cannot, Sharī'ah allows breastfeeding the newborn from a wet nurse other than his mother in return for a fee that the father pays the wet nurse.

Sharī'ah permitted and encouraged breastfeeding but codified it with conditions and legal provisions to avoid social problems such as mixing lineages and incest marriage. Breastfeeding establishes ties of milk kinship that affect family law under Sharī'ah. The Holy Qur'an lists the

²⁷¹ Malik bin Anas, *al-Muwatta*, Book 30: Suckling, hadith no. 13
<https://sunnah.com/malik/30/13>

types of taboos in marriage, including those prohibited by breastfeeding, comparing kinship based on milk to kinship based on blood. As a result, it says that a man can not marry his "milk mother" or "milk sister." Sharī'ah also set conditions specifying the duration and how the marriage prohibition breastfeeding forms.

CHAPTER FIVE

Experience of Children with Unknown Parents in Saudi Arabia

5.1 Introduction

The care of orphaned children is a critical social issue, with millions of children worldwide lacking parental care due to various reasons such as war, disease, poverty, or other changes in human societies.²⁷² The traditional way of caring for orphans has been through institutional care, where children are placed in orphanages, group homes, or other residential facilities. The manifestations of orphan care in the world have settled on four primary forms: the adoption system, institutional care, care in Children's Villages (SOS), and finally, the alternative families, or what is called in the Muslim community, *kafalat alyateem*.

Providing care for orphans in Saudi Arabia is a significant issue, with various governmental and non-governmental organizations established to address the matter. Until recently, institutional care has been the predominant form of care implemented in many countries, including Saudi Arabia, and represents a deviation from traditional practices in Saudi society. This chapter explores the origins of institutional care as a foreign system to Muslim culture generally and Saudi society specifically. Additionally, it outlines the legal framework for orphan care in the Kingdom and describes the various forms of care provided, including institutional care and alternative care. Finally, the chapter highlights the challenges of institutional care in the Saudi context.

²⁷² According to the UNICEF website, the number of orphans (0–17 years) reached 147 million globally in 2021. <https://data.unicef.org/topic/hiv aids/orphanhood/>

5.2 The Beginnings of Institutional Care in Muslim Societies

The Muslim community in the prophetic era, followed by the Rashidun Caliphate²⁷³ and the Tābi‘īn's era,²⁷⁴ included the orphan child in a family who would care for them, whether they were living as orphans or foundlings. This approach enabled the child to grow up like any child in an ordinary family within society. From the era of the Companions (the 1st Century in the Islamic calendar or the 7th century AD) until today, the Muslim community has practiced prophetic directives to care for orphans. (a companion refers to companions of the Prophet Muhammed who met him physically and therefore had first hand reporting and knowledge of Islam). Many companions sponsored orphans and took them into their homes, as evident from historical records.²⁷⁵ Among them, for example, but not limited to Abū Bakr Al-Siddiq²⁷⁶, Abū

²⁷³*Al-Khulafā' Ar-Rāshidīn* (the Rightly-Guided Caliphs): The best of nations is the nation of Muhammad, and the best of this nation, after its Prophet, are the four Rightly-Guided Caliphs, who are: Abu Bakr, Omar, 'Uthmān, and 'Ali, may Allah be pleased with them. They were the ones who accompanied the Prophet Muhammad right from the beginning of Islam. They were assigned the caliphate and leadership after the death of the Prophet to look after the Muslims' affairs by establishing the religion and protecting the Muslims in such a way that all people needed to follow them. It was not permissible to oppose them. Their rulership was thirty years (632–661 AH). Ahl-us-Sunnah (the followers of the Sunnah) believe that their merit ranking is the same as their order in the caliphate.

²⁷⁴ The "followers" or "successors" are the generation of Muslims who followed the Companions (*ṣaḥābah*) of the Prophet Muhammad (pbuh) and thus received their teachings secondhand. See Glassé, Cyril., and Cyril. Glassé. *The New Encyclopedia of Islam*. Rev. ed. Walnut Creek, (CA: AltaMira Press, 2001), 443.

²⁷⁵ Abdullah al-Sadhan, *Orphan Care in the Islamic Civilization*, The First Forum for Orphan Care (Riyadh: Charity Association for Orphans Care “Insaan,” 2007), 18.

²⁷⁶ Abū Bakr ‘Abd Allāh ibn ‘Abī Quḥāfa, a senior companion. Through his daughter Ā’isha, he was a father-in-law of the Prophet Muhammad (pbuh). He was also the first Caliph of the Rashidun Caliphate. He is known by the honorific title "*al-Siddiq*."

Sa‘īd al-Khudrī²⁷⁷, ‘Urwah ibn al-Zubayr,²⁷⁸ Abū Ṭalḥa al-Anṣārī,²⁷⁹ Ā’isha bint Al-Siddiq, Umm Sulaym²⁸⁰, and Zainab bint abi Muawiyah²⁸¹ - may God be pleased with them - and many others.²⁸²

Throughout Islamic history, despite the strong urge in the religion and the great interest of Muslims in caring for and raising orphans, there were no whole residential institutions dedicated

²⁷⁷ Sa‘īd ibn Mālīk ibn Sinān al-Khazrajī al-Khudrī is one of the young companions but one of the most knowledgeable. He was an imam, mufti of Medina, and diligent jurist. He was one of the many who narrated the hadith on the authority of the Prophet Muhammad (PBUH).

²⁷⁸ ‘Urwah ibn al-Zubayr ibn al-‘Awwām al-Asadī was a hadith scholar, historian, and one of the seven jurists of Medina in the time of the Tābi‘īn. He was one of the many who reported on the authority of his aunt, Aisha, daughter of Abi Bakr, the wife of the Prophet Muhammad, and one of the first who sought to write down the hadith. He also had pioneering contributions in codifying excerpts from the beginnings of Islamic history, which provided a foundation upon which the later Muslim historians relied. He was also known to be one of the most eloquent people of poetry.

²⁷⁹ Zayd ibn Sahl ibn al-Aswad al-Khazrajī was a renowned companion and one of Medina's *Anṣār* (the 'Helpers'). He was primarily known as a valiant fighter and skillful archer of the early Islamic period. Abū Ṭalḥa was also known to have been a horseman of the Prophet.

²⁸⁰ Al-Rumaysā’ bint Milḥān was one of the earliest women converts to Islam in Yathrib (now Medina). She is the mother of Anas ibn Mālīk al-Anṣārī, a notable companion and the servant of the Prophet Muhammad (PBUH). Umm Salim was distinguished by wisdom and patience, and she narrated several hadiths.

²⁸¹ Zainab bint Abi Muawiyah Abdullah Al-Thaqafīyya was the wife of a notable companion, ‘Abd Allāh ibn Mas‘ūd, a great companion and one of the narrators of the Prophet's hadith. Her hadiths were mentioned in the two Sahihs. It was stated in Sahih Muslim, Sahih al-Bukhari, Sunan Ibn Majah, and Sunan al-Nisa'i that Zainab was a craftsman woman who made her craft and sold it.

²⁸² Al-Sadhan, *Orphan Care in the Islamic Civilization*, 18. For more information about the Companions, see in Arabic Ibn Ḥajar Al-‘Asqalānī, *Al-Iṣābah fī Tamyīz al-Ṣahābah* “A Morning in the Company of the Companions,” Edited by Adel Ahmed Abdul Mawjoud and Ali Mohamed Moawwad (Beirut: Dar al-Kutub al-Ilmiya, 1415 AH).

to orphans as we have today.²⁸³ This absence could be attributed to two main reasons. The first reason is the strong willingness of Muslim families to take care of their orphans. In the past, there was a strong sense of solidarity, and it was rare to find a family that would abandon its orphans.²⁸⁴ Additionally, due to the high moral standards of the first Muslim society, there were relatively few foundlings compared to the current era. As a result, there was no need for such residential institutions.²⁸⁵ There may be other reasons for the absence of such residential institutions, such as the financial burden of providing all living and educational needs. Such institutions require considerable financial resources and may be more costly than other charitable and social projects, such as schools and mosques.²⁸⁶

Although there was a widespread practice of caring for orphans without lodging them in institutions, only a few offices were established through endowments to provide them with education and care. Abdullah Al-Sadhan, a Saudi scholar, attempted to trace the emergence of social institutions dedicated to fully sheltering orphans in Islamic or Arab countries, but he found only a few references that were often due to individual efforts.²⁸⁷ For instance, in his book, *Al-Ibar (The Lessons)*, Imam Al-Dhahabi mentioned that Zain Al-Din Ali Kajak, the father of

²⁸³ Abdullah al-Sadhan, *Institutional Care for Orphans: It's Beginning and Alternatives*, Research papers of the first Saudi conference for orphan care in the Kingdom of Saudi Arabia, 318-319. 2011.

²⁸⁴ Abdullah bin Nasser al-Sadhan, *Children without Families* (Riyadh: al-Obeikan Library, 2011), 54.

²⁸⁵ Abdullah bin Nasser al-Sadhan, *The Awqaf "Endowments" and Society* (Riyadh: SAEE for Awqaf Development, 2018), 47.

²⁸⁶ Muhammad Ameen, *Awqaf and social life in Egypt 648-923 AH / 1250-1517 AD A historical and documentary study* (Cairo: Dar al-Nahdhah al-Arabiyyah, 1400 AH - 1980 AD), 242, 263.

²⁸⁷ Al-Sadhan, *Orphan Care in the Islamic Civilization*, 18-19.

Muzaffar Al-Din Kawkapuri, built a home for orphans and foundlings. Muzaffar al-Din, who died in 630 AH / 1232 AD, also established a house for foundlings and a group of wet nurseries for every newborn foundling to be breastfed.²⁸⁸ According to al-Sadhan, this was a unique case that may have been short-lived due to the aforementioned reasons. There were no references to the continuation or replication of this house in Islamic history.²⁸⁹

During the reign of Imam Faisal bin Turki Al Saud, one of the rulers of the second Saudi state, an orphanage was established in 1259 AH / 1843 AD near the Palace of Government in Riyadh.²⁹⁰ The purpose of this orphanage was to provide care for orphans, foundlings, and children whose parents were lost in battles. This period in the history of the second Saudi state was marked by frequent battles and invasions aimed at consolidating the rule.²⁹¹

The "Syrian Orphanage" was established by a foreign missionary in Syria in 1277 AH / 1860 AD. Twenty years later, in Syria, the governor, Midhat Pasha, set up another home in 1297 AH / 1879 AD.²⁹² Meanwhile, in Istanbul, Turkey, the Islamic Teachings Association established a boarding school called the "House of Compassion" in 1281 AH / 1864 AD, which provided food, clothing, and healthcare to its students across three educational stages: primary,

²⁸⁸ Shams ad-Dīn Adh-Dhahabī, *Al-'Ibar fī khabar man ghabar*, ed. Abu Hajar Muhammad Al-Saeed, (Beirut: Dar Al-Kutub Al-Arabiya, 1405 AH), 208.

²⁸⁹ Al-Sadhan, *Institutional Care for Orphans: Its Beginning and Alternatives*, 318.

²⁹⁰ Rashid bin Muhammad bin Asākir, *The History of Mosques and Ancient Endowments in the Country of Riyadh to the Year 1377 AH* (Riyadh: Maramer for Electronic Printing, 1420 AH), 330.

²⁹¹ Ibid.

²⁹² Shaker Al-Nabulsi, *The Age of Lodgings and Subjects: A Description of the Cultural Scene of the Levant during the Ottoman Era 1516-1918 AD*, (Beirut: The Arab Institute for Studies and Publishing, 1999 AD), 429.

intermediate, and secondary. In 1331 AH / 1913 AD, the number of students reached 300, and there was an unsuccessful attempt to open a branch in Makkah Al-Mukarramah in 1329 AH / 1911 AD.²⁹³

In 1339 AH / 1920 AD, an orphanage was established in Samoud, Egypt by an endower and operated until 1378 AH / 1958 AD.²⁹⁴ Additionally, a female philanthropist donated several agricultural acres in 1345 AH / 1927 AD to establish another orphanage.²⁹⁵ State-organized orphan care, known as shelters for orphans, emerged in Egypt between 1355 AH - 1936 AD.²⁹⁶ These shelters were affiliated with the Ministry of Interior, municipal councils, and some charities but later became affiliated with the Ministry of Social Affairs after its establishment in 1357 AH / 1939 AD.²⁹⁷

There are references indicating that in 1341 AH / 1922 AD, some notables in Beirut established the "Islamic orphanage" in a rented building.²⁹⁸ In the 1920s, a foreign missionary institution in Bahrain also set up an institution for foundlings and children of unknown parents,

²⁹³ Suhail Saban, *Makkah Al-Mukarramah and Al-Madinah Al-Munawwarah: Research and Studies from the Reality of the Ottoman Archives and Turkish Sources* (Riyadh: King Abdulaziz Public Library, 1426 AH), 149.

²⁹⁴ Ibrahim Al-Bayoumi Ghanem, *Awqaf and Politics in Egypt* (Cairo: Dar Al-Shorouk, 1419 AH), 313.

²⁹⁵ Ibid.

²⁹⁶ Onsi Muhammed Kassem, *Children Without Families* (Alexandria: Alexandria Book Center, 1998 AD), 45.

²⁹⁷ Ibid.

²⁹⁸ Hanan Ibrahim Qarqouti, *The Development of Waqf Organization in Lebanon: A Model for Orphan Care in the City of Beirut*, *Awqaf Journal*, General Secretariat of Awqaf, Kuwait, Issue 12, Year 7, Jumada Al-Awwal 1428 AH.

but the exact year is unspecified.²⁹⁹ There is also evidence of orphanages in Iraq in the 1930s of this century, specifically in 1352 AH / 1934 AD.³⁰⁰

Orphan care without sheltering them was prevalent and financially supported through endowments by establishing offices to educate and provide for them. One famous example is Salah al-Din al-Ayyubi in the 12th century, who ordered the establishment of offices to teach the Qur'an and provide food, clothing, and study tools to the poor and orphaned children.³⁰¹ Al-Tawashi Zahir Al-Din Mukhtar, one of the emirs of Damascus in the 7th century AH (the 13th century), also gave special attention to orphans through endowments. He set up an orphanage at the door of the Damascus Citadel, providing clothing and a monthly salary to them, and personally examined and rejoiced with them.³⁰² This form of orphan care was intended for orphans to remain with their natural families or those who sponsor them in the community. Based on historical references, these offices for orphans were not shelters in the complete sense of the word as it is in our contemporary time.³⁰³

²⁹⁹ Karim Muhammad Hamzah, *Conditions of Social Welfare Institutions and Their Role in Serving the Arab Gulf Society* (Bahrain: Council of Ministers of Labor and Social Affairs in the Arab Gulf States, 1414 AH), 19.

³⁰⁰ Ibid.

³⁰¹ Muhammad bin Ahmed bin Jubair, *The Journey of Ibn Jubayr* (Beirut: Beirut House for printing and publishing), 27.

³⁰² Ismā'īl Ibn Kathīr, *Al-Bidayah wa'an-Nihayah* "The Beginning and the End" (Beirut: al-Ma'arif Library, 1410 AH - 1990 AD) vol.14, 78.

³⁰³ Abdullah al-Sadhan, *Institutional Care for Orphans: Beginning and Alternatives*, Research papers of the first Saudi conference for orphan care in the Kingdom of Saudi Arabia, p. 319. 2011.

5.3 The Beginning of Institutional Orphan Care in Saudi Arabia*³⁰⁴

5.3.1 Before 1960

Between 1934 and 1955, in Saudi Arabia, orphanages were established by notable individuals, including members of the royal family and merchants. Each institution had its regulations, admission criteria, and funding sources.

The **first** orphanage in the kingdom was "The Education House" in Medina, founded by Sheikh Abdul Ghani Dada, a local trader.³⁰⁵ The orphanage was established in response to a drought in 1933 AD/1351 AH that led to the death of many Bedouin parents, leaving their children without support.³⁰⁶ Sheikh Dada requested permission from King Abdulaziz to open the orphanage, which the king quickly approved.³⁰⁷

The orphanage was opened in 1934 AD/1352 AH and was named "The Two Holy Mosques Orphanage and National Industries." It aimed to provide shelter and education for Bedouin orphans and Medina's poor children, teaching them the Quran and crafts. Orphans of all

^{304*}In this section, I relied on Dr. Abdullah al-Sadhan's books and articles due to the lack of other resources regarding the institutional care history in the Saudi literature.

³⁰⁵ Abdullah al-Sadhan, *Social Welfare in the Kingdom of Saudi Arabia; The Origin and Reality*, 63.

³⁰⁶ Ibid

³⁰⁷ Institute of Public Administration, Center for Government Documents, Decision of the Chairman of the Council of Deputies No. 8332 in 12/25/1351 AH (Appendix No. 1).

ages were accepted as long as they were Saudi citizens and had lost one or both parents.³⁰⁸ At the time of its founding, the orphanage housed 150 children.³⁰⁹

The orphanage was funded through donations, including *zakāt*, the obligatory annual donation made by Muslim individuals to specific beneficiaries or causes specified in Quran and Islamic law.³¹⁰ Donations were received from Indian and Egyptian pilgrims, who were the wealthiest at the time.³¹¹ The government also provided fixed monthly assistance of ten thousand riyals, which later increased to fifteen thousand riyals. The orphanage was eventually handed over to the General Presidency of Orphanages in 1960 AD / 1380 AH.³¹²

The "Orphanage in Makkah" was established as the **second** institution of its kind in Saudi Arabia, with its origins dating back to 1936 AD / 1355 AH.³¹³ Its founder, Mahdi Bey

³⁰⁸ There was an overriding of the condition of an orphan as the house included many children from low-income families. See Dakhil Allah Abdullah al-Haidari, *Private Education in Al-Madinah Al-Munawwarah; a historical and descriptive study 1344-1402 AH* (Al-Madinah: Al-Madinah Al-Munawwarah Literary Club, 1412 AH / 1992 AD).

³⁰⁹ Al-Sadhan, *Institutional Care for Orphans: Beginning and Alternatives*, 319.

³¹⁰ The third Pillar of Islam, the official alms tax levied on certain types of property and payable by every adult Muslim of sufficient means. The percentage to be paid on the property varies for different classes of goods, and interpretations differ between the schools of law. Bowker, John. "Zakāt." In *The Concise Oxford Dictionary of World Religions*. : Oxford University Press, 2000.
<https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780192800947.001.0001/acref-9780192800947-e-8167>.

For more information about *zakāt*, see al-Sheikh, Abdallah, and Devin J. Stewart. "Zakāt." In *The Oxford Encyclopedia of the Islamic World*. : Oxford University Press, 2009.
<https://www-oxfordreference-com.offcampus.lib.washington.edu/view/10.1093/acref/9780195305135.001.0001/acref-9780195305135-e-0865>

³¹¹ Al-Sadhan, *Social Welfare in the Kingdom of Saudi Arabia*, 64.

³¹² Tareq Abdel Raouf Amer and Ihab Issa Al-Masry, *Orphan Care: Arab Trends* (Cairo: Dar Al-Uloom for publication and distribution, 2017), 149.

³¹³ Al-Sadhan, *Social Welfare in the Kingdom of Saudi Arabia*, 64.

Al-Musleh, who served as the Director of Public Security, aimed to provide complete residential care, including food, clothing, and education, to fatherless children under fifteen years old.³¹⁴ In 1938 AD / 1357 AH, King Abdul Aziz inaugurated the house in a grand celebration attended by many Islamic figures who performed Hajj that year.³¹⁵ The orphanage's financing relied heavily on donations from benefactors, particularly pilgrims who visited Makkah yearly, as the house invited them to do so. Additionally, donations arrived periodically at the house from outside the Kingdom, particularly from India and Egypt.³¹⁶

The **third** institution established for orphans was the "Riyadh Orphanage," initiated by Prince Mansour bin Abdul Aziz when he was the prince of the royal palaces in 1938 AD / 1357 AH.³¹⁷ He founded the first public school and attached a room for orphans.³¹⁸ There is no exact record of the number of orphan students in the home, but it is estimated that there were 190 orphans in 1958 AD / 1378 AH.³¹⁹ The funding for the home was primarily provided by Prince Mansour bin Abdulaziz, who established the home within his palace. Nevertheless, some wealthy individuals donated to the home "to seek the reward of God."³²⁰ Later, the home's budget was integrated into the Royal Palace Administration's budget until all the orphanages were

³¹⁴ Al-Sadhan, *Social Welfare in the Kingdom of Saudi Arabia*, 64.

³¹⁵ Tareq Amer and Ihab Al-Masry, *Orphan Care: Arab Trends*, 150.

³¹⁶ Ibid.

³¹⁷ Al-Sadhan, *Institutional Care for Orphans: its beginnings and alternatives*, 320.

³¹⁸ Tareq Amer and Ihab Al-Masry, *Orphan Care: Arab Trends*, 150.

³¹⁹ Ibid.

³²⁰ Ibid

transferred to the General Presidency of Orphanages in 1955 AD / 1375 AH and then to the Ministry of Social Affairs, where all its financial matters became part of the Ministry's budget.³²¹

In 1943 AD / 1362 AH, the Shura Council endorsed establishing an orphanage and a senior home in Jeddah and advised the government to provide the necessary land for the project. The council further encouraged other cities to follow Jeddah's example.³²² However, there is no evidence that this house was established, as no references mentioned it in the Hijaz region or Jeddah until 1955 AD / 1375 AH. Notably, Abd al-Quddus al-Ansari, in his encyclopedia, provided a detailed account of Jeddah, but he only referred to the establishment of an orphanage after 1955 AD / 1375 AH.³²³ It is plausible that the orphanage was not established due to a lack of resources after the end of World War II in 1945 AD / 1363 AH.³²⁴ The war's conclusion resulted in a scarcity of resources and increased market prices, which may have made it difficult to establish a new project, particularly one that would require a considerable amount of resources to operate.

Moreover, In 1944 AD / 1363 AH, King Abdulaziz initiated the establishment of an orphanage in Al-Ahsa and was the first to donate to it.³²⁵ However, similar to the Jeddah

³²¹ Tareq Amer and Ihab Al-Masry, *Orphan Care: Arab Trends*, 150.

³²² Institute of Public Administration, Government Documents Center, Shura Council Resolution 157 on 29/8 /1362 AH (1943 AD).

³²³ Abd al-Quddus al-Ansari, *Encyclopedia of the History of the city of Jeddah* (Jeddah: Dar al-Asfahani, 1383 AH).

³²⁴ Abdullah al-Sadhan, *Orphan Care in The Kingdom of Saudi Arabia* (Riyadh: The General Secretariat to celebrate the centenary of the founding of the Kingdom of Saudi Arabia, 1419 AH), 120.

³²⁵ Umm al-Qura Newspaper, Issue no. 1006, in 14/4/1363 AH (1944 AD).

orphanage, historical sources on the region did not mention the orphanage's establishment. Notably, Dr. Abdullah Al-Subaie's writings on the discovery of oil and its impact on life in the eastern region of the Kingdom is one of the most prominent references on this subject.³²⁶ Despite King Abdulaziz's order, whether the orphanage was established is still being determined, as no further information exists in historical records.

Girls' Orphan Care Institutions

It is worth noting that all the orphan institutions were **only for males** until 1955 AD / 1375 AH when King Faisal bin Abdul-Aziz, who was Crown Prince then, established the **first residential institution for orphan girls** in the Kingdom "Dar al-Hanan" in Jeddah at his own cost.³²⁷ Since its inception, it has been placed under the patronage of his wife, Princess Effat. The orphanage restricted the target group to girls who

1. lost one or both parents,
2. their father or breadwinner was unable to work, and
3. her age should be between seven to ten years.³²⁸

King Faisal played a crucial role as the primary benefactor of the institution, along with financing from donations and the charitable markets that the orphanage continuously maintained.³²⁹ Initially, when Dar Al-Hanan was opened, the number of female students was

³²⁶ Abdullah al-Subaie, *The Discovery of Oil and its Impact on the Social Life in the Eastern Region 1352 -1380 AH; a study in social history* (1407 AH).

³²⁷ Al-Sadhan, *Social Welfare in Saudi Arabia*, 65.

³²⁸ The primary regulation of Dar Al Hanan in Jeddah, article #2.

³²⁹ Al-Sadhan, *Institutional Care for Orphans: its beginnings and alternatives*, 320.

limited to thirty, which steadily increased annually, particularly after the house began accepting non-orphans with a financial fee.³³⁰ At the time of its establishment, Dar Al-Hanan was similar to any contemporary school in terms of education, with the notable addition of a boarding facility for orphan girls.³³¹ The institution also offered several non-curricular activities to the girls, both within and outside the educational system.³³²

In 1956 AD / 1376 AH, a **second** residential house for orphan girls was established in Riyadh, named "*Mabarrat Al Kareemat*," which was founded by Princesses Hessa, Moodhi, and Noura, the daughters of King Saud.³³³ The princesses bore the administrative supervision and all expenses of the institution. The institution specified that the girl should be an orphan and not older than ten years of age.³³⁴ Initially, the house started with thirty orphan girls. However, it later opened its doors to non-orphan girls to study at Al-Mabarrah School, which had two sections: an internal section for orphan girls and an external section for non-orphan girls.³³⁵ The Mabarrah School provided residential care, including clothing, food, housing, and education for orphans until its dependency moved to the General Presidency for Girls' Education in 1965 AD / 1385 AH.³³⁶

³³⁰ Al-Sadhan, *Institutional Care for Orphans*, 320

³³¹ Ibid.

³³² Ibid.

³³³ Ibid.

³³⁴ Um Al Qura Newspaper issued on 13/8/1376 AH (1956 AD).

³³⁵ Al-Sadhan, *Orphan Care in The Kingdom of Saudi Arabia*, 132.

³³⁶ Al-Sadhan, *Institutional Care for Orphans: its beginnings and alternatives*, 320.

Given the reality of Saudi residential orphan care from the thirties to the fifties of the last century, *orphans residential care started with individual initiatives and lacked a unified legal authority to regulate the activities of those institutions.*

The Establishment of the General Administration for Orphans

King Saud, bin Abdulaziz, issued a royal order in 1955 AD / 1375 AH to establish specialized orphanages in the Kingdom's major cities, where poor or unsupported orphans could be accommodated. The city's judge, prince, and dignitaries were tasked with overseeing the program in each city. The royal decree specified that each orphanage should have a principal, supervisor, and several teachers responsible for the education and moral guidance of the orphans. In addition, the King ordered the creation of a financial budget for each home to cover the expenses of food, clothing, books, and stationery.³³⁷

Following the issuance of the royal order, a new department known as the **General Presidency of Orphanages** was created to handle matters related to orphans. The Grand Mufti³³⁸ of the Kingdom of Saudi Arabia at the time, Sheikh Muḥammad ibn 'Ibrāhīm Al ash-Sheikh, was appointed as its president.³³⁹ The General Presidency took the initiative to establish many new orphanages in addition to the existing ones. In less than two years, twenty-five orphanages were established across the Kingdom to cater to the needs of orphans and children from low-income families.³⁴⁰ Additionally, some orphanages accommodated the children of nomadic

³³⁷ Umm al-Qura Newspaper, Issue in 21/1/1375 AH (1955 AD).

³³⁸ The chief issuer of *fatwas* in the country.

³³⁹ Al-Sadhan, *Institutional Care for Orphans: its beginnings and alternatives*, 320.

³⁴⁰ Umm al-Qura Newspaper, Issue in 26/12/1375 AH (1956 AD).

shepherds who traveled in search of pastures. They left their children in these orphanages to provide them with a better livelihood and access to education. This was a common practice in residential institutions in grazing areas, especially in the north of the Kingdom.³⁴¹

In order to address the need for more organizational regulation in existing residential care homes for orphans in Saudi Arabia, the General Presidency of Orphanages established a regulation for such homes. This regulation outlined the objectives of residential care homes, the specific steps involved in their workflow, and the duties of workers within these homes.³⁴² The regulation comprised seventy-six articles and was completed within a few months of establishing the General Presidency.³⁴³

According to the regulation, there were two conditions for accepting an orphan into a residential care home: the child had to be an orphan and poor, or just poor (not orphan), and their age should fall between seven and fifteen years.³⁴⁴ However, some former home workers reported that the admission requirements were not strictly followed, with some care homes accepting students as old as eighteen. In addition to providing care and shelter, these homes were also seen as a means of attracting children from families to education by providing supplies and support.³⁴⁵ Establishing regulations for residential care homes was essential to creating a more organized and efficient system for caring for orphans in Saudi Arabia.

³⁴¹ Al-Sadhan, *Orphan Care in The Kingdom of Saudi Arabia*, 142.

³⁴² Ibid at 144.

³⁴³ Ibid.

³⁴⁴ Orphanages Regulations, General Directorate for Orphan Welfare (Dammam: Al-Khat Printing Press, 1375 AH), 1.

³⁴⁵ Al-Sadhan, *Orphan Care in The Kingdom of Saudi Arabia*, 145-150.

5.3.2 From 1960 until now,

In the early 1960s, the Kingdom of Saudi Arabia underwent comprehensive administrative development by establishing the **Ministry of Labor and Social Affairs**³⁴⁶ by Royal Decree No. 122 on 23 /12 /1380 AH (1960 AD). The Cabinet's decision to annex all orphanages in the country to the Ministry brought them under the administrative and financial supervision of the General Presidency of the Social Homes administration. The Ministry's mission includes supervising orphanages, nursing homes, and juvenile homes, developing the care system for orphans, and establishing work rules in residential care homes.³⁴⁷ The annexation process, including the transfer of administrative and financial supervision, took almost two years, with all orphanages coming under the management of the Ministry by 1962 AD / 1382 AH, marking the beginning of a new phase of orphan care.³⁴⁸

³⁴⁶ The name of this Ministry changed several times. In 1960, it was established under the Ministry of Labor and Social Affairs. Then in 2004, the Council of Ministers Decision No. (27) was issued to separate the Ministry of Labor and Social Affairs into two independent ministries; the first is called the Ministry of Labor, and the second is the Ministry of Social Affairs. After that, in 2015, Royal Decree No. (A/133) was issued to merge the Ministries of Labor and Social Affairs into one Ministry under the Ministry of Labor and Social Development. Finally, in 2020, Royal Decree No. (A/455) was issued to join the Ministry of Civil Service to the Ministry of Labor and Social Development and to amend the Ministry's name to become "**Ministry of Human Resources and Social Development.**" See in Arabic: Okaz Newspaper, February 25th, 2020. <https://www.okaz.com.sa/news/local/2012210>

Note: referring to "**Ministry of Human Resources and Social Development,**" I will use the term **The Ministry** in the research for short.

³⁴⁷ Al-Sadhan, *Orphan Care in The Kingdom of Saudi Arabia*, 153.

³⁴⁸ Ibid at 151.

The Ministry is responsible for reviewing, organizing, and consolidating some of the orphan homes, reducing their number and concentrating them in areas with the greatest need.³⁴⁹ It also established more homes for boys and girls, differentiated according to age. To ensure that the orphans' feelings were considered, the Ministry changed the orphanages' names to the Social Education House.³⁵⁰ In addition to the Ministry's efforts, some charities were commissioned to establish residential care homes and care for orphans. In conjunction with the Ministry's endeavors, certain charities were authorized to establish residential care homes and provide for the needs of orphans. The Ministry recognized the significance of voluntary work and civil initiatives in social welfare and its constructive influence on fostering collaboration, empathy, and mutual reliance among individuals within society.³⁵¹

Before the 1990s, orphans' education was conducted within the confines of the orphanages, with a duration of four years.³⁵² Orphan students were given financial incentives, encouraging some parents to enroll their children in these institutions and increasing the number of students. However, with the improvement in the Kingdom's economic situation in the early nineties AH (mid-1990s AD), the number of students in orphan care homes decreased significantly.³⁵³ The orphanages' internal education system continued for eight years until they were integrated into the Ministry of Labor and Social Affairs, which recognized the need to

³⁴⁹ In 1967, Cabinet Resolution No. 185 was issued to cancel some homes and join them together, bringing the number of orphanages to seven, concentrated in the central regions: Makkah, Madinah, Riyadh, Abha, Buraydah, Al-Ahsa, and Al-Jouf.

³⁵⁰ Minister of Labor and Social Affairs Decision No. 133 of 19/10/1381 AH (1962 AD).

³⁵¹ Abdullah al-Sadhan, *Children Without Families* (Riyadh: Obeikan Library, 2011), 112-113.

³⁵² Al-Sadhan, *Orphan Care in The Kingdom of Saudi Arabia*, 145-150.

³⁵³ Ibid.

integrate orphaned students with those outside the orphanages. Consequently, the internal study system for orphans was abolished, and they were enrolled in government schools affiliated with the Ministry of Education.³⁵⁴ The Presidency of Orphanages continued its supervisory role until it was incorporated into the Ministry of Labor and Social Affairs.³⁵⁵

5.4 The Legal Framework of Orphans Care in Saudi Arabia

The rights of children and foundlings are defined in Sharī‘ah law, and the laws of Saudi Arabia acknowledge and uphold them.³⁵⁶ The Basic Law of Governance, specifically its first, seventh, and twenty-seventh Articles, emphasizes the Kingdom's obligation to justice and arbitration and the safeguarding of human rights, including those of children with unknown parentage.³⁵⁷ The government regulates orphans’ affairs in Saudi Arabia to ensure they receive the necessary care and support. These regulations cover a wide range of areas, including the orphan care form and its requirements, the physical facilities of the orphanages, the qualifications of the staff who work in them, and the quality of care that orphans receive. These

³⁵⁴ Al-Sadhan, *Orphan Care in Saudi Arabia*, 145-150.

³⁵⁵ Al Sadhan, *Institutional Care for Orphans: its beginnings and alternatives*, 321.

³⁵⁶ For more information about the child rights in Saudi Arabia, visit the website of the Saudi Arabia’s National Unified Portal for Government Services.
https://www.my.gov.sa/wps/portal/snp/careaboutyou/childrights!/ut/p/z1/jZBNC4JAFEV_jVvfGzWzdIYQWDKWfdhsQmMaBXVEp_z7ibUJyrq79zgHLhcYRMDK-J6JWGWyjPPuPjH7bBB_uSRoULOPE9zstuF2YfsmTWw49oAXOBZxkVBqjma4mftj6oYHgJgC9o-PX-Lib58NIN5qbbYAoYo9MNDBAyZymTz3cMvEdASwml95zWv9VnfvVKmqmWqoYdu2upBS5Fy_yELDT0oqGwXROwkhL6Eq9hFmQXF0IPMAqHG7Og!!/#header2_15

³⁵⁷ The Saudi Basic Law of Governance was enacted by Royal Decree No. A/90, 29 *Sha’aban* 1412 A.H. (March 2, 1992).

laws are designed to ensure orphans receive appropriate care and protection, including access to education, healthcare, and social support.

The legal framework for caring for and protecting children of unknown parents in Saudi Arabia is based on several laws and regulations. In 1975 / 1395 AH, the Cabinet approved the **Regulation of Children in Need of Care**.³⁵⁸ The term “*child of unknown parents*” first appeared in this statute, defined as the child born in Saudi Arabia to unknown parents.³⁵⁹ The statute regulates the treatment of children of unknown parents and children who have been deprived of parental care due to the death, separation, imprisonment of parents, or any reason that deprives the child of parental care. The law mandates that foundlings be given medical attention and placed in a suitable care facility until their care can be determined.³⁶⁰

The Civil Status Law³⁶¹ requires an immediate reporting of a foundling. In cities, the nearest police station must be informed, while the administrative governor must be notified in villages and centers. The report should include a detailed description of the situation and circumstances, such as the location, date, and time of finding, a description of the child and any accompanying items, an estimate of the child's age based on appearance, and the identification of the person who found the child, unless they refuse to reveal their identity. Both the person who wrote the report and the child finder, if they agree to provide their name, must sign the report. The child and the report should be transferred to one of the approved institutions or persons for

³⁵⁸ Cabinet decision No. 612 in 13/5/1395 AH (1975 AD).

³⁵⁹ The Regulation of Children in Need of Care, Article No. 1. The term also means children who have paralysis or any other incurable disease and whose families are unable to care for and treat them.

³⁶⁰ The Regulation of Children in Need of Care, Article 5.

³⁶¹ Cabinet Decision No.: M / 7 in 20/4/1407 AH (1986 AD).

care unless the finder wants to provide care themselves, subject to approval from the Ministry of Labor and Social Affairs. The Ministry is responsible for the naming of the child following its established procedures.³⁶²

Furthermore, under the **Civil Status Law**, orphaned children have the right to obtain identification papers, which include a birth certificate and a national identity card.³⁶³ Article Forty of the law has been amended by Cabinet Resolution No M/25, issued on 1/6/1422 AH, which mandates that the caretaker or institution responsible for a foundling child must notify the civil status office within fifteen days of receiving the child. Upon notification, the registry clerk must enter the child's information in the register and issue a birth certificate to the caretaker or institution responsible for the child's upbringing and care without mentioning the child's foundling status.³⁶⁴

The Law of the Saudi Arabian Nationality³⁶⁵ stipulates the right of a child of unknown parents to the Saudi nationality, as Article Seven of the system stipulates that “He shall be a Saudi who was born inside or outside the Kingdom of Saudi Arabia to a Saudi father, or to a Saudi mother and a father of unknown or stateless nationality, or who was born inside the Kingdom to unknown parents. A foundling found in the Kingdom is considered born there unless proven otherwise.”³⁶⁶

³⁶² Civil Status Law, Article 39; The Regulation of Children in Need of Care, Article 11.

³⁶³ Civil Status Law, Article 40; see also Child Protection Law, Article 3, paragraph 5.

³⁶⁴ Civil Status Law, Article 40.

³⁶⁵ Cabinet Resolution No. 4 dated 25/1/1374 AH (1954 AD).

³⁶⁶ This Article was amended by Royal Decree No. 20 dated 11/12/1379 AH (1960 AD)

The implementing regulations of **Child Protection Law**³⁶⁷ stated in Paragraph 34 of Article No. 1 that “the child in need of care” means every child whose parents are unknown. The regulation also ensures that children of unknown parentage are protected against maltreatment or neglect in their surroundings. This applies regardless of whether the perpetrator is a person with legal guardianship, authority, or responsibility over the child or has any form of relation to them.³⁶⁸

5.5 Orphan Care Forms in Saudi Arabia

The General Administration for Orphans, which operates under the Ministry, is responsible for ensuring the welfare of orphans in the Kingdom of Saudi Arabia. This agency also provides care for abandoned children and those in need. The Administration's policies are designed to provide orphans with education, care, and social rehabilitation, following the principles of Sharia and modern scientific methods. The administration provides its services through the Orphan Affairs Department and the Residential Care Department. Orphan care can be provided through two main forms: institutional care and alternative care. The following section provides a detailed explanation of each type of care.

5.5.1 Institutional Care

In many societies, the institutional care of orphans is a critical issue, and Saudi Arabia is no exception. In Saudi Arabia, these institutions were formerly referred to as shelters and later

³⁶⁷ Child Protection Law, issued by Royal Decree No. (M/14) in 3/2/1436 AH (2014).

³⁶⁸ Child Protection Law, Article 2.

renamed social houses or social institutions.³⁶⁹ Governments allocate funds from the state budget to finance these institutions' operations, employ workers to care for the children, and develop programs for their education. Additionally, numerous charitable associations and organizations around the world undertake this task.³⁷⁰ The institutional care for orphans in Saudi Arabia has three types as follows.

1. Orphan Care Houses

The orphan houses by the Ministry of Human Resources and Social Development have settled into the following three sections:

- Social Nurseries (0-6):

In the first phase of orphan care, social nurseries are established to provide comprehensive care for young orphans of both genders, staffed entirely by females.³⁷¹ These nurseries are designed to provide a suitable environment for children from birth to six years old, compensating for the absence of a natural family by offering appropriate health, social, psychological, educational, and recreational care. Children transfer to social education houses after the age of six, with a gradual introduction program organized to help them adjust to the new home and workers.³⁷² The “cubs section” is the first step in this transition and involves a greater interaction with the female staff, who are all female specialists, observers, and supervisors.

³⁶⁹ Al-Sadhan, *Children without Families*, 69-70.

³⁷⁰ Ibid.

³⁷¹ Al-Sadhan, *Orphan Care in The Kingdom of Saudi Arabia*, 157-159.

³⁷² Ibid.

However, the child is also integrated with older children, who are supervised by a male staff during meals, activities, and studies in schools.³⁷³

- Social Education Houses (6-12):

These homes act as a substitute for the natural family and receive orphans who have reached six years or older. In this stage, orphans are segregated based on their gender, which means male orphans live in separate institutions under male administration. In contrast, female orphans live in independent institutions under female administration.³⁷⁴ The homes for boys accommodate them until they turn twelve. For female orphans, they remain in girls' social education homes until they are ready to start a family.³⁷⁵

Each male and female student in the social education home receives compensation according to their stage of education to help with their other living expenses.³⁷⁶ For students in the elementary stage, they receive a monthly remuneration of 500 riyals (133 USD), for those in the middle stage, their monthly remuneration is 700 riyals (186 USD), and for high school and undergraduate students, they receive 900 riyals (240 USD) and 1200 riyals (320 USD) per month, respectively.³⁷⁷

³⁷³ Al-Sadhan, *Orphan Care in Saudi Arabia*, 159-160.

³⁷⁴ Ibid at 160.

³⁷⁵ Ibid.

³⁷⁶ Cabinet decision No. 157 in 12/9/1401 AH (1981 AD)

³⁷⁷ Saudi Arabia's National Unified Portal for Government Services website.
https://www.my.gov.sa/wps/portal/snp/careaboutyou/childrights!/ut/p/z1/jZBNC4JAFEV_jVvfGzWzdIYQWDKWfdhsQmMaBXVEp_z7ibUJyrq79zgHLhcYRMDK-J6JWGWyjPPuPjH7bBB_uSRoULOPE9zstuF2YfsmTWw49oAXOBZxkVBqjma4mftj6oYHgigC9o-PX-Lib58NIN5qbbyAoYo9MNDBAyZymTz3cMvEdASwm195zWv9VnfvVKmqmWqoYdu2upBS5Fy_yELDT0oqGwXROwkhL6Eq9hFmQXF0IPMAqHG7Og!!/#header2_15

- Model Education Institution (12- older):

This institution is for male orphans, exclusively twelve years and older, who have completed their primary education in social education homes.³⁷⁸ They stay at the institution until they finish their studies in schools affiliated with the Ministry of Education or find a suitable employment.

These institutions aim to accommodate and nurture orphans, providing them with intermediate and secondary education opportunities. The model educational institutions rely on sponsorship programs and a range of activities planned and overseen by a specialized committee. This committee coordinates social, cultural, and athletic activities, encourages productive hobbies during free time, and organizes study schedules. The institution's social department monitors all programs and activities, both within and outside the institution.³⁷⁹

2. SOS Children Village (Taybah Children's Village)³⁸⁰

Children's village is a residential institution that provides comprehensive care for orphans deprived of family care, from birth until the age of twelve for males and until the age of marriage

³⁷⁸ Al-Sadhan, *Orphan Care in Saudi Arabia*, 163-164.

³⁷⁹ Ibid.

³⁸⁰ The term 'SOS' is an abbreviation of Societas Socialis, which is Latin for a "Socially Responsible Society", or literally translated as "Social Society." It was established by Hermann Gmeiner and his followers in 1949 as a social club aimed at collecting funds for the care of orphaned children in Austria. The organization's name was changed to SOS Children's Villages a year later. See <https://www.sosillinois.org/sos-childrens-villages-international-celebrates-70-years-of-improving-the-lives-of-children-across-the-globe/#:~:text=Upon%20its%20inception%2C%20SOS%20Children%27s,after%20the%20Second%20World%20War>.

for females.³⁸¹ This house offers programs and activities considering the orphans' diversity and age stage. Taybah Women's Charity Association in Medina City which operates under the supervision of the Ministry of Social Development, established the **Taybah Children's Village** in 1426 AH/ 2005 AD, the first of its kind in the Kingdom of Saudi Arabia and the Arab Gulf countries.³⁸² The model of care provided by the village is unique in the region, and its establishment was inspired by similar children's villages in other countries, such as SOS. To inform the village establishment, field visits were conducted to observe various experiences in this field. Sebastian Corti, the head of the regional office of Children's Villages worldwide, and the president of the National Association of Children's Villages in Jordan were invited to visit the Taybah Children's Village project in Medina City.³⁸³

The village applies the *comprehensive and continuous family care model*, accommodating 61 boys and girls in two separate sections distributed over 16 housing units in eight residential buildings. Each unit comprises a family living independently from the rest of the village families, with 4-5 children living with a resident alternative mother who takes one day off every ten days and an entire month off yearly.³⁸⁴ Children participate in the activities and programs implemented by the village. The alternative family model is adopted within the village to include the

³⁸¹ Bareah Bahjat Khuja, *The Problem of the Stability and Efficiency of the Alternative Mother in the Orphan Villages in Medina*, Research papers of the first Saudi conference for orphan care in the Kingdom of Saudi Arabia (2011), 128-137.

³⁸² Khuja, *Problem of the Stability of the Alternative Mother in the Orphan Villages*, 132.

³⁸³ Presentation slides about **Taybah Children's Village** by Taybah Women's Charity Association. Retrieved from <https://www.slideserve.com/silvio/taybah-childrens-village>

³⁸⁴ Khuja, *The Problem of the Stability Alternative Mother in Orphan Villages*, 133.

alternative mother, alternative aunt,³⁸⁵ and brothers and sisters of different ages. A social worker and a psychologist are also appointed to support the family in playing their role efficiently.³⁸⁶

However, the reality of the orphan village in Medina highlights a significant challenge: providing a competent alternative mother with the necessary skills to care for orphaned children and who can provide continuous care until the child leaves the village.³⁸⁷ Dr. Khuja's research identifies several reasons for the difficulty in recruiting and retaining competent alternative mothers in orphan villages, resulting in instability in the children's lives during their stay. The key problem with this type of orphan care is that the demanding nature of the job and the requirement for semi-permanent residency at the children's village mean that exceptional qualifications are necessary. The burden on the alternative mother, who must remain separated from her family for extended periods, is substantial. In addition, factors leading to job termination include inadequate problem-solving skills, low educational attainment, and lack of relevant experience in working with orphans.³⁸⁸

3. Social Houses

The Ministry of Human Resources and Social Development introduced a new initiative, the "Social Houses," in 2014 aimed at providing orphans with the latest standards of care. The

³⁸⁵ She replaces the mother when she is absent for any reason, whether during the monthly or annual leave, or for any emergency, and bears all the responsibilities that the alternative mother performs.

³⁸⁶ Khuja, *The Problem of the Stability and Efficiency of the Alternative Mother*, 133.

³⁸⁷ *Ibid* at 135.

³⁸⁸ *Ibid* at 137.

initiative is the latest step in the Kingdom's ongoing efforts to provide better care for orphans. Its main objective is to create a family atmosphere that helps orphans overcome the challenges of losing their families while promoting psychological stability and social integration.

Under the supervision of the Ministry, this initiative seeks to gradually transfer orphans from orphanages to model social houses, which adhere to specific standards and regulations.³⁸⁹ This project is designed to provide a better living environment for orphans with special circumstances,³⁹⁰ including those living in the Ministry's orphanages in all regions of the Kingdom. It aims to enhance their involvement with all segments of society, increase their empowerment, and improve their overall quality of life.³⁹¹ The Ministry selected appropriate service neighborhoods to ensure that all required support is provided for the orphans. Each house includes from 6 to 8 orphans, depending on the house category.³⁹² The Ministry provides each

³⁸⁹ Ministry of Human Resources and Social Development official website. <https://www.hrsd.gov.sa/en/news/ministry-labor-and-social-development-launches-initiative-model-houses-orphans>

³⁹⁰ The term “Orphans with special circumstances” is another term synonymous with children of unknown parentage.

³⁹¹ Ministry of Human Resources and Social Development official website. <https://www.hrsd.gov.sa/en/news/ministry-labor-and-social-development-launches-initiative-model-houses-orphans>

³⁹² Based on an interview with one of the social nurseries principal I interviewed, the initiative classified the new social houses' beneficiaries into six categories:

1. Family (2 - 23 y): females only.
2. Youth (12 - 23 y): males only.
3. Independents (23 - 30 y): for females only until they start a family or become completely independent from government supervision.
4. Rehabilitative: returnees from foster families.
5. Returning married women: means divorced or widowed women, including their children if they have. This category inhabits 2 to 3 people only.
6. Children of social circumstances: the victims of domestic violence or family disintegration. Homes in this category receive children of all ages.

house with a private car, a chauffeur, and a housemaid; in the youth houses, they have their private cook.³⁹³ The following is a translated version of the initiative's official infographic [Figure 4].

The **Basic Regulations for Social Houses** defines *social houses* as "residences established by the Ministry to care for those whose parents or father they do not know, whether male or female, and which the Ministry undertakes to manage and supervise."³⁹⁴ This regulation mentioned the rights granted to this group and what the Ministry must provide for them regarding health, psychological, financial, educational, and social care. An example of these rights mentioned in Article Seven of the Regulation stipulates that:

1. The resident shall be paid a monthly stipend as determined by the rules.
2. If the resident is not accepted into public schools, institutes, or universities, the Ministry will pay the fees for enrolling him in a private school, institute, or university.
3. The Ministry bears the treatment cost in a private center or hospital if the resident is not treated in a government center or hospital.
4. The Ministry provides transportation for residents who learn, train or work.



(Figure 4: Social/Community Houses Initiative)

The project's first phase launched ten model houses in Riyadh, Makkah, Sharqiya, and Qassim in 2020.³⁹⁵ In the following year, the Ministry closed 19 residential institutions around the Kingdom.³⁹⁶ The Ministry has pledged to continue monitoring the progress of social houses through inspection visits. These visits will be conducted to assess the situation of orphans, check on their well-being, and ensure their safety. Additionally, the Ministry says that high-performance standards will be set to evaluate the efficiency of employees caring for the orphans in these homes. The ultimate goal of this initiative is to achieve the highest levels of integration and social involvement for orphans, enabling them to live a decent and fulfilling life.³⁹⁷

5.5.2 Alternative Care:

The Saudi government has acknowledged that a stable home and a family environment are essential for a child's healthy psychological and social development. To this end, the **Regulation of Children in Need of Care** establishes guidelines for alternative family care and recognized its importance in providing children with a nurturing family environment.³⁹⁸ This

³⁹⁵ For more details about the social house module, see the video report (in Arabic) on Youtube: <https://www.youtube.com/watch?v=H8n2U7KGMLw>

³⁹⁶ The Annual Report of The Ministry of Human Resources and Social Development in 202, 84. Available at the Ministry's official website.

³⁹⁷ Ministry of Human Resources and Social Development official website. <https://www.hrsd.gov.sa/en/news/ministry-labor-and-social-development-launches-initiative-model-houses-orphans>

³⁹⁸ Cabinet decision No. 612 in 13/5/1395 AH (1975 AD).

approach involves placing the child in a stable family environment as an alternative to institutional care in two programs as follows.

1. Host families

The Host Families Program aims to offer partial care to orphaned children who have not had the opportunity to be embraced by a family. This is achieved by pairing one or more orphaned children residing in social homes with a natural family in the community. The preferred host family would have children of similar age to the hosted child who wishes to accommodate them for a specified period, such as during holidays, weekends, or summer vacation. The child is returned to their home or institution after completing the designated period.³⁹⁹

Regarding time commitment, the Host Families program is designed to be flexible and adaptable to the needs of both the child and the host family. The program does not impose a specific time requirement for hosting the child but rather leaves it to the discretion of the family and their level of attachment to the child. In some cases, the family may choose to host the child only on weekends or holidays, for instance.⁴⁰⁰

2. Foster families (*Kafalah*)

The Child Protection Law defines the foster family as "a family entrusted with providing educational, social, psychological and health care for the child whose circumstances prevented

³⁹⁹ Tareq Amer and Ihab Al-Masry, *Orphan Care: Arab Trends*, 102.

⁴⁰⁰ Amer Al-Masry, *Orphan Care: Arab Trends*, 102.

him from being brought up in his natural family.”⁴⁰¹ The foster family offers comprehensive and enduring care to an orphaned child who is under the oversight of the Ministry. This form of care bestows upon the child a sense of psychological security and emotional comfort, while simultaneously instilling within them a set of social standards and values that are deemed optimal. According to the Sharī‘ah regulations that govern this matter, the orphaned child, under Kafalah, becomes a member of the foster family.⁴⁰²

In the context of orphan care in Saudi Arabia, *Kafalah* refers to the process through which an individual takes on the responsibility of caring for an orphan. However, it differs from legal guardianship as it is practiced in Western countries. The *kafala* process in Saudi Arabia operates under the Guardianship system, which assigns a legal guardian to the orphaned child. This guardian assumes responsibility for the child's upbringing and education and is authorized to represent the child in all legal matters. Despite this authority, the guardian does not have the power to change the child's name, and the child retains their biological family name.⁴⁰³ The Ministry of Human Resources and Social Development has established specific eligibility criteria for prospective foster families, as follows:⁴⁰⁴

⁴⁰¹ Child Protection Law, Article 1, paragraph 23.

⁴⁰² Abdul Qadir Al-Sheikhly, *Children's Rights: in Islamic law, the Saudi System and International Covenants* (Obeikan Library, 2016).

⁴⁰³ For orphans of unknown parents, the Ministry is authorized to give the child a full name (random name with four parts) without assigning a family name. See the Regulation of Children in Need of Care, Article 11.

⁴⁰⁴ The Ministry of Human Resources and Social Development official website; applying for foster families program. <https://hrsd.gov.sa/ar/queries/خدمة-التقديم-على-برنامج-الأسر-الكافلة>

1. The family must be Muslim, of Saudi nationality, and comprised of a married couple in which the wife is no younger than twenty-five and no more than fifty years old.
2. The gender of the applicant requesting the service must be female.
3. The family should have no more than three children under six, with priority given to childless families.
4. The family's income should be sufficient.
5. All family members must pass a medical examination indicating they are free of contagious and infectious diseases.
6. The family must fulfill the conditions necessary for breastfeeding children under two years of age.
7. The child's physical appearance, including skin color and facial features, should align with the foster family's.
8. Social research must confirm the family's psychological, social, and economic suitability to care for the child.

The foster family program provides financial assistance for the care of each sponsored child.⁴⁰⁵ The amount of financial support for families hosting a child under six is up to 2,000 riyals (533 USD) per month, while the amount for families hosting a child over six is up to 3,000 riyals (800 USD) per month, provided that they have applied for it. At the end of the sponsorship period, by the marriage of the female orphan and independency of the male orphan, the foster

⁴⁰⁵ Cabinet decision No. 157 in 12/9/1401 AH (1981 AD).

family will receive a reward of 20,000 riyals (5,333 USD) for each child whose sponsorship has expired.⁴⁰⁶

The Ministry's relationship with the child in the foster family continues through the social worker's visits. The social worker prepares periodic reports on the foster children and their families and obliges the family to submit a medical report on the child's health once every six months.⁴⁰⁷

5.5.3 Al-Wedad Association for Orphans Care

Al-Wedad Association for Orphan Care is the first Saudi association to specialize in caring for orphaned children who lack parental care under the age of two years. It was founded in 1429 AH / 2008 AD and registered with the Ministry of Human Resources and Social Development.⁴⁰⁸ Within the framework of the Kingdom's 2030 vision and the National Transformation initiatives, the Ministry has designated the al-Wedad Association as the executive arm of the Ministry responsible for sheltering and fostering orphaned children **under two years old** who lack parental care and rehabilitating foster families in the Kingdom of Saudi Arabia.⁴⁰⁹ The Association provides three primary services.⁴¹⁰

⁴⁰⁶ Saudi Arabia's National Unified Portal for Government Services website. https://www.my.gov.sa/wps/portal/snp/careaboutyou/childrights!/ut/p/z1/jZBNC4JAFEV_jVvfGzWzdlYQWDKWfdhsQmMaBXVEp_z7ibUJyrq79zgHLhcYRMDK-J6JWGWyjPPuPjH7bBBuSRoULOPE9zstuF2YfsmtWw49oAXOBZxkVBqjma4mftj6oYHgigC9o-PX-Lib58NIN5qbbyAoYo9MNDBAyZymTz3cMvEdASwml95zWv9VnfvVKmqmWqoYdu2upBS5Fy_yELDT0oqGwXROwkhL6Eq9hFmQXF0IPMAqHG7Og!!/#header2_15

⁴⁰⁷ Al-Sadhan, *Orphan Care in Saudi Arabia*, 160-170.

⁴⁰⁸ Al-Wedad Association official website. <https://alwedad.sa>

⁴⁰⁹ Al-Wedad Association Annual Report 2022, 7.

⁴¹⁰ Ibid at 12-14.

1. **Temporary shelter:** provides housing units similar to those of ordinary families to orphaned children received from the Ministry, where all their primary care requirements are met until qualified families take them in.
2. ***Ihtedhan***⁴¹¹ (home-based kafalah): seeks to encourage the fostering of orphans on the condition of breastfeeding by carefully selecting foster families that meet the necessary conditions and ensuring good follow-up after coordination with the Ministry.
3. **Follow-up and support:** Provides continuous follow-up to the foster family of orphaned children to ensure that the children receive comprehensive and appropriate care to achieve the goals and objectives of *ihtedhan*.

The Association services cover all regions of the Kingdom of Saudi Arabia through a central department in Jeddah and five branches covering all parts of the Kingdom. The average time for an orphaned child to stay in the temporary shelter is 46 days before handing him over to the foster family. By 2022, the Association succeeded in handing over 1000 orphan children to their foster families.⁴¹²

Al-Wedad Association has undertaken various innovative initiatives, including the Lactation Stimulation Program, which is a medically approved program designed to facilitate breastfeeding among non-nursing women, thereby promoting the nourishment of foster children.⁴¹³ The Association received *Fatwa* No. 974 on 9/7/1431 AH from the Permanent

⁴¹¹ The word *Ihtedhan* was first introduced by al-Wedad association to the public, means the home-based kafalah. I noticed through my field trip to Saudi that the word *Ihtedhan* is more common and used than kafalah.

⁴¹² Al-Wedad Association Annual Report 2022, 18-19.

⁴¹³ Ibid at 30.

Committee for Scientific Research and Ifta, which stated that it is permissible to stimulate milk secretion and that the nursing mother becomes the child's mother through breastfeeding.

However, it should be noted that this differs from the legal mother, who has inheritance and other legal rights. The *fatwa* further specified that if the nursing mother breastfeeds the child five times and the feedings are satiating, then she becomes the child's mother through breastfeeding.⁴¹⁴ The program has successfully stimulated milk production in over 950 women, making them eligible to breastfeed their foster children.⁴¹⁵ The Association also developed the Procedural Guide for Raising an Orphan, an educational approach and a procedural guide for raising an orphan of unknown parentage.⁴¹⁶

5.6 The Problems of Institutional Care

Institutional care has traditionally been used to provide care for orphans globally. However, **concerns have been raised about the effectiveness of institutional care**, facing challenges that can either exacerbate or alleviate the issues related to the orphans' physical, emotional, mental, and social development. The well known study of Romanian abandoned children concludes that institutionalization in orphanages can have profound negative effects on children's physical, cognitive, and socio-emotional development.⁴¹⁷ The Romanian orphans

⁴¹⁴ Al-Wedad Association Annual Report 2022, 30.

⁴¹⁵ Ibid.

⁴¹⁶ Ibid at 31.

⁴¹⁷ Charles A. Nelson, Nathan A. Fox, and Charles H. Zeanah. *Romania's Abandoned Children : Deprivation, Brain Development, and the Struggle for Recovery*. Cambridge, Massachusetts: Harvard University Press, 2014. doi:10.4159/harvard.9780674726079

displayed some level of neurocognitive impairment, as well as deficits in attention and social skills, and a tendency towards impulsivity.⁴¹⁸ Specifically, the assessments revealed a significant reduction in brain activity in certain areas such as the orbital frontal gyrus, prefrontal cortex/hippocampus, amygdala, and brain stem.⁴¹⁹

Another main challenge that institutionalized orphans face is related to their emotional and mental well-being. Orphans are exposed to social problems during their development, which can have profound effects on them, making them unable to adapt and connect with themselves and the society around them. Among those problems are isolation, lack of participation, and lack of social relationships.⁴²⁰ As a result of the social isolation that characterizes life in residential homes, orphans are likely to lack some critical social skills, such as loss of self-confidence, poor relationships with others, and the prevalence of aggressive behavior among many of them.⁴²¹ Institutional care can exacerbate these issues, as children are often separated from their families and may lack individual attention and care from their caregivers. Studies show that orphans

⁴¹⁸ Harry T. Chugani, Michael E. Behen, Otto Muzik, Csaba Juhász, Ferenc Nagy, and Diane C. Chugani. "Local Brain Functional Activity Following Early Deprivation: A Study of Postinstitutionalized Romanian Orphans." *NeuroImage* (Orlando, Fla.) 14, no. 6 (2001): 1290–1301. doi:10.1006/nimg.2001.0917.

⁴¹⁹ Ibid.

⁴²⁰ Yasser Abdel-Fattah Al-Qassas, *a Schematic Concept to Enable Charities to Improve the Life Quality of Children Deprived of Families*, The first Saudi conference for the care of orphans in the Kingdom of Saudi Arabia (Saudi Arabia: Charitable Society for Orphans Care, 2011), 603-634.

⁴²¹ Ahmed bin Abdul Rahman al-Bar and Ashraf Abdul-Wahhab Abu Faraj, *Problems of social integration and identity among orphans with special circumstances: a field study in the Education House in Riyadh*, the first Saudi conference for the care of orphans in the Kingdom of Saudi Arabia (Saudi Arabia: Charitable Society for Orphans Care, 2011), 55-77.

living in institutions have social and psychological issues, such as violence, stealing, lying, fear, the feeling of loneliness, and “homosexuality.”⁴²²

Additionally, institutionalized orphans are more likely to experience emotional deprivation, aggression, psychological loneliness, instability, rebellion, and stubbornness.⁴²³ Female orphans with unknown parents have been found to suffer from weak self-confidence, attention deficit, isolation, and sleep difficulties.⁴²⁴ Furthermore, orphans residing in institutional care tend to experience more lack of peacefulness than their peers living with their relatives. Nevertheless, both groups (orphans in institutions and orphans living with their relatives) tend to feel lonely, with a higher prevalence among institutionalized orphans.⁴²⁵ Orphans of unknown

⁴²² Ali al-Suwaihri, *The Social Psychological Problems for The Orphan Society in Makkah, Descriptive and Analytical Study* (Makkah: Um Al-Qura University, 2009).

Note: The researcher acknowledges that homosexuality is not viewed as a psychological disorder in the USA and other Western nations. In adherence to cultural sensitivity in research, the researcher is committed to reporting the study findings objectively, irrespective of personal beliefs or biases.

⁴²³ Ruba Hamed al-Maflahi, *Challenges Of Educating Orphan Girls With Special Circumstances In Residential Homes*, The first Saudi conference for the care of orphans in the Kingdom of Saudi Arabia (Saudi Arabia: Charitable Society for Orphans Care, 2011), 218-263.

⁴²⁴ Badria bint Muhammad al-Otaibi, "Social and psychological problems resulting from orphanhood and loss of identity for people with special circumstances in the role of social education in Riyadh: an applied study on girls and supervisors." *Social Magazine: Imam Muhammad bin Saud Islamic University - Saudi Society for Sociology and Social Service* P9 (2015): 163-221. Retrieved from <https://search.mandumah.com/Record/832452>

⁴²⁵ Abdul Rahman al-Attas, *Feeling of Peacefulness and Loneliness of Orphans Living in Care Homes and The Orphan Residents with Their Familie, a comparative Study*. (Umm Al-Qura University, 2013).

parents also report low perceived quality of life levels due to depression and psychological stress.⁴²⁶

Other challenges associated with orphan care institutions include a shortage of supervisors, the absence of a resident physician and psychologist to address the children's medical and mental problems, overcapacity, and maintenance issues.⁴²⁷ The caregivers in some orphan care institutions need to be sufficiently educated and experienced in dealing with orphans to improve the quality of care.⁴²⁸ The lack of training courses for orphanage workers affects the social integration of children with unknown parents.⁴²⁹ Moreover, the shift change system used by caregivers with the same group of children often results in a lack of consistency, contributing to problems such as stubbornness, withdrawal, and aggression among orphans.⁴³⁰

⁴²⁶ Ahmad Hantoul, *Study of the perceived Quality of Life among the Orphans of unknown Parentage in Inpatient institutions and their Relationship to Depression and Psychological Stress* (Saudi Arabia: Arabic Studies in Education and Psychology ASEP, 2015).

⁴²⁷ Manal bint Ammar bin Ibrahim al-Sharif, and Muhammad Jamil bin Ali Khayat. "Educational and social problems as viewed by the inmates of the Social Education House for Boys in Makkah: and proposals for resolving them in the light of Islamic education" Ph.D. thesis. Umm Al-Qura University, Makkah Al-Mukarramah, (2009). Retrieved from <http://search.mandumah.com/Record/531416>

⁴²⁸ Latifah Ashaalan and Ibtisam al-Zeiby, "Methods of Care for Children Living in Orphanages in Saudi Arabia (An Exploratory Field Study)." *Journal of International Education Research (JIER)* 11, no. 1 (2015): 21-28.

⁴²⁹ Maher bin Othman bin Abdullah Aba Hussein, *Factors affecting the social integration of orphans of unknown parents residing in the housing of the Charitable Foundation for Orphan Care in Riyadh*. *Journal of the Faculty of Arts and Humanities: Suez Canal University - Faculty of Arts and Humanities* p. 24 (2018): 262 - 343. Retrieved from <https://search.mandumah.com/Record/962205>

⁴³⁰ Ashaalann and Al-Zeiby, *Methods of Care for Children Living in Orphanages in Saudi Arabia*, 26.

In contrast, foster care offers a family-oriented environment that allows children to receive individual attention, emotional support, and care, ultimately positively affecting their mental and emotional well-being. Compared to institutional care, the alternative family system better satisfies the child's psychological, social, and material needs within the home setting.⁴³¹ By placing orphans in home-based kafalah, a form of foster care in Saudi Arabia, the likelihood of delinquency is reduced, ultimately protecting them from criminal behavior.⁴³² Research indicates that orphans who lost both parents are more prone to delinquency than those who lost one parent, and those who lost their mother are at a higher risk of deviating from those who have lost their father alone.⁴³³

5.6 Summary

The Kingdom of Saudi Arabia has demonstrated a deep commitment to the welfare of orphans, including their care and protection. Orphan home-based kafalah in Saudi Arabia is governed by Islamic law and considered noble and virtuous. The legal framework for kafalah is designed to ensure that the child is placed in a suitable home and provided with the best possible care. The process of home-based kafalah can be complex and lengthy, but it provides an opportunity to provide a loving home for children without parental care.

⁴³¹ Nelson, Fox, and Zeanah, *Romania's Abandoned Children*; Jamal Hawawsa, "The Role of the Alternative Family in Satisfying the Needs of the Orphan Child: an Analytical Study," *Prince Abdul Qadir University Journal of Islamic Sciences* 38 (2016): 367-390. doi: 10.37138/1425-000-038-014.

⁴³² Hamdan Al-Otaibi, *The experience of alternative families to care for juvenile delinquency, a diagnostic study from the point of view of social workers*. (Naif Arab University for Security Sciences, 2010).

⁴³³ Fahad Aldhaej, *The personal characteristics of juvenile delinquents and orphans, a comparative study* (Naif Arab University for Security Sciences, 2008).

Foster care, or home-based kafalah in the Saudi context, is a better option than institutional care for orphans; It provides children with individualized attention and support, a family-like environment, and an opportunity to develop essential social and emotional skills. The alternative care system provided by foster care families is better equipped to meet orphans' psychological, social, and material needs, which is essential for healthy development. Therefore, the implementation of home-based kafalah should be prioritized in the care and protection of orphaned children.

CHAPTER SIX

Methodology

6.1 Introduction

This chapter discusses the methodology of the qualitative research part of the whole study. In research, "methods" and "methodology" are often used interchangeably but have distinct meanings. "Methods" refer to the specific techniques and procedures used to collect and analyze data, while "methodology" refers to the overall approach and theoretical framework used to guide the research process.⁴³⁴ The methods used are concerned with the application of research, whereas methodology is the process followed in conducting the research.

The chapter considers the advantages of qualitative research, the interpretive perspective, and the rationale for choosing this approach through an examination of epistemology and ontology, the grounded theory approach, and the philosophical foundations of the study.

⁴³⁴ John W. Creswell and J. David Creswell. *Research design: Qualitative, quantitative, and mixed methods approaches*. Sage publications, 2017.

Additionally, the chapter examines the sample and how participants were selected. The primary data collection method is discussed, as well as the analysis of the obtained data. The principles of reflexivity, gatekeeping, and access are explored before concluding with a summary of the research approach used to gather primary data.

6.2 Research Philosophy

In the field of research, the term "research philosophy" refers to the beliefs and worldview of the researcher that influence their approach to knowledge production.⁴³⁵ It is also considered the ideological position and philosophical stance that serves as the foundation for producing knowledge.⁴³⁶ The research philosophy shapes the researcher's perspective on a phenomenon and their understanding of appropriate research methods. A research paradigm, which includes a set of assumptions, values, and beliefs, guides the researcher's decisions, assumptions, and judgments. The research philosophy is determined by various factors, such as the research objectives, research questions, and data characteristics.⁴³⁷

The research philosophy underpinning this study is interpretivism. Interpretivism is a qualitative research paradigm that emphasizes the importance of understanding social phenomena through the subjective experiences of individuals and the meanings they attach to

⁴³⁵ Egon G. Guba, "The paradigm dialog." In *Alternative paradigms conference, Mar 1989, Indiana u, school of education, San Francisco, ca, us*. Sage Publications, Inc, 1990.; Herbert J. Rubin and Irene S. Rubin. *Qualitative interviewing: The art of hearing data*. sage, 2011.

⁴³⁶ Ibid.

⁴³⁷ John W. Creswell and J. David Creswell. *Research design: Qualitative, quantitative, and mixed methods approaches*. Sage publications, 2017.

their actions and interactions.⁴³⁸ Interpretivism assumes that reality is subjective and that individuals have unique interpretations and understandings of their social world.⁴³⁹ Therefore, this research approach aims to explore the subjective experiences and perceptions of the participants rather than testing preconceived hypotheses or generalizing findings to a larger population.

According to Chowdhury, an interpretive research approach is used by researchers to construct social realities based on participants' experiences.⁴⁴⁰ Therefore, the researcher must exercise caution to ensure accuracy and avoid bias. The underlying rationale for utilizing interpretivism in this study is that the research paradigm places the researcher and participant on an equal footing. Therefore, the researcher engages with the participants in a way that acknowledges their input, encourages active participation, and is culturally sensitive.

In the interpretive approach, the researcher's role is to understand individuals' or groups' subjective meanings and interpretations of their experiences and actions. Unlike in the positivist approach, where the researcher is seen as an objective observer who collects data and analyzes it using statistical methods, in the interpretive approach, the researcher is an active participant in the research process.⁴⁴¹ It enables the researcher to become involved in the research rather than

⁴³⁸ Ibid.

⁴³⁹ Barney Glaser, *Theoretical sensitivity* (University of California, 1978); Norman K. Denzin, *The research act: A theoretical introduction to sociological methods* (Routledge, 2017).

⁴⁴⁰ Muhammad Faisal Chowdhury. "Interpretivism in aiding our understanding of the contemporary social world." *Open Journal of Philosophy* 2014 (2014).

⁴⁴¹ Anthony Giddens, *The constitution of society: Outline of the theory of structuration*. Vol. 349. (Univ of California Press, 1986); Clifford Geertz, *The interpretation of cultures*. Vol. 5043. (Basic Books, 1973); Kathy Charmaz, *Constructing grounded theory* (Sage, 2014).

being solely an observer.⁴⁴² The researcher's role in interpretive research is to engage with the research participants, listen to their perspectives, and try to understand their experiences and beliefs.⁴⁴³ The researcher uses interviews, focus groups, or participant observation to gather data and then analyze it using qualitative methods such as thematic and discourse analysis.⁴⁴⁴ Moreover, the interpretive researcher is aware of their biases and preconceptions and acknowledges that their interpretations of the data are subjective and influenced by their background and experiences. The researcher also recognizes the importance of context and that meanings are shaped by the social and cultural environment in which they are produced.⁴⁴⁵ This research considers that the participants' cultural background and Saudi Arabia's setting will likely affect their view on social reality.

The epistemological stance adopted for this study is constructivism, a theoretical perspective that asserts that knowledge is constructed through social interaction and interpretation.⁴⁴⁶ This perspective assumes that the researcher and the participants co-create meaning through their interactions and that meaning is subjective and context-dependent.⁴⁴⁷ The

⁴⁴² Roni Berger, "Now I see it, now I don't: Researcher's position and reflexivity in qualitative research." *Qualitative research* 15, no. 2 (2015): 219-234.

⁴⁴³ Giampietro Gobo, *Doing ethnography* (Sage, 2008).

⁴⁴⁴ Ibid.

⁴⁴⁵ Anna Madill, Abbie Jordan, and Caroline Shirley, "Objectivity and reliability in qualitative analysis: Realist, contextualist and radical constructionist epistemologies." *British journal of psychology* 91, no. 1 (2000): 1-20.

⁴⁴⁶ Ernst Von Glasersfeld, *Radical constructivism*. (Routledge, 2013).

⁴⁴⁷ Ibid.

ontological position in this research is that social reality is dynamic and constantly created and recreated by individuals through interactions. This position assumes that individuals are not passive receivers of information but actively construct their reality through social interactions.

This research philosophy aligns with the research questions of this study, which seeks to understand how Saudi individuals engaging in the orphan care field perceive and experience the concept of *kafalt alyateem*. The interpretive approach emphasizes the importance of exploring the subjective experiences of individuals in home-based kafalah for children with unknown parents rather than imposing external categories or explanations on the data.

Grounded Theory

Grounded Theory is a research approach that involves gathering and examining qualitative data with the aim of developing a theory that is firmly rooted in the data.⁴⁴⁸ Charmaz extended the original conceptualization of Grounded Theory proposed by Glaser and Strauss in the 1960s,⁴⁴⁹ incorporating her constructivist perspective into the methodology.⁴⁵⁰ Her approach involves several key steps, including simultaneous involvement in data collection and analysis, constructing analytic codes from the data rather than from pre-existing hypotheses, utilizing constant comparative analysis throughout the process, advancing the theory at every stage of data collection and analysis, writing memos to explicate concepts and identify research gaps,

⁴⁴⁸ Kathy Charmaz, *Constructing grounded theory: A practical guide through qualitative analysis*. sage, 2006.

⁴⁴⁹ Barney Glaser and Anselm L. Strauss. *The discovery of grounded theory: Strategies for qualitative research* (Routledge, 2017).

⁴⁵⁰ Charmaz, *Constructing grounded theory*, (2006).

selecting samples that contribute to theory construction instead of population representativeness, and performing the literature review following an independent analysis.⁴⁵¹ A set of general principles guides the data collection and analysis to ensure that the outcomes serve as the theory's basis rather than merely being descriptive.⁴⁵²

This research studies the concept of *kafalat alyateem* and its application to children with unknown parents in Saudi Arabia. The main objective of this research is to contrast the Islamic legal principles practiced in Saudi Arabia regarding the obligation of Muslims to care for orphans with contemporary Saudi families' attitudes toward orphans of unknown parents.

To answer the research questions, this study utilized an **intensive interviewing method's grounded theory approach**, which helps understand the link between attitudes and behavior toward home-based kafalah for children with unknown parents. The grounded theory approach was employed because it is about generating a theory of a process – action or interaction – based on the perspective of a large group of participants. As Corbin and Strauss explain, the key idea is that this theory development is "grounded" in data from participants who have experienced the process.⁴⁵³ This grounding is desirable because the Saudi Islamic culture differs from the West. Intensive data collection interviews permit an in-depth exploration of the participant's experience; thus, it is a valuable method for interpretive inquiry.

⁴⁵¹ Ibid.

⁴⁵² John W. Creswell and Cheryl N. Poth. *Qualitative inquiry and research design: Choosing among five approaches*. Sage publications, 2016.

⁴⁵³ Anselm Strauss and Juliet Corbin, "Basics of qualitative research techniques." (Sage,1998).

The employed methodology facilitates the development of a theoretical framework that accurately characterizes the data, constructing a conceptual model that identifies the factors influencing the involvement of the study population in home-based kafalah.

6.3 Research Design

The research aims to contrast the Islamic legal principles observed in Saudi Arabia concerning the obligation of Muslims to care for orphans with the attitudes of contemporary Saudi families towards orphans of unknown parentage. Qualitative research using the grounded theory approach was designed to answer the research questions, applying a thematic analysis. This research has to answer the following primary questions.

- 1. How has the concept of *Kafalat al-yateem* been practiced in Saudi Arabia? What are the legal principles of exercising kafalah in Saudi law?**
- 2. What are the legal obstacles to practicing home-based kafalah for children with unknown parents in Saudi Arabia?**
- 3. What are the perceptions and attitudes of Saudis towards *Kafalat al-yateem*, and how do they engage with its principles? What are their perceived social obstacles to practicing home-based kafalah versus institutionalized kafalah?**

This study utilized mixed-methods: legal doctrinal analysis and qualitative grounded theory methodologies to address the research questions incorporating theoretical and empirical components. To address the legal aspect of the first question, I conducted a thorough investigation and examination of the laws and regulations that govern kafalah in Saudi Arabia, presented in Chapter two to Chapter five of this research. For the qualitative component, the

grounded theory approach involved intensive interviewing to understand Saudi individuals' attitudes and behaviors toward home-based kafalah for children with unknown parents.

6.4 Data Collection

Participants And The Recruitment Process

6.4.1 Setting

The scope of this study encompasses the Makkah Region, which comprises three major cities: Makkah, Jeddah, and Taif. The research investigates the factors that hinder Saudi individuals from accepting orphaned children, specifically those with unknown parents, into their households. The participants' perspectives will serve as the foundation of my theory on the challenges of implementing in-house kafalah. To obtain data, I conducted individual interviews with each group of participants. As this is a qualitative study, there is no predetermined sample size. The primary advantage of the qualitative approach is to gain a comprehensive understanding of social reality within a particular context, even if this reality is incomplete or conditional. I continued to sample until I reached saturation, wherein each subsequent interview reaffirmed my previous findings but did not offer any new insights. The research sample was divided into three groups, as follows.

1. **Orphanage frontline workers:** I define this category as employees working in the orphan care field in Saudi Arabia.
2. **Families with home-based kafalah experience (Foster families):** Families who foster children of unknown parents.

3. **Host Families:** Families who consider practicing kafalah but hesitate to inhabit the orphan with them.

6.4.2 Sampling Method

The snowball sampling technique was utilized in this research due to the challenge of finding individuals with experience and knowledge about the research topic, as not all potential participants may be willing to participate. Initially, known informants were selected as seeds for the sampling process and were then asked to introduce the researcher to others with relevant experience.

A less formal snowballing method was employed, with the researcher asking their seeds after an interview about the possibility of introducing additional informants. This approach allowed for a deeper understanding of the researcher's objectives before introducing new introductions. Both male and female participants were included in the sample.

Semi-structured interviews with broad, open-ended questions were conducted to identify core themes relevant to the research topic. Discussions began with general questions, followed by more specific follow-up questions based on the interviewees' responses. The interviews were conducted in Arabic and recorded, with each informant providing formal written consent before the interview.

As anticipated, the interviews lasted one to two hours per participant, with an average of 90 minutes. Interviewees were assured that their identities would be protected and not disclosed in the research. The questions and interview guides were translated from English into Arabic and provided to each participant before the interview. In addition, interviewees were allowed to ask questions to ensure a clear understanding of the questions to be asked. Participants were

informed they could withdraw from the interview anytime and were not obliged to answer all questions.

6.4.3 Interview Guide and Questions

The initial interview guide comprised five questions designed to explore the informant's motivation for home-based kafalah, their experiences with the child, challenges encountered, their understanding of the concept, and expectations for the future. However, after conducting several interviews, commonalities and other relevant themes emerged, prompting the researcher to revise the guide.

For instance, the challenges encountered were classified into three categories: legal, social, and economic, and a question regarding revealing the child's identity was added since it was a critical challenge faced by all families. Additionally, questions about breastfeeding were included to explore its significance in facilitating the kafalah process. In contrast, more detailed questions were added to explore kafalah procedures from a legal perspective, such as required application documents, the duration of the procedure, and the child's identity documents.

The researcher expressed satisfaction with the interview questions as they comprehensively understood the status quo regarding fostering orphans of unknown parents within Saudi families. The questions were practical in obtaining an in-depth explanation of the informant's perception of *kafalat al-yateem*. However, due to the topic's religious nature, some participants hesitated to express their views on the last question concerning their opinions on *kafalat al-yateem*. They preferred to seek validation from a scholar before providing their opinion.

6.5 Data Analysis

This study used the grounded theory approach for coding and data analysis. Grounded theory is a qualitative research method that seeks to develop theories based on collected data rather than testing preconceived hypotheses. The coding process began with open coding, where the data was broken down into discrete units and given descriptive labels. These codes were then grouped into categories through axial coding and finally into themes through selective coding. The themes from the data were used to develop a theoretical framework explaining the study's findings.

Thematic analysis is conducted on the transcripts from semi-structured interviews using Atlas.ti software and employing an iterative inductive and deductive process. The analysis team, led by PI, collectively developed the codebook with coding iteratively completed as interviews were transcribed. After reviewing the transcripts, the PI developed a list of independent codes using a deductive coding process. Next, the PI arranged small units into broader themes and added and revised new codes until it reached saturation of themes. Once thematic saturation became evident in codes through reviewing the repetition of responses, the PI modified the interview guides. The first 2-4 semi-structured interview transcripts were coded in pairs to ensure consistent understanding and use of the codebook. Another coder reviewed approximately one-third of the additional transcripts. Coders met once to twice weekly to discuss coding questions and interpretations and reach a consensus with oversight and support from the qualitative expert on the committee. The analysis team, led by the PI, evaluated common codes across participant responses and primarily used cutting and sorting as processing techniques to

group similar codes and develop themes. To ensure the triangulation of the data, multiple quotes were initially selected to support each identified theme. Themes were refined by group discussion, and quotes were selected by group consensus. The analysis was also conducted reflexively, with the researcher regularly reflecting on their assumptions and biases that may have influenced the interpretation of the data.

6.6 Reflexivity

In the spirit of self-reflexivity, I acknowledge my standpoint as an educated Saudi married woman and a mother. I conducted the data collection and analysis processes exclusively. Also, being bilingual in Arabic and English allowed the study participants to feel comfortable sharing their experiences. One of the epistemological assumptions of the social constructionist/interpretivism paradigm is that there is not one reality but many realities “that can be articulated based on the values, standpoints, and positions of the author.”⁴⁵⁴ Thus, based on my standpoint as an educated Saudi woman, I offer these findings as only one possible interpretation of these individuals’ experiences.

6.7 Data Logistics and Storage

Managing data logistics and storage is an important aspect of any research project. In this study, the data collected from the interviews were stored securely and confidentially. Once the interviews were recorded, the audio files were transferred to a secure storage location accessible only to the researcher. The audio files were then transcribed and saved in a password-protected

⁴⁵⁴ Kerry J. Daly, *Qualitative methods for family studies and human development*. (Sage, 2007), 33.

computer file. The data are two kinds: recorded audio files for participants who agreed to record the interview and my notes of other participants who refused to record.

To ensure the confidentiality of the participants, identifying information such as names and contact details were removed from the transcripts. Each participant was assigned a code number, which was used to reference their responses in the analysis.

The data was stored in multiple locations, including an external hard drive and cloud storage, to ensure that it was backed up and could be accessed in case of data loss or corruption. The data is stored for five years in compliance with the data retention policies of the University of Washington Human Subject Division (UW HSD) policies. The researcher ensured that the storage and management of the data adhered to the ethical guidelines set out by the UW HSD and that the data was protected from unauthorized access or disclosure.

6.8 Gatekeeping And Access

IRB approval(s):

The UW HSD determined that this study is human subjects research and qualifies for exempt status (Category 2). However, based on the study's nature, permission from the Ministry of Social Affairs in Saudi Arabia was needed to approach possible subjects in the orphanages (orphanage workers).

6.9 Summary

This chapter explicates the methodology employed in investigating the study's purpose. The underlying philosophy of the study is also explored, situated within the interpretive social constructionist paradigm. Adopting the interpretive perspective allows for examining the social realities encountered by Saudi individuals with home-based kafalah for children with unknown parents.

In this study, the researcher lacks personal experience with home-based kafalah. Thus, to address the potential issues related to reflexivity, this chapter highlights the approach taken in this study toward power dynamics with the research participants. Specifically, the researcher's outsider perspective is explained, along with how it is leveraged to empower the participants to share their experiences of relevant events. This approach seeks to mitigate potential power imbalances due to the researcher's lack of personal experience in the subject matter.

CHAPTER SEVEN

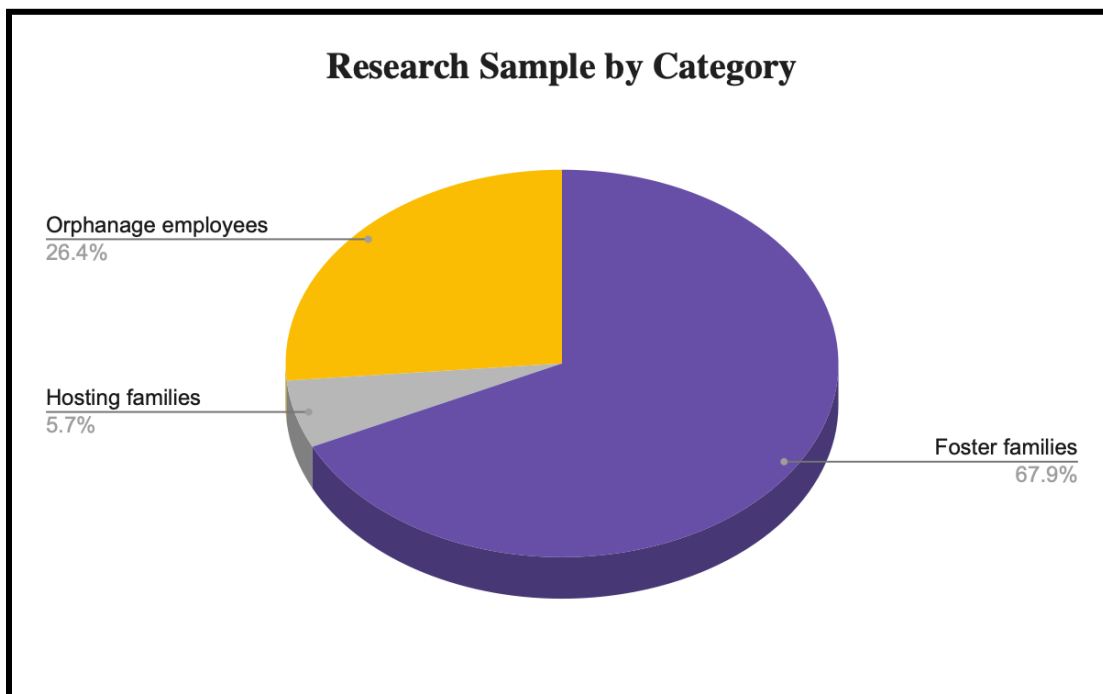
Findings & Discussion of Obstacles to Practicing Home-Based Kafalah

7.1 Introduction

The chapter provides a thematic analysis of interviews conducted with Saudi Arabian individuals with experience with the kafalah system. The analysis focuses on identifying the obstacles that impede the practice of home-based kafalah for children with unknown parents on both legal and social levels. The chapter then proceeds to discuss and interpret the results of the analysis.

7.2 The Study Sample's Demographic Information

The study sample includes 53 participants, divided into three categories: foster families, orphanage employees, and host families. Most of the participants were from foster families (67.9%), followed by orphanage employees (26.4%) and host families (5.7%). The following figure [Figure 5] shows the distribution of the different interviewees based on the category.



(Figure 5: Research Sample by Category)

The demographic descriptions of the participants in each category are presented below.

1. Foster Families:

(Table 1: Foster families demographic details)

Socio-demographic characteristics	N (%), mean (\pm SD)
Total number of participants (N)	36
Age of the participant at interview (years)	49.2 \pm 11
Age at kafala	36.7 \pm 6.9

Marital status	
Married	31 (86.1)
Divorced	3 (8.3)
Widow	2 (5.6)
Education	
High school or less	7 (19.4)
Undergraduate	20 (55.6)
Graduate	9 (25.0)
Occupation	
Employed	16 (44.4)
Self-employed	2 (5.6)
Unemployed	10 (27.8)
retired	8 (22.2)
Number of biological children	1.4 ±2.0
First child	
Yes	21 (58.3)
No	15 (41.7)
Number of Kafalah children	
1	27 (75.0)
2	8 (22.2)
3	1 (2.8)
Sex of Kafalah child *	
Female	22 (40.7)
Male	32 (59.3)
Child age at kafala*	
< 6 months	38 (70.4)
6 – 11 months	9 (16.7)
12 – 23 months	3 (5.6)
≥ 24 months	4 (7.4)
Child Current age	13.8 ± 7.7
Year of Kafalah*	
1990 – 1994	7 (13.0)
1995 – 1999	4 (7.4)
2000 – 2004	7 (13.0)
2005 and later	36 (66.7)
City of residence*	
Jeddah	1 (1.8)
Makkah	16 (28.6)
Madinah	1 (1.8)
Taif	8 (14.3)
Dammam	2 (3.6)

City of the child receiving *	
Jeddah	17 (31.5)
Makkah	24 (44.4)
Madinah	1 (1.9)
Taif	8 (14.8)
Riyadh	2 (3.7)
Najran	1 (1.9)
Tabuk	1 (1.9)
Orphanage type*	
Public	34 (63.0)
Private	8 (14.8)
Al-Wedad	8 (14.8)
Unknown	4 (7.4)

N= the total number of participants SD = standard deviation

*the total does not add up to the total number of interviewed participants (N=36) because some fostered more than one orphaned child.

The given data presents the socio-demographic characteristics of the participants, the foster families category. The sample includes 36 participants, all female, with a mean age of 49.2 ± 11 years. The mean age at the time of kafalah was 36.7 ± 6.9 years. Among the participants, 31 (86.1%) were married, 20 (55.6%) had an undergraduate degree, and 16 (44.4%) were employed. The participants had an average of 1.4 ± 2.0 biological children, and 21 (58.3%) were the parents of their first child.

Regarding the kafalah children, the majority (75.0%) were the only kafalah child in their family, 22 (40.7%) of whom were female, and 32 (59.3%) were male. The age at the time of kafalah was <6 months for 38 (70.4%) children, and the current age was 13.8 ± 7.7 years.

The kafalah occurred from 1990 to 2020, with 36 (66.7%) participants fostering a child after 2005. Most kafalah children (44.4%) lived in Makkah, and most orphans (63.0%) were fostered from a public orphanage. The data provides essential information about the

characteristics of the study population and the kafala children, which can be used for further analysis and interpretation of the study's results.

2. Orphanage Employees:

(Table 2: Orphanage employees' demographic details)

Characteristics	N (%), mean \pm SD
Total number of participants	14
Sex	
Female	10 (71.4)
Male	4 (28.6)
Organization	
The Ministry	3 (21.4)
Al-Wedad Association	5 (35.7)
Dar Al-Zuhoor	3 (21.4)
Ikha'a Association	1 (7.1)
Dar Al-Salam	2 (14.3)
Organization type	
Public	4 (30.8)
Private	9 (69.2)
Number of working years	11.4 \pm 7.9
City	
Jeddah	3 (21.4)
Makkah	10 (71.4)
Taif	1 (7.14)

N= total number of participants

SD = standard deviation

The table presents the characteristics of a sample of 14 orphanage employees. Of the 14 participants, 71.4% were female, and 28.6% were male. In terms of the organization they work for, the majority (35.7%) work for the al-Wedad Association, followed by The Ministry of Human Resources and Social Development (21.4%) and al-Zuhoor House (21.4%). Regarding organization type, the majority (69.2%) work in private organizations. The participants' mean

number of working years was 11.4 years, with a standard deviation of 7.9 years. The majority of the participants (71.4%) live in Makkah, followed by Jeddah (21.4%) and Taif (7.14%).

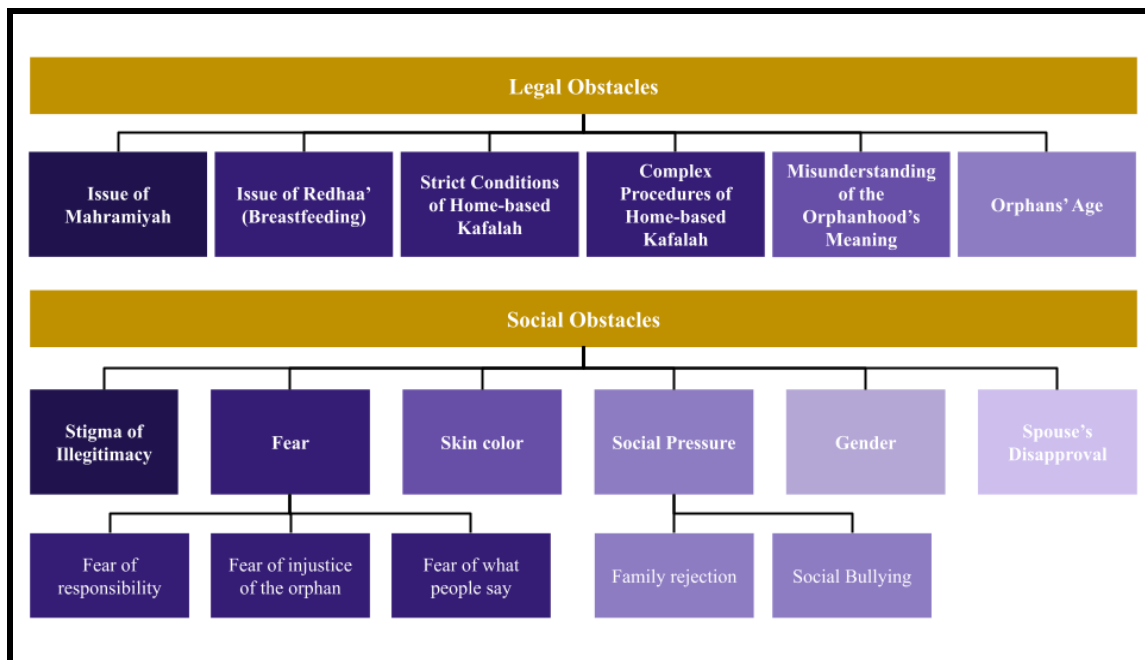
3. Host Families:

Only three host mothers participated in the study, two of whom are employed, do not have biological children, fostered male orphans, and reside in Makkah. See (Table 3) for more details.

(Table 3 Orphanage employees' demographic details)

ID	Marital status	Age	Occupation	Biological children	# of Kafalah children	Orphan's sex	Orphan age at Kafalah	Orphan's current Age	City of residence
1	Single	56	Teacher	No	8	Male	Middle School age	> 25	Makkah
2	Widow	52	Public employee	No	1	Male	6	27	Makkah
3	Married	67	Former school principal	Yes	1	Female	16	29	Jeddah

Home-based kafalah obstacles are divided into two categories: Legal and social. The following graph [Figure 6] illustrates the obstacles generated by the study. There are various color shades in the graph's boxes. The darker the box, the more often the obstacle was discussed in the interviews.



(Figure 6: Legal and Social Obstacles to Home-based Kafalah)

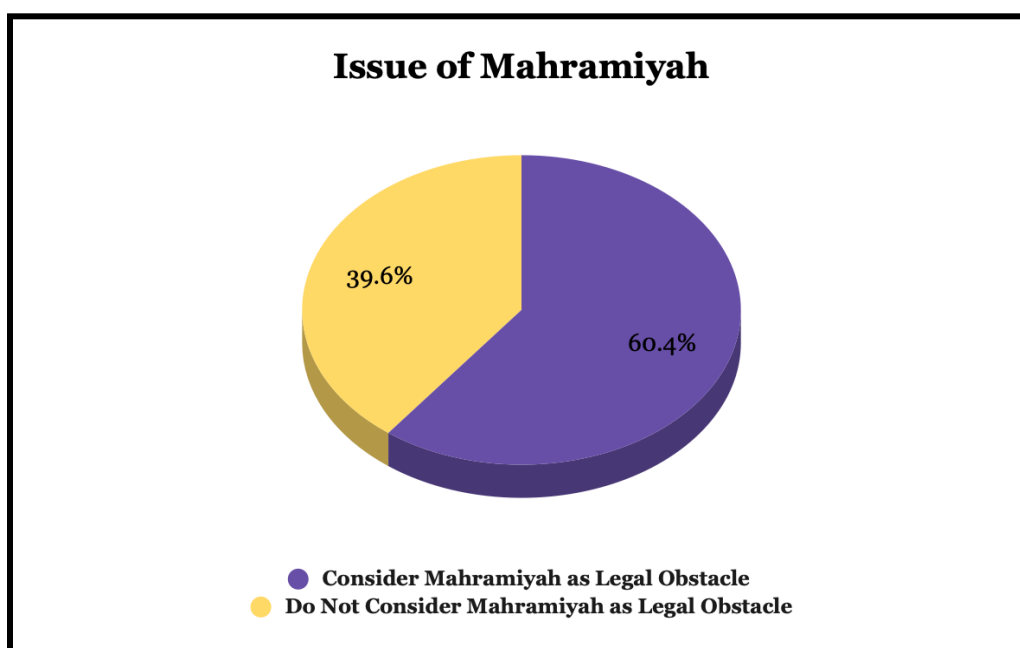
7.3 Legal Obstacle of Practicing Home-Based Kafalah

In the current study context, I define the *legal obstacle* as a legal impediment that prevents or restricts the Saudi family from practicing home-based kafalah for children of unknown parents. These obstacles include various legal issues such as jurisprudential, regulatory, and other legal constraints. Based on the interviews, this study found that **six legal obstacles** make home-based kafalah difficult for Saudi families within the scope of the research as follows: (A) Issue of Mahramiyah; (B) Issue of Redhaa'; (C) The strict conditions of home-based kafalah; (D) The complex procedures of home-based kafalah; (E) Misunderstanding of the orphanhood's

meaning; and (F) Orphan's age [see Figure 9]. The number of responses analyzed for each aspect determines these obstacles' rank.

7.3.1 Issue of Mahramiyah

Mahramiyah is a relationship refers to the term "*mahram*," a person who is considered unmarried and with whom certain intimate relationships are prohibited due to their close blood relationship or other legally recognized relationship.⁴⁵⁵ In this study, a substantial proportion of the study population, consisting of 32 participants (60.4 %), reported the Mahramiyah relationship as a significant impediment to the practice of home-based kafalah [Figure 7].



(Figure 7: Issue of Mahramiyah as a Legal Obstacle)

⁴⁵⁵ More details about the Mahram relationship are explained in Chapter Three.

The concept of Mahramiyah is widely perceived as a challenging hurdle in the context of home-based kafalah, which involves fostering an orphaned child in a family setting. Since the child and the foster family are not related by blood or marriage, the constraints imposed by Mahramiyah, or the concept of being unmarriageable kin, create difficulties for the family in fully embracing a non-related child. One foster mother, T.N.S, affirmed, “The issue of Mahramiyah is the most important thing, and it may be the reason that prevents home-based kafalah.”⁴⁵⁶ Moreover, a social worker at the Ministry of Human Resources and Social Development (The Ministry) further explains that some families avoid home-based kafalah due to the constraints of Mahramiyah. He said, "Some people say that when this orphan boy grows up, how will he reveal himself to my wife and her sisters?"⁴⁵⁷ A host mother, H.F., cited the same rationale when questioned why she did not take the orphaned child into her own home.⁴⁵⁸

Based on the participant's responses, the absence of a familial bond between a foster child and the foster family could lead to a feeling of alienation for the child as they grow up. This feeling may cause discomfort and a lack of unity within the family structure because of the limitations imposed by the Mahramiyah.

7.3.2 Issue of *Redha‘a* (Breastfeeding)

The second legal obstacle to implementing home-based kafalah pertains to the *Redha‘a* issue, whereby a non-biological mother breastfeeds a child. Such an act is subject to a legal

⁴⁵⁶ Interview with a foster mother (T.N.S) in September 2021.

⁴⁵⁷ Interview with a social worker (M.Th.) in September 2021.

⁴⁵⁸ Interview with a host mother (H.F.) in June 2021.

prohibition on the potential marriage between the nursing woman and the child she has nursed.⁴⁵⁹ Additionally, the nursing child is considered on equal footing with the woman's biological offspring regarding the limits of *awrah*,⁴⁶⁰ physical touch, and interaction.

The present study's findings reveal that 23 participants (43.4%) recognized breastfeeding as an integral aspect of facilitating home-based kafalah by eliminating the Mahramiyah impediment and creating a legitimate familial bond between the orphaned child and the foster family [see Figure 8]. For instance, one foster mother, S.B., stated:

By breastfeeding, many of them [refers to Mahramiyah restrictions] dissolve. I mean, he won't meet the whole family! I mean, my aunt's daughters, for example, why does he meet them, and what makes him relate to them? But my aunts became his grandmothers, and my sister became his aunt, which means that plenty of restrictions were dissolved through breastfeeding.⁴⁶¹

Furthermore, 11 participants of the study population (20.8%) perceived the absence of breastfeeding within the family as a possible obstacle to implementing home-based kafalah, citing the potential lack of access to a nursing family member during the child's period of care. For instance, one foster mother, I.H., stated, "I know many people who want to foster but do not have a nursing mom. Like me right now, I have thought a lot about bringing another child, but the issue of Redhaa' restrains me."⁴⁶²

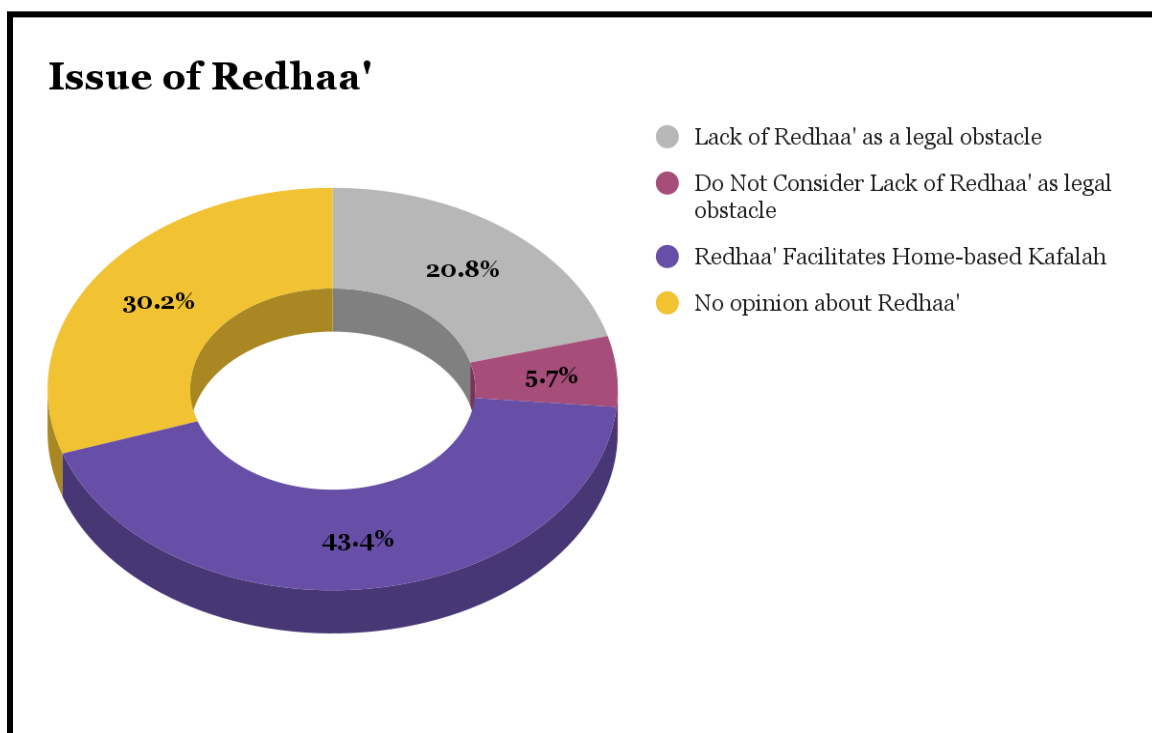
⁴⁵⁹ I provided more information about Redhaa' on Sharī'ah in Chapter Four.

⁴⁶⁰ Body parts must be covered from others under the Islamic dressing code. More details are provided in Chapter Three.

⁴⁶¹ Interview with a foster mother (S.B.) in March 2021.

⁴⁶² Interview with a foster mother (I.H.) in June 2021.

On the other hand, 3 participants (5.7%) of the sample did not view the absence of breastfeeding as a barrier to home-based kafalah, as they practiced this form of kafalah without nursing the child. One foster mother of two girls posited that "Attention and education at a young age replace breastfeeding; if the father is deviant, then breastfeeding will not make any difference!"⁴⁶³ She implies that even if the family breastfed her daughters to establish Mahramiyah between them and her husband, that would not make any difference if the latter is considered "deviant" from the beginning. Notably, this group is concerned about the idea of stimulated breastfeeding required by the al-Wedad Association and the long-term complications of this procedure on the foster mother's health.



(Figure 8: Issue of Redhaa' as a legal obstacle)

⁴⁶³ Interview with a foster mother (L.A.) in September 2021.

7.3.3 Strict Conditions of Home-based Kafalah

The stringent conditions for kafalah imposed by the Ministry may hinder the implementation of home-based kafalah. A total of 11 participants (20.8%) of the sample perceived these strict conditions as an obstacle to adopting a child through kafalah. According to S.A., an orphanage manager,

The difficulty of kafalah's conditions burdens the *kafil* [kafalah applicant] with the idea, and they retreat or hesitate. And until the turn comes, because there is a long waiting list, some families despair and give up.⁴⁶⁴

One example of those strict conditions is that both foster parents **must hold Saudi nationality**, with greater emphasis placed on the nationality of the foster mother. The foster mother must be a Saudi citizen. However, exceptions may be made in certain circumstances; as A.Sh., an al-Wedad Association employee, explains,

This condition might be difficult to meet in the Western region of Saudi Arabia. An exception may be made if all other conditions are met. For example, if the foster mother is Saudi but the father is non-Saudi, and they have dark skin. This exception is due to the large number of dark-skinned orphans in orphanages and the small number of families applying for foster care that meet all the conditions.⁴⁶⁵

⁴⁶⁴ Interview with an orphanage manager (S.H.) in September 2021.

⁴⁶⁵ Interview with al-Wedad Association employee (A.Sh.) in September 2021.

Notably, the Saudi nationality condition exception may apply to the foster father only but not the mother because she will always have custody of the child whether the marriage continues or not.⁴⁶⁶

Moreover, according to S.J., a foster mother, and I.Q., a former orphanage manager, the conditions **prioritize infertile applicant families** and exclude childbearing families without even assessing the family's situation and qualifications.⁴⁶⁷ In the past, the Ministry allowed families with children to foster orphans, and several participated in the current study. The same situation applies to the marital status condition; the foster family must be a married couple. Previously, a single woman was allowed to foster an orphan; as an orphanage worker, A.Y. said,

For 30 years, I have seen *Ihtedhan* [home-based kafalah] in families, even among my female colleagues, whether married or unmarried, who foster orphans. Recently, the rules have become stricter. In the past, anyone who wanted to take an orphan, they would give them because, you know, when a child is brought up in a family is different than when they are raised in an orphanage.⁴⁶⁸

The reasoning behind this strict approach is that the current form of home-based kafalah solves two societal problems: the inability to have children and orphanhood, as it gives orphans in need of parental care to spouses who are deprived of childbearing.⁴⁶⁹

⁴⁶⁶ Interview with al-Wedad Association employee (M.B.) in September 2021.

⁴⁶⁷ Interview with (S.J.), a foster mother in September 2021, and an interview with (I.Q.), a former orphanage manager, in October 2021.

⁴⁶⁸ Interview with a social worker at the Ministry (A.Y.) in October 2021.

⁴⁶⁹ Meeting with the al-Wedad Association's Chairman of the Board of Directors in March 2021.

In addition to other requirements, the Ministry mandates that the **skin color and facial features of the foster family should match** those of the orphan child, which poses a challenge for families with lighter skin tones who wish to apply for kafalah, particularly in the Makkah region where a significant majority of children in orphanages are dark-skinned. A.Y., a social worker at the Ministry, clarified that while both light and dark-skinned individuals apply for kafalah, the shortage of light-skinned orphans poses an obstacle for light-skinned applicants, whereas dark-skinned orphans are more readily available.⁴⁷⁰

The conditions get tighter when **fostering an older orphaned child**, three years and up, especially for female orphans. For instance, if a family intends to provide foster care to a six-year-old orphan girl, certain conditions must be met. These include not having any male children older than the foster girl, having a foster mother who is not above fifty, and being unmarried. Conversely, if the orphan is a boy (older than three years), it is stipulated that there may be no girl in the family, so there will be no problems as the children grow up.⁴⁷¹ An orphanage manager, A.J., justified that

They are afraid of the problems that we hear in society. We have recently seen many families bringing back children because, for example, the mother cannot give birth, so she comes to take a child from us. After a while, Glory be to God, she became pregnant, so she did not accept to return the child because she was attached to her and loved her. When her biological child grows up, problems arise in the family, and when the girl reaches the age of 10, 11, or 12, they bring her back home. If she had breastfed her, the problem would have been solved, and the boy would have become her brother through breastfeeding. We are

⁴⁷⁰ Interview with a Ministry social worker (A.Y.) in October 2021.

⁴⁷¹ Interview with two private orphanage managers (S.H.) in September 2021, and (A.S.) in October 2021.

talking about this if there is no breastfeeding; the same mother did not breastfeed the girl.⁴⁷²

7.3.4 Complex Procedures of Home-based Kafalah

The present study reveals that the complex procedures involved in home-based kafalah are a significant obstacle, according to 11 participants (20.8%). As stated by a foster mother, T.N.S., "The procedures, frankly, if someone is not mentally prepared and accepts the idea in all its difficulties and will be dragged into it, the issue will be very difficult."⁴⁷³

One of the challenges identified in the kafalah procedures is the **variability in duration**, ranging from a few days to several months or even up to three years, depending on the family. For instance, A.J, a foster mother, waited for three years until she received her child, while A.A, another foster mother, took two orphans in less than a month.⁴⁷⁴ Moreover, the **bureaucratic nature of the process** can result in extended waiting times and necessitate significant follow-up. The foster mother, A.J., reported that it took a year for all the official documents, such as the birth certificate, passport, and guardianship deed, to be completed after receiving the child. A.J. also noted that the process took longer in some cases, up to two and a half to three years. Despite being relatively fortunate to finish the process quickly, A.J. felt anxious and visited the Ministry officials frequently to ensure the timely completion of her son's papers.

⁴⁷² Interview with a private orphanage manager (A.S.) in October 2021.

⁴⁷³ Interview with a foster mother (T.N.S.) in September 2021.

⁴⁷⁴ Interview with foster mothers, (A.J.) and (A.A.) in March 2021.

7.3.5 Misunderstanding of the orphanhood's meaning

Within the study sample, 7 participants (13.2%) identified a barrier to home-based kafalah as a misunderstanding of the concept of orphanhood. Specifically, four participants highlighted the **differentiation between "yateem" and "laqet"** as an example. Some individuals adhere strictly to the literal Arabic definition of *yateem* as a fatherless child and *laqet* as a foundling.⁴⁷⁵ In addition, religious texts in the Qura'n and Sunnah only use the term "*yateem*" when discussing the virtues of sponsoring an orphan, treating them with kindness, and warning against mistreatment.

The misconception that an orphan must be only fatherless was recounted by a foster mother, H.S., who shared a story of how a group of women believed that a child was not an "actual" orphan since they believed that the biological parents had thrown the child on the street.⁴⁷⁶ Similarly, S.H., an orphanage manager, expressed frustration with individuals who came to give donations and inquired whether the children in their care were orphans or foundlings, stating that such distinctions were irrelevant to the act of doing good. S.H. emphasized that children in residential homes required special care regardless of their family backgrounds and urged for a greater understanding of the definition of orphanhood in society.⁴⁷⁷

Additionally, three participants identified a **misconception about the inheritance entitlement of fostered orphans** as a potential obstacle to home-based kafalah. N.H., a

⁴⁷⁵ For details about the terms *yateem* and *laqet*, see Chapter Three.

⁴⁷⁶ Interview with a foster mother (H.S.) in June 2021.

⁴⁷⁷ Interview with a private orphanage manager (S.H.) in September 2021.

supervisor at the al-Wedad Association, reported that some families decline to foster orphans due to the belief that the fostered child will inherit from them, which is not the case.⁴⁷⁸

7.3.6 Orphans' Age

In the context of home-based kafalah, the age of orphans is a significant factor, with those exceeding two years old potentially facing barriers. A total of five participants (9.4%) reported this issue. A Ministry social worker M.Th. highlighted that,

Fostering orphaned children while they are infants yields better outcomes, as it is easier to instill values and education at a younger age. Because older orphans may have already been influenced by their previous experiences, and some may have even been cared for by non-Arab foreign care providers, potentially exposing them to different cultural values and languages.⁴⁷⁹

According to most of the *fuqaha*, the 'golden age' for creating a legal bond through breastfeeding is infancy,⁴⁸⁰ and orphans not nursed during this period may face difficulties forming bonds with their foster parents. As T.N.S. noted,

This can be incredibly challenging for foster parents of the opposite sex. For instance, if the orphan is a girl, it may be difficult for the foster father, and if the orphan is a boy, it may be difficult for the foster mother as he grows up.⁴⁸¹

⁴⁷⁸ Interview with al-Wedad supervisor (N.H.) in August, 2021.

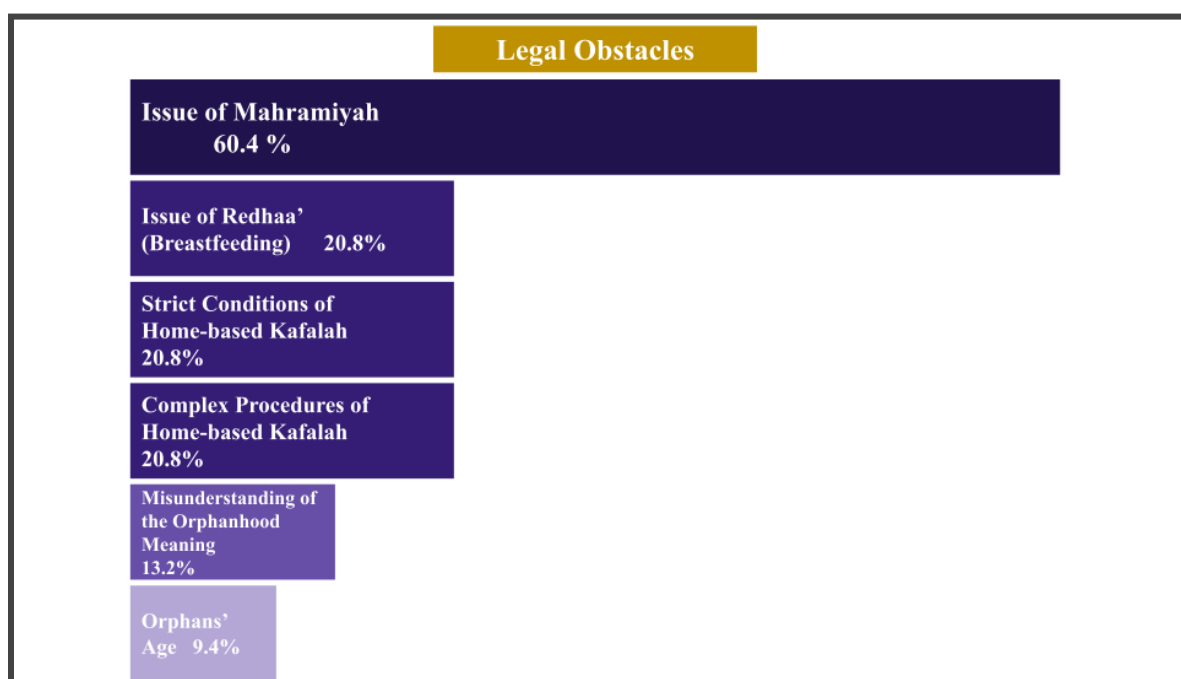
Note: the foster child does not inherit from his foster parents because the inheritance system in Islamic law is based on blood relations.

⁴⁷⁹ Interview with a Ministry social worker (M.Th.) in September 2021.

⁴⁸⁰ Chapter Four explains the provisions of breastfeeding a non biological child.

⁴⁸¹ Interview with a foster mother (T.N.S.) in September 2021.

The absence of a familial bond created through breastfeeding can have implications on the relationship dynamics between the orphan and the foster parents when the child reaches puberty, particularly concerning the provisions of Mahramiyah and the Islamic dress code, such as the hijab. The lack of a legal, familial bond may result in the child feeling a sense of difference or disconnection from the family, which may negatively affect their psychological well-being.



(Figure 9: Legal Obstacles of Home-based Kafalah)

7.4 Social Obstacle of Practicing Home-Based Kafalah

In the context of this study, *social obstacles* are defined as barriers that hinder or make the process of home-based kafalah in Saudi Arabia more complex. These barriers may result

from social norms, cultural beliefs, discrimination, prejudice, or other forms of social inequality. Based on the interviews conducted, six social obstacles were identified as making home-based kafalah challenging for Saudi families within the scope of this research. These obstacles are as follows: (A) Stigma of illegitimacy; (B) Fear; (C) Skin color; (D) Social pressure; (E) Spouse's disapproval; and (F) Gender. The relative importance of these factors is established based on the number of responses scrutinized for each aspect [Figure 10].

7.4.1 Stigma of Illegitimacy

Stigma is a socially constructed concept that refers to negative attributes or discrediting marks that result in individuals or groups being viewed as unreliable, tainted, or incompetent. This phenomenon is contingent on factors such as identity and association and is constructed by societal norms and values. Stigma, therefore, serves as a mechanism for society to delineate between socially acceptable and unacceptable individuals or groups.⁴⁸² The *stigma of illegitimacy* refers to the social disapproval and negative attitudes toward children born outside of marriage or those perceived as not having a legitimate family status. Stigma often leads to negative attitudes, beliefs, and discriminatory treatment toward stigmatized people, resulting in social exclusion and discrimination.

According to the research findings, a significant proportion of the study sample, comprising 42 participants (79.2%), identified the **stigma of illegitimacy** as the primary social obstacle to kafalah. In Saudi Arabia, children with unknown parentage are often labeled illegitimate, suggesting they were born out of wedlock. Consequently, such children encounter

⁴⁸² Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity*. Englewood Cliffs, N.J: Prentice-Hall, 1963.

social marginalization, discriminatory attitudes, and inferior treatment by others. This is evident in the following statement made by S.F., a foster mother who participated in the study:

Society; people's view is the hardest thing; it made me cut off from the world for a long time, and I swear, I still get nervous. I do not know why they hold the child responsible for being a foundling! Many people around me argue about how we can allow ourselves to live with a “bastard.” O, people! do not say a bastard; he is an orphan!⁴⁸³

Another foster mother, Z.K., reported the same issue, telling a story of her conversation with a work colleague,

The biggest problem is society's view of the child. I do not forget a word from one of my colleagues; although she did not know that my son was fostered, she talked about these children [meaning of the unknown parents] with contempt and that they are a “punishment for their parents.” Her words were hurtful.⁴⁸⁴

An instance of discriminatory behavior towards orphans is the **disparate treatment** between the foster child and the extended family's biological children. A foster mother recounted an incident during the family's Eid celebration where a relative distributed money to all the children except her foster son. Another example involves a situation where another relative returned from a trip and presented gifts to all the children except the orphan, citing forgetfulness as the reason for the exclusion.⁴⁸⁵

⁴⁸³ Interview with a foster mother (S.F.) in June, 2021.

⁴⁸⁴ Interview with a foster mother (Z.K.) in September, 2021.

⁴⁸⁵ Interview with a foster mother (M.B.) in September, 2021.

Moreover, fostering orphans of unknown parentage is associated with another type of stigma, with many believing **those children are challenging to manage and may exhibit behavioral problems**. As one foster parent said, “People say: ‘How do I live with a foundling? Maybe when he grows up, his morals become bad like his mother and father.’ You will hear this comment a lot.”⁴⁸⁶ Another foster mother elaborated that,

Some fear the orphan's social status because he is unlike ordinary children. I tell you, the stereotype that they are illegitimate children [she said it in a whisper], so you may raise him and treat him kindly; ultimately, because he is an illegitimate child [in a whisper], he may harm you or deny your favor with him.⁴⁸⁷

During an interview with a host mother, K.D., she explained why she and her husband chose the educational kafalah and hosted the child rather than having it in their home. K.D. expressed concerns that the child's behavioral issues, such as aggression and stubbornness, might have a negative impact on the children of her family, like nieces and nephews.⁴⁸⁸

The stigma of **illegitimacy and the tribalism** that dominates Saudi Arabian society present considerable challenges for orphans of unknown parentage. Society's preoccupation with genealogy fosters a culture of tribalism that values those with an ancient tribal lineage or distinguished family above those without it. Therefore, tribalism has led to **prejudice against orphans**, resulting in discriminatory attitudes and behaviors toward them. Due to these attitudes, orphans may be subjected to social marginalization and inferior treatment.

⁴⁸⁶ Interview with a foster mother (S.F.) in June, 2021.

⁴⁸⁷ Interview with a foster mother (S.B.) in March 2021.

⁴⁸⁸ Interview with a host mother (K.D.) in September, 2021.

It is worth noting that according to several study participants, offensive comments made by some community members further strengthen their discriminatory attitudes towards orphans of unknown parentage. These individuals refer to a *hadith* that states, “*takhayaru li nutfikum fa'iina al-eirq dassas,*” translated as (Choose for your semen, for the race is infiltrated), suggesting that non-physical traits such as good or bad manners are inherited.⁴⁸⁹

These attitudes have particular significance in marriage, where orphans may face substantial obstacles to finding a suitable partner due to their unknown parentage. One of the foster mothers, F.Z., hailing from a large tribe in Saudi Arabia, arranged a betrothal between her niece and her foster son, who was 23 years old.⁴⁹⁰ She anticipated the family's approval, particularly since the child was fostered at a young age (5 months) and raised in the family. The family breastfed him, and grew up with them. However, she was surprised when her sister and her husband rejected the proposal due to the unknown origin and lineage of the foster son.⁴⁹¹

⁴⁸⁹ Imam Ibn al-Jawzī, in his book *Al-Ilal al-Mutanahiyah fi al-Ahadith al-Wahiyah*, after listing the words of the hadith and its methods, states that the hadith is weak (unreliable) and cannot be invoked. Most of the hadith scholars have also weakened the hadith. See Abd al-Raḥmān bin ‘Alī in. al-Jawzī, *Al-Ilal al-Mutanahiyah fi al-Ahadith al-Wahiyah*, ed. Irshad al-Haq al-Athar (Department of Archaeological Sciences, Faisalabad: Pakistan, 1401 AH / 1981 AD).

The correct narration is what Ibn Majah narrated: “*Choose the best for your sperm, and marry compatible women and propose marriage to them.*” See Sunan Ibn Majah, hadith 1968, Chapter 46: Compatibility, Book 9: The Chapters on Marriage.

<https://sunnah.com/ibnmajah:1968>

⁴⁹⁰ Cousins are generally allowed to marry, whether were related by blood or by nursing. For more details about the family structure in Islamic law, see Chapter Three.

⁴⁹¹ Interview with a foster mother (F.Z.) in September 2021.

Understanding the tribal prejudice and the likelihood of rejection, N.Sh., another foster mother from a different large tribe, revealed her intention to seek a bride for her foster son from a similar social status, fostered and raised by a family. She rationalized that the daughter of the tribe might humiliate her son for his origin and lineage.⁴⁹²

7.4.2 Fear

In the research sample, 25 participants (47.2%) identified fear as a significant social obstacle to Home-based kafalah, with several specific concerns highlighted in the following.

- **Fear of responsibility:**

Nine participants expressed concern about the responsibility of raising an orphan, which is a substantial undertaking that not everyone is equipped to handle.

- **Fear of injustice to the orphan:**

Eight participants cited fear of injustice to the orphan as an obstacle, given the Islamic principle of protecting orphans from oppression or abuse, especially the proper management of their finances.

- **Fear of what people say:**

Eight participants reported fear of social consequences, specifically the reactions of others in the community. Some expressed anxiety about the opposing views of society towards foster families who take in orphans of unknown parentage; as T.N.S. said,

⁴⁹² Interview with a foster mother (N.Sh.) in September 2021.

Many families fear what people will say about them. This orphan is not a child whose parents are known and have no one to raise him; this is a child that we do not even know who his family is, which makes many people fearful of the idea. What will society's view of this child and the family that fostered him be? ⁴⁹³

Others were concerned about the questions that people may ask, which can be intrusive and uncomfortable, as A.J. explained when asked about home-based kafalah social obstacles.

Socially, fear of people's words and people's views. For example, they might ask who is infertile in the foster family, the wife or the husband. Who is tolerant because the second is giving up childbearing? People like to know these things. If we foster, we may grieve and take this step because we do not have children and have a defect. Also, people may ask where your son came from. What is its origin? Who is his family? ⁴⁹⁴

People may inquire about the foster family's fertility or whether they have a defect, while others may ask about the origin and lineage of the foster child.

7.4.3 Skin Color

In the present study, 16 interviewees (30.2%) of the study participants identified skin color as a potential obstacle to the process of home-based kafalah.

A.Y., a social worker affiliated with the Ministry, has pointed out that the **Makkah region has a higher proportion of orphans with dark skin tones**, African skin tones, than other regions.⁴⁹⁵ The al-Wedad Association supervisors have stated that the majority of

⁴⁹³ Interview with a foster mother (T.N.S.) in September 2021.

⁴⁹⁴ Interview with a foster mother (A.J.) in March 2021.

⁴⁹⁵ Interview with a social worker at the Ministry (A.Y.) in October 2021.

According to al-Wedad Association kafalah specialist, M.B., different skin color problems in home-based kafalah are not prevalent in Riyadh Region (Capital region of Saudi

applicants for foster care are light-skinned. Additionally, dark-skinned families tend to have weaker financial conditions than others. Consequently, matching the skin color of orphans with prospective foster families has emerged as a significant hurdle in the kafalah process, particularly for those families with lighter skin tones; they may experience delays in the kafalah process due to the rarity of such orphans in the region.

A.S., an orphanage manager, has also highlighted the significance of skin color in the process of home-based kafalah. Orphans with lighter skin tones are reportedly more likely to be fostered than those with darker skin tones.⁴⁹⁶ The light-skinned orphans do not stay long in the orphanage, and a foster family even takes some of them from the hospital before arriving at the orphanage.⁴⁹⁷

Additionally, there appears to be a **seasonal reception for dark-skinned orphans**, with a higher influx of children arriving at orphanages after the Ramadan and Hajj seasons. This is often attributed to parents traveling to Makkah for the Hajj and Umrah seasons, with some becoming pregnant and unable to care for their children. Consequently, orphanages tend to

Arabia); so orphaned children are placed with foster families faster (Interview in September 2021).

Note: While conducting this research, two additional themes emerged, but they were beyond the scope of this study. The first theme is the correlation between the COVID-19 pandemic and the age of incoming children. Before the pandemic, the al-Wedad Association primarily hosted newborns. However, due to the pandemic, they began receiving six to eight-month-old babies, some of whom were healthy and in good condition. The second theme is the correlation between the rise in residency renewal fees and the number of foundlings received by the al-Wedad association. This increase is due to the increasing residency renewal fees and the high expenses associated with health and education services, free only to Saudi citizens.

⁴⁹⁶ Interview with a private orphanage manager (A.S.) in October 2021.

⁴⁹⁷ Interview with a former orphanage supervisor (A.B.) in October 2021.

experience higher numbers of dark-skinned children at certain times of the year compared to others.⁴⁹⁸ Another presumption stated by A.B., a former orphanage supervisor, is that some poor pilgrims and visitors leave their children in the Holy City (Makkah), desiring to provide them with a better life in Saudi Arabia.⁴⁹⁹

7.4.4 Social Pressure

The American Psychological Association (APA) defines *social pressure* as,

The exertion of influence on a person or group by another person or group. Like group pressure, social pressure includes rational argument and persuasion, calls for conformity, and direct forms of influence, such as demands, threats, or personal attacks on the one hand and promises of rewards or social approval on the other.⁵⁰⁰

The research data indicate that 11 study sample participants (20.8%) state that social pressure is an obstacle for kafalah. In the current study context, social pressure manifests in family rejection and social bullying.

- **Family rejection:**

On the social level, **extended family members' rejection** of the child represents a common obstacle to Home-based kafalah. Given that most orphans in orphanages are abandoned, they are often stigmatized as illegitimate children, which can lead to negative attitudes towards them from the extended family.

⁴⁹⁸ Interview with a private orphanage manager (A.S.) in October 2021.

⁴⁹⁹ Interview with a former orphanage supervisor (A.B.) in October 2021.

⁵⁰⁰ APA Dictionary of Psychology, s.v. "Social Pressure," Date accessed May 8, 2023, <https://dictionary.apa.org/social-pressure>

People, oh God, people. The family, some of the family members do not accept. Some of them consider him as they say, “Ibn haram”. . . I swear there is one of my family; I do not want to mention her name, she used to say to me, “Do you bring ‘Ibn haram’ within our children?”⁵⁰¹

N.B., a foster mother, said that when asked about the most prominent difficulties she faced after taking the child home. She lowered her voice to a whisper, saying that label, “*Ibn haram*,” which means son of a forbidden relationship, referring to adultery. Although most of her family members were supportive, they sometimes questioned her motivation since she has biological children, “Why do you bear yourself more responsibility? You already have your children.”⁵⁰²

K.H., a foster mother, and her husband applied for home-based kafalah without informing their families to preempt any potential negative reactions. However, following the child's placement, they were met with significant resistance, leading to heated arguments and disagreements that nearly resulted in divorce. K.H. recounts feeling torn between her husband and her foster child, ultimately choosing the latter. Her husband, unable to withstand the social pressure, found himself in a difficult position until a wise family member intervened and successfully reconciled the couple.⁵⁰³

Aware of the potential rejection by the extended family, H.M. and her husband approached their families before starting the kafalah process, as she said, “I did not bring

⁵⁰¹ Interview with a foster mother (N.B.) in March 2021.

⁵⁰² Interview with a foster mother (N.B.) in March 2021.

⁵⁰³ Interview with a foster mother (K.H.) in November 2021.

the girl until I got the approval of my family and his family, you know, because I did not want her to live with someone who does not accept that she lives with them.”⁵⁰⁴ She provided an accepting environment for the girl to thrive by seeking initial approval. Contrary to their expectation, both families excitedly welcomed the idea and were willing to support it.

At the time, my older sister was pregnant, and her birth was close, and my sister-in-law was also the same, and they both said to me, 'Bring her, and we will nurture her with you.' They encouraged me more; their enthusiasm made me bring her while I am reassured.⁵⁰⁵

When the sisters offered to breastfeed the child, they were willing to nurse her with their newborn to create a legal-social relationship between the family and the child through breastfeeding, which happened. Now the child has several milk mothers.

- Social bullying

In the current study context, I define *social bullying* as a form of social aggression in which individuals or groups use their power or influence to marginalize, stigmatize, or discriminate against orphans of unknown parentage or their foster families. This bullying can take many forms, including verbal abuse, exclusion, and spreading rumors or gossip about the orphan's origins.

⁵⁰⁴ Interview with a foster mother (H.M.) in September 2021.

⁵⁰⁵ Interview with a foster mother (H.M.) in September 2021.

The participants in the study shared some instances of social bullying they encountered, including criticism from some individuals who were reluctant to accept foster families' motivation,

I heard some people here in Taif criticized some foster families [doubting their motivation]. Even when they told them we wanted to get closer to the Messenger in Paradise, the hadith "The one who sponsors an orphan and I will be in Paradise" was a sufficient reward for us, so they reluctantly remained silent..⁵⁰⁶

In one case, a lady provocatively and contemptuously asked if the orphan was found on the street; as a foster mother said,

One day, a lady asked: Do you mean he was on the street? (Provocatively and contemptuously) I understood what she meant, but I told her he was not on the street; his mother and father were dead. Besides, even if he was found on the street, he is my son and had nothing to do with anything that happened. After that, she kept silent.⁵⁰⁷

Furthermore, one of the female workers at the school made a derogatory remark suggesting that taking in an orphan would be pointless,

One of the female workers at the school, when she found out that I had taken an orphan, said to me, "Do not tire yourself out, 'oh educator of people's children, you mash water in the mash.'" which means, there is no benefit, and he will not benefit you.⁵⁰⁸

⁵⁰⁶ Interview with a foster mother (S.F.) in June, 2021.

⁵⁰⁷ Interview with a foster mother (A.J.) in March 2021.

⁵⁰⁸ Interview with a foster mother (Z.N.H.) in September 2021.

In some cases, physically bullying the orphan child occurs as Th.G., a foster mother, said, “My son's wife used to incite her children to harass my foster daughter to offend me.”⁵⁰⁹ Another foster mother, A.D., shared a similar experience where her half-sister prevented her children from playing with A.D.'s foster child due to fear for her own children's safety and jealousy towards the foster child, "She is afraid for her children from my daughter, and she is also jealous of her."⁵¹⁰

7.4.5 Spouse's Disapproval

According to the study findings, 10 participants (18.9%) reported that one of the obstacles to home-based kafalah is the rejection of the idea by the prospective foster child's spouse, especially the husband. This finding implies that the decision to take an orphaned child into the family is not always made by one partner alone. The other partner's views, particularly the husband, must be considered. It is worth noting that this phenomenon is not unique to the context of kafalah. However, it is a prevalent issue in Saudi Arabia, where the husband's views carry significant weight in family decision-making.

7.4.6 Gender

The study found that 6 participants (11.3%) believed orphaned girls are more likely to be fostered than boys. This preference is potentially due to the perception that girls are more vulnerable and may not have as much support as boys, which leads Saudi society to show more affection towards them.

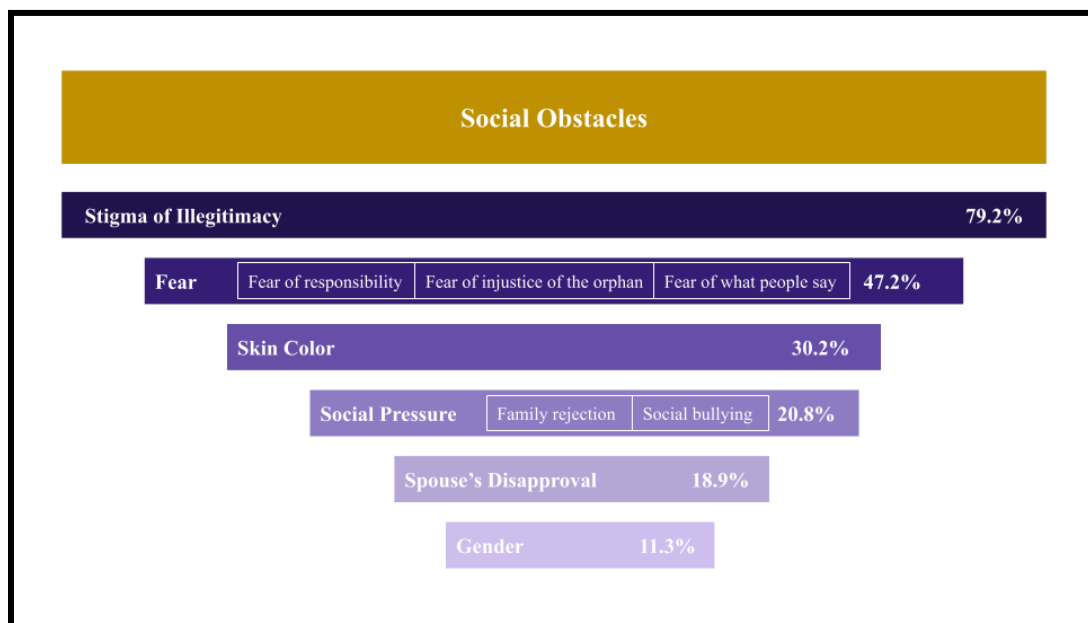
⁵⁰⁹ Interview with a foster mother (Th.G.) in June 2021.

⁵¹⁰ Interview with a foster mother (A.D.) in October, 2021.

This preference for girls is noticeable among dark-skinned orphans, according to a kafalah specialist at al-Wedad. The specialist explained that people believe that raising a girl is more manageable than raising a boy.⁵¹¹ Some participants rationalized this trend by citing societal beliefs about gender roles and the need for more protection and support for girls.

During an interview with a principal of an orphanage, it was explained that families who seek home kafalah are often divorced women or older women who have not married and wish to start a family for themselves. These women may also seek divine rewards for their actions.⁵¹² This trend suggests that the preference for girls may be influenced by societal and cultural factors and personal motivations for fostering a child. These findings suggest that gender plays a role in the kafalah process, with orphaned girls more likely to find a home than boys.

(Figure 10: Social Obstacles to Home-based Kafalah)



⁵¹¹ Interview with al-Wedad kafalah specialist (A.Sh.) in September 2021.

⁵¹² Interview with a private orphanage manager (A.S.) in October 2021.

7.5 Perceptions and Attitudes toward Kafalt Alyateem

The current study highlights the diversity of Saudi individuals' interpretations and applications of the Kafalah system. The data reveal the existence of three forms of practicing *Kafalat Alyateem*. The first form is **Home-based Kafalah**, which involves taking the orphan to live with the foster parent (*Kafil*) and their biological children.

The second form is the **Financial Kafalah**, where the orphan's expenses are covered without incorporating them into the *Kafil's* household. In this type, the child lives in an orphanage, and his expenses are covered by the *kafil* (the sponsor in this form). The third form is **Educational Kafalah**, which is practiced by host families. This family builds a relationship with an orphan, then hosts them in their home on weekends, holidays, feasts, and special occasions.

Some participants consider all three forms of Kafalah valid but prefer Home-based Kafalah as the highest ranked, followed by Educational Kafalah and Financial Kafalah. Other participants believe that the true meaning of Kafalah is Home-based Kafalah, and all different types of kafalah are considered acts of charity.

7.6 Discussion

Kafalt Alyateem is a significant Islamic law concept, highlighting the importance of caring for orphans by providing them with financial and educational support. Providing kafalah for orphans in Saudi Arabia is a crucial aspect of Islamic culture that is highly valued. This

system gives orphans the care and support they need to lead fulfilling lives and contribute positively to society.

However, the reluctance of contemporary Saudi families to take in orphaned children with unknown parents, despite the Islamic tradition of caring for orphans within a family structure, raises questions about applying the concept of Kafalah in Sharī'ah and its legal interpretation in Saudi Arabia. This research aims to investigate the meaning of Kafalah under Sharī'ah and its practical application to children with unknown parents and to contrast the legal principles with contemporary Saudi families' attitudes toward these children. During data collection in Saudi Arabia, it was observed that the term "*Ihtedha'an*"⁵¹³ is more commonly used to refer to Home-based Kafalah.

Based on the interviews, it has become apparent that home-based kafala is a more common practice among Saudi families than initially expected. Although the practice was limited in the past, the oldest case identified during interviews dates back to 1994. Among the 36 foster families interviewed, only two were of dark skin, highlighting the issue of dark-skinned orphans. In recent years, increased media attention has been brought to the issue, mainly since the Ministry tasked the al-Wedad Association with finding foster families for infants of unknown parentage, or Ihtedhan. Furthermore, social media has played a significant role in raising awareness of home-based kafala or Ihtedhan.

Another noteworthy finding is that home kafalah is predominantly a female-driven practice. Expressly, the foster mother assumes full responsibility for the child's care, as documented in the maintenance deed from the court. In the case of the foster mother's divorce,

⁵¹³ From the word root *hadhana*; means to hug or to embrace.

the child remains under her custody, per Saudi Arabia's custody laws prioritizing mothers. In the event of the foster mother's death, the child's custody passes to the person recommended by the mother. If the mother did not specify a person in her will and no foster family volunteers to take the child, the child returns to the government orphanage.

The field study results shed light on the intricate legal, social, and cultural factors that impact the practice of home-based kafalah in Saudi Arabia. The diverse perspectives shared by participants in this study offer valuable insights into this complex issue.

In the realm of home-based kafalah in Saudi Arabia, **legal constraints**, **social prejudices**, and **racial biases** are all significant factors. These themes are interrelated and complex.

7.6.1 The Legal Constraints

The study results highlight that the primary legal constraint of home-based kafalah for orphans of unknown parentage is the **Mahramiyah limitations**. Therefore, requiring the breastfeeding of the child by the foster family eliminates this constraint and provides an ultimate environment for the orphan by living with a family that has a legal bond with them.

As identified by the research findings, another legal impediment to home-based kafalah for orphans with unknown parentage is the condition of **Redhaa'**, which necessitates breastfeeding by the foster family. While breastfeeding the orphaned child was not a requirement a decade ago, it has become one of the primary conditions after the al-Wedad Association's implementation. Nevertheless, if the prospective foster family does not have a lactating mother, the Ministry has authorized a solution proposed by al-Wedad. This solution involves the foster

mother undergoing a milk stimulation course under al-Wedad's supervision to fulfill the breastfeeding requirement and satisfy the Mahramiyah condition.

The feasibility of stimulated breastfeeding has been established; however, some research participants expressed concerns regarding its implementation. They suggested that the process of milk stimulation could be challenging, as it may disrupt the hormonal balance. Moreover, some participants recommended that single women should avoid using milk stimulation drugs, which could potentially affect their future pregnancies. Therefore, future studies should be conducted to investigate the long-term health complications of milk stimulation on the foster mother.

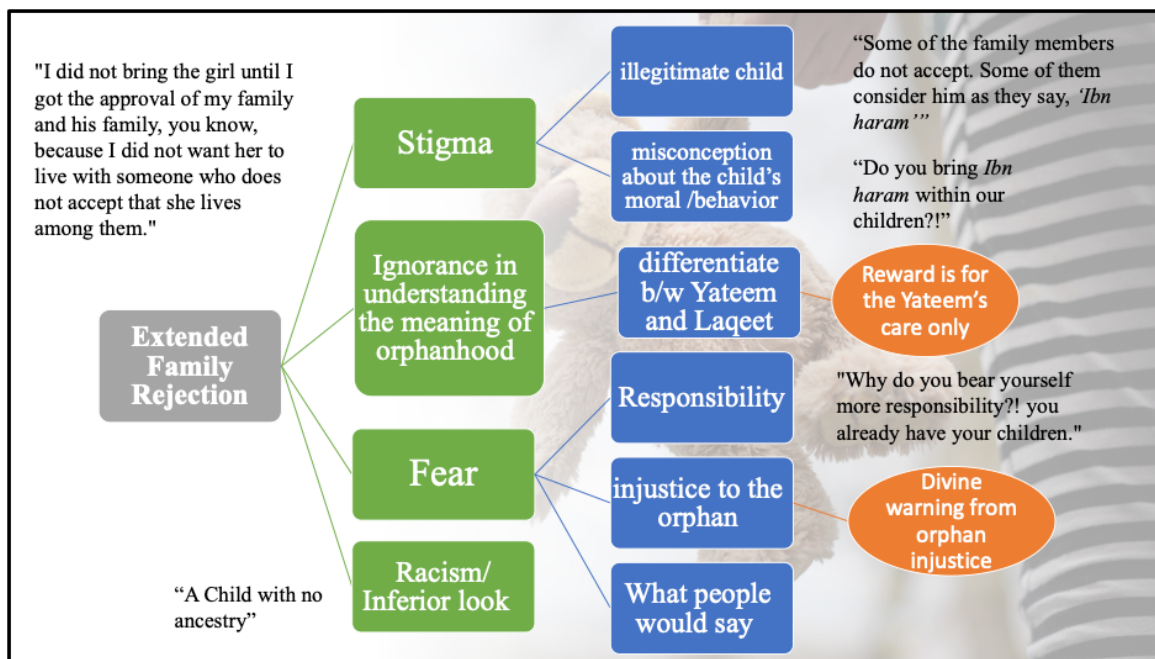
If an orphaned child is **older than two years**, the age at which breastfeeding is permitted to establish the Mahramiyah bond, the issue of *redhaa' al-Kabeer* (breastfeeding an older child) provides a solution. The proponents of this legal opinion refer to the story of Sālim mawla abi Hudhayfah, where breastfeeding allowance was intended to create the Mahramiyah bond between him and his foster mother, Sahla.⁵¹⁴ The allowance exists in Sālim's case that prohibits marriage and offers a solution for orphans older than two years old. In the modern era, the case of orphans of unknown parents satisfies the specific circumstances limitation since they desperately need to live with a family and have a normal and decent life.

7.6.2 The Social Prejudices

The social stigma attached to orphans of unknown parentage represents a significant challenge, leading to cases of rejection by extended family and society. Such rejection is often based on the unfounded assumption that the child results from an illegitimate relationship. This

⁵¹⁴ The issue is explained in detail in Chapter Four.

stigma can also result in misconceptions about the child's behavior and moral character, with many believing that the child's morals will be as corrupted as those of their biological parents. The relationship between these themes is illustrated in the chart below [Figure 11], with the extended family rejection of orphaned children serving as an example.



(Figure 11: Illustration of the complexity of the factors of home-based kafalah)

The chart depicts the complex interplay between stigma, extended family rejection, and **misconceptions about the foster child's morals and behavior**. These factors contribute to the extended family's rejection of the foster child, as demonstrated by the remarks of N.B., who cited her relative's condemnation of the child's presence among their children. The relative's statement reflects the stigma associated with foster children of unknown parentage, who are often stereotyped as the products of illicit relationships and perceived as corrupt and morally deficient.

Such misconceptions about the foster child's behavior and morals can further reinforce the negative attitudes towards them, leading to their rejection by the extended family and society.

The second reason for extended family rejection of a foster child is attributed to a **lack of understanding of the meaning of orphanhood**. Some individuals mistakenly differentiate between a *yateem* (an orphan of known parents) and a *laqeet* (a foundling or foster child) and believe that the divine reward for caring for orphans only applies to the former. However, it is essential to note that kafalah for a foundling is similar to that of an orphan, as both require care and mercy. A foundling requires even more care than an orphan since they lack roots and branches to care for them, making their situation more severe than that of an orphan in judgment.

The third reason for extended family rejection is **fear of responsibility**, injustice to the orphan, and what people say. Some people consider the idea of home-based kafalah, but they hesitate due to the fear of injustice to the orphan. The Sharī'ah urges the kafalah of the orphan and promises a great reward for it. However, it warns against wronging and abusing the orphan, especially usurping the orphan's money and disposing of his money unjustly, as God Almighty has promised those who unjustly eat orphans' money with fire on the Day of Resurrection.

Finally, the fourth reason is **racism and the inferior look** for foundlings. The structure of Saudi society comprises either original Arabic tribes or families from Arab countries or non-Arab countries who have settled in the Arabian Peninsula since the Ottoman era. If you are not affiliated with either category, you will face racism. In the foundling case, they do not belong to a tribe or bear the surname of a well-known family. They need help to be accepted by a society that sanctifies the nobility of origin and is proud of their lineage.

The stigma of illegitimacy, together with a **tribalistic society** and biases against orphans, presents significant challenges to the well-being and prospects of orphans in Saudi Arabia. The emphasis on genealogy runs counter to the principles of Shari‘ah, which recognize the equality of all individuals and prioritize piety over the social background.

7.6.3 The Racial Biases

The study identified an intersection between **stigma** and **race**, which could be explained by the finding that most orphans in the Makkah Region have dark skin. This phenomenon could be attributed to various social, economic, and cultural factors, such as poverty, lack of education, and social discrimination. These factors can affect the likelihood of families abandoning or neglecting their children, resulting in many orphans of unknown parentage in the region.

Moreover, the social stigma associated with dark skin could contribute to the rejection of founding children by prospective foster and extended families, leading to further challenges for the placement of these children. This stigma may stem from cultural and historical beliefs about skin color, perpetuated through generations. Such beliefs may lead to the stigmatization of individuals with dark skin, including orphans of unknown parentage, and may contribute to difficulties in finding suitable families for these children.

In light of the issue of race and its potential impact on the implementation of home-based kafalah, the Ministry of Labor and Social Development has made certain modifications to the conditions governing prospective foster families. Specifically, to facilitate the fostering of orphans with dark skin, the net monthly income requirement for families seeking home-based kafalah has been reduced from 8,000 SR (\$2133 AD) to 5,000 SR (\$1333 AD) for families of

darker skin color.⁵¹⁵ Additionally, in cases where the custodial father does not hold Saudi nationality, this requirement may be overlooked, provided all other conditions are satisfied, as A.Sh., an al-Wedad Association employee, explains.⁵¹⁶ Finally, in some cases, the requirement regarding the age of the mother may also be overlooked if all other conditions are met.

Finally, in my opinion, and based on interviews conducted, I believe that the condition of matching skin color and facial features between the foster family and the orphan child is essential in facilitating the child's coexistence among family members without his appearance being different from theirs, especially in Saudi society, which is currently not ready to accept the difference in race or skin color, especially between tribal families.

⁵¹⁵ Interview with al-Wedad Association employee (M.B.) in September 2021.

⁵¹⁶ As mention in the interview with al-Wedad Association employee (A.Sh.) in September 2021.

CHAPTER EIGHT

Conclusion

8.1 Introduction

Kafalat al-yateem is vital to Islamic law and tradition, supporting and caring for orphaned children in need. The current study aimed to study the concept of *Kafalat al-yateem* and its application to children with unknown parents in Saudi Arabia. The main objective of this research is to contrast the Islamic legal principles practiced in Saudi Arabia regarding the obligation of Muslims to care for orphans with contemporary Saudi families' attitudes toward orphans of unknown parents. The study found that the kafalah system in Saudi Arabia manifests in three forms: financial, educational, and residential, with financial kafalah being the most widely recognized form of care for orphans.

Home-based kafalah for children of unknown parents has become an increasingly important way of caring for orphans, providing them with a loving and supportive environment within a family unit. This approach is in line with the teachings of Islam, which emphasize the importance of compassion and kindness towards orphans. Home-based kafalah, known as *Ihtedhan*, has recently become a social phenomenon in Saudi Arabia. The practice has a long history, with the oldest case identified during interviews dating back to 1994. Although the practice was limited in the past, recent years have seen increased media attention and a growing awareness of the issue.

8.2 Contribution of The Study

Throughout this study, several barriers and challenges to home-based kafalah in Saudi Arabia have been identified on legal and social levels. On the legal level, misconceptions about orphanhood and restricting the divine reward to kafalah for orphans only of known lineage play an essential role in home-based kafalah practice. Another essential legal restriction is the issue of Mahramiyah, which is solved by the breastfeeding condition that creates a familial legal bond between the orphan and the foster family, thus eliminating the Mahramiyah restrictions.

Furthermore, there is a need for a more streamlined and transparent kafalah process in Saudi Arabia. The current process is often lengthy and bureaucratic, leading to delays and frustration for prospective foster parents. Enhancing the kafalah process's efficiency will ensure that more orphans receive the care and support they need and deserve.

On the social level, this system has its challenges and obstacles. The most significant issue identified is the stigma associated with orphans of unknown parentage, particularly the stigma of illegitimacy, presuming that all orphans of unknown parents were born outside of wedlock. This stigma results in society's rejection and misconceptions about the child's morals and behavior. Moreover, the study findings indicate that skin color, spouse rejection, and gender preferences are significant barriers to the kafalah process. These barriers must be addressed to ensure that all orphans, regardless of gender or skin color, have an equal opportunity to find loving and supportive homes.

Despite these challenges, the practice of home-based kafalah has been shown to have many benefits, including providing orphans with a sense of belonging, emotional support, and a stable environment to grow and develop. Moreover, this approach can significantly reduce the

number of orphans living in institutional care and help promote the welfare and well-being of these vulnerable children.

Addressing the challenges identified in this study is essential to ensure the success and sustainability of home-based kafalah in Saudi Arabia. This success can be achieved through increased awareness and education about the process and ongoing efforts to combat the stigma, misconceptions, and stereotypes associated with orphans of unknown parentage and the practice of home-based kafalah.

In addition, it is essential to raise awareness about home-based kafalah in Saudi Arabia, particularly among potential foster parents. There is a need to educate the public about the benefits of kafalah and dispel myths and misconceptions that discourage families from considering home-based kafalah. Foster parents should receive adequate training and support to provide the best care possible for the orphans.

Overall, home-based kafalah offers a promising solution to the challenges faced by children of unknown parents in Saudi Arabia, providing them with the love, care, and support they need to thrive and succeed in life. Through the collective and continued efforts and support of government, NGOs, and individuals, this approach will become an increasingly popular and successful way of caring for orphans in Saudi Arabia and hopefully internationally.

8.3 The Limitations of The Study

The interviews commenced approximately one month after the researcher arrived in Saudi Arabia, owing to the closure of public places and cafes due to Covid-19 precautionary measures. Additionally, interviews were suspended during the month of Ramadhan and the initial ten days of Shawwal due to the participants' engagement in fasting and Eid celebrations.

In some instances, participants exhibited concerns regarding the research questions and sought clarification before consenting to participate. The researcher provided an overview of the questions to these participants. For example, one former orphanage worker participant expressed reservations and was provided with an explanation that focused on the challenges faced by families who foster orphans in their homes, specifically legal or social obstacles.

Several foster mothers voiced concerns that the researcher would contact their children later and disclose the information gathered during the interviews. Additionally, the fear of audio recording was noted amongst the participants, mainly male and female employees and some custodial mothers whose husbands had not consented to the recording.

While the plan was to conduct interviews with both male and female participants, there were limited male interviews, and attempts to have foster fathers participate in interviews were unsuccessful. The researcher posits that the reason for this might be attributed to a variety of factors, including the sensitivity and privacy of the topic, lack of confidence in qualitative research, suspicion of undercover work for the Ministry, fear of the psychological impact on the child, discomfort with speaking to unfamiliar women, and discomfort of some wives with their husbands' participation.

There were some challenges with scheduling interviews, mainly in-person interviews, due to transportation unavailability, husbands' refusal for their wives to meet in cafes, and fear of the Coronavirus. Furthermore, some participants needed to respect the agreed-upon interview time, leading to delays. To overcome some of these challenges, online interviews were conducted

after the researcher returned to Seattle. However, scheduling proved difficult due to the significant time difference between Seattle and Saudi Arabia (11 hours) and some participants' lack of technical proficiency.

The communication channel employed with participants was WhatsApp, with Telegram used as an alternative on occasion. However, technical issues sometimes occurred, such as the suspension of communication channels for several hours. Most participants were in the first and second groups, namely the foster families and orphanage frontline workers, with a few interviews conducted in the third group, host families. The data collection took six months: from March to September of 2021, and it was halted once sufficient data had been gathered for the dissertation.

Finally, the Ministry of Human Resources and Social Development in Saudi Arabia conducted a comprehensive research project on children with unknown parentage. The study comprised statistical and factual data; however, access to the research was restricted due to its classification as "secret research" that required direct approval from the Minister. My access request was denied because my research is being conducted at a foreign university.

8.4 Recommendations for Policy and Practice to Improve Home-based Kafalah

Addressing the challenges facing this practice is imperative to ensure the success and sustainability of home-based kafalah in Saudi Arabia. This study recommends a series of measures, the most crucial of which are the following:

- 1.** Increasing awareness and understanding of the concept of orphanhood and the kafalah process. Raising awareness can begin with educating children about the meaning of orphanhood and the Islamic values emphasizing the importance of caring for orphans through inclusion in the public school curriculum. Additionally, misconceptions surrounding kafalah, such as the belief that the divine reward for kafalat al-yateem is limited to orphans of known parentage, must be corrected.
- 2.** Coordination with universities and research centers to study foster children and their families' issues is essential. Such research can provide valuable insights into the challenges faced by foster families and help policymakers to develop appropriate solutions to support them.
- 3.** Raising awareness about the benefits of kafalah and the kafalah process is crucial in combating the stigma and stereotypes associated with orphans of unknown parentage. This can be achieved by disseminating information through various channels such as social media, television, and public events.
- 4.** Continuous psychological and social counseling for families before and after the kafalah process, in the early stages of the kafalah process and at all stages of the fostered orphan's life, is essential.
- 5.** Clarifying regulations for prospective and foster families, and keeping them up-to-date with new developments in the field of orphans, is essential. Clarification can be achieved through annual meetings with officials and decision-makers.

8.5 Future Studies

Within the scope of the current study, certain areas of inquiry have surfaced as intriguing but peripheral. One such topic concerns the prevalence of Attention Deficit Hyperactivity Disorder (ADHD) among foster children, which may be associated with Bowlby's (1969) Secure Attachment Theory. Several foster mothers disclosed that their foster children exhibited symptoms of ADHD, and some of them are on medication, indicating a possible avenue for future investigation.

Two additional themes have arisen in the course of the research. The first theme concerns the impact of the COVID-19 pandemic on the age of incoming children at the al-Wedad Association. Before the pandemic, the association primarily received newborns, but due to the crisis, the association began admitting six to eight-month-old infants who were often in good health. The second theme relates to a possible link between the rise in residency renewal fees and the number of foundlings received by the al-Wedad Association. It appears that the increase in fees, combined with the high costs of healthcare and education services available only to Saudi citizens, has contributed to an uptick in the number of foundlings admitted to the association.

Another potential research area is exploring the common difficulties experienced by foster families following the placement of a child, which may include disclosing the child's true identity, dealing with any resulting consequences, and addressing the issue of the foster child's future marriage.

In conclusion, the current research is limited to the Makkah Region in western Saudi Arabia. Future studies should expand the geographical scope to include other regions, such as the

Middle Region, where the capital city of Riyadh is located, to enable comparisons and contrasts of findings in different social settings.

8.6 Conclusion

This study examines the practice of *kafalat al-yateem* in Saudi Arabia, specifically focusing on home-based kafalah for children of unknown parentage. While this practice is a crucial part of Islamic tradition, it faces various obstacles, such as legal misconceptions, restrictions, and social stigma. Despite these challenges, home-based kafalah offers numerous benefits, including emotional support and a stable environment for orphans to thrive. Overcoming these barriers is crucial to ensure the success of this practice and create a better future for orphaned children in Saudi Arabia.

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