

## **Rights of the Child in Islam: Theory, Mechanisms, Practices and Convention on the Rights of the Child – A Book Review**

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### **Introduction**

The book under review is authored by Dr Muhammad Munir, who is a Professor of Law at International Islamic University, Islamabad, and it was published by the Iqbal International Institute for Research and Dialogue (“IRD”), hosted by the same University. The book comprises of eight chapters, in addition to a well-crafted introduction and conclusion, along with recommendations at the end. The foreword of the book is written by Justice (R) Ali Nawaz Chowhan, who is presently heading the National Commission for Human Rights at Islamabad. Like well-organised, research-oriented books published under the auspices of good quality publishers, the book has an extensive bibliography, and a short but concise Index. The author’s grasp over Arabic language - the original source of Islamic law - is manifested in the contents and bibliography of the book. This aspect lends it an aura of authenticity.

### **An Overview of The Book**

The introduction provides the background that necessitates bringing forth such a book. Dr Munir is of the view that a large number of books on the subject confine themselves to the rituals carried out on birth of the child, and do not take into account the developments made in national and international legal frameworks on the rights of children.<sup>1</sup> This book, however, envisions the concept of rights in line with contemporary phraseology, and emphasizes affirmative as well as protective aspects. Mere provision of some facilities is not efficacious to ensure the children’s rights. Neglect and disregard towards them should also be prevented to maintain their well-being.<sup>2</sup> Another significant aspect is that the book does not standardise a monolithic understanding of a child as healthy, legitimate, growing up in a dual parents’ family. It also takes into account special, illegitimate and step-children while underscoring the need for the fulfilment of their rights and even handed treatment towards them. Though the book is well connected theoretically, it can be read in a non-linear manner as aptly pointed out by the author.<sup>3</sup>

Chapter One of the book evaluates the existing literature on the subject and highlights its limited and constricted scope. Contemporary terminologies such as “rights of the child” and “protection of the child” are conspicuously absent, particularly from the books written in the Arabic language.<sup>4</sup> The author appreciates 13<sup>th</sup> century scholar, Mahmood B. Husain Astroshni’s book and rates it as “unique” because of its coverage of all transactions involving children in

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<sup>1</sup> Dr Muhammad Munir, *Rights of the Child in Islam: Theory, Mechanisms, Practices and Convention on the Rights of the Child* (1<sup>st</sup> edn, IRD 2017) 3, 6.

<sup>2</sup> Ibid 4.

<sup>3</sup> Ibid 9.

<sup>4</sup> Ibid 11.

addition to its explanation of the role of courts and the Islamic state on the subject.<sup>5</sup> Dr. Munir is critical of those authors who have exclusively confined themselves to the perspective of their school of thought, such as Abi Bakr ibn-Qaiyam al-Jawaiyah and Khalid Dhorat.<sup>6</sup> Further, Dr. Munir laments those books which have not dealt with the role of Muslim states and international law on children's rights. Consequently, a comparative and comprehensive approach on such aspects is reflected in his book.

Chapter Two of the book evolves a theoretical framework for the rights of children under Islamic law. This framework is inspired from *Maqasid al-Shariah*, commonly known as objectives of Islamic law. There are five basic interests that are protected and preserved under this approach: faith, life, progeny, intellect, and property.<sup>7</sup> Out of these five interests, the author highlights three i.e. life, progeny, and intellect, and constructs a framework thereon.<sup>8</sup> It is not clear why the other two interests, i.e., faith and property, are not considered worthy to formulate part of the evolved framework. Moral and religious tutelage of children is meant to protect their faith, and there are specific commandments in the Quran that deal with the management of property of orphaned children and minors.

In the same chapter, with reference to the concept of capacity under Islamic law, Dr Munir rightly highlights that a fetus is endowed with restricted *ahliyat al-wujub*.<sup>9</sup> And it is this sort of limited but beneficial capacity that entitles him to various rights, such as inheritance. The book briefly explicates the Islamic perspective on abortion by pointing out that it is prohibited after the fourth month of pregnancy.<sup>10</sup> Considering the controversy prevailing over this issue in our age, it would have been more appropriate had this issue been analysed in detail. The author, in context of children's rights to health, emphasises that they should be properly immunised against contagious diseases and that negligence in this regard is equivalent to the Quranic phrase of putting one's family into self-destruction.<sup>11</sup> Dr Munir also clarifies that the notion of knowledge under Islamic law is not confined to religious learning: it "encompasses all necessary worldly knowledge with all its types and branches".<sup>12</sup> All-inclusive and wide-ranging articulation of the notions of health and knowledge in the backdrop of a traditional society are well-timed and judicious.

Chapter Three of the book analyses various aspects relating to parenting of children, such as rearing, fostering, suckling, loving, disciplining etc. Dr Munir emphasises on the adoption of a balanced approach characterised by humanistic love and care on the one hand, and on the other meant to foreclose all possible avenues of spoiling and neglecting the well-being of children. Children should have ample access to recreational activities and games.<sup>13</sup> Dr Munir argues that children should be given the opportunity to express their opinions on matters

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<sup>5</sup>Ibid 12.

<sup>6</sup> Ibid 15, 19.

<sup>7</sup> Ibid 30.

<sup>8</sup> Ibid 32.

<sup>9</sup> Ibid 39.

<sup>10</sup> Ibid 40.

<sup>11</sup> Ibid 43.

<sup>12</sup> Ibid 51.

<sup>13</sup> Ibid 81.

pertaining to them, and that their perspective should be respectfully accommodated.<sup>14</sup> The author has crafted a subtitle for the children’s right to privacy, but unfortunately has not ventured further to explicate its nature and extent under Islamic law.<sup>15</sup> Dr Munir has also explained in this chapter the rights of orphaned, step, and illegitimate children. The most remarkable feature of this part of the book is the clarification on the notion of adoption under Islamic law.<sup>16</sup> In contrast to the ill-founded but widely prevalent impression that adoption is prohibited under Islamic law, Dr Munir - being informed by *fiqh* literature on foundling - argues for “a principled inclusion of at least quasi-adoptive relationship within Islamic law”.<sup>17</sup> Furthermore, an adoptive child may be benefitted under “mandatory testamentary dispositions”.<sup>18</sup>

Chapter Four of the book critically analyses the legitimisation claims of female genital mutilation (“FGM”) from an Islamic perspective. Dr Munir problematises the argument that FGM is supported by the Quran.<sup>19</sup> The sayings of the Prophet Muhammad, as relied upon by the proponents of FGM, are weak and spurious.<sup>20</sup> Further, the claims of consensus among Muslim jurists are not substantiated as we notice divergence of opinion among various schools of thought on FGM.<sup>21</sup> Dr Munir concludes that FGM is founded on some bad custom or culture without any sound foundation in Islamic law.<sup>22</sup> Hence, considering the cruel treatment meted out by FGM to females along with its bad consequences on psychological and physical health, it should be unconditionally prohibited by Muslim states.

Chapter Five of the book argues for the prevention of violence, abuse, and exploitation of children. Children should not be physically punished, blamed for their mistakes, nor be cursed and abused as there are more appropriate disciplining measures for their upbringing. Under Islamic law, juvenile offenders have been treated more compassionately than their adult counterparts and have also been protected from the infliction of any sort of harm or injury during wars.<sup>23</sup> Dr Munir argues against all forms of exploitations of children, including child labor and sexual exploitation. This last argument lands him into a tricky issue regarding the age of Aisha at the time of her marriage with Prophet Muhammad.<sup>24</sup> Dr Munir treats it as one of the greatest historical myths and debunks it by establishing that she was never nine years of age at that time. Consequently, he shatters the sole ground considered to be readily available to the supporters of child marriages from within and outside the Islamic world.

Chapter Six of the book analyses similarities and differences between the approaches of international law and Islamic law towards the rights of children. Dr Munir dispels the impression that international law is secular in its nature; hence, he encourages Muslim states

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<sup>14</sup> Ibid 82-83.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid 67-69.

<sup>17</sup> Ibid 69.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid 97-98.

<sup>20</sup> Ibid 98-102.

<sup>21</sup> Ibid 102-107.

<sup>22</sup> Ibid 114.

<sup>23</sup> Ibid 130–134, 127–128.

<sup>24</sup> Ibid 143–147.

to engage with it.<sup>25</sup> He argues that Muslim states could enter any international treaty provided it satisfies two conditions: first, it is not against the interests of Muslims, and second, it is not in violation of injunctions of Islam.<sup>26</sup> With particular reference to the Convention on the Rights of the Child (“CRC”), the author is generally appreciative of the vast domain of convergence between international law and Islamic law, e.g., the principle of best interest of child, the recognition of *Kafala* under the CRC, elimination of all forms of exploitation, rights of refugee children etc. However, there are some areas where Dr Munir notes divergences between both the systems, such as the notion of illegitimacy and lineage under Islamic law, the rights of the fetus under Islamic law, and freedom of religion when interpreted in absolute terms under CRC. The author aptly points out that the CRC confines itself to the provision of various rights to the children, but conspicuously keeps silent on the corresponding responsibilities of the children towards their parents which have found specific mention under Islamic law.<sup>27</sup> Muslim states have brought many reforms, legislative and otherwise, for realising the rights of children in line with international law, but still much is needed to be done. Dr Munir concludes that it is not only the lack of necessary resources that hinder bringing about requisite transformations at institutional and structural levels by Muslim states, but also the lack of political will.<sup>28</sup>

Chapter Seven of the book deals with the concept of guardianship under Islamic law which is divided into *hadanah* and *wilayah*. Dr Munir explains that the first is basically a female-oriented function that involves nursing, caring of a child physically as well emotionally, etc., and the second is a male-oriented task that is related to taking care of the personal affairs of a child, such as education and marriage.<sup>29</sup> This categorisation assumes the preference of one gender over another for maintaining immediate and long term affairs of a child. There are some tasks which could only be performed by one gender, such as suckling, but sweeping many with the same stick echoes gendered structure of Islamic law. This chapter further elucidates the detailed rules and differences among various schools of thoughts on the custody of children, their suckling and its compensation.

Chapter Eight of the book analyses the role of Pakistan and Jordan in the protection of children. It notes that various legislative measures have been adopted in both countries with an aim to protect the rights of children. Anyhow, both have not yet evolved “ideal legislation for child protection based on Islamic law”.<sup>30</sup> Pakistan has not yet synchronised the age of child up to 18 years for male and female, and its criminal laws have an even lower yardstick for culpability.<sup>31</sup> There are many areas in which we find apparently effective legislative arrangements for the protection of children, such as child marriage, sexual exploitation, child labor, etc. However, such laws are not thoroughly implemented.<sup>32</sup> Dr Munir extorts the Muslim states for the enactment of suitable legislative measures for children’s protection and their efficacious implementation, in addition to encouraging NGOs to extend their helping hand for

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<sup>25</sup> Ibid 152.

<sup>26</sup> Ibid 157.

<sup>27</sup> Ibid 160.

<sup>28</sup> Ibid 166.

<sup>29</sup> Ibid 167.

<sup>30</sup> Ibid 187.

<sup>31</sup> Ibid 179, 182.

<sup>32</sup> Ibid 186.

training and support.<sup>33</sup> The last part of the book is titled, “Conclusion and Recommendations” which summarises the main findings of all the previous chapters.

### **Conclusion**

Dr Munir’s “Rights of the Child in Islam” is a noteworthy contribution to the field of knowledge that has not attracted that level of attention by academia which it deserves. Hopefully, this pioneering book would encourage many to conceive academic projects in this neglected field and contribute on topics that call for more rigorously focused studies such as illegality of abortion under Islamic law, and the rights and status of a fetus under Islamic law.

The book under review possesses many merits. It has given a jolt to the parent centric approach generally followed in Muslim states for the protection and promotion of children and brought the states into centre stage by highlighting their responsibilities under domestic as well as international law. Such a shift is not only required under Islamic dispensation rather warranted by its foundational sources. Furthermore, the same is in line with international law. Another noteworthy feature of the book is its demystification of adoption under Islamic law, the actual age of Aisha at the time of her marriage with the Prophet Muhammad and the position of Islamic law on FGM. In short, this book will find its admirers from amongst the legal fraternity, including lawyers, judges, and students, and all those interested in the interaction of Islamic law and international law in contemporary Muslim state dispensation.

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<sup>33</sup> Ibid 188.