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CHILD LABOR UNDER ISLAMIC LAW (THE *SHARI'AH*): AN OVERVIEW¹

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Abstract

Child labor is a serious world phenomenon that affects child's rights. In general, child labor reflects any form of child employment whether it is hazardous or not-hazardous to children's welfare. Millions of children are working around the world in order to assist their destitute family, or themselves. It is so unfortunate that many are also forced to involve in dangerous employment like armed forces, drug trafficking and sexual exploitation. This clearly violates children rights especially the right to receive kind treatment, maintenance, good health and education. In Islam, children are regarded as bounties from Allah the Almighty and should be loved and cherished. This paper examines an Islamic overview on child labor and how children should be protected. Our analysis extends to certain means that Islamic law may offer to further protect children from labor. For that purpose, the analysis will involve examination on Islamic perspectives on the role of the government in combating child labor and what are the preventive measures that may be undertaken in order to prevent child labor.

Keywords: Child Labor, Child Protection, Child's Rights, Islamic Law, International Legal Framework

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Introduction

Child labor is a global issue that is prevalent throughout the world. Research reveals that about ninety percent of child employment can be categorized as child labor.² According to the World Report on Child Labor, around 168 million children remain caught in child labor.³ Child labor is much higher among boys than girls for the 5-17 years age group as a whole, with 99.8 million boys versus 68.2 million girls.⁴ Protection of children from child labor is recognized and emphasized by many International Legal Frameworks. To mention a few, International Labor Organization Convention No.138 on the Minimum Age 1973 (ILO 138) provides for minimum age of labor and call all State Members to provide for minimum age of labor in their State Laws. International Labor Organization (ILO) Convention No.182 on the Worst Forms of Child Labor 1999 (ILO 182) compliments the ILO 138 by emphasizing the worst forms of Child Labor requiring priority action. The United Nations Convention on the Rights of the Child 1989 (UNCRC) highlights that the government should protect children from work that is dangerous or might harm their health or their education.⁵ Similarly, the African Charter on the Rights and Welfare of the Child 1999⁶ and the Covenant on the Rights of the Child in Islam 2004 (the CRCI).⁷

What Is Child Labor

A general understanding on child labor may reflect an employment that is not necessarily bad for children. This can be described as light

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² See Faraaz Siddiqi Harry Anthony Patrinos, “Child Labor: Issues, Causes and Interventions”, *Human Resources and Operations Policy Department and Education and Social Policy Department*, (no date) 1 & 2.

³ *World Report on Child Labor 2015: Paving the Way to Decent Work for Young People*, International Labor Office. (Geneva: ILO, 2015), 15.

⁴ International Labor Organization (ILO), *Global Estimates And Trends 2000-2012, Making Progress Against Child Labor*, International Labor Office, (2013), 18.

⁵ See the UN Convention on the Rights of the Child 1989, Article 32 (1).

⁶ See the African Charter on the Rights and Welfare of the Child 1999, art. 15.

⁷ See Covenant on the Rights of the Child in Islam 2004, art 18(1).

work that is not dangerous and does not interfere in the child's schooling or childhood activities.⁸ Such a job might be necessary for the purpose of helping a destitute family or lending a hand in the case where the family might carry a business. Nevertheless, it seems that the term 'child labor' is defined beyond the above understanding. UNICEF in its handbook defines Child Labor as 'forms of employment or unpaid work that violate the rights of children and should be prohibited'.⁹ The Worst Forms of child labor Convention 1999 (ILO 182)¹⁰ defines the 'worst forms of child labor' to include among others slavery or similar practices such as the children sale and trafficking, forced labor who include those who are recruited for use in armed conflict, child prostitution and pornography, child use for drug trafficking and any work that is likely to harm the health, safety or morals of the children.

The UNCRC while addressing protection of children from child labor provides among others that "States Parties of the UNCRC recognize the child's right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".¹¹ A similar provision is provided under the African Charter on the Rights and Welfare of the Child 1999.¹² In addition, the Covenant on the Rights of the Child in Islam 2004 (the CRCI) also protects children from child labor as it provides inter alia that "no child shall exercise any risky work or work which obstruct his or her education or which is at the expense of his or her health as well as physical or spiritual growth".¹³

For that purpose, the International Conventions further urge State Members to identify and determine certain age of working that

⁸ See for example UNICEF, "Child Protection: A handbook for Parliamentarians, 2004", 140. Available online at www.ipu.org/pdf/publications/childprotection_en.pdf. Retrieved 30th December 2015.

⁹ *Ibid*, at 140.

¹⁰ No 182.

¹¹ See the UN Convention on the Rights of the Child, art 32(1).

¹² See the African Charter on the Rights and Welfare of the Child 1999, art. 15.

¹³ See Covenant on the Rights of the Child in Islam 2004, art 18(1).

is recognized by the law.¹⁴ The ILO 138 also emphasized on State Members to undertake certain policy on abolition of Child Labor by raising progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.¹⁵ While the ILO 182, the CRC and the CRCI goes further by stipulating its State Members to also fix working conditions and hours and imposes sanctions to the States that contravene the provision.¹⁶ In pursuant to that, the ILO 138 has specified a general age of child labor to be determined by State Members which is shall not less than 15 years old except in such States whose economy and educational facilities are insufficiently developed. In those State Members, the minimum age of employment is fourteen years old.¹⁷

In Malaysia, Children and Young Persons (Employment) Act 1966,¹⁸ defines a child as ‘any person who has not completed his fifteenth year of age or of such age as the *Yang di-Pertuan Agong* may, by notification in the Gazette prescribe’.¹⁹ The Act does not encourage the employment of children,²⁰ but permits with some exceptions.²¹ The Act also provided the days and hours that the child can work.²²

Based on the above discussion, there are two main forms of child labor, namely non-hazardous child labor and hazardous child labor.²³ Non-hazardous child labor is referring to underage employment that affects the child’s rights to education and other

¹⁴ See for example the UN Convention on the Rights of the Child, art 32(2), Covenant on the Rights of the Child in Islam 2004, art 18(2).

¹⁵ See ILO Minimum Age Convention 1973, no. 138, art. 1. See also the CRC, art. 32 (2a).

¹⁶ See the ILO 182 (4(172), the CRC, art 32(2 b&c) and the CRCI, art 18(2).

¹⁷ See ILO 138, art 2(3&4).

¹⁸ Act 350.

¹⁹ Children and Young Persons (Employment) Act 1966, (Act 350), section 1A (1).

²⁰ Section 2(1): No child or young person shall be, or be required or permitted to be, engaged in any employment other than those specified in this section.

²¹ Section 2(2).

²² Section 4.

²³ See UNICEF, Child Protection, p.141; See also *World report on Child Labor 2015: Paving the way to decent work for young people* (Geneva: International Labour Office, 2015), 8.

childhood activities. Hazardous child labor refers to forms of child labor that is dangerous by nature which including the nature of work or activity itself.²⁴ This kind of child labor includes worst forms of child labor as described by ILO 182, which is all forms of work by its very nature and circumstances is likely to harm the health, safety or morals of children.²⁵

Child Labor under Islamic Law

Islam regards a child as a delicate person and therefore is entitled to receive protection. A child is not a subject of abuse and harm. In order to protect the interest of children, Islamic law outlines detailed rights of children to be fulfilled by parents, adult, society or government. Those rights are determined from the day the child is conceived. More importantly, Islam has never recognized any form of abuse or harm to be inflicted upon a child as one hadith of the Prophet (S.A.W) states to the effect, “He who did not show tenderness (mercy) to the young ones and respect to the elders is not from us”.²⁶

Definition of a Child

The Muslim jurists who include the Shafi'i and the Hanafi generally define a child as a person who is under the age of puberty.²⁷ The Shafi'i also defines a *mukallaf* person as a person who is sane and

²⁴ See UNICEF, Child Protection, p.142.

²⁵ International Labor Organization (ILO) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, 1999 (No. 182), art. 3.

²⁶ Tirmithi, M., hadith 1913.

²⁷ Jalal al-Din 'Abd al-Rahman al-Suyuti, *al-Ashbah wa al-naza'ir fi qawa'id wa furu' fiqh al-Shafi'iyyah*, Ed. Taha 'Abd al-Ra'uf & 'Imad al-Barudi (Cairo: Dar al-Bayan al-'Arabi, n.d.), 387; al-Khatib al-Syarbini al-Syafie, Syamsu al-Din Muhammad bin Ahmad, *Mughni al-Muhtaj ila Ma'rifah Ma'ani Alfaz al-Minhaj*, 1st Edition, vol. 2 (Beirut: Dar al-Kutb al-Ilmiyyah, 1994), 332; al-Tahtawi al-Hanafi, Ahmad bin Muhammad bin Ismail, *Hasyiah al-Tohtowi 'ala Muraqi al-Falah Syarh Nur al-Idoh*, 1st Edition, vol. 1 (Beirut: Dar al-Kutb al-Ilmiyyah, 1997), 720; Ibn Abidin bin Muhammad Amin bin Abd al-Aziz Abidin Al-Damsyiqi al-Hanafi, *Radd al-Muhtar 'ala al-Dar al-Mukhtar*, 2nd Edition, vol. 2 (Beirut: Dar al-Fikr, 1992), 361.

attains the age of puberty. This, therefore, indicates that a *mukallaf* person is not a child.²⁸ According to Maliki jurists, a child means a person who has no capability for his interests including of his expenses and his meals.²⁹ The Muslim jurists from the four Sunni school of law unanimously agree that the puberty of a child is attained when there is a manifestation of certain natural symptoms or in the absence of natural symptoms, age can be considered as puberty indication. The natural symptoms that indicate puberty as agreed upon by the Muslim jurists include sexual dream (in a boy), menstruation and pregnancy (in a girl).³⁰ As regards age, if natural symptoms do not appear, majority of the Muslim jurists including the Shafi'i, the Hanbali, Abu Yusuf and Muhammad of the Hanafi, one report attributed to Imam Abu Hanifah and some of the Maliki are of the view that the age of puberty with respect to both a boy and a girl is upon the completion of his/her fifteen years of lunar year.³¹ Their argument is based on the *Sunnah* of the Messenger of Allah (S.A.W) where Ibn 'Umar narrated that, "The Messenger of Allah (S.A.W) inspected him on the day of *Uhud* while he was fourteen years old, and the Messenger of Allah did not allow him to take part in the battle. He was inspected again by the Messenger of Allah on the day of *Khandaq* (the battle of the trench) while he was fifteen years old, and the Prophet allowed him to take part in the battle".³² The hadith apparently indicates that at the time when Ibn 'Umar is disallowed by the Messenger of Allah (S.A.W) to go out for *jihad* because he has

²⁸ Abu Bakar Mashyur bi al-Bakri Osman bin Muhammad Shata al-Dimyati al-Syafie, *I'nanah al-Talibin ala Hil Alfaz Fath al-Mu'in*, vol. 4 (Beirut: Dar al-Fikr lil Toba'ahwa al-Nasyrwa al-Tauzi', 1997), 8.

²⁹ Muhammad bin Ahmad bin 'Urfah al-Dasuqi al-Maliki, *Hasyiah al-Dasuqi 'ala al-Syarh al-Kabir*, vol. 4 (Beirut: Dar al-Fikr, n.d), 124.

³⁰ Apart from the above mentioned, there are more natural symptoms that indicate puberty in which Muslim jurists are in disagreement such as, the growth of hair on private part of boy or girl, the growth of the breast with respect to the girl and so on. See Ibn 'Abidin, Vol. 6, 153; al-Khurashi, Vol. 5, 291; al-Nawawi, *Rawdat al-Talibin*, Vol. 3, 412-413; al-Bahuti, Vol. 3, 444.

³¹ Ibn 'Abidin, Vol. 6, 153-154; al-Hattab, Vol. 5, 59; al-Shirazi, Vol. 1, 435; al-Bahuti, Vol. 3, 443-444.

³² Al-Bukhari, Sahih Kitab: *al-Maghazi* (Military Expedition led by the Prophet), Chap. The *Ghazwat* of *al-Khandaq* which is called *al-Ahzab* battle. ; Muslim, *Sahih*, Book on Government (Kitab: *al-Imarah*), Chap. The age of majority.

not attained the age of puberty and, later on, he is allowed because he has attained the age of puberty.³³ Another reason is that the ground or the basic obligation or responsibility of a person under Islamic law is the intellectual faculty, i.e. the capability of a person to understand the law that is addressed to him and the law makes the sexual dream as the measure for the perfection of the mind. Normally, the sexual dream is not delayed past fifteen years of age. In the case of where a person who does not experience the sexual dream prior that age, it is understood that there might be something wrong with his physical development, but that may not affect his intellectual faculty.³⁴

On the other hand, according to Abu Hanifah, the age of puberty with respect to a boy is the completion of eighteen years and with respect to a girl is the completion of seventeen years.³⁵ His argument is based on the verse of the Qur'an, "And come not nigh to the orphan's property except to improve it until he attains the age of full strength..."³⁶ The full strength of the boy is eighteen years as based on the report from Ibn 'Abbas. The difference is one year with respect to the girl since her development and understanding is faster than a boy so that one year is reduced from a boy.³⁷ The dominant view of the Malikis also agrees with the view of Imam Abu Hanifah that the age of puberty is the completion of eighteen years however they make no difference between a boy and a girl.³⁸

This age of majority under the Maliki school of law is consistent with the age of majority under the CRCI and the CRC.³⁹ Nevertheless, so far, there is no age of employment provided under Islamic law whether provided in Qur'anic provisions or hadith of the Prophet (S.A.W) discussed by the jurists. Nevertheless, Islamic law also works on the concept of public interest (*maslahah*). In the absence of the provisions in the Qur'an and Sunnah of the Prophet (S.A.W), the law can be based on *maslahah* and is guided by the general aims of the *Shari'ah*, i.e. to secure benefit to the people and

³³ See al-Māwardī, Vol. 8, p. 11. See also al-Tuuri, Vol. 8, 85.

³⁴ Al-Kasanī, Vol. 7, 172.

³⁵ Al-Marghīnānī, Vol. 3, p. 284; al-Zayla'i, Vol. 6, 275-276.

³⁶ Al-Qur'ān, Sūrah *al-An'ām* : 152.

³⁷ See al-Marghīnānī, Vol. 3, pp. 284-285. ; al-Zayla'i, Vol. 6, 277.

³⁸ 'Ulaysh, Vol. 6, 87. ; al-Khurashī, Vol. 5, 291.

³⁹ See CRC and Covenants on the Rights of the Childs in Islam, part. 1.

to repel harm that might inflict them. In child labor context it is to protect the interest of children as the job might cause harm to them. On the other hand, the issue might be relevant to the child labor is also whether the child is fit to work.

Child Labor in the Quran and the Sunnah

The Qur'an and hadith as the main sources of Islamic law do not expressly provide provisions on child labor or child employment as well as any prohibition on child employment that does not affect their welfare. Nevertheless, there are several hadith of the Prophet (S.A.W) that seem to indicate that a child especially a discerning child may provide certain service to assist his in need parents. For example, in a hadith of the Prophet (S.A.W) narrated by Abu Hurairah: "It is reported from Abu Hurairah that a woman came to the Prophet (S.A.W) and asked; O messenger of Allah, my husband wishes to go away with my son while he did me some services. Then the Prophet (S.A.W) said to the boy; this is your father and this is your mother. Take the hand of either of them whom you like. Afterwards, the boy caught the hand of his mother and she went away with him".⁴⁰

The above hadith was referred by the *fuqaha* in discussing the right of the child to choose with whom he will stay when his parents got divorced. This hadith also indicates that when a child is at the age that he can deliver certain services for the mother, he is allowed to choose between the mother and the father. This age was translated by the *fuqaha* as to refer to the age of discernment (i.e. 7 years old). Nevertheless, further analysis might also disclose that services that can be rendered by the child for the benefit of the mother is not necessarily an employment for certain financial return.

In another hadith, it was reported that the Prophet (S.A.W) had undergone a bruising (*hijam*) operation with a child and then the Prophet gave a wage to the child.⁴¹ Nevertheless, the Muslim jurist when interpreting the hadith commented that the wage that the Prophet gave to that child was because the child was very poor.⁴²

⁴⁰ Abu Dawud, *Sunan*, Vol.2: 2270.

⁴¹ Reported by Ibn Majah, no 2164

⁴² Syaikh Muwafiquddin Ibnu Qudamah, *Al-Mughni*, vol. 8, *muhaqqiq* Abdullah bin

It seems so far that these are the only authorities that show Islamic law permits a child to work for assisting his family and because of poverty or destitution. This kind of job seems to be practical for the purpose of supporting the child own life and helping the family. This idea seems to be in conformity with International definition of child labor that only bans employment that is detrimental to the child's welfare and interest.

Islam Against Child Labor: Several Islamic Principles that Protect Children from Child Labor

Apart from the limited hadith that describe and discuss matters related to child labour, there are many provisions that indicate subjecting children to harm is prohibited. This is conformance to the aims of Islamic law (*maqasid al-shari'ah*), which is to preserve the benefit of the human being and to remove any hardship that might inflict on them. This is clearly stated in the Qur'an; "He has chosen you and has imposed no difficulties on you in religion".⁴³ In another verse, the Qur'an further states that, "Allah intends every facility for you, He does not want to put you in difficulties (hardships)"⁴⁴ and "on no soul does Allah place a burden greater than it can bear"⁴⁵.

The above verses show that Allah the Almighty when imposing certain religious duties does not intend hardship on human beings. This principle therefore, also reflects that Allah dislikes any kind of hardship that is imposed by human beings on another human being. It follows that a Muslim is forbidden to impose difficulties or hardship on another person.⁴⁶

Child labor as described by the International Conventions reflects harm, hardships, difficulties and abuse on children's rights and welfare. Therefore, based on the above verses, such hardship and difficulties imposed on children are not recognized in Islam. It

Abdul Muhsin At-Turki - Abdul Fatah Al-Halw (Dar Alamul Kutub, 1997), 119-120

⁴³ Al-Qur'an, *Al-Hajj*, 22:78

⁴⁴ Al-Qur'an, *Al-Baqarah*, 2:185.

⁴⁵ Al-Qur'an, *Al-Baqarah*, 2:286.

⁴⁶ See also UNICEF, "Children in Islam - Their Care, Development and Protection," *Al-Azhar University International Islamic Center for Population Studies and Research* (2005), 67

follows that Islamic law employs several other principles and concepts that show that child labor has no place in Islam. For example, the status of legal capacity of a child to perform an obligation. Furthermore, Islamic law protects and safeguards child's rights and welfare which include child's rights to maintenance, child's rights to education, child's rights to kind treatment, child's rights to love and affection and child's rights to health. Such rights that are outlined by Islamic law prove that Islamic law is against child labor as defined by international legal instruments.

Concept of Legal Capacity (*Ahliyyah*) under Islamic law as a Manifestation of a Child's Fitness to Receive Rights and to Perform Obligations

Legal capacity of a child to receive rights and to perform obligations under Islamic law is based on the concept of *ahliyyah*. This is to signify the human capacity and fitness to perform and hold certain social and religious obligations. Literally, *ahliyyah* denotes aptitude, fitness, competence validity, authority, and qualification, which collectively connote the human ability and quality to perform certain duties diligently.⁴⁷ Abdul Karim Zaydan defines *ahliyyah* as to mean the "eligibility to hold duty and the validity of having legitimate rights".⁴⁸ Al-Zarqa defines *ahliyyah* as "a description presumed in a person rendering such a person a possible candidate to receive a legislative injunction".⁴⁹ Al-Sabouni defines it as "the ability of a person to oblige, be obliged and conduct one's affairs by oneself".⁵⁰ The Hanafi jurists divide *ahliyyah* into two kinds: the capacity for the inherency of rights and obligations (*ahliyyat al-wujub*) and capacity for the exercise of rights and the discharge of obligation (*ahliyyat al-ada*).⁵¹ The former may be described as receptive and the latter

⁴⁷ Hans Wehr, *A Dictionary of Modern Written Arabic -Arabic-English*, (London: Macdonald & Evans LTD, 1974), 33.

⁴⁸ Abdul Karim Zaydan, *al-Wajiz fi Usul al-Fiqh* (Beirut: Mu'assasat al-Risalah, 2001), 280.

⁴⁹ Ahmed M. Al-Zarqa, *Al-Madkhal Al-Fikh Al-'am*, 6th edn., vol.2 (1959), 733.

⁵⁰ Abd Al-Rahman Al-Sabouni, *Al-Madkhal Lidirasat Al-Fiqh Al-Islami*, 4th edn., vol. 2 (1978), 24.

⁵¹ 'Ali ibn Muhammad al-Bazdawī, *Usul al-Bazdawi* (Karachi, Pakistan: Mir Muhammad Kutub Khanah, n.d.), 324; M. A. Abdur Rahim, *The Principles of*

as the active legal capacity.⁵² Again, these two kinds of legal capacity may be perfect and imperfect⁵³ owing to the different stage that human life passes through which starts from fetus till the stage of intellectual maturity.

Under Islamic law, a child under the age of puberty undergoes two different stages; undiscerning child from birth until the age of discernment (*mumayyiz*) and discerning child, from the age of discernment until the age of puberty. Al-Sarakhsi from the Hanafi school has fixed the age of seven years as the age of discernment.⁵⁴ This is also supported by Muslim scholars who have fixed certain periods for the undiscerning child that begins as soon as the child is born and ends when he reaches the age of seven.⁵⁵ This is based on the *Sunnah* of the Prophet (S.A.W): “Command your children to pray when they become seven years old, and beat them for it (prayer) when they become ten years old, and arrange their bed (to sleep) separately”.⁵⁶ The purpose of the commandment here is for accustoming the child to pray (performing *solat*). That is to say, a child is not commanded to perform *solat* until he has reached the age of discernment.⁵⁷ The child after the age of seven years until puberty is known as a discerning child. According to Muhammad al-Zuhayli, a discerning child is a child who has reached a certain age which enables him to differentiate in general the meaning of the words of

Islamic Jurisprudence, 2nd Revised Edition (New Delhi: Kitab Bhavan, 1994), 206.

⁵² Abdur Rahim, *The Principles of Islamic Jurisprudence*, 206. ; Ahmad Hasan, *The Principles of Islamic Jurisprudence: The Command of the Shari'ah and Juridical Norm*, vol. 1 (Islamabad: Islamic Research Institute, 1993), 296.

⁵³ Al-Bazdawi, 324-326; See Zaydan, *al-Madkhal*, 262. And see also Ahmad Hasan, *The Principles of Islamic Jurisprudence . . .*, 301-308.

⁵⁴ Al-Sarakhsi, Vol. 24, p. 162. See also Badruddin bin Hj Ibrahim “The Concept of al-Wisayah with Special Reference to the Administration of A minor’s Poperty under Islamic Law and The Enacted Islamic Law in Malaysia,” (PhD thesis, International Islamic University Malaysia, 2006).

⁵⁵ Al-Khafif, *Ahkam al-Mu'amalat al-Shar'iyyah . . .*, 241; Shalabi, *al-Madkhal . . .*, 493. See also Badruddin bin Hj Ibrahim, “The Concept of al-Wisayah . . .

⁵⁶ Abu Dawud, Sunan, Kitab: al-Salat, Chap. In what age a boy should be command to pray.

⁵⁷ Al-Kurdi, 16.

the contract, know its purpose as according to the custom and understand the basis of the transaction in general.⁵⁸

The Muslim jurists are unanimous on the fact that a discerning child possesses a perfect receptive legal capacity (*ahliyyat al-wujub al-kamilah*). This is because the basis of the existence of this legal capacity is life itself.⁵⁹ Hence, an undiscerning child can receive all rights to which he is entitled to, for instance, he is entitled to own the property which is purchased for him or given to him as a gift. At the same time, he is subject to certain legal obligations which can be discharged by him through his legal deputy. Most of the cases are concerned with his property, for instance, maintenance to the poor among his near relatives, liability for losses and payment of the price of the property purchased on his behalf.⁶⁰ It follows that the active legal capacity is not completely established in an undiscerning child since the basis of this legal capacity is discernment and intellectual maturity. Accordingly, the undiscerning child is not fit for the issuing forth of all kinds of the dispositions and contracts. Besides that, he is not bound to perform any acts of worship such as prayer and fasting. And lastly, he is not subject to any physical punishment or any other type of punishment.⁶¹ During this period, a guardian is a person who acts on his behalf as deputy for the purpose of protecting, administering and disposing of his property according to the limitation prescribed by Islamic law.⁶²

As regards to the discerning child, the majority of Muslim jurists view that the legal capacity is established in the discerning child, besides a perfect receptive legal capacity, an imperfect legal capacity (*ahliyyat al-ada' al-naqisah*). The reason is that, although the minor in this stage is endowed with the faculty of intellect, but it is still defective and weak. This makes him competent to dispose of only some kinds of disposition.⁶³ With regard to the performance of

⁵⁸ Muhammad al-Zuhayli, p. 142.

⁵⁹ Al-Kurdi, 16. ; al-Khafif, *Ahkam al-Mu'amalat al-Shar'iyah*, 236 & 241.

⁶⁰ See al-Kurdi, 17; Muhammad al-Zuhayli, 139-141.; Zaydan, *al-Madkhal . . .* , 263.

⁶¹ Muhammad al-Zuhayli, 139; al-Zarqa', vol. 2, 752-753.

⁶² Al-Khafif, *Ahkam al-Mu'amalat al-Shar'iyah . . .* , 241; al-Shalabi, *al-Madkhal . . .* , 493.

⁶³ See al-Kurdi, 18-19; al-Khafif, *Ahkam al-Mu'amalat al-Shar'iyah . . .* , 242;

religious worship such as prayer (*solat*) and fasting, it is held valid, but it is not binding on him like an adult.⁶⁴ In addition, a child's action (sinful act) is not recorded until he attains the age of puberty. In addition, A'ishah reported that the Prophet (S.A.W) as saying:

“There are three (persons) whose actions are not recorded: a sleeper till he awakes, an idiot till he is restored to reason, and a boy (minor) till he reaches puberty”.⁶⁵

Ahliyyah al-ada' al-kamilah is the final stage where the child at this stage attained his intellectual faculty, he becomes an adult. At this age, he is fit to bear duties and responsibilities. With this capacity also, a person is fit to perform all jobs that cannot be done by a minor and can be held accountable for his doings. At this stage also, Islamic law imposes him with certain Islamic obligations like prayer (*solat*), fasting, payment of alms giving and pilgrimage as well as other religious obligation.⁶⁶

The concept of *ahliyyah* under Islamic law reflects that a child who is under the age of puberty has no perfect human capacity and intellect. Islamic law does not impose any obligatory duty on a child due to his imperfect legal capacity. This can also be understood and analogous that a child is not fit for any kind of employment or to earn a living. What more a dangerous work which totally affects his best interest and welfare.

An Overview on Protection of Child's Rights under Islamic law as a Manifestation that Islamic law Against Child Labor

As Islamic law guarantees protection of the child rights, the idea of child labor as defined earlier is clearly rejected. Islamic law protects

Muhammad al-Zuhayli, 142.

⁶⁴ Al-Zarqa', vol. 2, 762; al-Kurdi, 20.

⁶⁵ Abū Dāwud, *Sunan*, Kitāb: *al-Hudūd* (Book of prescribed punishment), Chap. On lunatic who commits theft or a crime to which the prescribed punishment applies; al-Tirmidhī, *Sunan*, Kitāb: *al-Hudūd*, Chap. On person who is not liable for punishment.

⁶⁶ Abdurezak A. Hashi and Bashiir A, “Human Capital Development from Islamic Perspective,” (presentation, International Conference on Human Capital Development, UMP Kuantan Pahang, Malaysia, May 25-27, 2009), 3

the rights of the child as early as the day the child is conceived. Those rights include fundamental rights like right to life, right to education, right to good name and identity, right to profess a religion, right in family relationship namely; right to lineage, right to care and upbringing, right to maintenance, and right to be protected from harm. The emphasis of protection of such rights can be referred to the practice of Saidina ‘Umar al-Khattab, the second Caliph after the death of the Prophet (S.A.W) to the effect;

“One day a man came to Umar ibn al-Khattab to complain of a disobedient son. So Umar had brought the boy to him and he blamed him for his disobedience. Then the boy addressed Umar by saying, ‘O Commander of the faithful: Are there no right for a boy against his father?’ Umar said “Yes”. Then the boy said ‘What are these rights O Commander of the Faithful?’ Umar said, ‘To choose a good mother for him, to select a good name to him and to teach him the Qur’an. Then the boy said: ‘O Commander of the faithful; my father has not accomplished any of these rights. As for my mother, she was a black slave for a Magian; as for my name, he has named me *Jual* (beetle); and he has not taught me even one letter from the Qur’an. Then Umar turned round to the man and said ‘You came to me complaining disobedience on the part of your son, whereas you have not given him his rights. So you have made mistakes against him before he had made mistakes against you.”

In relation to child labor, Islamic law protects children through imposing duty to provide maintenance on the father. The basic scope of maintenance includes food, shelter and clothing.⁶⁷ Father’s duty to

⁶⁷ For further reading, see 'Abd al-Karim Zaydan, *Al-Jami' fi al-Fiqh al-Islami: Al-Mufassal fi Ahkam al-Mar'ah wa al-Bayt al-Muslim fi al-Shari'ah al-Islamiyyah*, vol. 10, 4th edition (Muassasah al-Risalah Nashirun, 2012/1433AH), 162-165. See also Badruddin Hj Ibrahim & Azizah Mohd “The Child's Right to Maintenance: the Extent of the Family's Responsibilities in Islamic Law and According to Family Law Provisions of Muslim Countries,” *Journal of Arab Law Quarterly* 25 (2011): 401-422.

provide maintenance to children is clearly mentioned in the Qur'an.⁶⁸ There is also hadith of the Prophet (S.A.W) that gave permission to Hindun to take the property of the husband (Abu Sufyan) in secret for the purpose on maintaining herself and her children.⁶⁹ The permission of taking the father's property in secret for the purpose of children's maintenance further emphasized that fulfilling such a duty to maintain is very important so that children's rights will be safeguarded. Therefore, where a father fulfills such a duty to maintain his family, the issue of child labor will not arise. As regards to the responsibility of a father, the Prophet in a hadith stated that;

“Every one of you is a guardian and every one of you is responsible (for his wards). A ruler is a guardian and is responsible (for his subjects); a man is a guardian of his family and responsible (for them); a wife is a guardian of her husband's house and she is responsible (for it), a slave is a guardian of his master's property and is responsible (for that). Beware! All of you are guardians and are responsible (for your wards)”.⁷⁰

The above hadith reflects that responsibility to provide maintenance of children falls on a guardian who can be a father, relative, foster father or government. Therefore, in the absence of a father or individual guardian, government has to play the role of providing maintenance to parentless children. This is also based on the hadith of the Prophet (S.A.W) that state to the effect ‘the Sultan (head of State) is the guardian for those who have no guardian’.⁷¹

A child's right to education is another right guaranteed by the Islamic law. Apart from basic scope of maintenance, a father or guardian is obliged to provide religious and non-religious education to his children.⁷² For a religious education, it is generally based on

⁶⁸ *Qur'an, Surah al-Baqarah* 2:233 and *al-Talaq*, 65:7.

⁶⁹ *Sahih Muslim, hadith* relating to Hindun's case, vol.3:1714: 1338; *Sahih Al-Bukhari*, vol.3: 2211, 79.

⁷⁰ *Sahih Al-Bukhari*, vol.7, hadith 5188: 26.

⁷¹ Reported by al-Tirmidhi, Muhammad ibn 'Isa ibn Sawrah ibn Musa ibn al-Dahhal al-Tirmidhi, *Sunan al-Tirmidhi*, Kitab al-Nikah 'an Rasulullah saw Bab: Ma Jaa Li Nikah Illa bi Wali, (Bayrut: Dar al-Gharb al-Islami, 1998), vol. 2, 398.

⁷² Zaydan, *Al-Mufasssal fi Ahkam al-Mar'ah*, vol. 10, 113-129.

the verse of the Qur'an to the effect that a father or a guardian is obliged to guard his family from the punishment from hell fire.⁷³ Islam also emphasized on the importance of education through reading. This is evident when Allah the Almighty sent the message to mankind through the Prophet (S.A.W), on the first revelation, with the commandment to read.⁷⁴ The Prophet (S.A.W) was also reported to have said in a hadith, "A father gives his child nothing better than a good education".⁷⁵ The emphasis upon the importance of seeking knowledge can also be found in one hadith of the Prophet (S.A.W) states that, "Seek knowledge even if it be in China",⁷⁶ and a hadith narrated by Anas bin Malik to the effect, "Whoever goes out seeking knowledge, then he is in Allah's cause until he returns".⁷⁷

Accordingly, the Islamic law also promotes treatment of children with kindness. This is based on general understanding on the verse of the Quran that expressly enjoins human being to help one another in kindness and piety.⁷⁸ The Prophet also stated;

"He who helped in alleviating suffering of a believer from the distress of the world, Allah would relief him from distress of the day of Resurrection. He who makes things easy for one who is hard pressed, Allah will make things easy for him in both in this world and the hereafter, and he covers (the failing of) a Muslim, Allah would provide him covering in this world and in the hereafter. Allah would come to help of a servant as the servant had been coming to help his brother..."⁷⁹

⁷³ *Qur'an, Surah al-Tahrim*, 66:6.

⁷⁴ *Qur'an, al-Alaqa*, 96:1-5

⁷⁵ Al-Tirmidzi, Abu Isa Muhammad ibn Isa ibn Surah al-Turmudzi, *Sunan al-Tirmidzi*, (Eqypt: Syarikah Maktabah wa Matba'ah Musthafa al-Baby al-Halaby, 1395H.).

⁷⁶ Ibn Jauzi, Jamal al-Din Abd al-Rahman ibn Ali ibn Muhammad, *Al-Mawdhu'at*, vol. 1 (Al-Madinah: Al-Maktabah Al-Salafiyah, 1386H), 215.

⁷⁷ Al-Tirmidzi, Abu Isa Muhammad ibn Isa ibn Surah al-Turmudzi, *Sunan al-Tirmidzi*, vol.5, hadith 2647 (Eqypt: Syarikah Maktabah wa Matba'ah Musthafa al-Baby al-Halaby, 1395H.), 29

⁷⁸ *Qur'an, Surah al-Maidah*, 5:2.

⁷⁹ Muslim, *Sahih Muslim, kitab al-zikr wa al-du'a wa al-tawbah, bab fadhl al-ijtima' 'ala tilawat al-Qur'an wa al-zikr*, vol. 4 (Dar al-Fikr, n.d.), 233.

The above hadith of the Prophet (S.A.W) also indicates that children should not be harmed or become the subject of abuse and violence but must always be protected.

Furthermore, the Islamic law reminds that the children are to be loved and cherished.⁸⁰ The family and adults must treat children with softness and mercy. This was clearly mentioned by the Prophet (S.A.W) in the hadith: “He who did not show tenderness (mercy) to the young ones and respect to the elders is not from us”.⁸¹ In Islam, our Prophet Muhammad (S.A.W) is the best person and example who always show love and mercy to children. Anas b. Malik reported: I have never seen anyone kinder to one’s family than Allah’s Messenger (S.A.W), and Ibrahim was sent to the suburb of Medina for suckling. He used to go there and we accompanied him. He entered the house, and it was filled with smoke as his foster-father was a brick smith. He took him (his son Ibrahim) and kissed him and then came back. ‘Amr said that when Ibrahim died Allah’s Messenger (S.A.W) said: Ibrahim is my son and he dies as a suckling babe. He has now two foster-mothers who would complete his suckling period in Paradise.⁸² The Prophet is also reported to have said to his grandchild Hassan, “Oh Allah, behold, I love him. Thou too love him and love one who loves him”.⁸³ Prophet’s feeling of mercy to children was also described in another *hadith*, where he was reported to have said, “When I start the prayer I intend to prolong it, but on hearing the cries of a child, I cut short the prayer because I know that the cries of the child will incite its mother’s passions”.⁸⁴ Similarly, the Prophet (S.A.W) was always patient and considerate with children and took great pain not to hurt their tender feelings. This was as narrated by Abu Qatadah Al-Ansari that Allah’s Messenger (S.A.W) was praying and he was carrying Umamah the daughters of Zainab, the daughter of Allah’s Messenger (S.A.W) and she was the daughter of ‘As bin

⁸⁰ M. E. Ahmad, *Rights of Child*, (India: Al-Athar Islamic Centre, Puraveni Haveni, 2011), 20.

⁸¹ Tirmithi, *hadith* no.:1913.

⁸² *Sahih Muslim*, vol.4:2316: p.1808

⁸³ Muslim, ibn al-Hajjaj al-Qusyairi an-Naisaburi, *Sahih Muslim*, vol.4:2421 (Beirut: Dar Ihya al-Turath al-Arabiyy, n.d.), 1882.

⁸⁴ Al-Bukhari, Muhammad bin Ismail bin Ibrahim bin Al-Mughirah bin Bardizbah Al-Ju’fi, *Sahih Al-Bukhari*, vol.1:709 (Dimasyq: Dar Tuq al-Najah, 1422H), 143.

Rabi'a bin 'Abd Shams. When he prostrated, he put her down and when he stood, he carried her (on his neck)".⁸⁵ One narration that describes the Prophet's tolerance towards children is narrated by 'Aishah that the Prophet (S.A.W) took a child in his lap for *tahnik* (i.e. he chewed a date in his mouth and put its juice in the mouth of the child). The child urinated on him, so he asked for water and poured it over the place of the urine.⁸⁶

Protecting the child's right in terms of health is also a vital aspect under the Islamic law. In principle, Islam does not recognize any kind of practices that is harmful to children's health. Such an act does not only affect the child's right physically due to violence but also may affect his health. The Islamic teaching also reminds us on the importance of good health as well as preventing any harm and this is evident when the Qur'an commands the prohibition of consumption of certain unhealthy drink like liquor,⁸⁷ unhealthy food like dead meat (corpse), blood and pork.⁸⁸ In order to save human's health also, Islamic law enjoined fasting one month per year.⁸⁹ Prophet (S.A.W) used to say to the effect that, "For every disease there is cure and if the sick (person) makes use of medication, he will be cured by the will of Allah".⁹⁰ Prophet is also reported to have said that: "Second to faith, no one has ever been given a greater blessing than health".⁹¹ The Prophet (S.A.W) also reminded the Muslims to stay away from vulnerable disease as He said to the effect, "When you hear of epidemic in a land do not go there and if you were there do not go out".⁹² As compared to adult, children are more exposed to disease due to their vulnerability. Therefore, protecting their good health is far more important than protecting good health in adult.

⁸⁵ *Sahih Al-Bukhari*, vol.1, hadith 516: p.109

⁸⁶ *Sahih Al-Bukhari*, vol.8, hadith 6002: p.8

⁸⁷ Al-Qur'an, *Surah al-Maidah*: 5:90-91.

⁸⁸ Al-Qur'an, *Surah al-Maidah*: 5:3.

⁸⁹ Al-Qur'an, *Surah al-Baqarah*: 2:184.

⁹⁰ Al Jauziyyah, M.Q., *al-Ṭibbu an-Nabawi*, (Beirut: Dar-alFikr, n.d.), 8.

⁹¹ Tirmithi, M., Vol.5, hadith 3558.

⁹² Al Jauziyyah, M.Q., *Zadul Mi'ad fi Hadyi Khairul'Ibad*, Vol. 3. (Beirut: Dar-al-Fikr, 1972), 75.

Conclusion

It is interesting to note the words of Imam Ali Ibn al-Husayn, the great-grandson of Prophet Muhammad (S.A.W and the progeny) who was a scholar and most learned man of his time, had written “The treatise on Rights”, among others he quoted several child’s rights i.e. “the right of your child is that you should know that he is from you, and will be ascribed to you, both through his good and through his evil, in the immediate affairs of the world. You are responsible for what has been entrusted to you, such as educating him in good conduct, pointing him in his direction of his Lord, and helping him to obey Him (Almighty God). So act towards him with the action of one who knows that he will be rewarded for good doing towards him, and punished for evil doing”.⁹³ From the above it is clear that by divinely mandated Islamic law, man bears full responsibility for the care and upbringing his children. Those who willfully violate the law will be held accountable, especially on the Day of Judgment.⁹⁴

It is one of the ultimate goals of the *Shari'ah* to protect the interest of human being including children. Islamic law also promotes tenderness, love and kindness to children and this absolutely reflects that children should not be the subject of harm and destruction. As child labor would endanger child's life and affects his best interest, Islamic law will not tolerate such a practice. This is further manifested and expressed by the Covenants of Child Rights in Islam that support this idea. Islamic law does not agree with such idea of causing harm on a child for whatever reason including child labor especially as described by all International Legal Frameworks on the nature of child labor as discussed earlier. A child is fragile and should not be burdened with works especially that might harm him. Furthermore, it is the responsibility of the family and the person who had close relationships with the children to support them even though their parents already died. If the child is an orphan or parentless or without guardian, the responsibility shifted to the government and community. This also reflects that in any circumstances a child

⁹³ Ali Ibn al-Husayn , *The Treatise on Rights*, (Hyderabad: Al-Shaheed Publications, n.d)

⁹⁴ Syed H. Akhtar Austin , *Parents' Responsibility towards Children The Islamic perspective*, (Texas), 2.

should not be the subject of labor but is under the responsibility of adults including the government.



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