Islamic Adoption jurisprudence
التبني بالرضاعة في الفقه الإسلامي

Dr. Hanan A. Sultan

FRCOG, ABOG, IBCLC & MSc
Senior OB/GYN Consultant- Reproductive Genetics & Lactation Consultant
Member of Board Directors Saudi Scientific Society for Medical Jurisprudence Studies SSSMJS
Islamic Adoption jurisprudence
التبني بالرضاعة في الفقه الإسلامي

Dr. Hanan A. Sultan  FRCOG, ABOG, IBCLC & MSc
Lactation Consultant & Member of Board Directors Saudi Scientific Society for Medical Jurisprudence Studies SSSMJS

Dr. Nora Alkharji  PAB, IBCLC
Lactation Leader – IBLCE Coordinator in Saudi Arabia
Adoption in Islam

Definition

✓ Transplantation of a son from the family of his birth into another family who is known as “Adoptive Parents”

✓ Adoption in its legal form is prohibited in Islam
Adoption in Islam

✓ Islam **allowed** persons “Fostering” to cover needy namely orphaned children with protection and financial support.

✓ Can give the parental care and affection to a child without granting him any legal obligations such as inheritance rights or change child's family name and without the severing of family ties.
Islamic Encourages Adoption

✓ Several Hadith encourage adoption & Fostering the Orphans (Kafalat yatim)

✓ Prophet Muhammed Peace be upon him says: “whoever takes care of an orphan will be side by side with him in Paradise”

✓The best household among the Muslims is a household wherein an orphan is treated well. And the worst household among the Muslims is a household wherein an orphan is ill-treated” (Ibn Majah).
Evidence of Islamic Ethics in Adoption

The concept of Islamic ethics in Adoption is different based upon Quran evidence – NOT TRUE SON

Allah has not made your claimed [i.e., adopted] sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] way
Evidence of Islamic Ethics in Adoption

✓ The adoptive parents should leave the names of the Orphans as it is
✓ They are NOT allowed to change or alter the given names

سورۃ الاحزاب ایة ۵: اذْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ ۚ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِنَّ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِی الدِّینِ وَمَوَالِیکُمْ ۙ وَأَحْسِنِ الدَّاْیَةَ ۚ وَاسْتَرْجِعْ عَلَّمَ ۚ

✓ Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you
Islamic Ethics in Adoption

✓ Forbidden robbing a child of his/he identity

✓ The Adopted Child is NOT the couple Son

✓ No Legacy - No Inherit

✓ After Puberty, Child Mature NOT Mahram to couple
What is “Mahram “

✓ The term ‘Mahram' is used to denote a level of relationship between close family members; those with whom the Hijab does not have to be observed.
  - Father & daughter
  - Mother & Son
  - Sister & Brother
✓ Not allowed to married from her / his Mahram
Summary Islamic Ethics in Adoption

✓ The adoptive parents are NOT the biological parents

✓ NOT permitted to hide the identity of the Child’s biological family to anyone by keeping his /her original name

✓ The tie of the child with his biological parents is never severed

✓ Once the adoptive child grown up (mature), Both the adoptive family and the Orphan needs to follow the Islamic role of Hijab

✓ Islam adoption means ‘Kafalat Yatim or Orphans’ It means ‘to Freed’ - to Foster parent relationship
Kinship in Islam

Islamic kinship Relationship

Blood
- Sisters & Brothers

Marriage
- Wife & Husband

Milk
- Wet nurse +/-
  - Induced Lactation
  - Son & Daughter
  - Sisters & Brother
Evidence of Milk Kinship in Islam - Quran

The concept in milk kinship is Based on Quran & Sunnah

Holy Quran Alnissa 4: 23

سورة النساء اية 23 : حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَواتُكُمْ وَعَمَّاتُكُمْ وَخَالاتُكُمْ وَبَنَاتُ الأخ وَبَنَاتُ الأخْتِ وَأُمَّهَاتُكُمُ الْلَّاتِي أَرْضَعْنَكُمْ وَأَخَواتُكُم مِّنَ الرَّضِاءَاَةِ

✓ Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, **your [milk] mothers who nursed you**, your sisters through nursing
Prophet’s Mohamoud peace be upon him says:

“Milk kinship relationship is forbidden exactly as what is forbidden from lineage  (Ibn Quad amah)
Adoption Encouraged
To continue the support and being in a family
To avoid any psychological trauma to the mature Orphans

Established Milk Kinship with the family before he/she completed 2 years
Become their own Son / daughter
Creating a restriction against marriage between siblings who were nursed by the same mother
Adoption By Breastfeeding Induced Lactation Milk Kinship
Milk Kinship Rule in Islam

If a baby (boy or girls) is lactating from a women (In the first 2 years of life & 5x breastfeed) Mahram Relationship Established

Wet nurse become her / his mother by lactation and all children of that mother will become her sisters and brother.

It will be prohibited from marriage of any of that offspring of that women (wet nurse)
Induced Lactation for Milk Kinship

✓ From the earliest times, including the time of Hippocrates, it has been thought that lactation may occur in virgins.

✓ Method of stimulating the production of breast milk in women who have not gone through the pregnancy process (nulligravid, nulliparous and non puerperal women).
Amount of Breastfeeding to be considered as one BF session

✓ Based on the Fatwa of Sheikh Dr. Abdullah al-Muslehy, the **satiating** milk breastfeeds (الاشباع): 120ml of Breast Milk consider as satiating

✓ Direct BF from the mother's breast, will be **calculated** by sucking the breast and then leaving it 7 taking the breath (considered as one breastfeeding session)

Bottle feeding of the expressed BM, well be considered as direct breastfeeding

Exclusive or partial breast milk
Advantages of Adoption By induced Lactation - Milk Kinship

✓ Some cases of infertility particularly those with no hopes e.g (Azospermia) – Absent uterus, may seeking adoption to fulfill the need to start or expand their family.

✓ To create a real secured family & stable life for the adopted Muslim children (NO known Parents) to have a new secured life & Support in the communities
Legible couples for Adoption by milk kinship SA

✓ The family should be Saudi’s and consist of two spouses
✓ Wife < 50 Years
✓ Priority for childless families
✓ If family has children NOT > 3 below 6 years
✓ Passing medical tests
✓ Matching skin color as well as facial and body features
✓ Research’s should prove the validity of the foster family from the Psychological, Social and Economic aspects for the care of the orphan child, through the use of special criteria

✓ Breastfeeding is must and main condition
  baby has to be < 2 years to be legible for milk kinship

A prerequisite as a right of an orphan child who lacks parental care
Fatwa from the President of High Scholars to Alwedad Associations 1439H – 2018

1st try induce Lactation from the wife of the couples planning the adoption

If Failed

Use wet nurse (Relatives of Husband or wife )

Depends on sex of the Orphans Couple Need to be Mahram for the baby (orphan)
If wet nurse was from Husband origin relatives
Mother / sisters / Grandmother

Baby Mahram (boy/girl) to Husband ONLY
❖ If wet nurse was from wife origin relatives
Mother / sisters / Grandmother

Baby Mahram (boy) to wife ONLY

❖ If wet nurse was from Husband relatives & the wife relatives
Mahram for both couple
Summary of kinship (baby & Adopted Family)

1- Best Option **wife** breastfeed baby *5x (+/- IL)* Milk kinship to couple

2- Husband **origin** relatives
   A- Mother/ Grandmother/sister
   Baby Mahram (boy/girl) to **Husband ONLY**
   B- Husband Daughters / grand daughters or daughter in law from same wife or other wife's
   Baby Mahram to both **WIFE & HUSBAND BOY**

3- Wife's Relatives
   A- Mother/Grandmother / Sisters/ niece
   Baby Mahram (boy / girl) **Wife ONLY**
   B- Wife's daughters/ niece/ daughters in law from same husband or previous husband
   Baby Mahram to both **wife & Husband (girl)**
<table>
<thead>
<tr>
<th>Wife’s origin Relatives</th>
<th>Husband origin relatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother/Grandmother/Sisters</td>
<td>Mother/Grandmother/sister</td>
</tr>
</tbody>
</table>

**Husband**
- Daughters / grand daughters or daughter in law from same wife or other wife's
- Daughters in law from same husband or previous husband

**Wife’s**
- Daughters/ niece/ daughters in law from same husband or previous husband
<table>
<thead>
<tr>
<th>Fatwa</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IBN BAZ</strong></td>
<td>yes</td>
<td>Breast-feeding was five times or more, if the breast-feeding satiating and the child was within the two years</td>
</tr>
<tr>
<td><strong>Permanent committee</strong></td>
<td>yes</td>
<td>Woman produced milk after Hormonal stimulant, and she breastfed a child five times or more in the first two years</td>
</tr>
<tr>
<td><strong>Al- Azhar Alshareef</strong></td>
<td>yes</td>
<td>It is forbidden by Islamic law to adopt a child but permissible to take care of another child Kafalat</td>
</tr>
<tr>
<td><strong>National fatwa council for Islamic religious affairs in Malaysia</strong></td>
<td>yes</td>
<td>Muslim adoptive mothers should feed her adopted child with her breastmilk to make that child a full member of her family</td>
</tr>
<tr>
<td><strong>National council for Islamic affairs</strong></td>
<td>yes</td>
<td>Use of artificial method to stimulate breastmilk is permissible</td>
</tr>
</tbody>
</table>
Recommendations

✓ Mandatory to educate Islamic families & to implement the Fatws regarding Adoption & Milk Kinship

✓ Islamic countries need to have their own legalization to implement the Adoption & Milk Kinship Fatwas

✓ Islamic Figh jurisprudence regarding adoption & milk kinship has to be included in all postgraduate lactation curriculum

✓ All fatwas regarding Breastfeeding and Milk Kinship to be published at IBFAN website
References

✓ Laws of Brunei, cap 206 – Islamic Adoption of Children, 2014
✓ Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child. Muslim Women’s Shura Council August, 2011
✓ Masriani YT, 2017. Granting of will for adopted child based on Islamic Law. *Inter J of Bus, Econo and Law*, 14: 4 (December) ISSN 2289-1552
✓ Faisall Kutty, 2014 Islamic Law and adoption
✓ Siti Fatimah Salleh et al., 2017. *Ta’sil Fiqhi* (Fiqh Foundation) for a Husband’s Status with the Child Breastfeeding with his Wife through Synthetic Hormone Injection. *Inter J of Acad Res in Bus and Social Sci* : 7: 4 ISSN: 2222-6990
✓ Elfat Obaid, The effect of loose milk without pregnancy on spreading sanctity by breastfeeding contemporary jurisprudence study
Thank You for Listening