

A Critical Analysis of the Legal and Social Implications of Rearing Non-Biological Children in Bangladesh

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Abstract

Mainstream Muslim law bans the traditional concept of adoption with outright prohibition. Despite being a Muslim majority country, the practice of adoption among Muslim under the veil of guardianship or custody is still prevalent in Bangladesh either in institutionalized or non-institutionalized nature. People resort to the Guardians and Wards (GW) Act, 1890 as a workaround for rearing of non-biological children but this system is unsustainable and is fraught with legal complexities as well as uncertainties as this Act is not designed for this purpose. Parties (Muslims), government authorities as well as courts face acute hardship in matters relating to rearing of non-genetical babies, applied by Muslims, due to lack of law and proper guidelines in this regard. The paper aims to assess the impact of traditional concept of adoption which is expressly banned in Islam and the practiced across the globe including in several Muslim majority countries. By comparing the practice of rearing non-biological children in different Muslim countries as well as secular practices in this regard the paper seeks to find out whether there is an urgency to introduce a directive for Muslim community to refer identical rules related to rearing non-biological children in Bangladesh or not. To reach the research objectives the authors collect Primary data by conducting relevant field visits, analysing case studies and by arranging interviews with the KIIs through structured questionnaire. The authors use secondary data by reviewing relevant literature to get a clear understanding on the prevailing contrast between the Shariah and real-world practice of rearing non-biological children by Muslims. After analysing the court practices, case studies including both institutionalized and non-institutionalized adoptions and relevant literatures the authors conclude the study by referring the possibility of introducing provisions as like as the other Muslim States related to the rearing of non-biological children in Bangladesh. In alternative, at least a provision consistent with the Islamic principles related to this matter may be included in the Guardians and Wards Act, 1890, to resolve the prevailing complexities between Shariah and practice by the Muslims in Bangladesh.

Keywords: Institutionalized adoption, Non-Institutionalized adoption, Islamic principles, Judicial practice, Best interest of the child

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1. Introduction

Islam prohibits adoption. In Bangladesh, personal affairs such as marriage, inheritance, guardianship, or adoption are determined by respective personal laws. States may also intervene through statutory laws in personal affairs when necessary. However, the prohibition of adoption for Muslims is based on *Shariah*, and the statutory laws of Bangladesh neither allow nor prohibit it.

In recent development the government has drafted a new legislation naming *Porityagkrito Shishur Odhikar Surokkha Ain 2022* (Protection of Abandoned Children's Rights Act, 2022) followed by a revised draft of 2024 which aims to ensure guardianship of children who are not lucky enough to have their own identity. Hence, the draft is yet to be finalized and this particular draft also lacks clear provisions related to adoption for Muslims.

The problem it creating is that, sometimes, Muslim couples without children are adopting children of their own choice and raising such non-biological child upon their own will.

Primarily for the reasons of infertility, incapacity of having children, want of a child of certain gender or simply out of compassion - Muslims in Bangladesh, tend to raise non-biological children as their own. As there is no clear legal mechanism present, the relationship between the couple and the child is determined on the basis of the will of the adopting couple.

Mostly adoption in Bangladesh takes place in a non-institutionalized manner, meaning a Muslim couple often adopt child from their own relatives or from individuals who are willing to let their child to be adopted. There is no paperwork or legal mechanism involved in such types of non-institutional adoption. Although, Islam completely prohibits the change of name of adopted children, many parents after adoption, change the complete identity of the adopted child, including their own name and the name of their parents. They bring up such adopted non-biological children as their own.

Besides, Muslim families seek to take infants from baby homes, under the shadow of guardianship. Nonetheless, in practice, this

arrangement may effectively assume the status of adoption. The judicial process is mandatory when someone tries to accept children from *Chotomoni Nibas* or Baby Home. Since the parties are Muslims, in some instances when these types of institutional acceptance take place, the judiciary steps in and find themselves in a complex scenario, to determine the legality of the approval and to determine the method.

Because of such vacuum in the legal framework, judges decide each case separately, and the opinions vary from judge to judge and from place to place. The primary drawback of this process is that when a Muslim couple applies for accept babies, the judges must resort to their discretion to determine its legality, assess the acceptance process, and determine which parent will receive the legal custody and every other issue that may need determination. Because of the lack of a unified legal framework and total dependence on judges' discretion, this process is too unpredictable. On one side the *Shariah* prohibits adoption for Muslims and on the other hand Muslim parties are applying for babies. Such inconsistency makes the situation complicated for the judges. Because of this peculiar nature, in Bangladesh, it creates a difference in a judicial opinion in this regard.

2. Research Approach

The main objective of this study is to investigate the impact of drought in Statutory Law related to rearing of genetically unrelated persons in Bangladesh. In doing so the authors explore the existing prohibition of adoption in *Shariah* Law. The paper also portrays and compares the practice of rearing non-biological children in different Muslim countries and the scenario of adoption practice of Muslims residing in Non-Muslim Country. The paper further investigates the present scenario of accepting non-biological children and overall practice by the Muslims in Bangladesh, and to enquire if there is any conflict with religion or not.

The study wants to determine whether by the times, the judges have developed any guidelines or not. The study concerns to know, what

process is followed or what should be the proper process. The researchers further aim to assess the impact of traditional form of adoption in Bangladesh which is banned in mainstream Muslim Law with outright prohibition. Also tries to understand the influence of religion, statutory laws and court practices available for childless Muslim couple in Bangladesh.

The study is mainly based on both primary and secondary data, Islamic principles that are the fundamental core sources of Muslim Law are analyzed as primary data.

Again, primary data is collected through face-to-face interviews with a well-structured questionnaire. The study conducted Key Informant Interview, hereinafter KIIs, with the Deputy Superintendents of Baby Home from Rajshahi and Dhaka from the Department of Social Service, two Judges from the Family Courts of Rajshahi and Dhaka and one of the Additional Directors of Department of Social Services, Dhaka. Case studies are also considered as primary data. Relevant secondary data is also used in order to achieve the objectives set for the study.

This research applies both ontology and epistemology as methodological approaches. Ontology is concerned with the nature of reality, what is considered real or true. In this paper, it helps examine whether the practice of both institutionalized non-institutionalized adoption among Muslims exist as a social reality, despite Islam's express prohibition of traditional adoption. Epistemology, the theory of knowledge, deals with what can be known and how such knowledge can be acquired. This approach guides the researchers in understanding the phenomenon by analyzing reliable sources such as books, journals, reports, and official records, as well as by observing societal practices and legal trends.

This study focuses on the practice of child guardianship and informal adoption within the Muslim community in Bangladesh. Rajshahi and Dhaka districts has been chosen as the primary study areas, as the practices observed here are considered reflective of wider national trends. While the research mainly centers on these

two districts, it also reviews secondary sources and reports from other parts of the country to support the findings. To draw meaningful comparisons, the study looks at how adoption is practiced in a few Muslim-majority countries, such as Turkey, Egypt, Pakistan, and Indonesia, highlighting how these countries manage adoption within an Islamic framework. It also includes a brief look at India to understand how Muslims navigate adoption laws in a non-Muslim country.

The issue involved in this research, is the practice of rearing of non-biological children by childless Muslim couples, a very contemporary socio-legal issue. This study emphasizes to find out the possibilities to include or introduce provisions related to the rearing of non-biological child by the Muslims in Bangladesh in the existing jurisprudence of the country without violating the core principles of Islam.

3. Islamic Concept of Rearing Non-Biological Children

Traditional concept of adoption is explicitly prohibited in Muslim law with outright prohibition. According to the general concept of legal adoption the adopted child is treated as adoptive parent's own child in terms of identity, inheritance, and limitations to marriage.¹ The Quran in verse 5 of *Sura Ahzab* makes a clear prohibition on legal adoption pointing to the incident of 'Zaid ibn Harith', the adopted son of Muhammad (SM).² But the Quran also encourages caring for orphan children and prohibits misbehaving towards

¹ United Nations Department of Economic and Social Affairs, Population Division, 'Child Adoption: Trends and Policies', New York, 2009, 45-48

² Dr. Mustafa Khattab, 'The Clear Quran', 1st Edition, Message for Humanity Publisher, 2016. *Sura Ahzab* (33:37) "And 'remember, O Prophet,' when you said to the one for whom Allah has done a favour and you 'too' have done a favour, "Keep your wife and fear Allah," while concealing within yourself what Allah was going to reveal. And 'so' you were considering the people, whereas Allah was more worthy of your consideration. So, when Zaid totally lost interest in 'keeping' his wife, we gave her to you in marriage, so that there would be no blame on the believers for marrying the ex-wives of their adopted sons after their divorce. And Allah's command is totally binding."

them.³ Under certain condition a Muslim might raise a minor under Islamic guidance.⁴ Muslim law is not static rather it is dynamic. And there is a mechanism in Muslim law to deal with new situations and exigencies that may arise. As a principle, legitimate lineage can only be established by the conception of a child in a valid marriage, Islamic scholarship has developed legal devices for circumventing this rule and establishing kinship relation between persons who are not genetically related.⁵ The Quran permits fostering through milk kinship.⁶ Raising a non-biological child is not prohibited for Muslims. After reviewing the Quran, it becomes evidently clear. Moreover, if that child is helpless or orphaned, it is highly praised to take care of them with love and compassion.

Prophet Muhammad (SM) took care of orphans deeply.⁷ He also promised that Muslims who care for an orphan will join him in heaven.⁸ According to Islamic experts like Dr. Zakir Naik,⁹ Nouman

³ Abdul-Haq Humeish, 'Orphans Rights in Islam' (Dubai Sun, Issue 18, June 2010) 6.

⁴ Imad-ad-Dean Ahmad, 'The Islamic View of Adoption and Caring for Homeless Children' in *Adoption Fact Book III* (National Council for Adoption, Washington 1999).

⁵ Nadjma Yassari, 'Adding by Choice: Adoption and Functional Equivalents in Islamic and Middle Eastern Law', *The American Journal of Comparative Law* Vol. 63, No. 4, pp. 927-962 (Oxford University Press 2015)

⁶ Ibid.

⁷ Muhammad Muhsin Khan, *The Translation of the Meanings of Sahih Al-Bukhari* (Darussalam Publishers & Distributors, Riyadh 1997) vol 2, Hadith 1008-1009, 84.

⁸ *Sunan Abi Daud* 5150, Sahl (b. Sa'd) reported the prophet (May peace be upon him) as saying; I and the one who takes the responsibility of an orphan will be in Paradise thus, and he joined his middle finger and forefinger. <<https://sunnah.com/abudawud:5150>> accessed on September, 2022.

⁹ Dr. Zakir Naik, 'Dr. Zakir Naik: Question and Answer - Is adoption allowed in Islam?', June 2013 <<https://zakirnaikqa.wordpress.com/tag/adoption-allowed-in-islam/>> accessed on September 2022.

Ali Khan,¹⁰ and Mufti Menk,¹¹ - within the parameter of Islamic rulings, Muslims can certainly upbringing a non-biological child in their family.

The Quran clearly states that adopted children are not one's real children.¹² The Quran also instructs to maintain the adopted children's true family name. If the identity of the biological father is unknown, they should be referred to as the child of brother in faith.¹³ In addition, the Quran also permits bequeathing one's property to a person who is not a blood relative.¹⁴ This ensures justice for the non-biological child and for the one who gives the child parental love.

Wet nursing, also known as milk kinship, is another method of Muslim caregiving to a non-biological child that is recognized by the

¹⁰ Nouman Ali Khan, 'Nouman Ali Khan – The Gulf Tour', May 2016, Ust. Nouman Ali Khan was asked 'is adoption allowed?' during a live lecture on the 2015 gulf tour <<https://muslimcentral.com/nouman-ali-khan-adoption-allowed>> accessed in September 2022.

¹¹ Mufti Menk, 'Mufti Menk on the topic of adoption in Islam', March 2016, Mufti Menk was asked the question 'is adoption allowed in Islam?'- during a live lecture <<https://www.youtube.com/watch?v=iwN9AUMFc4s&t=21s>> accessed in September 2022.

¹² Ahzab (33:4) 'Allah does not place two hearts in any person's chest. Nor does He regard your wives as 'unlawful for you like' your real mothers, 'even' if you say they are. Nor does He regard your adopted children as your real children. These are only your baseless assertions. But Allah declares the truth, and He 'alone' guides to the 'Right' Way.'

¹³ Ahzab (33:5) 'Let your adopted children keep their family names. That is more just in the sight of Allah. But if you do not know their fathers, then they are 'simply' your fellow believers and close associates. There is no blame on you for what you do by mistake, but 'only' for what you do intentionally. And Allah is All-Forgiving, Most Merciful.'

¹⁴ Ahzab (33:6) 'The Prophet has a stronger affinity to the believers than they do themselves. And his wives are their mothers. As ordained by Allah, blood relatives are more entitled 'to inheritance' than 'other' believers and immigrants, unless you 'want to' show kindness to your 'close' associates 'through bequest'. This is decreed in the Record.'

Quran. It is permitted by the Quran to breastfeed a non-biological child up to two years.¹⁵ The idea of milk-kinship is that when a baby is breastfed by a non-biological mother, they share the same bond as that of a natural mother and child.¹⁶ Marrying a foster mother or foster sibling is expressly forbidden in the Quran.¹⁷ The evident intention of the Quran is that a foster child and foster family would have a bond that is identical to that of a consanguine relationship.¹⁸

Moreover, over the ages, Islamic scholars and Islamic jurisprudence have developed a system for Muslims to raise non-biological children known as '*Kafalah*' or 'Guardianship', for the welfare of both the child and the Muslim family. The concept of *Kafalah* originates from Sharia, which resembles the idea of adoption while maintaining the restrictions from the Almighty and his prophet. *Kafalah* stands for the commitment of taking care of a minor

¹⁵ Fadel Soliman, 'Bridges' Translation of the Ten Qira'at of the noble Qur'an', Author House UK, 2020. Sura Al-Baqara (2:233) 'And mothers shall nurse their children for two whole years—for whoever wants to complete the nursing period. And it is the duty of the father of the infant to provide for them and clothe them in accordance with what is fair. No self shall be tasked beyond its capacity. No mother should be harmed on account of her child, nor any father of an infant on account of his child. And the same duty rests upon the heir. And if they both want weaning, by mutual consent and consultation, then no sin is committed by them. And if you want to seek nursing for your children, then no sin is committed by you as long as you give(them) what you have brought⁵ in accordance with what is fair. And be mindful of Allah, and know that Allah is indeed All-Seeing of what you do.'

¹⁶ Sayed Sikandar Shah, 'Fosterage as a Ground of Marital Prohibition in Islam and the Status of Human Milk Banks' (1994) 9(1) *Arab Law Quarterly* 3 <<https://www.jstor.org/stable/3381508>> accessed 29 September 2022.

¹⁷ An-Nisa [4: (22-23)]

¹⁸ Sikandar Shah, 'Fosterage as a Ground of Marital Prohibition in Islam'.

willingly, in terms of maintenance, education and protection as his own father would do.¹⁹

In terms of mutual inheritance between a non-biological child and an adoptive parent, the Qur'an explicitly states that Allah does not consider adopted children as a person's biological children.²⁰ If non-biological children cannot be acknowledged as one's own offspring, it is obvious that there is no way to recognize a natural inheritance for them. In addition, the Quran prioritizes the rights of inheritance of blood relatives over others.²¹ The Prophet (sm) declared that a deceased person's wealth belongs to his heirs.²²

Even though the non-biological parent and children are not natural heirs, they may still receive a portion by bequest.²³ If someone wishes to express their love, the Quran sets out a path for bequeathing one-third of their wealth.²⁴ If someone wants to leave their assets to someone other than an heir, the messenger of Allah also encouraged leaving up to one-third of it through bequest.²⁵

In this pretext, there is a scope of reconsidering previous ruling and practices without derogating from established principles of Islam. Many modern scholars think, as pointed out in this Chapter, rearing of non-biological child should not be mixed up with the word adoption.

¹⁹ *Family Code of Algeria* art 116; International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC), 'Specific Case: Kafalah' (Fact Sheet No 51, ISS Geneva 2007) <<http://www.iss-ssi.org>>.

²⁰ Sura Ahzab (33:4).

²¹ Ahzab (33:6).

²² *Sahih al-Bukhari* vol 8, Hadith 6731 (narrated by Abu Huraira): The Prophet (ﷺ) said, "I am more closer to the believers than their own selves, so whoever (of them) dies while being in debt and leaves nothing for its repayment, then we are to pay his debts on his behalf and whoever (among the believers) dies leaving some property, then that property is for his heirs."

²³ Dr. Zakir Naik, Nouman Ali Khan, Mufti Menk.

²⁴ Ahzab (33:6).

²⁵ Bukhari.

4. Comparison of Statutory Laws among Different Muslims Countries Related to the Rearing of Non-Biological Children

Adoption or rearing of non-biological child is practised in almost all Muslim majority countries in different forms. Among them Turkey has the most liberal adoption regime. All other countries exercised caution by imposing restrictions and conditions on adoption to prevent the process of adoption from being starkly contradictory to established principles of Muslim law.

Pakistan is a Muslim majority state with a population of 240 million. It applies *shariah* law in personal matters involving Muslims. Adoption is neither expressly prohibited nor recognized by statutory law of Pakistan.²⁶ It is not uncommon and is widely practiced by Pakistani Muslims in various informal ways. '*Kafala*' system in which a child is placed under a '*Kafil*' (Guardian) prevails here. However, this system does not create mutual rights of inheritance between the child and the guardian. The child does not become *mahram* of the foster family unless it is of very young age and is breast-fed by the foster mother.²⁷

The Kingdom of Saudi Arabia is considered as a conservative Islamic country. It's legal system is strictly based on Islamic *shariah* principles. Legal adoption is prohibited in Islam as such also prohibited in Saudi Arabia. There exists in Saudi Arabia a foster-care system which hardly resembles adoption in real sense. Saudia Arabia has a state managed foster-family program. This Program provides adoption service through foster parenting. Adoption of

²⁶ Zafar Iqbal Kalanauri, "Islamic Law and Adoption in Pakistan" Available at

<https://zafarkalanauri.com/wpcontent/uploads/2020/05/Islamic_Law_And_Adoption_In_Pakistan.pdf> accessed on Jan 13, 2024

²⁷ Adopting a child is the next best option for childless couples. Adoption is generally discouraged in Pakistani society. But it is gaining popularity because many deem it a necessity for protection of underprivileged children and also for bringing solace to hundreds of childless couples.

orphans only is allowed. From 2019 and onwards adopting under this program is being offered as an e-service.²⁸

In Malaysia two different statutes directly deal with adoption. The Adoption Act 1952²⁹ is the primary legislation which provides for adoption in real sense. This Act is not applicable to Muslims. Adoption for Muslims has been recognized by the Registration of Adoptions Act 1952.³⁰ Malaysia exercised extreme caution while recognizing adoption for Muslims. It only provided for registration of *de facto* adoptions and avoided detailing out consequences of adoptions.

Adoption is regulated in Indonesia by different statutes. According to Government Regulation No 54 of 2007 (Indonesia)³¹ in Indonesia all administrative matters related to child adoption fall under the responsibility of the department in charge of social affairs of Indonesia. Services for adoption by foreigners are provided by Yayasan Sayap Ibu (Sayap Ibu Foundation), an organization appointed by the Indonesian Government³² for this purpose.

Turkey follows uniform civil code for all citizens and incorporated legal adoption in their legal system.³³ Such system is apparently violative of Islamic principles. There are a few legal instruments relating to adoption in Turkey including the Turkish Civil Code,³⁴

²⁸ Ministry of Human Resources and Social Development (Saudi Arabia), 'Ministry Services' <<https://www.hrsd.gov.sa/en/ministry-services/services/424146>> accessed in September 2022

²⁹ *Laws of Malaysia* Act 257

³⁰ *Laws of Malaysia* Act 253

³¹ Government Regulation No 54 of 2007 (Indonesia) art 41.

³² See detail in <https://www.sayapibujakarta.org/eng/adoption.html> accessed on 1.5.2026

³³ Zikry Rahmatillah and others, 'Reform and Codification of Islamic Family Law in Turkey: From The Ottoman Law of Family Rights to the Turkish Civil Code of 1926' (2025) 2(4) *An-Nisa: Journal of Islamic Family Law* 326 <https://doi.org/10.63142/an-nisa.v2i4.246>, accessed 25.06.2026.

³⁴ Law No. 4721 dated 22.11.2001

Turkish Citizenship Law,³⁵ Adoption Implementation Statute etc.³⁶ Turkey is a state party to the Hague Adaption Convention³⁷ and allows inter-state adoption.

Adoption laws of the countries discussed above, namely, Pakistan, Malaysia, Indonesia, and Turkey are slightly different from each other. Adoption laws of Turkey are much more liberal, wider in scope, and it is alleged that Turkish adoption law deviated significantly from the fundamental principles of Muslim law. Laws of Malaysia and Indonesia are much more restricted and exercise every caution not to disturb fundamental principles of Muslim law. The statutory laws of Pakistan neither allow nor prohibits adoption.

5. Adoption Law for Muslims in India

India is a Hindu majority country with a significant Muslim population. It styles itself as secular and democratic and follows common law legal system. It allows application of personal law in some personal matters unless it is contrary to statutory law.

In India Hindu adoption is regulated by Hindu Adoptions and Maintenance Act, 1956. This Act is not applicable for Muslims, Christians, etc. As a result, adoption for followers of other religions is still regulated by their respective religious law. Recently, interesting developments happened in case of adoption for Indian Muslims. In *Shabnam Hashmi v. Union of India and Others*³⁸ the Supreme Court of India made a monumental decision having far reaching consequences for Muslims with regard to adoption. The highest court of India decided that any person irrespective of caste, creed, religion, etc. can adopt a child under the Juvenile Justice (Care and Protection of Children) Act, 2000. In this case the respondents argued that adoption falls within the purview of personal matters and should be regulated by respective personal law. As the petitioner is a Muslim by faith, she cannot claim adoption right in

³⁵ Law No. 5901 dated 29.05.2009

³⁶ Based on Council of Ministers Decision No. 2009/14729

³⁷ The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

³⁸ 4 SCC 1 (2014); AIR 2014 SC 1281.

this case. The court decided the case in favor of the petitioner holding that personal law cannot dictate the operation of an enabling statute. India allowed adoption for all citizens including Muslims under a specific statute. A Muslim has a choice to adopt under that specific statute exercising statutory right to adopt which supersedes personal law.

6. Practice of Rearing Non-Biological Children in Bangladesh

Adoption is not recognized by Muslim law which is applicable in personal matters of Muslims in Bangladesh. Non-recognition does not prevent people from indulging in non-institutional practices of rearing non-biological children. People care for and raise non-biological children due to various reasons. Mostly childless couples are eager to this practice. Some people try to give some semblance of formality to this practice by making declarations by their selves using sworn Affidavits³⁹ which is commonly known as non-institutionalized adoption. Moreover the people can obtain guardianship rights under the provisions of GW Act 1890. In pen and paper they are not adoptee but treated as custodian of that child.

To get an insight into the practical process of adoption the authors visited Government 'Baby Home' popularly known as *Chotomoni Nibash* and Family Courts of Rajshahi and Dhaka simultaneously. During the visit, Mst. Reksona Khatun, Deputy Superintendent, Baby Home Rajshahi, Department of Social Services, Rajshahi, Mst. Jubellie Begum Ranu, Deputy Superintendent, Baby Home, Dhaka, Department of Social Services (DSS), Md. Sefatullah, Senior Assistant Judge, Sadr Senior Assistant Judge Court, Rajshahi and Durdana Rahman, Senior Assistant judge, Family Court-12, Dhaka were interviewed as part of KIIs.

6.1. Practice Governed by the Baby Homes

Chotomoni Nibash (Baby Home) is a government institution run under the supervision of the DSS. There are six Baby Homes with a

³⁹ A legal declaration sworn and affirmed by the deponent taking stance on something which he/she cannot change later at will

combined capacity for 600 children. As of August 2023, there are 142 resident infants in these Baby Homes. A management committee headed by the Deputy Commissioner of the concerned district is responsible for looking after activities of each Baby Home.

Baby Homes allow the willing couples to adopt suitable babies. The Home does not have authority to act on its own in this matter rather acts as per directions of competent courts in each step of the process. According to institutional policy and terms of the DSS, a resident of Baby Home can be only handed over to father/mother or legal guardian with the approval of the Director General of DSS or the management committee of Baby Home but not to a stranger. Prospective parents apply to family court to obtain legal guardianship of a child residing at Baby Home under the GW Act, 1890. Once they are appointed as legal guardians, they have to make another application to obtain custody of the child. Once this application is granted and presented to Baby Home, it releases the child to the custody of appointed legal guardians. There are two separate Registers maintained. One keeping records of children admitted and another recording children delivered to legal guardians as per court orders.

Analysing information from the Registers, it is found that the Home admitted 7 children in 2020 and none was delivered to legal guardian. In 2021, 13 children were admitted and 2 children were handed over to legal guardian. In 2022, the number of admitted children was 23 and the number of delivered children was 4. In 2023, the Home admitted 15 children and gave 3 children to custody of legal guardians.

Mst. Jubellie Begum, Deputy Superintendent, *Chohotomoni Nibash*, Dhaka during her interview as KII, mentioned that, while considering application for guardianship and custody of any child from *Chotomoni Nibash* the, the Court summons the duty officers. Although the Court is not obligated to base its decision solely on the duty officer's statement, such statements are given considerable importance in the proceedings. Primarily, after considering the statement and other circumstances like the age, financial capacity,

social status and other similar factors the Court decides the application for the guardianship and custody of a child. Generally the Court does not allow application from single parents for guardianship but this also is subject to exception. There are exceptional cases where the Court allows single parents to become guardian and taking custody of child from the *Chotomoni Nibash*.

6.2. Court Practices

Courts of Assistant Judge are assigned as Family Courts.⁴⁰ Family Courts are invested with exclusive jurisdiction to deal with cases related to guardianship and custody of children.⁴¹ As a result, Assistant Judge Courts often become overburdened with cases. Family Courts has to decide regular suits for guardianship and custody of children. They also have to decide applications for guardianship and custody of orphans. Adoptive parents regard this procedure of obtaining guardianship and custody of orphan under the GW Act, 1890 as a workaround for adoption. Deciding applications for adoption by prospective adoptive families is completely administrative or executive task which may be shouldered by administrative officers. Due to lack of legal provisions for adoption procedure, concerned parties face uncertainty and resort to Family Courts as a last resort.

The authors visited Sadr Family Court, Rajshahi and the Family Court of Dhaka. They interviewed Md. Sefatullah, Senior Assistant Judge, Sadr Judge Court, Rajshahi and Durdana Rahman, Senior Assistant Judge, Family Court-12, Dhaka Judge Court as KIIs. They shared many issues and challenges faced while dealing with adoption cases. During the visit to Family Courts located in Rajshahi and Dhaka, the researchers have conducted several case studies to understand the current court practices related to adoption and guardianship.

The case studies reflect that in the absence of formal adoption laws under Muslim personal law in Bangladesh, the courts handle child

⁴⁰ *The Family Courts Ordinance 1985* s 4.

⁴¹ *Ibid* s 5.

custody and guardianship matters under the GW Act, 1890. Most cases involve non-biological children from institutions like Baby Home or *Chotomoni Nibash*, where custody is granted upon the court's satisfaction that the petitioners can ensure the child's welfare. The court prioritizes the child's best interest, requiring periodic reporting and proper documentation, including employment and housing status of the guardian. However, no consistent framework for periodic reporting has been identified. *Solenama* (deed of compromise) is often used to settle suits amicably. However, in non-institutional settings, such as informal transfers within extended families, legal recognition is absent, raising concerns over identity, property rights, and future guardianship. Notably, while courts appoint guardians and allow custody, they remain silent on the long-term financial responsibility of non-biological children.

In order to illustrate the core principles of the Apex Court adjudicating the issue of guardianship and custody of a child, the researchers have also gone through some reported cases.

The judicial approach in Bangladesh to custody and guardianship of minors strongly reflects the principle that the welfare of the child is of paramount importance, often overriding personal or traditional claims. The courts consistently emphasize that legal rights of guardianship must align with the best interest and well-being of the child, and custody cannot be enforced solely through legal entitlement if it contradicts the child's expressed wishes or mental and physical welfare.⁴²

In disputes between natural guardians and relatives, such as grandparents, the courts held that mere biological connection or traditional entitlement is insufficient to claim custody or visitation, especially when the child expresses unwillingness or shows emotional detachment from the claimants. In such situations, the High Court observed that custody and visitation rights must respect

⁴² *Zahida Ahmed (Liza) v Syed Nooruddin Ahmed and another* (2009) 14 MLR (HCD) 465

the minor's will and psychological comfort, and such claims cannot be exercised forcibly.⁴³

Even in situations where a parent is facing serious criminal allegations (such as abetment to suicide), the court may still favor them for custody if they are deemed capable of ensuring the child's welfare.⁴⁴ Conversely, remarriage of a mother does not automatically disqualify her from custody, unless there is additional evidence proving the arrangement harms the child's welfare.⁴⁵

In several judgments, courts acknowledged that a mother remains a natural custodian, especially of young children, and in the absence of proven disqualification, she is entitled to guardianship of both person and property under the GW Act, 1890.⁴⁶ The courts also reinforced that custody matters are dynamic and must be revisited if family circumstances change significantly. Custody is not an absolute right but a continuing assessment based on the minor's evolving needs.⁴⁷

In cross-border cases like the custody dispute between a Japanese mother and Bangladeshi father, the court upheld the principle of overall well-being and stability for the child, deciding in favor of the parent best able to provide a secure environment, irrespective of nationality.⁴⁸

Finally, in cases where allegations such as mental instability or employment constraints are brought against a parent, courts require solid proof before denying custody. Mere assumptions or social

⁴³ *M Nazim Uddin and another v Bangladesh and others* (2023) 75 DLR; Writ Petition No 8978 of 2021.

⁴⁴ *Md Ahsan Ul Monir and others v Dr Md Fakhrul Islam and others* (2021) 15 SCOB (HCD) 87.

⁴⁵ *Md Rahmatullah and others v Most Sabana Islam and others* (2003) 23 BLD 165.

⁴⁶ *Abdul Basit and another v Tahmina Akter Koli* Civil Revision No 3958 of 2024.

⁴⁷ *Anika Ali v Rezwanul Ahsan* (2012) 17 MLR (AD) 49.

⁴⁸ *Nakano Eriko v Imran Sharif, Bibswan Deb Biswas*, 'From the Court Corridor: July 2023' (*Dhaka Law Review*, March 2024).

stigmas are not sufficient to disqualify a mother who otherwise ensures the child's emotional and physical well-being.⁴⁹

Collectively, these cases show that, the Court has no homogenous guidelines to settle cases related to adoption and Guardianship. Due to such legal vacuum the decisions of the Courts varies from case to case.

7. Findings and Suggestions

This research reveals a significant legal and practical ambiguity in Bangladesh regarding the rearing of non-biological children, primarily arising from the dilemma between the traditional concept of adoption and the prohibition in Islam. Adoption, often in its conventional form involving change of lineage and mutual inheritance, is explicitly prohibited under Islamic law. Instead, Islamic law encouraged the practice of *kafala*, milk kinship, and foster care. Despite this, both institutional and non-institutional adoption practices continue in Bangladesh without a clear legal basis, leading to inconsistencies in court decisions and administrative practices. The GW Act, 1890 remains the only legal framework available for addressing custody and guardianship of both biological and non-biological children. It lacks clarity on lifelong guardianship obligations for non-biological children and fails to identify who is responsible for their financial security, leaving the child vulnerable even when formally placed in a family environment.

In light of these challenges, the authors suggest that the rearing of non-biological children may be formally recognized in Bangladesh through a modified legal framework that aligns with Islamic principles. The identity of the child's birth parents must be preserved, and no automatic inheritance rights should be created between the child and the guardians. Moreover, legal provisions concerning marriage prohibitions and the practice of *maharam* should remain unaffected. A practical legislative reform could involve inserting a supplement to Section 24 of the GW Act, 1890

⁴⁹ *Aminul Bor Chowdhury v Nargis Sultana* (1999) 4 BLC (AD) 208.

ensuring that a guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires. Such supplementary provision may have an imperative impact to ensure that the concerned child can be raised in the new house and also he or she is entitled to a gift, will or obligatory bequest.⁵⁰

The study also finds that the absence of effective post-placement monitoring mechanisms following adoption or guardianship decisions exposes children to risks of neglect, identity loss, and exploitation. In cases where couples later have biological children, the status of the previously adopted non-biological child becomes precarious and emotionally unstable. Therefore, it is essential that child rearing practices include periodic oversight. The DSS should supervise such monitoring system to ensure that the non-biological adopted child receives continued care and fair treatment which includes future financial security within the family.

The *Porityagkrito Shishur Surokkha Ain, 2022*, although promising, is still in draft form and lacks substantive provisions required to the needs of Muslim families in Bangladesh. This presents an opportunity for legislative reform without violating Islamic principles. An imminent initiative needs to be taken by the government to consider the demand and necessity for recognition of rearing non-biological children without harming the core principles of Islam like not to change the genetically Father's name. A committee of experts consisting of all stakeholders including legal experts, Islamic scholars, child rights activists, social workers has urgency. The committee is to report on different dimensions of recognition of rearing of non-biological children. The Law Commission be directed to formulate a draft law on adoption taking into consideration the report of the expert committee.

Initiative be taken for enacting a uniform child protection law incorporating different modes of protection of children including

⁵⁰ Obligatory bequest in Islam is a concept of a mandatory gift that a Muslim is required to allocate to an Orphan in certain cases.

custody and guardianship of orphan children, foster-care, institutional alternative care. Minimum standard of care be set for each of such modes. Maximum effort be given to prevent abuse and exploitation of children subjected to alternative care.

Muslims in Bangladesh should have a clear cut provision regarding the rearing of non-biological children which is in accordance with Islamic principles and safe for the Muslims. This will ensure that the best interests of the child are served without breaching the fundamental tenets of Islamic law, thereby allowing the country to modernize its child welfare system responsibly and inclusively.

8. Conclusion

Bangladesh stands in between a dilemma whether to stick to archaic guardianship law ignoring ground reality or to take a progressive approach and recognize rearing of non-biological children be it in a curtailed and modified form. Despite the outright prohibition in Islamic law the impact of the traditional form of adoption is clearly visible in Bangladesh. The necessity of guidelines for rearing and caring non-biological children is obvious from various perspectives. On one hand vulnerable children need protection and care, on the other hand childless couples want to rear up children and share the joy of having children. It is evident that the main objective of government initiatives for child welfare is rehabilitation and social re-integration. In this respect institutionalizing the practice of rearing and caring of non-biological children can play a vital role in reaching government's goal. It ensures that concerned children receive the care and shelter it needs in a conducive family environment. GW Act, 1890 is far from being enough for this purpose. In the present situation, well defined directives for rearing and caring of non-biological children have become a demand of time and society. It is imperative and highly desirable that the government takes legislative measure for recognition of such practice and issues proper rules and guidelines for administration thereof.