

Rights of the Child in Islam: A Book Review

Mustafa Khan*

Introduction

Prof. Dr. Munir is the Vice President of Higher Studies and Research at the International Islamic University, Islamabad. He is also the Director of the Shariah Academy, and a Professor in the Department of Law at the same institution. At the request of the Federal Shariat Court, he has been known to give his legal opinion in seminal cases.¹ His book, *Rights of the Child in Islam*, conducts a comprehensive analysis of the rights of children under Islamic law.² Herein, he also analyzes the issue of adoption as traditionally approached by Islamic jurists and the role of International Covenants such as the Convention on the Rights of the Child ('CRC') in this regard. Thus, he attempts to focus on the responsibilities of the State in providing for the realization of these rights within a society. This book review briefly discusses the contents of each chapter of the book. After outlining Dr. Munir's major findings as elucidated in these chapters, this review shall critically appraise the book in respect of the conclusions drawn and recommendations made.

Overview of the *Rights of the Child in Islam*

The *Rights of the Child in Islam* revolves around a fundamental contention that the study of the rights and protections of children in Islam is a sphere that has not attracted serious scholarship.³ The author contends that most scholars have focused on the rituals dealing with the birth of a Muslim child; these rituals, among others, include the '*aqiqa*' (slaughtering of goats on the birth of children) and the shaving of a baby's hair. Such scholarship has failed to focus on more significant issues regarding the role of the State in enforcement and protection of the child rights in Islam.⁴ Structurally, the book is comprised of several chapters that may be read independently, with each chapter focusing on a separate issue in Islamic jurisprudence. The

* The author is a Legal Associate at Axis Law Chambers, Lahore. He is mainly involved in matters of family law, corporate law, and civil litigation.

¹ Faculty & Staff – Shariah & Law (*International Islamic University*) <http://www.iiu.edu.pk/?page_id=88> accessed 16 August 2017.

² Muhammed Munir, *Rights of the Child in Islam* (1st edn, Iqbal International Institute for Research and Dialogue 2017).

³ Ibid, 2.

⁴ Ibid, 3.

conclusion summarizes the author's findings and provides recommendations that may be followed in an effort to encourage proper realization of rights as envisaged in an Islamic polity.⁵

Chapter 1 critically evaluates the existing literature, demonstrating how development has been sparse in this sphere. It begins with a discussion of what is perhaps the earliest work on children's rights in Islam – the *Jami Ahkam Al Singhar*, penned by Mohammed b. Mahnod b. Husain Astroshni (1234 C.E). This detailed work discusses the rules of Islamic law regarding activities such as prayers, fasting, Hajj, and marriage. Dr. Munir points to the comprehensive nature of the text by highlighting the presence of chapters on adoption and the rules of paternity. Interestingly, the book also discusses the role of the court and the Islamic state in aspects involving a child.⁶ The chapter provides brief accounts of other works such as the *Tuhfatul Mqdad fi Ahkam al-Mawlud*, written by Shamsuddin Muhammd ibn Abi Bakr ibn Qaiyam al- Jawziyah, a text consisting of the rules and various rituals found in Islamic law regarding the birth of a Muslim child.⁷ In addition to Arabic texts, the chapter also touches upon some literature published more contemporaneously in English and Urdu. Viewing this body of literature as a whole, Dr. Munir posits that most publications regarding rights of children in Islam focus only on the various rituals and discuss the issue from the point of assuming parental responsibility of children.⁸ None of these treatises analyze the role of the State with regards to more substantive rights of children under Islamic law. Furthermore, contemporary issues regarding child vaccinations, polio drops, and lifesaving injections are barely mentioned.

Chapter 2 proceeds to provide a framework of *Sharia* for the rights and protection of children in Islam. Within this framework, it seeks to accommodate the often-neglected role of the Muslim State under the *maqasid al sharia* in creating and enforcing mechanisms that provide for the actualization of these rights. In describing these *maqasid* (objectives), it delves into a discussion of the doctrine of '*Maslahah*' and its further subdivision into '*Durat*' (necessary interests), '*Hajat*' (supporting interests), and '*Tahsinat*' (complementary interests). The necessary interests are the ones which, if left unprotected, result in chaos in society. These include life, faith, progeny, intellect, and property.⁹ It is the duty of the Islamic state to play a substantial part in the protection of these objectives through promulgation of

⁵ Ibid.

⁶ (n 2) 12.

⁷ Ibid, 13.

⁸ Ibid, 27.

⁹ Ibid, 32.

laws against the taking of life and punishing those individuals who carry out such actions. The chapter also discusses the importance of the family unit in Islam and details the concept of rights or '*Haqq*' as provided under Islamic law. After establishing this theoretical foundation, the chapter systemically details the rights of a child to life, health, and education. It substantiates its findings mainly by relying on the sayings of the Prophet (peace be upon him) and his actions in a particular situation. Since the hadith of the Prophet forms a fundamental tenet of Islamic law, reliance on these sayings effectively substantiates the point that Dr. Munir is making.

Chapter 3 explains the various rites which are practiced when a baby is born.¹⁰ The rights of orphans and illegitimate children are also discussed. Furthermore, it details the rights and equality of female children in Islam, pointing to Islamic injunctions that forbid practices such as celebrating the birth of a boy and mourning the birth of a girl. Interestingly, the chapter not only deals with the rights that children have over their parents and the State, but also explains the rights parents have over their children and the duties and responsibilities children owe to their parents. To substantiate this point, it provides reference to the relevant Qur'anic injunctions as follows:

Your Lord has decreed: (i) Do not worship any but Him, (ii) Be good to your parents and should both or any one of them attain old age with you, do not say to them even 'fie' neither chide them but speak to them with respect and be humble and tender to them.¹¹

The next two chapters deal with violence. Chapter 4 tackles the controversial issue of female genital mutilation ('FGM'). The practice has been roundly condemned by international human rights organizations, but is still carried out in many Middle Eastern and African countries. According to the author, the involvement of international organizations has resulted in some Muslim communities feeling culturally insecure. Such condemnations have been considered by some as an attack on traditional Islamic values, galvanizing some clerics into giving *fatwas* (religious edicts) in support of FGM. In an attempt to rationalize this debate, Dr. Munir turns to the Qur'an and Sunnah to point out that Islam does not condone FGM in the slightest. He argues that

¹⁰ Ibid, 55.

¹¹ The Qur'an 17:23-24.

there is no direct evidence in the Qur'an to support FGM.¹² Those in favor of the practice usually place reliance on Surah Al Nahl which states:

Follow the way of Abraham with exclusive devotion to Allah. He was not one of those who associated others with Allah in his divinity.¹³

The argument then is that since Abraham was circumcised, all other Muslims should also undergo similar treatment since his conduct is to be followed. The author disputes this interpretation of the verse. He argues that the verse is in reference to the duty upon Muslims to follow the model of Abraham in establishing and preaching monotheism, not to circumcision. Moreover, even if that is what the verse intended, it makes no reference to FGM. Therefore, a logical extension may only be made to men, not to women. As regards the hadith put forward in support of FGM, Dr. Munir argues that these verses are either weak or unreliable. The rules of Islamic law cannot be based on such weak foundations.¹⁴ Amongst the four Sunni schools of thought, only the Shafi School considers FGM obligatory. Proponents of the other schools, even when supporting the practice, the author argues, fail to prove that a pre-Islamic custom is inherited by Islamic law and cannot point to a Qur'anic verse or an authentic hadith to back up their assertions.¹⁵ The chapter thus comes to the conclusion that female genital mutilation is a cultural practice that outdates Islam. It was practiced in counties like Egypt and Sudan before the advent of Islam in these regions. Under Islamic law, only that custom is considered valid which does not clash directly with Islamic law. Since the Qur'an explicitly prohibits the disfiguring of the human body, FGM cannot be regarded as a valid Islamic injunction in any way whatsoever.¹⁶ Consequently, the author maintains that the State must ensure that the practice is condemned and stamped out through its statutory powers.¹⁷

Chapter 5 tackles the issue of violence against children at home and at school. It delves into issues such as corporal punishment and how such actions are to be avoided, and points to the serious emotional disadvantages of inflicting such punishments on children. Even blaming the child should be

¹² (n 2) 97.

¹³ The Qur'an 16:123.

¹⁴ (n 2) 116.

¹⁵ Ibid.

¹⁶ Ibid, 118.

¹⁷ Ibid.

avoided. Instead, the child should be advised in a polite way in order for them to realize their mistake. The second half of the chapter approaches the issue of the rights of children during an armed conflict and the nature of juvenile justice. Relying on the words of the Holy Prophet who forbade the killing of women and children during a conflict, it makes the point that such actions are prohibited.¹⁸ On the issue of juvenile justice, the author points out that the Prophet exonerated children who had not reached the age of maturity from the responsibility of their actions.¹⁹ Within the judicial process, principles such as the presumption of innocence and the non-retroactivity of criminal law are fundamental tenants of the Islamic justice system and must be adhered to.²⁰

In Chapter 6 of the book, Dr. Munir embarks upon a discussion regarding the similarities and differences between the rights of children provided in International instruments and the relevant injunctions of Islamic law. Ever since its adoption in 1989, the CRC has become the focal point of reference for the obligations of states to their populations in the realm of children's rights. This chapter first seeks to demonstrate the place of Islamic law within the International legal regime. It points to the role of Muslim states like Turkey in the creation of the International legal regime and to documents such as Article 9 of the Statute of the Permanent Court of Justice which provides that the ICJ shall represent the main forms of civilization and the principal legal systems of the world.²¹ The chapter then proceeds to discuss the similarities and differences between Islamic law and the CRC such as the existence of rights of the fetus which are provided for under the former, but have no corresponding provision in the latter. Stress on the family unit in Islamic law is very strong as compared to the milder approach to familial relations taken by the CRC. Both doctrines also share similarities such as prohibiting discrimination and principles such as that of the best interests of the child are present in both regimes.²² The chapter concludes by pointing out the reservations that have been placed by Muslim countries on the CRC. The author points out the lack of uniformity amongst Muslim states with regard to what articles are to be reserved, implying that the process is essentially a political, rather than a religious exercise.²³

¹⁸ Ibid, 128.

¹⁹ Ibid, 130.

²⁰ Ibid, 131.

²¹ United Nations, Statute of the International Court of Justice, 18 April 1946 <<http://www.refworld.org/docid/3deb4b9c0.html>> accessed 16 August 2017.

²² (n 2) 158.

²³ Ibid, 165.

Chapter 7 provides a brief outline of the concept of guardianship or *Waliyah* in Islamic law. It explains the different forms of guardianship that exist – of the person and of the property, and how different rules apply in each circumstance. It also discusses the principle of the best interests of the child, demonstrating how the principle is an important tool used in Islamic law with regard to custody issues and protection of children in case of split families.

The last chapter of Dr. Munir's book compares and contrasts legal systems of Jordan and Pakistan. It discusses relevant Pakistani case law that represents the principle of the best interests of the child and points to statutes such as the *Restraint of Marriage Act 1929* which fixes a minimum age before two individuals may be married. Attention is also drawn to the *Pakistan Penal Code 1860* ('PPC') which prescribes punishments for practices such as *Wanni* and *Swara* – the un-Islamic custom where the offending party gives females, mostly minors, in marriage to the relatives of the victim party as compensation.²⁴ With regards to Jordan, the author discusses the *Personal Status Law of 2010* which defines the age of marriage as 18 years.²⁵ The labor and education laws in the country which seek to provide additional protections to children have also been reviewed. Collectively, great stress has been placed on the importance of the State in regulating and protecting the rights of children under Islamic law.²⁶

Analysis

Dr. Munir's book, in its language and structure, is easily accessible. His approach is laudable in the fact that it does not seek an overly textual and jurisprudentially complicated approach to these issues. This becomes especially important since a number of issues discussed in the book are those that are controversial in their nature and have rarely been subjected to open discussions in Muslim countries. For instance, the issue of FGM is one that has plagued many Muslim societies. This practice, according to the World Health Organization (WHO), can have long term consequences such as urinary tract infections, excessive bleeding, and can even result in death.²⁷ The WHO has issued a number of declarations against the practice.²⁸ In 2012, the United Nations General Assembly, adopted a resolution against the

²⁴ Ibid, 180.

²⁵ Ibid, 183.

²⁶ Ibid, 188.

²⁷ 'Female Genital Mutilation' (*World Health Organization*, 2017)

<<http://www.who.int/mediacentre/factsheets/fs241/en>> accessed 16 August 2017.

²⁸ Ibid.

procedure, calling for an outright ban worldwide.²⁹ However, despite these global efforts, FGM procedure is still greatly practiced in Africa and the Middle East. Data from 2008 suggests that nine out of ten women in Djibouti, Egypt, Guinea, Mali, Northern Sudan, Sierra Leone, and Somalia have undergone some form of FGM.³⁰ An added complication in efforts to eradicate FGM has been a sense in some Muslim societies that a ban would be an attack on their religious freedom. *Fatawa* in favor of the procedure have only served to strengthen this belief. For Dr. Munir to dedicate a full chapter in the book to this issue is a bold step.

Furthermore, by tracing the history of FGM, he demonstrates how it is a custom that has been practiced in many countries even before the advent of Islam. By seeking to break the link between religion and procedure, Dr. Munir makes an important contribution to the efforts for the eradication of this harmful practice. Additionally, by individually refuting the interpretations of the verses of the Qur'an and the sayings of the Holy Prophet that are most often used in support of FGM, the book takes a bold stance in the face of certain controversy. By unequivocally declaring the procedure un-Islamic and suitable for a ban, Dr. Munir plays his part in the global eradication efforts against FGM.³¹

The book is comprehensive with regard to the issues that are barely discussed within the Islamic community. The issue of immunizations is one such example. The debate regarding vaccines is currently on the forefront in not only the Muslim world, but also in Europe and especially in the United States. Many parents refuse to have their children inoculated due to the false perception that vaccinations cause disorders such as autism. Even though organizations such as the Center for Disease Control ('CDC') have explicitly stated that there is no scientific link between immunizations and the disease, many parents choose to ignore or distrust these findings.³² By placing a duty upon the Muslim state to educate and encourage people with regards to the benefits of immunizations, the author seeks to start a discussion that has been sorely lacking, especially within the Muslims. In a country like Pakistan where many communities still grapple with widespread doubt and fear in relation to polio vaccines, this discussion can ultimately make a significant

²⁹ UN General Assembly Resolution 67/146 (5 March 2013) UN Doc A/RES/67/146.

³⁰ Qanta Ahmed, 'FGM: We Have a Responsibility and Urgency to Act' (*The Independent*, 2014) <<http://www.independent.co.uk/voices/comment/female-genital-mutilation-as-the-cutting-season-approaches-end-the-silence-9251283.html>> accessed 16 August 2017.

³¹ (n 2) 207.

³² 'Vaccines Do Not Cause Autism Concerns | Vaccine Safety | CDC' (CDC, 2017) <<https://www.cdc.gov/vaccinesafety/concerns/autism.html>> accessed 16 August 2017.

and tangible impact on the health systems and the infant mortality rate in the country.

Notwithstanding these impressive efforts to write a text which is not only accessible but also tackles issues that are rarely discussed in Islamic societies, the book does not seem to go far enough in its critique and analysis. Perhaps this is due to Dr. Munir's approach of seeking to give weight to all sides of the argument. For instance, when discussing the issue of FGM, he mentions that the Shafi'i School considers the procedure obligatory while proponents of the other schools consider it a Sunnah or a *mustahab* or a permissible act.³³ Dr. Munir avoids directly criticizing the schools for this view, dedicating only a few paragraphs to discussing how each school has historically developed its doctrine. A more in-depth study and analysis of the positions, at this juncture, may have further added to the literacy and legal contribution of the book since the issue is one that is controversial and hotly contested, on both religious and social grounds.

Another issue with this book is that while the author repeatedly stresses the importance of the State in ensuing the protection of the rights of children as enshrined in Islamic law, he does not comprehensively interact with the development of Islamic law through the judiciary. The role of the judiciary has been especially noteworthy in Pakistan where the courts have repeatedly upheld and strengthened principles like the best interest of the child. They have, for instance, allowed a mother to retain the custody of a child after a divorce, even though on a strictly textual basis, due to the age of the child, the father as *wali* (guardian) was entitled to custody.³⁴ The best interests of the child – a standard that Dr. Munir refers to numerous times in his book – has been very progressively defined by the Pakistani courts. In this regard, the judiciary has held that welfare of a minor means his/her financial, moral, spiritual, and intellectual well-being.³⁵ This welfare has been given great importance inasmuch as it supersedes all private settlement agreements between the parties regarding the custody of children.³⁶

With regards to the delicate issue of legitimacy, the Pakistani state has tried to ensure that children's interests are protected, and have enacted legal presumptions against a child's illegitimacy. Article 128 of the Qanun-e-Shahadat Order 1984 incorporates this rule by stating that any child born during the continuance of a valid marriage between his mother and any man

³³ (n 2) 103.

³⁴ *Iram Shahzad v Additional District Judge, Lahore* PLD 2011 Lah 362.

³⁵ *Feroze Begum v Lt. Col. Muhammad Hussain* 1983 SCMR 606.

³⁶ *Mehmood Akhtar v District Judge, Attock* 2004 SCMR 1839.

and not earlier than the expiration of six lunar months from the date of the marriage, or within two years after its dissolution, while the mother remains unmarried, shall be conclusive proof that he is the legitimate child of that man. While it is quite clear that no pregnancy subsists for two years, the rule is intended to avoid declarations of illegitimacy and ensure that children are provided their due rights such as those of inheritance. Analysis of case law and legislations in Muslim countries with reference to efforts to protect children's rights would have added to Dr. Munir's work, demonstrating the actual role that the Pakistani state have played in this field. It would have also provided empirical proof to his central thesis of the State responsibility.

In Chapter 8 of the book, the author discusses the role of International instruments such as the CRC and seeks to compare two different jurisdictions in their approach to the issues of child rights. He stresses the need to have greater enforcement of covenants such as the CRC by the State. However, he stops short of discussing the nature of reservations that have been raised by Muslim countries to its various provisions. These reservations – many of which are arguably political, not religious in nature – must be highlighted so that the public is aware of the measures (relating to children's rights) that are being adopted. He also undertakes a comparative analysis of the Jordanian and Pakistani legal systems in this context. However, the legal and historical experiences of both these countries are not similar. It is not clear why the author chose to compare these two nations in order to get a snapshot view of the legal position in the Muslim world. It would have been helpful if some similarities in the historical experiences of the two countries were provided in order to provide as to why a common yardstick is applicable to both.

Conclusion

The *Rights of the Child in Islam* is an important contribution to Islamic jurisprudence. It demonstrates the breath of protections that Islam has historically and scripturally afforded to those in society who need the most protection. By covering a wide variety of subjects, Dr. Munir provides a guide for both Muslims and Islamic states, so that they can order their behavior in accordance with their Islamic obligations. This roadmap is helpful in not only the realization of the rights provided in Islam, but acts as a foundation for further discourse and development of the subject.

Unless otherwise noted, copyrights for the texts which comprise all issues of the LUMS Law Journal (LLJ) are held by the Lahore University of Management Sciences (LUMS). Items published by the LLJ may be freely shared among individuals, but they should not be republished in any medium without express written consent from the author(s) and advance notification to the LLJ Editorial Board. For permission to reprint articles published in the LLJ, please contact the editorial board at submissions.llj@lums.edu.pk.

Facts and views published in the LLJ express the opinions of the authors. While the information in the LLJ is believed to be true and accurate at the date of its publication, neither the editors nor the publishers and the authors accept any legal responsibility for any errors or omissions that may be made or for the results obtained from the use of such material.

Copyright © 2017-2018

This journal is available online at <https://sahsol.lums.edu.pk/law-journal>.