

Fiqh of Adoption and Fostering

The goal of this seminar is to revive an abandoned *sunnah*, the abandonment of which has led to the abandonment of children in very difficult situations.

PART I

The “Big Picture”: The importance of good treatment of orphans

ابغوني في الضعفاء ، فإنما تتصرون ، وترزقون بضعفاتكم

Abu-Darda (May Allah be pleased with him) reported: the Messenger of Allah (ﷺ) said, "Seek me among the weak, for you are given sustenance and help only because of the weak amongst you." [Abu Dawud].

Typically speaking the word (الضعفاء) is translated as “weak” but what it really means is “vulnerable.” This applies to all of those who are vulnerable in society.

What’s embedded in our religion is the idea that Allah will treat us (as a community) the way we treat those who are the most vulnerable among us.

يَا أَيُّهَا النَّاسُ أَنْتُمُ الْفُقَرَاءُ إِلَى اللَّهِ وَاللَّهُ هُوَ الْغَنِيُّ الْحَمِيدُ

O mankind, you are those in need of Allah, while Allah is the Free of need, the Praiseworthy. [Qur’an 35:15]

وَاللَّهُ فِي عَوْنِ الْعَبْدِ مَا كَانَ الْعَبْدُ فِي عَوْنِ أَخِيهِ

The Prophet (ﷺ) said, “Allah helps (is in the service of) His slave as long as he helps (is in the service of) his brother.” [Muslim.]

“Prosperity doctrine” in Surah Fajr - when we are tested with ease, instead of thanking Allah, we boast and think that because we are doing well in this life, this must mean that Allah is pleased with us.

فَأَمَّا الْإِنْسَانُ إِذَا مَا ابْتَلَاهُ رَبُّهُ فَأَكْرَمَهُ وَنَعَّمَهُ فَيَقُولُ رَبِّي أَكْرَمَنِ

And as for man, when his Lord tries him and [thus] is generous to him and favors him, he says, "My Lord has honored me." [Qur’an 89:15]

This person isn’t glorifying Allah and showing gratitude for their blessings but rather boasting that they’re being tested with ease rather than hardship. This is just like the man who was given two gardens in Surah Al-Kahf and equated his goodness in this life to receiving the pleasure of Allah.

وَأَمَّا إِذَا مَا ابْتَلَاهُ فَقَدَرَ عَلَيْهِ رِزْقَهُ فَيَقُولُ رَبِّي أَهَانَنِ

But when He tries him and restricts his

provision, he says, "My Lord has humiliated me." [Qur'an 89:16]

In the following *ayah*, when this same individual is tested by Allah with hardship (or restricting his sustenance), they blame Allah for their misfortunes, rather than blaming themselves, and become bitter and dejected towards faith.

Allah responds to this person by saying that you don't deserve to be honored because you do not honor the orphan and you do not feed the poor. You only deserve good if you do good to and for those who are vulnerable.

كَأَلِهٖ بَلَّ لَا تُكْرِمُونَ الْيَتِيمَ
وَلَا تَحَاضُّونَ عَلَىٰ طَعَامِ الْمِسْكِينِ

No! But you do not honor the orphan. And you do not encourage one another to feed the poor. [Qur'an 89:17-18]

In these verses Allah connects the desire to be honored by Allah with the importance of honoring the poor and the desire for sustenance and financial stability to the pursuit (or lack thereof) of feeding the poor.

The mention of orphans in Qur'anic verses is always placed before mention of the poor. In the *shariah*, the *miskeen* are defined as those who possess less than half the wealth required for their needs; they are very poor (more than the *faqeer* who has over 50% of what is needed). The scholars say that this sequence indicates that emotional support and honor are more important than financial independence. Allah gives preference to the dignity of the human being because He Himself has honored us (given us dignity); so we are required to maintain the dignity of all human beings.

ولقد كرمنا بني آدم

And indeed We have honored the children of Adam. [Qur'an 17:70]

أَلَمْ يَجِدْكَ يَتِيمًا فَآوَىٰ (٦) وَوَجَدَكَ ضَالًّا فَهَدَىٰ (٧) وَوَجَدَكَ
عَائِلًا فَأَغْنَىٰ

Did He not find you an orphan and give [you] refuge"? And He found you lost and guided [you], And He found you poor and made [you] self-sufficient. [Qur'an 93:6-8]

The Prophet (ﷺ) is reminded by Allah (swt) in these verses about the favors that he was blessed with, beginning with the favor that He provided to him (ﷺ) when he was given refuge as an orphan by his uncle, Abu Talib. Then Allah mentions the blessing of guidance and following that the blessing of wealth (financial independence) through his wife, Khadijah (ra).

Again what is mentioned first is being an orphan. Moreover, *yatim* (يتيم) is the only word used twice in these *ayaat*. Once again, Allah emphasizes not the financial care of the orphan, but

their treatment with dignity. Just as the Prophet (ﷺ) was provided someone to take care of him as an orphan, we need to do the same. And just as he (ﷺ) was given guidance when he was seeking it, we need to answer the questions of those seeking guidance when they come to us.

The scholars say among the honors of an orphan is that the only orphan mentioned in the Qur'an is none other than the best of creation, Muhammad (ﷺ).

The honoring and good treatment of the orphan is a tradition of all the prophets. Dawud (as) said, "Be like a merciful father towards the orphan." [Al-Adab Al-Mufrad]

ثَمَّالُ الْيَتَامَىٰ مِثْلُ غَصَمَةِ لِإِلَّا رَأْمِلُ

The Prophet (ﷺ) was described by his uncle Abu Talib as the guardian (and a

source of emotional support) of the orphans in his society and a source of refuge for the widows.

When he (ﷺ) praised the women of Quraysh, he said they were : 1) kind to orphans; and 2) loyal to their husbands.

اللهم إني أخرج حق الضعيفين اليتيم والمرأة

The Prophet (ﷺ) said, "O Allah, I declare inviolable the rights of two weak (vulnerable) ones: orphans and women." [An- Nasa'i].

This was one of the last things that the Prophet (ﷺ) testified to Allah (swt) about. He essentially bore witness that he had done his job in warning people to protect the vulnerable members of society. He wasn't saying women were weak, but that they were vulnerable in that society because of how they were mistreated.

No *ummah* will have more orphans than the *ummah* of Muhammad (ﷺ) so this was meant by Allah (swt) to give us the opportunity to step up and support them. When we treat the vulnerable well, we will in turn be treated well by Allah (swt).

The technical term in Arabic for orphan is *yatim* (يتيم). Linguistically it means something that is isolated and alone. A human *yatim* is a child who has lost their father and an animal *yatim* is one that has lost its mother.

A human child who has lost their mother is called *munqati* (منقطع) or someone who has been cut off. Losing a father is not as devastating as losing a mother, so there is a special sub-category of the larger category of *yatim* for children who have lost their mothers. There are separate terms for children who have lost both parents, children who have been abandoned by their parents, etc.

‘Alî b. Abî Tâlib relates that the Prophet (ﷺ) said: "There is no orphan beyond the time of puberty." (Sunan Abî Dâwûd 2489) Thus, once they reach the age of puberty, they are no longer considered a *yatîm*. This hadîth is evidence that the legal status of being an orphan ends when the child ceases to be a legal minor.

However, the term "orphan" can apply figuratively to an adult; e.g., a widow or a person who has no tribal protection. They are alone and vulnerable.

Even in the Prophet’s (ﷺ) marriage contract he was referred to as the *yatîm* of Abu Talib. That was one of his nicknames, even as an adult.

Many of the *sahaba* were themselves orphans, or raised orphans, or both. It was the culture among the *sahaba* to take care of orphans.

Abu Huraira (ra)

- He used to say, "I grew up an orphan, made *hijrah* as a poor man, and was hired by the daughter of Ghazwan in return for some food and a chance to ride her camel after which I used to gather firewood for them. When they would stop to camp I would keep their camels going by singing to them. All Praise to Allah that Allah made this religion prevail and that He has taken a person like me and has made me an *imam*."

Anas ibn Malik (ra)

- His father Malik had passed away and his mother Umm Sulaym married Abu Talhah while Anas (ra) was a young boy.

Az-Zubayr ibn Awwam (ra)

- He was the disciple of the Prophet (ﷺ) and one of the ten promised paradise. He didn't have a father and grew up being called ibn Safiyyah (the son of Safiyyah).
- He became a caretaker of 7 other children who were orphaned by companions including Uthman ibn Affan and Abdullah ibn Masud (ra).
- He married Asmaa bint Abi Bakr, the daughter of the best human to walk the face of the earth after the Prophet (ﷺ) and was elevated in this religion.

Aisha bint Abi Bakr (ra)

- She wasn't an orphan but used to raise orphans in her home.
- Her brother Muhammad ibn Abi Bakr left behind four orphans, all of whom she took in and raised. In the books relating to *zakah* some of the prominent narrations came from Al-Qasim ibn Muhammad ibn Abi Bakr.

Founders of the *madhabs*

- Imam Malik, Imam As-Shafi'i, Imam Ahmad, Sufyan At-Thawri, Al-Awzai'i all lost their fathers either before birth or at a very young age.

Collectors of *hadith*

- Imam Bukhari (most famous collector of *hadith*)
- Imam ibn Hajar Al-Askalani was also an orphan and the most famous interpreter of hadith (*Fath Al-Bari* - an explanation of *Saheeh al-Bukhari*)

Tazkiya

- Al-Ghazali
- Ibn Al-Jawzi

Tafseer

- Imam Jalaludeen As-Suyuti

Many of our scholars were orphans and were considered among the most vulnerable in their societies but this didn't stop them from being elevated in status.

Other famous figures in Islamic history who were orphans included Tariq ibn Ziyad and Imaad Al-Deen Az-Zinki.

Rewards of being a caretaker of orphans:

1) *Jihad, Qiyam, and Siyam*

Abu Huraira (ra) reported that the Prophet (ﷺ) said, "The person who strives on behalf of the widows and the poor is like those who strive in the way of Allah and like those who fast in the day and pray at night." (Al-Adab Al-Mufrad)

The Prophet (ﷺ) would never use empty expressions. Scholars have commented on this hadith and said that what is the goal of *jihad* in the path of Allah but to secure a just society in which the most vulnerable are the most honored. What is the goal of *qiyam al-layl* (praying during the night) except to wake your consciousness to where you stand and connect with Allah and during the day you serve others. What is the goal of fasting except to teach you empathy and the great blessings from Allah so that you feel connected and you feel responsible for providing for those who don't have those things.

All the goals of the *shariah* are practically met when a person takes care of the widows and the orphans.

2) A Soft Heart

There are numerous narrations of the Prophet (ﷺ) in which he encourages others to strive on behalf of the orphans for the sake of their own heart. Helping others is not just for them; it also softens your heart. And a soft heart is the greatest of attainments on the day of judgment.

Being in service is the best way to soften one's heart. When one distances themselves from serving others and becomes selfish is when the heart grows hard.

Abu Ad-Darda' (ra) said, "A man who complained of a hard heart came to the Prophet (ﷺ). He (ﷺ) said: "Would you like your heart to be soft and you meet your needs? Be merciful to

an orphan. And rub his head and feed him from your food; your heart will become soft and you will meet your needs." [Authenticated by Al-Albani]

1. Be merciful to them and do not let them feel that they are a burden.
2. Accompany them and show physical consideration and care by rubbing their heads (this is something Rasool-Allah ﷺ used to do) and playing/joking with them. Show them love.
3. Feed them from the same food you would eat. Make them feel welcome and cared for.

"Whoever takes in an orphan and spends on them and makes sure their needs are met, that orphan will be a veil for that person from the hellfire on the Day of Judgment. And whoever wipes the hair of an orphan, with every hair is a good deed."

3) Companionship of the Prophet (ﷺ) in *Jannah*

If you want to be close to the Prophet (ﷺ) in the *akhira*, be good to orphans.

Umm Sa'id bint Murra al-Fihri related from her father that the Prophet (ﷺ), said, "I and the guardian of an orphan will be in the Garden like these two." He held up two fingers (index and middle) close to each other. [Al-Adab Al Mufrad]

Ibn Battaal, commenting on this *hadith*: "It is an obligation upon anyone who hears this *hadith* that they act upon it so that they can be the companion of the Prophet (ﷺ) in *jannah*. What station is better in the hereafter than that?"

Al-Hafiz Ibn Hajar, may Allah have mercy on him, said: "It is sufficient to confirm the closeness of the degree to the other degree is that there is no other finger between the middle and index fingers" between your station and the station of the Prophet (ﷺ) is nothing but that space. Also, by placing the two fingers together, the Prophet (ﷺ) is conveying a love for the guardians of orphans as well.

Anas reported that the Prophet (ﷺ) said, "I will enter the Garden with someone who brings up two daughters until they come of age, and we will be like these two," and he indicated his index finger and middle finger.

Excellence (*ihsaan*) in raising your own children as well will grant you the companionship of the Prophet (ﷺ).

'Awf ibn Malik reported that the Prophet (ﷺ), said, "I and a woman who is widowed and is patient with her child will be like these two fingers in the Garden." [Musnad Imam Ahmad]

All of these cases in which the Prophet (ﷺ) puts two fingers together to indicate closeness to him in the hereafter involve people who are raising young vulnerable children (whether your own, or orphans).

The Prophet (ﷺ) said, "I will be the first one to open the gate of Paradise and there will be a woman who will be racing with me and I will stop her and ask, 'Who are you?' She will say, 'I am a woman that was left with orphans and stayed patient with Allah and raised them well.'"

The Prophet (ﷺ) is essentially the orphan who adopted the world. He adopted us. He raised us and he described himself as a man who's holding the people he cares most about back from an impending doom.

متلي ومثلكم كمثل رجل أوقد ناراً فجعل الجنادب والفراش يقعن
فيها وهو يذبهن عنها وأنا أخذ بحجزكم عن النار، وأنتم تفلتون
من يدي

The Messenger of Allah (ﷺ) said, "My parable and that of yours is like a man who kindled a fire. When it has illuminated all around him, the moths and grasshoppers began to fall into it. He tried to push them away, but they overcame him and jumped into it. I am catching hold of your belts (to save you) from the fire, but you slip away from my hands". [Muslim]

إِنَّمَا أَنَا لَكُمْ مِثْلُ الْوَالِدِ لَوْلَدِهِ أُعَلِّمُكُمْ

The Messenger of Allah said: "I am to you like a father to his child, and I teach you."

4) Guarantee of Paradise

The Prophet (ﷺ) said, "He who joins an orphan among Muslims in his food and drink until that he can provide for himself; verily he is assured to enter Paradise." [Al-Albani said: authentic due to its multiplicity of ways]

The scholars mention that all of the other ways to attain the companionship of the Prophet (ﷺ) in *jannah* (e.g., increasing your *sujud*, having good character, increasing your *salawat*) are ways in which you might sometimes fall short. However the most certain way is to raise a *yatim* in your household.

5) Protection from Hell-fire

'A'isha (ra) said, "A woman came to me with two of her daughters with her. She asked me for something, but I could not find anything except for a single date which I gave her. She divided it between her daughters and then got up and left. The Prophet (ﷺ), came in and I told him what had happened. He said, 'Whoever looks after these girls in any way and is good to them will have them as a veil from the Fire.'"

The virtue of a household with an orphan

Abu Hurayra (ra) reported that the Messenger of Allah (ﷺ) said, "The best house among the Muslims is the house in which orphans are well treated. The worst house among the Muslims is

Umm al-Hakam or Duba'ah, daughter of al-Zubair, said that the Messenger of Allah (ﷺ) got some prisoners of war (slaves). I and my sister and Fatimah, daughter of the Prophet (ﷺ), went to the Prophet. We complained to him about our condition, and asked him to give us some prisoners (slaves). The Messenger of Allah (ﷺ) said, "The orphans of Badr came before you," meaning they had priority. The orphans were given more than the daughter of the Prophet (ﷺ). That was the justice of the Prophet (ﷺ).

This was always seen as a communal responsibility. Everyone was always thinking about the children and how to take care of them. Unfortunately these days it is the opposite; we think more about ourselves than we do about orphans. We don't think of the children going into foster homes as "our children" and children we should feel responsible for.

There are over twenty verses in the Qur'an that speak about the *yatim*. Most of these verses aren't about their rights, but warnings not to oppress them.

Among the greatest of sins is to consume the wealth of an orphan.

The Prophet (ﷺ) said, Be as kind to them as you are to your own children, and feed them with the same food that you eat." So, we are supposed to be as kind and generous to them as we are to our own biological children. This means we should make no distinction in treatment and service between our own children and the orphans that we are taking care of, and they should be fully integrated into our households.

وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّىٰ يَبْلُغَ أَشُدَّهُ
وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

And do not approach the property of an orphan, except to improve it, until he reaches maturity. And fulfill [every] commitment. Indeed, the commitment will be] questioned. [Qur'an 17:34]

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ
نَارًا وَسَيَصْلُونَ سَعِيرًا

Indeed those who devour the property of orphans unjustly are only consuming fire. And they will be burned in a blazing fire. [Qur'an 4:10]

Ibn Abbas (ra) said that when Allah revealed these verses in relation to the rights of the orphans, those who had orphans living with them rushed to their homes and started separating their food and property so that the orphans had a little more to ensure that their wealth, food, and property were not being taken from them. This was a legitimate fear in the community. They

asked the Prophet (ﷺ) about this because they were so worried and the following verse in Surah Baqarah was revealed:

وَيَسْأَلُونَكَ عَنِ الْيَتَامَىٰ قُلْ إِصْلَاحٌ لَّهُمْ خَيْرٌ وَإِنْ تُخَالِطُوهُمْ فَابْتَغُوا مِنْهُمْ لِلَّهِ يَتِيمًا مِّنَ الْمُصْلِحِينَ وَلَوْ شَاءَ اللَّهُ لَأَعْنَتَكُمْ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

mix your affairs with theirs then they are your brothers. And Allah knows the corrupter from the amender. And if Allah had willed, He could have put you in difficulty. Indeed, Allah is Exalted in Might and Wise. [Qur'an 2:220]

And they ask you about orphans. Say, "Improvement for them is best." And if you

The meaning of this verse is that as long as you're not wronging them (the orphans) then you do not have to go to extremes in separating your wealth from theirs.

The companions feared wronging their orphans so much that initially they let them get away with not being disciplined. They disciplined their own children but were reluctant to do so with their orphans out of fear that they would be wronging them. Asma' bint 'Ubayd said, "I said to Ibn Sirin, 'I have an orphan in my care.' He said, 'Treat him as you would treat your own child. Discipline him as you would discipline your own child.'" [Al-Adab Al Mufrad]

It was narrated from Ibn 'Abbas (ra) that the Prophet (ﷺ) said: "The guardian has no right (to force) the previously married woman (into a marriage). And an orphan girl should be consulted, and her silence is her approval."

Sometimes orphans are treated as charity cases and so when a suitor is interested, the family feels that they have the right to force them to get married so they won't have to be responsible for them anymore. But the Prophet (ﷺ) made it very clear that the orphan girl has a right to say no. This was revolutionary principle at that time where even the non-orphan girl didn't have this right, and forced marriage was the norm.

Imam ibn Al-Jawzi said, "Those who have orphans in their homes are never free from the angels sending peace and praying upon them." This is because as a caretaker of an orphan you are literally living *sadaqah* every moment you do good with or for this child.

Three Beautiful Stories:

1) The Story of Abu Dahdah (ra)

Anas (ra) narrates: There was a 10-year-old orphan at the time of the Prophet (ﷺ) who was building a fence around his garden. It was connected to a much larger garden belonging to someone else. So he started building the fence and realized that there was a tree dead center that belonged to the other man. So he went to him and asked would you mind just giving me that tree, it won't harm you as you have so many. The neighbor said no. The orphan said but it

won't harm you, so the man replied but, it's my tree. He said well will you sell it to me? He said no. The orphan said so what do I do about my fence? He said that's your problem, not mine.

So the orphan went to the Prophet (ﷺ) while he was sitting with Abu Dahdah and told him what happened. The Prophet said: go tell your neighbor to come to me. So he went and got him. The Prophet repeated the whole story from the orphan as he heard it and asked him if it was true, and the man said yes. The Prophet said, "Give this one tree to your brother." He said, "No, O Messenger of Allah, it's my tree." The Prophet was shocked by his answer. He asked again and again and each time the man replied, "No, O Messenger of Allah, it is my tree." He said to him, "Give him the tree and for you is a tree in Paradise." The man said "I don't want the date-palm tree in *jannah*, this one is mine." The Prophet and everyone else in the gathering remained quiet and after a long period of silence the man left.

Abu Dahdah broke the silence by saying to the Prophet (ﷺ), "If I manage to purchase that tree and give it to the orphan, will there be a tree for me in Paradise?"

The Prophet (ﷺ) responded and said, "Yes there is for you a tree in Paradise." Abu Dahdah went to the man's house and asked him if he know about his garden of 600 trees. The man said, "Who doesn't know about your garden"? Abu Dahdah said "Would you exchange that one tree with me for all 600?" The man was surprised and asked, "Are you making fun of me?" and Abu Dahdah said no. He said take this tree indeed there is no *barakah* in it any way since the Prophet (ﷺ) was displeased over it and soon after they made the deal.

Abu Dahdah then went to the orphan and said, "This tree is from me to you, take it as a gift." He returned to the Prophet and the Prophet said, "How many trees are growing for Abu Dahdah in Paradise (right now)." The Prophet (ﷺ) continued to repeat this statement until Abu Dahdah left the gathering.

Upon returning home he found his wife in the garden. He told her to leave the garden, I have sold it. She asked to whom? He replied, to Allah and His Messenger. She responded and said this is a profitable transaction and took the dates from the hands of her children and said that they no longer belonged to them.

This story very much highlights the lengths the companions (ra) would go to to attain Paradise, but it also emphasizes the emotional impact on the orphan when he felt like no one would stand up for him, and how important it was to show him support.

2) The Story of Basheer ibn Aqraba

Basheer ibn Aqraba (ra) said, "My father accepted Islam while I was a child and when we went to the Messenger of Allah (ﷺ), he smiled at me and asked me to come forward. Then he put his hand on my head and asked my my name to which I said, "My name is Baheer." He said, "No, your name is now Basheer."

وأصل القصة ما ثبت من حديث بشر بن عقربة ، أنه قال استشهد أبي مع النبي صلى الله عليه وسلم في بعض غزواته ، فمر بي النبي صلى الله عليه وسلم وأنا أبكي ، فقال لي : « اسكت ، أما ترضى أن أكون أنا أبوك وعائشة أمك ؟ » ، قلت : بلى ، بأبي أنت وأمي يا رسول الله صلى الله عليه وسلم

In another narration he said, “My father passed away in the battle of Uhud and I was a young child who would cry a lot. The Prophet (صلى الله عليه وسلم) came to me one day when I was crying and he quieted me down and said, “Would you not love that I be your father and Aisha be your mother? I replied, “Of course,” and he (صلى الله عليه وسلم) said,” From now on it is as such.”

This Madani story has *fiqhi* implications (as does the following story - which is pre-Islam) which will be explored below in Part II.

3) The Story of Zayd ibn Haritha (ra)

He was known as “the beloved” of the Prophet (صلى الله عليه وسلم). He was kidnapped as a child and sold into slavery and the person who purchased him sold him to Khadija (ra). She gave him as a gift to the Prophet (صلى الله عليه وسلم) when they got married. His father looked for him for two decades and wrote a beautiful poem about him. He never gave up until he heard from the people of Banu Kalb that they had news that Zayd was with the Prophet (صلى الله عليه وسلم). He went to the Prophet (صلى الله عليه وسلم) to see if it was true and the Prophet (صلى الله عليه وسلم) said yes and went and brought Zayd to his father. Zayd recognized his father and embraced him. Then the Prophet (صلى الله عليه وسلم) told Zayd he could go back to his parents, but Zayd said, “No, I want to stay with you; I don’t want to go back to my parents.” Not because of any abuse at the hands of his family but because he had experienced so much love from the Prophet (صلى الله عليه وسلم) and had become very attached to him. Zayd’s father said, “Are you really going to choose slavery over freedom? Over your father? Your mother? Your tribe? Your country?” Then Zayd said, “I’ve seen something special from this man. I am not going to be the one to leave him.” Then the Prophet (صلى الله عليه وسلم) suggested that he free Zayd and make him his adopted son. Haritha was happy with that solution so the Prophet (صلى الله عليه وسلم) took Zayd to the steps of the Ka’aba (that’s where legal contracts used to take place) and he called out to the people, “Everyone bear witness: this is my son, he inherits from me and I inherit from him. He is my child just like any (of my other children).” Haritha was at peace with that and Zayd became known as Zayd ibn Muhammad.

Later when this process of *tabanni* (making someone your son who was not biologically related to you) was outlawed in Islam, it didn’t make the Prophet (صلى الله عليه وسلم) behave any differently with Zayd or Usama. It was just the legal ruling about inheritance that changed, not the loving relationships they had.

PART II

The *fiqh* of adoption/fostering (*kafala*)

We need to understand issues of semantics, culture, and context. We tend to falsely equate *tabanni* with adoption and then say that adoption is *haram*. But that is ridiculous because it counters everything covered above about the importance of caring for orphans in your home.

Zayd was over the age of puberty at the time the Prophet (ﷺ) “adopted” him. But recall that a person is only considered a *yatim* up until the age of *bulugh* (puberty). So there was no way to consider Zayd (ra) an orphan as he was a grown, married man at the time of the *tabanni*.

We need to balance the objectives of the law and the technicalities (legal restrictions). We can't allow the technicalities to override the objective; nor can we use the objectives to negate the technicalities. Instead, we need to balance the two. There are legal restrictions but you don't negate the purpose of the *shariah* to meet the legal restrictions. That is particularly important in the case of adoption/fostering of orphans.

Naming

One of the universal principles is preservation of lineage (ascribing the child to the biological parents) which is usually done through naming. The preservation of lineage is a very important part of our *shariah*. It prevents a lot of problems - like potentially marrying someone who is your sibling.

One of the first questions that comes up in the context of adoption is “Does the child have to be named after their father, their biological parents or can they be named after the adoptive parent?” Calling someone dad or mom who is not dad or mom as a means of ascribing yourself to them biologically is *haraam*.

The Prophet (ﷺ) said that the one who knowingly attributes himself to someone other than his father has committed a form of *kufir* (ingratitude). Whoever claims to belong to a group of people he has no ties to, let him choose his place in hellfire. [Bukhari]

In our *shariah* this is so serious that even if you don't know who a child's father is you would give them a generic last name so they don't end up being accidentally ascribed to the wrong person.

Why is that context there? In the time of the Prophet (ﷺ), in that tribalistic society, people who were embarrassed by their status and their parents would lie and ascribe themselves to other people. It was very common to say that you belonged to a tribe you didn't actually belong to. To say that someone was your father that wasn't your father. To say that someone who wasn't your mom was your mom. It was a society that only valued people for their lineage. Sometimes it would be to cheat. Sometimes it was with the intention to gain status in society. That was something the Prophet (ﷺ) saw as a great ingratitude and injustice to parents. It was deception and deceit. It had to have been a real problem in that society at that time for the Prophet (ﷺ) to have warned against it.

What about naming? Ibn Taymiyya wasn't really Ibn Taymiyya! That name was way up in his lineage. Same with Ghazali. So it is okay to ascribe yourself to someone higher up in your lineage. The Prophet (ﷺ) did so also: he called himself Ibn Abdul-Muttalib (his grandfather) on

occasion, but he wasn't falsely ascribing himself to someone who was not one of his actual ancestors. Everyone knew that was his grandfather.

What about saying "Mom," "Dad," out of affection and love? It is permissible. We know this because the Prophet (ﷺ) said to Basheer how would you like to call me father? He also occasionally referred to Abu Talib as his father. To say something out of affection and love, meaning you will not be treated differently in this household, you are my son, you are my daughter, you are my mother, you are my father - all of that is permissible. What's not permissible is to lie about one's lineage.

Changing last name

One of the main issues that comes up is changing one's last name. One of the problems that we have is that we cannot take the naming system which was completely different at the time of the Prophet (ﷺ) and compare it to the naming system we have today. What the surname (last name) means here is completely different than what it meant then. You cannot equate today's surnames with *Ibn* or *Bint* So-and-So. Ascribing someone to someone else without saying "son of" or "daughter of" is permissible.

There are multiple naming systems in Islam. Son of, daughter of, mother of, father of, etc. Also a *kunya* involves naming yourself in relation to your child (*Abu* or *Umm* So-and-So). A surname is like a *nisba*. A *nisba* can sometimes be used to describe where someone lives, or to a tribe, or a dynasty (e.g., al-Ayyubi), or to a rank, or to a job. A *nisba* was given as something that a person was known for. A tribe, a country, or land; e.g., al-Qurashi, al-Hijazi. Today's surname seems more like a *nisba* than anything else. Patronymics should ideally be preserved with the middle name. It used to be the case in some countries that your middle name had to be the name of your father. That's the name you'll be called on the day of judgment. It is okay to change last name as long as lineage is preserved in some other way.

It's the same with changing your last name to your husband's last name. To make it easier legally, you can add your husband's last name to yours.

So it is fine for your adopted/foster child to call you Mom/Dad and even to have your last name as long as they know their lineage. It's not healthy for a child to not change last name and emphasize how they are different from their brothers and sisters. It's also not healthy to wait to tell a child when they're much older that they are adopted. The American Academy of Pediatrics advises that "Adoption should not be a secret. Every youngster needs to have an honest understanding of his origin. Adopted children who have not been told seem to sense that somehow they are different; this nagging intuition can influence their self-image. The longer you wait, the harder it will be to discuss it with your child. Also, he is liable to find out from someone else—perhaps by overhearing the conversations of relatives, or from teasing by neighborhood children who have learned from their own parents that he is adopted" (www.healthychildren.org).

Our *deen* mandates that a child knows, but they don't need to be reminded all the time. You just need to have an honest conversation with them. At the same time make it clear that you're not going to be treated any different. I love you just like I love my other children. Get it out of the way as soon as possible.

Inheritance

The Prophet (ﷺ) when he allowed $\frac{1}{3}$ of inheritance to go to charity also said that those most deserving of your inheritance are your family members. The Prophet (ﷺ) said it's better to give it to your family. The adopted child doesn't naturally get inheritance. But in the $\frac{1}{3}$ that is discretionary, the adopted child can be factored in. The orphan can actually end up with more than a biological child but it has to come from that $\frac{1}{3}$ and it's considered *sadaqa*. That child you raised and called son or daughter should receive some inheritance from that discretionary $\frac{1}{3}$..

Mahram

If a child is breastfed by a woman within the first two years that child becomes *mahram* to both parents and everyone in the household. It establishes *mahram* just like blood relations. Five separate feedings are required. It used to be ten, and then it was reduced to five.

What about after the age of two? Abu Hudhayfa was a close friend of the Prophet (ﷺ). He and his wife Sahla adopted Salim before the *fatwa* on *tabanni*. He was over two years old (between 2 years and puberty). He was too old to become a *mahram* through breastfeeding. Sahla became uncomfortable with the child, with hugging him or with the child entering the room because they didn't want to violate the law. The Prophet (ﷺ) said feed him and he'll become your *mahram*. So she expressed her milk and put it in a vessel and he drank from a cup on five separate occasions. The vast majority of *ulama* said this was a specific case just for that family, because the Prophet (ﷺ) said after two years breastmilk has no effect.

The *fatwa* of Ibn Taymiyya is that in general only a child under 2 can become *mahram*. But he also said that if you have a child who's four years old and the choice is between making him *mahram* or abandoning them, the Salim case becomes a precedent. So, it is not a completely specific case, nor completely general, but restricted to certain situations. There are ways around difficult situations.