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TITLE OF PAPER:

***Harmonisation of Shari 'ah and International law In Protecting the
Rights of Orphans: Special Reference to Convention on the Rights of
the Child 1989***

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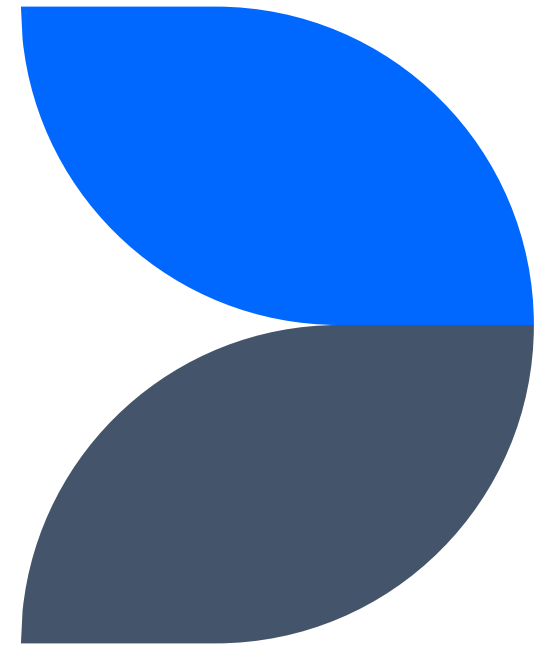
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Research Methodology

Doctrinal Research Methodology





KNOW THEM. DEMAND THEM.
DEFEND THEM.

Children's rights, especially for orphans, are a complex aspect of legal rights intertwined with human rights. Orphans, lacking parental care, face unique challenges that require special attention within the framework of children's rights.

International initiatives, such as the Geneva Declaration (1924) and the Universal Declaration of Human Rights (1948), paved the way for the UN Declaration on the Rights of the Child (1959). Though not binding, it marked a significant milestone. Finally, the Convention on the Rights of the Child was adopted in 1989, affirming the rights and well-being of all children globally.

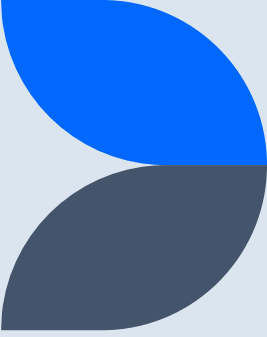
INTERNATIONAL LEGAL FRAME WORK FOR ORPHANS

Protection of Orphans Rights under The UN Convention on the Rights of the Child 1989

The Convention on the Rights of the Child incorporates key principles from the U.N. Charter, emphasizing dignity, justice, and peace globally. It reaffirms existing human rights treaties, ensuring rights and freedoms for all without discrimination. The convention recognizes the importance of family in children's well-being, promoting culture, and fostering fundamental rights for children, including orphans.



Fundamental Rights in CRC, 1989



Right to Life

Right to Care
and
upbringing

Right to
Name and
Identity

Right to
Health

Right to
Education

Right to
profess
Religion



Right to life

Article 6: Survival and development refer to every child's inherent right to life, and the State must ensure the child's survival and development.





Right To Care and Upbringing (Kafalah)

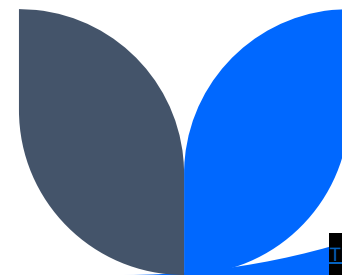
The Convention on the Rights of the Child (CRC) focuses on the rights of children deprived of a family environment, particularly orphans. It places the responsibility on the State to provide exceptional protection and assistance for these children.

Article 20 of CRC : *Protection of Child without family* : The state is obliged to provide special protection for a child deprived of a family environment and to ensure that appropriate alternative family care or institutional placement is available in such cases. Efforts to meet this obligation shall pay due regard to the child's cultural background.



Right to Name and Identity

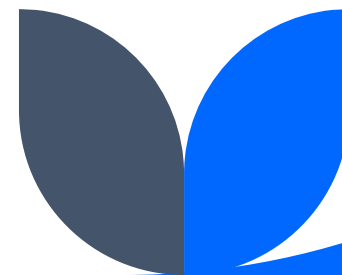
The United Nations Convention on the Rights of the Child (CRC) addresses this significant matter in Articles 7 and 8, emphasising the importance of registering children and mandates that every child should be given a name from birth.





Right to Health

Article 24 emphasises that it is the responsibility of the State to provide optimal healthcare facilities, particularly for children. States strive to ensure access to essential healthcare services and education, including health and nutrition knowledge for parents and children. Developed nations must support developing countries in providing critical healthcare facilities.



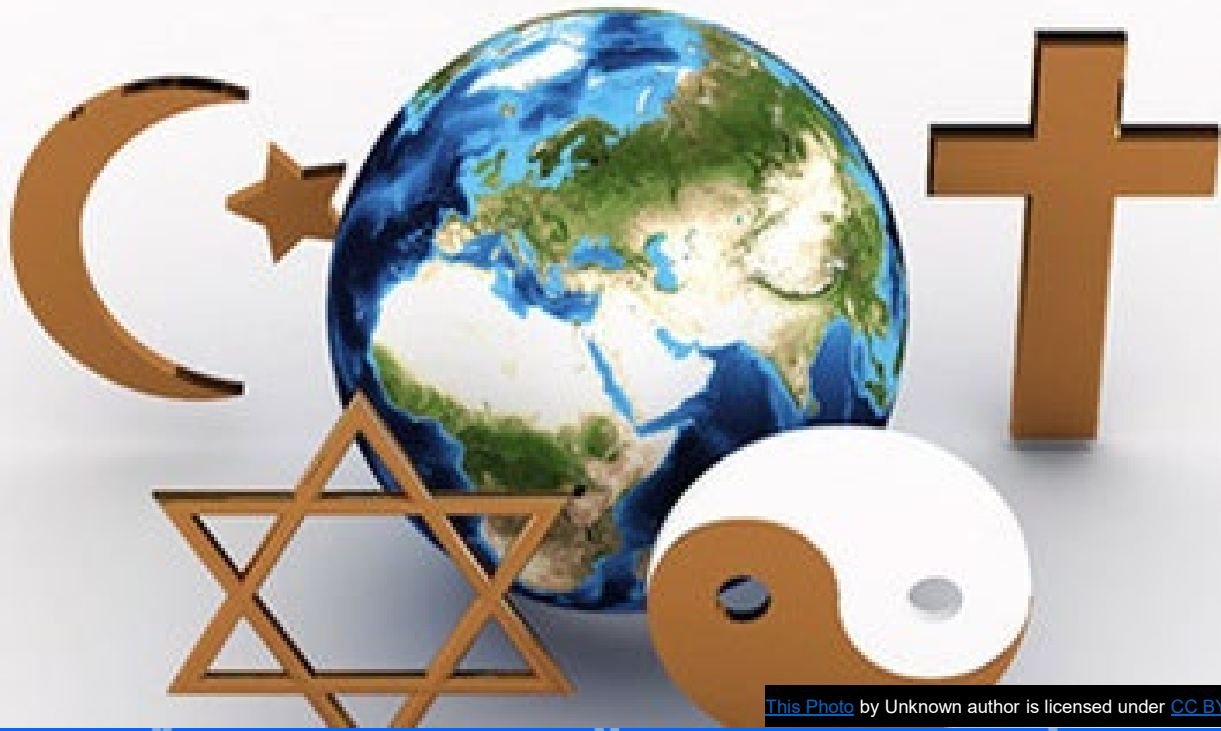
Right to Education

The CRC, Articles 28 and 29 specifically address the importance of the right to Education for children.

Focuses on the child's right to education, emphasising the provision, accessibility, and equality of educational opportunities.

PRESENTATION TITLE





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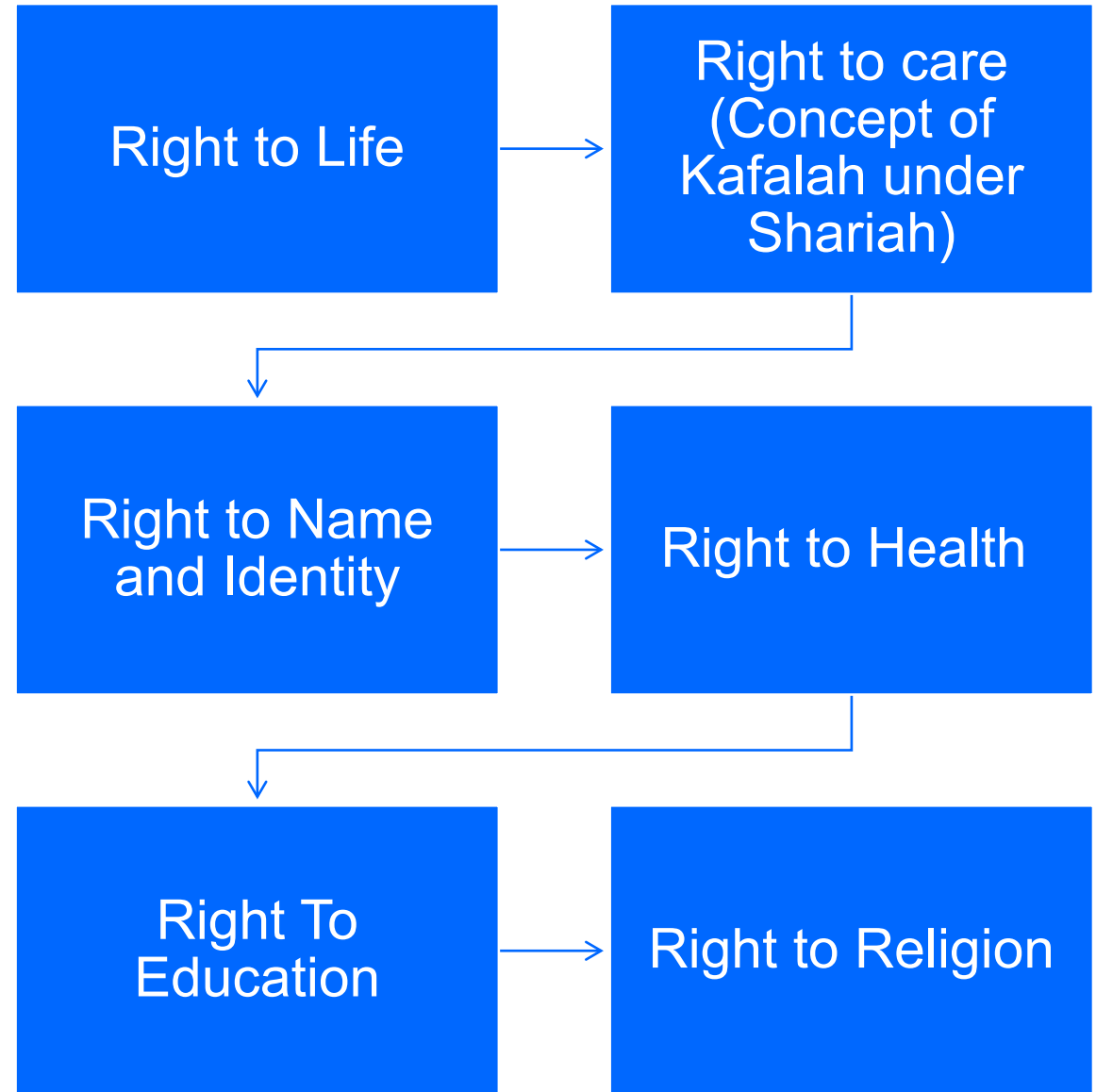
Right to Profess the Religion

- Article 14 of the United Nations Convention on the Rights of the Child (CRC) requires state parties to respect the child's right to freedom of thought, conscience, and religion.

Shariah-based legal Framework for the Protection of Orphan's Rights

- Shariah offers a comprehensive legal framework emphasising justice, equality, and compassion for the children who lost their parents.
- Allah (SWT) in Quran mentions the orphans 23 times and calls upon believers who treat them with love and show kindness towards them in many places.

Orphans rights under Shariah



Right to life under Shariah

- Protection of life is the objective of Islamic law. There is no religion or entity The Quran states to the effect.

"Because of that, we decreed upon the Children of Israel that whoever kills a soul unless, for a soul or corruption [done] in the land, it is as if he had slain mankind entirely and whoever saves a life it is as though he had saved the lives of all mankind."

- Surat Al-Mā'idah, 32.



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Kafalah under Shariah

Kafalah seeks to remove one's burden and place him/her under the protection of the one who has assumed this responsibility.

Shariah mandates that the basic needs of orphans, such as shelter, food, clothing, and education, should be adequately provided for.

Islamic law encourages the community and family members to contribute to the financial support of orphaned children.

Right to Name and Identity



After the birth of a child, the parents are bound to give a good name to their child. According to Prophet's instructions, "by the seventh day, the child should be given a good name and its head shaved, along with all other hygienic measures required for healthy growth. This should be made a festive occasion. At any rate, the child's right to care is so inalienable that not even a mother, the closest person to the child, can tamper with it."

Right to Health

Islam gives priority to health after the faith. Maqasid al shariah protects faith, life, progeny, property, and mind. Out of five, three things belong to good health: life, progeny, and mind.

Imam Al-Ghazali states, "A proper understanding and implementation of religion, from the standpoint of both knowledge and worship, can only be arrived at through physical health and life preservation."



Right to Education

- The concept of education is as old as human beings are; Allah (S.W.T) sent the first revelation on the Holy Prophet (peace be upon him) and said:
- "Recite in the name of Allah (S.W.T) who created. Created man from a clot of congealed blood. Recite and your Lord is most generous. Who taught by the pen. Taught man what he did not know".

Right to Religion

Hadith is reported on the authority of Abu Huraira that the Messenger of Allah said:

“I have been commanded to fight against people so long as they do not declare that there is no god but Allah, and he who professed it was guaranteed the protection of his property and life on my behalf except for the right affairs rest with Allah.”

Sahih Muslim: Book 1, Hadith 33.



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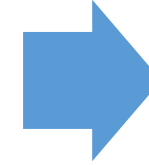
Harmonisation between Shariah and International law

Orphans, as vulnerable members of society, need special protection for their rights to identity, education, healthcare, and nurturing environments.

Harmonising Shari'ah and international law aims to bridge gaps and find synergy in protecting these rights. Collaborative efforts between scholars, policymakers, and civil society can create a culturally sensitive and universally applicable framework, ensuring comprehensive protection for orphaned children worldwide.

Benefits through Harmonization

Incorporation of Islamic principles and values into the broader discourse on children's rights, enriching the legal framework with cultural diversity and religious perspectives.



Harmonisation fosters a more comprehensive understanding of orphaned children's needs, drawing from the strengths of both legal systems to provide tailored and effective protection mechanisms.

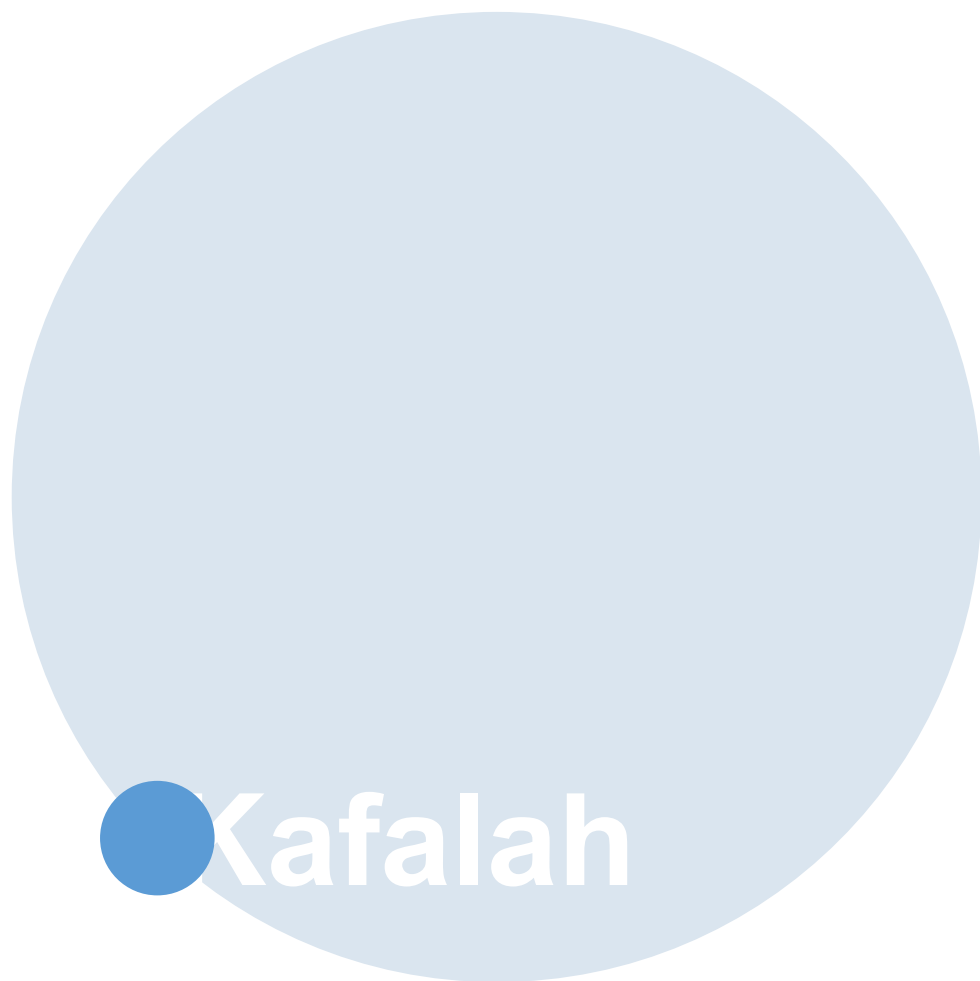
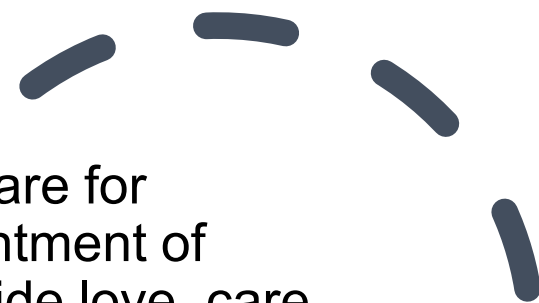


It facilitates greater cooperation and mutual understanding between different legal traditions, promoting a shared commitment to safeguarding the rights and well-being of orphans globally.

Prospective Areas for Harmonization

1. Rights-Based Approach

Islamic and international laws emphasize the rights and well-being of individuals, including orphans. The principles of equality, non-discrimination, and the child's best interests are standard foundations in both legal systems. By aligning these principles and emphasizing the protection of orphaned children's rights, the two legal systems can complement each other in promoting their



Islamic law guides kafalah and care for orphans, emphasising the appointment of suitable guardians who can provide love, care, and a nurturing environment.

International law recognises the importance of providing a stable and supportive environment for orphaned children through appropriate guardianship and care arrangements.

Harmonisation efforts can explore ways to integrate Islamic law principles on guardianship with international legal standards, ensuring the child's best interests are prioritised.

Legal Protection and Support

Islamic and international laws emphasise the need for legal protection and support for orphans. This includes access to justice, legal aid, and advocacy services.

Harmonisation efforts can explore ways to establish comprehensive legal protection mechanisms for orphaned children, drawing upon Islamic law principles and international legal standards.



Welfare of orphans

- Shari'ah and international law focus on the welfare of orphans. Principally different provisions regarding specific rights are available, like the right to life, right to name and identity, right to health, right to education and right to profess the religion.
- Harmonising these rights between the two systems further codified laws to protect orphans.

Conclusion

Harmoniously integrating Shariah principles with international law can protect orphan rights comprehensively. Islamic principles provide a strong foundation, complementing international legal frameworks to create a just and inclusive society for all children, including orphans.

Thank you