

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

***Kafāla*: The Qur'anic-Prophetic Model of Orphan Care**

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Abstract:

The article, Zainab Alwani's "*Kafāla*: The Quranic-Prophetic Model of Orphan Care," explores how Americans of all religions, or of no religion, can use the traditional Islamic foster care system (*kafāla*) to benefit orphaned or abandoned children. This is especially important for those children who happen to be Muslim, for there are not enough Muslim foster families to take all of them in.

Through a linguistic and thematic analysis of *kafāla* in the Quran, including the prophetic narratives, legal and social recommendations, and the Qur'an's humane portrayal of the orphans, Alwani illustrates the Islamic imperative to collectively support and take care of them. She further illustrates this imperative by exploring the way Prophet Muhammad (peace be upon him) implemented these concepts among his fellow Meccans. However, Alwani argues that Muslims need to reacquire themselves with the Islamic tradition's provisions of orphan *kafāla*, among the most important of which is that such children can never become the "children" of biologically unrelated adults. As Islam requires people to recognize the truth in all cases, such a false relationship would deprive these children of their dignity and honor and, in a sense, render them the property of biologically unrelated adults who seek to gain some benefit from them. Thus, as distinct from the American adoption system, their ties with their biological family and extended family members cannot be severed. In fact, *kafāla* stipulates specific roles for each family member so that a fostered child will grow up healthy in all aspects of its life – especially in terms of his/her spirituality.

In sum, this article argues that the goals of *kafāla* are to raise healthy, happy, and well-adjusted children who can succeed in society and benefit others. In doing so, she illustrates the parallel objectives of orphan sponsorship in Islamic law and American law, which is to secure the interests of all such children, irrespective of their religion.

Alwani ends with specific policy and community recommendations, encouraging more American Muslim families to become qualified foster families. She encourages Muslims to raise orphans communally, fully welcome them into the community, and provide needed services (e.g., transportation, tutoring in academic and life skills, and socialization), thereby making things easier for

everyone involved. She urges social workers, lawyers, and other qualified individuals and organizations to acquire an accurate understanding of both foster care systems so that these children can reap the benefits.

Keywords: Orphan, *yatīm*, orphan care, *kafāla*, foster care, guardianship

Introduction

This article seeks to outline a Qur'anic-Prophetic model for orphan care by presenting and analyzing some of the Qur'anic and Prophetic concepts related to this critical topic of *kafāla*.

By attempting to understand the Qur'an on its own terms and tracing its words' derivation(s), this essay proposes a Qur'anic framework of orphan care, one that is strictly centered on *kafāla* and was exemplified by Prophet Muhammad throughout his life. Based on the Quranic framework of orphan care and the Prophetic example, which prioritize protecting the orphan's interest, I argue that the responsibility of *kafāla* for orphaned and abandoned children falls on each and every one of us. This essay concludes with specific recommendations that Muslim communities can take on the community-level to fulfill our collective responsibility and alleviate the grievances of orphans.

This article applies the methodology of *al-wahda al-binā'iyya li-l-Qur'ān* (The Qur'an's Structural Unity),¹ to analyze and discuss Islam's approach to orphan care. The holistic method reads the Qur'an as a unified text through its linguistic, structural, and conceptual elements. In other words, the divine text, when read in its entirety, represents an integrated whole. In addition, this approach highlights how the meaning of a specific term changes, but never to the extent that its original meaning is violated. Tracing how the relevant terms are derived from their root leads to constructing the Islamic framework for orphan care.

As the Qur'an refers to itself as *al-Muṣaddiq* (the confirmer or verifier of truth) and *Muḥaymin* (overseer, protector, guardian, witness, and determiner of

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¹ For more details of the classical and contemporary debates concerning the method's genealogy, see Zainab Alwani, "Al-wahda al-binā'iyya li-l-Qur'ān: A Methodology for Understanding the Qur'an in the Modern Day," *Journal of Islamic Faith and Practice*, 1:1 (2018): 7-27.

the truth), it, therefore, judges us by the truth.² Consequently, we should seek its judgment when making a decision³: “And We have revealed to you, [O Prophet], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it” (5:48). Therefore, applying a *Muṣaddiq-Muḥaymin* methodology allows us to trace a term or a concept’s use, how it developed or changed over time, and how these changes impacted its implementation in a given society’s sociocultural, legal, socioeconomic, and sociopolitical spheres.

For this discussion, the terms analyzed are, in order of appearance: *insān* (human being), *khalīfa* (representative on Earth), *yaṭīm* (orphan), *al-waḥda al-binā’-iyya li-l-Qur’ān* (The Qur’an’s Structural Unity), *‘umrān* (cultivating our planet’s balance, peace, justice, and sustainability), *tazkiya* (holistic purification), *taqwā* (Allah-consciousness), *‘ibāda* (worship), *iṣlāḥ* (improve, reform, and rectify), *fasad* (corruption, mischief, ruin, and spoil), *tughyān* (to go beyond the *ḥudūd* [limits set by Allah]), *ibtilā* (test), *karam* (dignity, honor), *karāma* (honor), *ta’āruf* (getting to know one another), *‘urf* (local custom), *ma’rūf* (doing what is right, just, and fair), *‘amr bi al-ma’rūf wa nahy ‘an al-munkar* (enjoining the right/honorable and forbidding the wrong/dishonorable), *laqīṭ* (abandoned child), *kāfil* (legal guarantor), *tabanni* (adoption), *da’īy* (to be claimed as sons), *āwā* (a holistic description of an ideal shelter with a mission to improve a displaced person or orphan’s life), *nasab* (original lineage), and *farḍ kifāya* (communal responsibility).

Reading the Qur’an as a “unity” ensures that the divine text will remain relevant, for this approach enables scholars to continue developing its ability to provide answers to difficult contemporary questions and challenges.

² Given this reality, we should begin our search for answers and solutions to contemporary complex issues by reading the Qur’an holistically to understand and evaluate our concepts, customs, and systems in its light. The Qur’an only mentions *Muḥaymin*: Allah uses it both for Himself (59:23) and the Qur’an (5:48). This term comes from the root *hā-mīm-nūn*, which points to three main meanings: to oversee, protect, and guard; to witness; and to determine the truth. This root appears twice in the Qur’an in one derived form. Linguistically, the root also means to extend a wing, like a hen protecting her chicks, and is related to Allah’s names *ar-Raqīb* (The Watcher), *al-Hafīz* (The One who protects and guards), and *Ash-Shahīd* (The Witness). *Al-Muḥaymin* is the One who observes, controls, looks after, completely covers us, and judges us by the truth. <https://understandquran.com/and-the-answer-is-al-muḥaymin/>.

³ See ‘A’isha Abd al-Rahman bint al-Shatī’, *al-Tafsīr al-bayānī li-l-Qur’ān al-karīm* (Cairo: Dar al-Ma’arif, 1971 & 1981) and Issa J. Boullata, “Modern Qur’ān Exegesis: A Study of Bint al-Shatī’s method,” *The Muslim World* 64 (1974): 103.

Insān

In the Qur'an, Allah repeatedly explains that He has created every *insān* (human being) with dignity and clearly defines our purpose: to serve as His *khalīfa* (representative on Earth), a trust that requires the upholding of every human being's dignity. By default, a *yatīm* (orphan) is an *insān*. All human beings are personally responsible for maintaining an orphan's dignity, a fact that becomes clear by applying the holistic method of *al-wahda al-binā'iyya li-l-Qur'ān* (The Qur'an's Structural Unity).⁴ Reading and analyzing the Qur'an in its entirety, thereby acknowledging its complete structural and linguistic unity, enables scholars to observe a specific term's movement throughout the text and how its meaning changes according to the context in which it is used, without its original meaning ever being violated. This conceptualizes the Qur'an as perfect in all its *suwar* (chapters; sing. *sūra*), *ayāt* (verses; sing. *āyah*), words, letters, and parts – one unit. As human beings, we tend to forget and float away from what Allah tells us and thus end up creating misconceptions. To prevent this, we have to understand the Qur'an on its own terms so that we can derive comprehensive and applicable meanings.

To understand *kafāla*, we must first understand the *yatīm* as an *insān*. This term first appeared in *Sūrat al-Fajr*, considered by most commentators to be an early Makkan *sūra* and most likely the tenth one to be revealed.⁵ These early revelations tended to establish Islam's foundational teachings.

Reading and analyzing this *sūra* in light of the Qur'an's structural unity indicates that the human's mission on Earth is its central theme. *Nasiya*, the verbal derivative of the word *insān*, means to forget, in the sense that humanity tends to forget its origin (20:115; 76:1-2) and Creator, as well as how to form and then maintain this relationship. *Insān* is also derived from *uns* (to have affection, be friendly, familiar, intimate, or sociable).⁶ We often develop affection and

⁴ For more details of the classical and contemporary debates concerning this method's genealogy, see Alwani, "*Al-wahda al-binā'iyya li-l-Qur'ān*."

⁵ Fakhr al-Din al-Razi, *Tafsīr mafātīh al-ghāyib* (Beirut: Dar al-Fikr, 1981); Abu al-Fida Isma'il ibn Kathir, *Tafsīr al-Qur'ān al-'Aẓīm* (Beirut: Mu'assasa al-Kutub al-Thaqafiya, 1996); Muhammad al-Tahir ibn 'Ashur, *Al-Taḥrīr wa-l-Tanwīr* (Tunis: al-Dar al-Tunisiya li-l-Nashr, 1984).

⁶ Muḥammad ibn Mukarram ibn Manzūr, *Lisān al-'Arab* (Beirut: Dar al-Sadr, 1410 AH). Muḥammad ibn Muḥammad Murtaḍā al-Zabīdī, *Tāj al-'Arūs* (Beirut: Lebanese American University, LAU Stacks Quarto PJ6620 .M852, 1966). Online dictionary: <http://www.baheth.info/index.jsp>. <https://lau.summon.serialssolutions.com/?#!search?ho=t&fvf=ContentType,Book%20%2F%20eBook,f&l=en&q=lisan%20al-arab>.

familiarity for things other than Allah, like wealth and various worldly things (3:14), which make us forget our purpose in life.

Allah's description of the human being's role is *khilāfa* – serving as Allah's trustee on Earth: "Remember when your Lord said to the angels, I am placing a trustee (*khalīfa*) on Earth" (2:30). Just as Allah made each human being His *khalīfa*, He provided each of them with the knowledge needed to fulfill this role (2:31). First, the Qur'an informs us that each human being is born with an innate consciousness of Allah due to humanity's promise to worship Him alone (*tawhīd*) (7:172).⁷ Second, Allah wants us to do this voluntarily: "We did indeed offer the Trust to the heavens, Earth and the mountains, but they refused to bear it, and were afraid of it. Yet humans accepted it; indeed he is unjust to himself and ignorant of the consequences" (33:72). Most scholars have referred to this as the "Covenant between human beings and Allah." Third, accepting this trust made humanity responsible for the heaviest challenge in existence: freely choosing to worship Allah. The freedom to choose whether or not to do so stands at the center of the Qur'anic description of the human being. Allah created each human being in a special way and gave each one unique gifts and abilities, a soul and a conscience, knowledge, and free will: "He began the creation of humanity from clay, and made his progeny from a quintessence of fluid" (32:7-8). He then established kinship:

O humanity! Be conscious of your *Rabb*, who created you from a single soul, and from it created [of like nature] its mate, and from the two has spread a multitude of men and women; And remain conscious of Allah, through Whom you demand your mutual [rights] from one another, and (reverence) the wombs (that bore you). Verily, Allah is ever Watchful over you! (4:1)

Thus, human beings have a fundamental attachment to Earth (20:55). With this, the Creator, the One Who owns all knowledge and wisdom, entrusted them with cultivating and maintaining what the Qur'an calls *'umrān* (11:61) – our planet's balance, peace, tranquility, fairness, justice, and sustainability.

In short, humanity's agreement to take care of Earth and its inhabitants made all of its members accountable for treating both of them properly: "By the soul and how He formed it, then inspired it to understand what was right and wrong for it. Truly he/she succeeds that purifies it, and he/she fails that corrupts it!" (91:7-

⁷ "And (remember) when your Lord brought forth offspring from the loins of the Children of Adam and made them bear witness about themselves. He said, "Am I not your Lord?" They replied, "We bear witness that You are." This He did, lest you should say on the Day of Resurrection, "We had no knowledge of that.""

10). The foremost quality of mind and character that flows from this commitment is a state of constant vigilance or awareness of the presence of Allah, the All-Knowing. *Tazkiya* (holistic purification) is the vital process of building one's *taqwā* (Allah-consciousness), because it represents a human being's most important credential and qualification. Without *tazkiya*, a human being can no longer function as Allah's representative on Earth or cultivate it, although Earth was created to be cultivated.

Tawhīd, *tazkiya*, and *'umrān* are three of the Qur'an's higher aims, and the true meaning of *'ibāda* (worship) can only be realized/fulfilled when they are fully integrated.⁸ Allah entrusted us with *'umrān* so that we could inhabit, cultivate, build, repair, and take care of Earth and all of its inhabitants. A commitment to loving and cherishing Earth and everything in this universe is considered *islāh* (improvement, reform, and rectification).

On the other hand, being cruel to Allah's creations violates *'umrān*, creates *fasad* (corruption, mischief, ruin, and spoil), and makes things go bad and become rotten (see 2:11, 12, 27, 30, 60, 205, 222, 251; 13:25; 21:22).⁹ In this case, *'ibāda* acquires a broader meaning: Every step and movement on Earth either improves or corrupts: "Hence, do not spread corruption on Earth after it has been so well ordered. And call unto Him with fear and longing: Allah's mercy is ever near unto the doers of good" (7:56) and "Stand firm and straight on a right course as you have been commanded, [you] and those who have turned back with you [to Allah], and do not transgress. Indeed, He is Seeing of what you do" (11:112).

Sūrat al-Fajr presents three nations that used the wealth, power, and knowledge He had bestowed upon them to become arrogant and oppress others. Such tyrannical behavior caused them to be obliterated.

Have you not considered how your Lord dealt with 'Ād – [with] Iram, who had lofty pillars, the likes of whom had never been created in the land? And [with] Thamud, who carved out the rocks in the valley? And [with] Pharaoh, owner of the stakes? [It was they] who transgressed all bounds (*taghaw*) of equity all over their lands, and brought about great corruption therein. So your Lord let loose on them the whip of torment. Surely your Lord is ever on the watch. (89:6-14)

⁸ Zainab Alwani, "Maqasid Qur'aniyya: A Methodology on Evaluating Modern Challenges and Fiqh al-Aqalliyat," *The Muslim World* 104 (2014): 465-87.

⁹ For example, Prophet Muhammad (pbuh) provides a very clear example of corruption on Earth (*fasad fi al-ard*): "A woman was tortured and was put in Hell because of a cat which she had kept locked [up] till it died of hunger." The Messenger of Allah further said, "Allah said (to her), 'You neither fed it nor gave it water when you locked it up, nor did you set it free to eat the insects of the Earth'" *Sahīh Bukhārī* 3318, book 59, hadith no. 124; vol. 4, book 54, hadith 535.

Taghaw, a term derived from *tughyān*, means to go beyond the *ḥudūd* (boundaries set by Allah) and rebel against the limits set by Allah (20:81; 55:8; 91:11; 5:64, 68; 18:80; 23:75). How can we establish *‘umrān* and keep Earth a safe place for all while respecting Allah’s boundaries? This *sūra* identifies some common misconceptions that affect human actions and behavior which, as a result, lead to such transgression, oppression, and corruption.

Allah’s punishment and wrath must not be confused with *ibtilā* (test), the concept that Allah made this life a trial for all people, whether they are wealthy or poverty-stricken, healthy or sick, powerful or powerless, and so on. Such trials are designed to reveal if human beings are grateful during times of blessings and patient during times of hardship. We will be judged in both this life and the hereafter on how we responded to them. This further test is not designed to reveal who is good, but to make human beings face challenges so that they may grow and reach their potential. Allah says: “And all this befell you so that Allah might test what is in your minds. And in order to purify what was in your hearts. For Allah is aware of your inner thoughts” (3:154). Human beings are inclined to think that wealth and status are marks of true worth or signs of one’s standing with Allah, forgetting that Allah gives provision to whomever He wills (13:26, 17:30, 28:82, 29:62, 30:37, 34:36, 39:52, 42:12). This fundamental issue is further explained in *Sūrat az-Zukhruf* (43:32).

In all cases, human beings’ experiences and reactions to their situation(s) are defined by their relationship with the Creator and their striving to please Him alone. The implication here is that they repeatedly forget the difference between the things of this world and those of the next. Some people refer to *ibtilā* as hardship and difficulties; however, the truth of the matter is that wealth, comfortable living, and good health are also tests to reveal if we can share them and remember who gave them to us: “We have caused earthly things to seem attractive so that We can see who will excel in good deeds” (18:7) and “It is He who created death and life to put you in trial as to which of you is most virtuous in your deeds. He is Mighty and All-forgiving” (67:2).

In the case of *yatāmā* (orphans), their *ibtilā* is losing their caring and loving parents. But the test for everyone around them, from family to neighbors and community, is to provide the best care possible for them. *Sūrat al-Fajr* states that people incorrectly think that prestige ends their troubles and confers honor upon them. Thus, when their *rizq* (livelihood) is restricted or vanishes, they think that their Creator has humiliated them.

This concept implies that regardless of a person’s financial situation, every *insān* (human being) has been created in intense struggle. The term *insān* is used to imply that humanity as a whole and that all people individually are created in this toil and struggle: “Verily We created human into toil and struggle” (90:4) and

“Your Lord is not ever unjust to [His] servants” (41:46). Out of His infinite mercy, our Merciful Lord has helped us fulfill our responsibility properly by equipping us with both internal and external guidance, such as self-reflection, the scriptures, and the prophets – all sent according to His own wisdom and knowledge. Allah also informed us that He loves to forgive us and be there for us (2:186). His infinite mercy and justice dignify us with *karāma* (honor).

***Karāma*: A Cosmic Honor**

The term *karam* (dignity, honor) embraces all admirable qualities, and the related term *karīm* means forbearing, generous, kind, gentle, patient, self-possessed, noble, and pure. The term *akrama* is mentioned three times in *Surat al-Fajr* (twice in 89:15 and once in 89:17) in the active verb form. Allah also describes himself as *al-akram* (The Most Generous) in *sūra* 96, the initial five verses of which are held to comprise the first revelation sent down to Prophet Muhammad (peace be upon him). *Karāma*, a term derived from the same root as generosity, refers to the concept of human dignity, for it is the understanding that each human being has a special value due solely to his/her humanity: “Indeed, We honored the progeny of Adam, bore them across land and sea, provided them with good things for their sustenance, and favored them far above many of Our creation” (17:70).

This “cosmic honor” has nothing to do with our class, race, gender, religion, abilities, or any other factor other than being human. Allah created Adam and honored him by ordering the angels to bow to him and then gave him a high rank by making him His *khalīfa*. This honor ignited the jealousy of Satan (Iblis) and caused him to proclaim: “Do You see this one whom You have honored above me? If You delay me until the Day of Resurrection, I will surely destroy his descendants, except for a few” (17:62). “Allah said, ‘This is the path which leads straight to Me; Surely, you shall have no power over My true servants, except those misguided ones who choose to follow you’ (15:1-42). Allah keeps reminding humanity of its status and that He created each person in the best form (95:4, 82:5-7).

Allah’s infinite justice and mercy do not connect *karāma* with one’s physical or social status, but with one’s choices, actions, and deeds (3:195, 4:124, 16:97, 40:40). The Qur’an clearly explains that our mission is to establish an effective stewardship while acknowledging that all people are created equal in terms of worth and value regardless of their race, gender, wealth, class, lineage, or lack of a father, and affirming that only one’s *taqwā* (Allah-consciousness) determines one’s superiority over another person in His sight (49:13).

Human dignity must be recognized and preserved in all aspects of human relationships. For example, the Qur’an prohibits any verbalizations, actions, and even gestures that injure a person’s dignity: “Believers, let not some men among you ridicule others: it may be that the latter are better than the former: nor should

some women laugh at others: it may be that the latter are better than the former: do not defame or be sarcastic to each other, or call each other by offensive nicknames” (49:11-12). Avoiding such behavior not only protects and shows respect for others, but also is for everyone’s own good, for these characteristics enable everyone to thrive in the midst of compassion and peace.¹⁰ *Sūrat al-Balad* emphasizes the Qur’anic framework’s principles in terms of building a compassionate community and nation. The resulting model city’s foundational structure would be based on the clear message and accurate understanding of humanity’s mission as Allah’s *khalīfa*.

Today, we must ask which actions, behaviors, and practices humiliate the *insān* and bury their dignity, along with how can we help restore the orphans and other marginalized people’s dignity so they can perform their duty as Allah’s dignified *khalīfa*. The Qur’an constantly invites people to be mindful and aware of their words and actions due to their short- and long-impact on those around them. Moreover, such behavior will lead to the creation of customs, traditions, and even laws that future generations will mistakenly follow (2:110, 170; 3:30; 3:195; 4:123; 5:104; 7:173; 10:78; 11:62, 87; 26:74).

As our world becomes more and more diverse and interconnected, humanity must strive to implement the Qur’anic concept *ta’aruf*, namely, getting to know one another so humans can get to know themselves through the other. In other words, a widespread detrimental attitude within a community may become known only by interacting with others, as this often leads to self-reflection. The first Muslim community exemplified the historical integration of *urf* (local custom) by acting in accord with the Qur’anic concept of *ma’rūf* (doing what is right, just, and fair).

The concept *‘amr bi al-ma’rūf wa nahiy ‘an al-munkar* (enjoining what is right and honorable, and forbidding what is wrong and dishonorable) seeks to replace oppression with justice at all social levels (3:104, 110, 114; 7:157; 9:71, 112; 22:41; 31:15, 17). This integration analyzes how the law allows “the common good” and cultural norms to play a role in deriving legal rulings consistent with the Qur’an’s higher values of *tawḥīd*, *tazkiya*, and *‘umrān* in applying the Sharia’s objectives.¹¹

Today, millions of children are abandoned and deprived of life’s basic necessities. *Sūrat al-Fajr* describes any cruel and inhumane society by the words *lā yukrimūn* (not honoring [the orphan]), *walā yahadhūn* (not feeding [the poor]), *ya’kulūn* (devouring [the orphan’s inheritance]), and *yuhibbūn* ([immense] loving [of wealth]). This *sūra* also informs us that orphans and the poor are not only our

¹⁰ Both *Sūrat an-Nūr* and *Sūrat al-Hujurāt* present holistic practical strategies for building a compassionate community that can preserve all of its members’ human dignity.

¹¹ Alwani, “*Maqasid Qur’aniyya*.”

responsibility, but also our primary investment in the one of the most important things that matters: taking care of the dignity of all orphans, along with that of the poor and marginalized people. Otherwise, greed, selfishness, and enslavement to one's wealth will cause them to lose their human essence. *Yatīm* is an honorable title that Allah gave to minor children who have lost their father, and we must raise a generation that restores and upholds the honor and dignity in that title.

Yatīm (Orphan)

Yatīm (orphan) linguistically means “unique in its value or quality.” Al-Rāghib al-Asfahānī defined it as the individual, isolated and alone: *Durra yatīma* means the pearl that is precious and has no equal.¹² It also refers to everything that is dear to his/her counterpart, one who excels in his/her kind, and outperforms his/her peers.¹³ A minor who has no father is called *yatīm*; a minor who has no mother is called *munqaṭ‘i* (someone who has been cut off).

The term *yatīm* appears in the Qur’an twenty-three times. It is first found in *Sūrat al-Fajr*, where it deconstructs the wrong views of orphans and introduces the correct perspective: that *yatīm* is an honorable title, that this person is an *insān* by default and thus possesses *mukaram* (respected and honored), has been given cosmic dignity, and is a *khalīfa* and thus entrusted with all of the relevant responsibilities. *Sūrat al-Duḥā* introduces Prophet Muhammad (peace be upon him) as a *yatīm* whose father Abdulla died before his birth; his mother Amina died six years later. Although he appeared to have been “abandoned” by his parents, his relatives constantly provided him with shelter, care, protection, and guidance in addition to preserving his dignity. As we read in the Qur’an: “Did He not find you an orphan and give you shelter?” (93:6).

The Prophet’s (peace be upon him) life experience dispels any misconception about orphans being anything but honorable. In the case of female orphans, the Qur’an also presents the *yatīm*’s honorable status when discussing Maryam. Her life demonstrates a model for being raised as a female orphan, knowing Zakariya took *kafāla* of Maryam (3:37). Maryam herself is a role model for a righteous and trusted human being. As *Sūrat Āl-‘Imrān* states: “And when the angels said: ‘O Maryam, Allah has chosen you and purified you and chosen you over the women of all the worlds.’” The lives of these two honored individuals exemplify how Allah honors and takes care of both male and female orphans.

The Qur’an introduces the *yatīm* as an *insān*, a dignified child who should be raised as a believer so that he/she will voluntarily submit to the Creator, commit to a lifetime of striving in Allah’s way to enjoin what is good and forbid what is

¹² Al-Rāghib al-Asfahānī, *Al-Mufradāt fī gharīb al-Qur’ān*, ed. Muhammad Seyd Kaylani (Beirut: Dar al-Ma‘arifa, n.d), 550.

¹³ Murtaḍā al-Zabīdī, *Tāj al-‘Arūs*.

wrong, and to fulfill the purpose of his/her being Allah's *khalīfa*. Therefore, providing orphans with sustenance, education, upbringing, and emotional/mental support is a moral and legal responsibility, not to mention a great and rewarding task. The main challenge is to bring them up in such a manner that the dignity of their "self" is not injured. The Qur'an forbids treating orphans harshly and oppressively and urges kindness and justice toward them (2:83, 220; 4:2, 3, 6, 8, 9, 10, 127; 6:152; 17:34; 33:4, 5; 89:17; 93:9; 107:2).

Allah repeatedly emphasizes the word *yatīm* to instill the importance of that honorable title. All Muslims are obliged to physically and financially care for, support, and defend them; preserve their *karāma*; and be kind to them. As much as orphans need sympathy and tenderness, they also need guidance and discipline. The Qur'an urges compassion toward them and warns their caretakers not to oppress or treat them harshly (91:9, 107:2). *Surat al-Nisā'* gives special attention to female orphans, emphasizing that they must be given their full rights and properties (4:2-3, 127).

Orphan care is a complicated and sensitive topic. While it is tempting to believe that everyone with good intentions and a sincere heart can raise such children, in fact one can easily do more harm than good. This is why Allah established a careful set of guiding principles to direct how their caretakers and society as a whole are to treat them. Every member of the caretaker family, especially the father and the mother, has an obligation and a role to fulfill in this regard.

To uphold these guiding principles, we must first identify and understand these specific roles and responsibilities. *Sūrat al-Kahf* relates the story of two orphaned brothers whose righteous father left behind a buried treasure for them (18:82). Clearly, a father's responsibility to his children is to be both a righteous role model and a financial supporter. In the case of divorce, the Qur'an stipulates that fathers are legally obliged to provide for their children so that mothers, who are obliged to nurture and take care of them, will not have to worry about bearing the associated financial burden. It is important to emphasize that even if the mother decides she cannot nurse, the father's obligation's remains (2:233).

When a Child's Father Dies

According to the Islamic family model, this financial responsibility immediately transfers to the father's extended family upon his death, while raising and nurturing the *yatīm* moves to the mother's family. This does not mean that the father has no role in raising, nurturing, educating, and disciplining his child (12:4-18, 31:12-10), but rather that in the case of emergency, implementing such a practical strategy has two crucial benefits: (1) it maintains family stability and ensures the orphan's continued wellbeing and (2) provides clarity and transparency as to who is accountable for what.

Despite dividing the parents' responsibilities, this model is flexible enough to make any necessary changes due to death, illness, divorce, or similar issues. What is important here is the family's purpose: to ensure a safe, stable, and peaceful environment for all of its members. Therefore, some contemporary jurists define *yatīm* as any child who has lost his/her father through death to include those who have been abandoned by their fathers.

The *laqīṭ* (abandoned child) is a vulnerable member of society, especially in these troubled times. The orphan's vulnerability is not as great, since he/she, according to the Arabic and Islamic definitions, still has his/her mother. If both parents are deceased, the orphan is more like the abandoned child. According to the *Kuwaiti Encyclopedia of Islamic Jurisprudence (al-mawsū'a al-fiqhiya al-kuway-tiya)*, other categories are included under *yatīm* to protect the abandoned child's dignity as well.¹⁴

Legally, a *laqīṭ* is a child whose family has abandoned him/her out of fear of poverty or the accusation of *zinā* (adultery), or an infant left somewhere with no information about his/her parents' identity.¹⁵ Such unfortunate incidents are a sign of deteriorating moral values and, if ignored, will eventually destroy a society's moral fabric. Saving such a child's life is an act of great merit, for "One who saves a life, it is as if he/she saved the lives of all people" (5:32). Everyone must be held responsible for this – the parents, family, authorities, and society as a whole. Similarly, caring for an abandoned child has always been both a moral and legal imperative in the Islamic tradition.

The Qur'an presents a framework for protecting the dignity of the *yatīm* and the *laqīṭ*: (1) "Everyone must bear the consequence of what he does, and no bearer of a burden can bear the burden of another. Then to your Lord you will return, and He will inform you of what you used to dispute about" (6:164); (2) Prophets Musa and Yusuf were abandoned as young children. Allah told Musa's mother to place her newborn son in a basket and float it down a stream to escape Pharaoh's order to execute each first-born son of the Children of Israel (20:36-39). Ironically, Pharaoh's wife rescued him and raised him as if he were one of Pharaoh's sons. Yusuf's jealous brothers dropped him into a well, from which he

¹⁴ The Permanent Committee for Academic Research and Fatwa, headed by the Saudi scholar Ibn Baz, fatwa no. 20711, dated 12/24/1419 AH: "Those of unknown parentage come under the ruling of an orphan because they lose their parents; however, they are more in need of care than those with a known lineage because there is no knowledge of a relative to whom they resort to when necessary."

¹⁵ Wizarah al-Awqaf wa al-Shu'un al-Islamiyah, *Al-Mawsu'a al-Fiqhiya* (Kuwait: Matabi' Dar al-Safwah, 1995), 35/295. For more details about juristic perspective, see M. S. Sujimon, "The treatment of foundling (*al-laqīṭ*) according to the Ḥanafīs), *Islamic Law and Society* 9, no. 3 (2002): 358-85.

was rescued by passersby and sold into slavery; (3) It introduced the concept of brotherhood: “If you do not know their fathers, regard them as your brothers in faith and *mawālīkum* (allies and/or friends; 33:5) and a milk-based relationship to help support those who are orphaned or abandoned while being nursed. This special relationship creates prohibitions as well as rights and responsibilities. “Forbidden unto you [for marriage] are your mothers ... your foster-mothers (who breastfed you), and your foster sisters” (with whom you shared breastmilk) (4:23).

And finally, (4) The *āyah* “Therefore, do not oppress (*taqhar*) the orphan” (93:9) attempts to turn the caretakers’ attention to the more enjoyable everlasting success of the hereafter by making this type of good treatment a sign of genuine faith. *Sūrat al-Mā’ūn* asks: “Have you seen the one who denies the final Judgment? That is the one who repulses the orphan and does not encourage the feeding of the poor” (107:1-3). The term *taqhar* is based on *qahr* and, as al-Asfahānī cites in his *Mufradāt*, means “prevalence with contempt.”¹⁶ In the context of an orphan, it implies a strong warning for humanity not to oppress, overpower, or subjugate others. The Qur’an used *Qahār* in reference to a person only once – about Pharaoh (7:127).

The surest way to earn Allah’s wrath, *al-Qahhār*, is to oppress others. This shows that in relation to orphans, even though feeding and donating are considered highly commendable actions, it is more important to respect them, be kind, help them spiritually, and satisfy their emotional needs. In fact, a prophetic hadith states that upholding a *yatīm*’s *karāma* is best accomplished by following the guidelines of *kafāla* as described in the Qur’an and exemplified by Prophet Muhammad’s (peace be upon him) life.

Kafāla

The Qur’an, which verifies and protects the meaning(s) of its terms, mentions *kafāla* in relation to orphan care in 3:37, 44; 28:11-12; and 20:39-40 within the contexts of being liable for, giving or serving, sponsoring, making certain that something will happen, vouching for, assuring, and being a security or a suretyship.¹⁷ The Qur’an uses *kafal* in a broad concept, and its derivatives include all of the above-mentioned meanings (3:37, 44; 4:85; 20:40; 21:85; 28:12; 38:23; 57:28). *Kafāla* seeks to remove one’s burden and place him/her under the protection of the one who has assumed this responsibility. Therefore, it

¹⁶ Al-Rāghib al-Asfahānī, *Al-Mufradāt fī Gharīb al-Qur’ān*, 414.

¹⁷ A surety is defined as “a person who is primarily liable for the payment of another’s debt or the performance of another’s obligation.” “Although a surety is similar to an insurer, one important difference is that a surety often receives no compensation for assuming liability.” Brian A. Garner (editor in chief), *Black’s Law Dictionary* (Deluxe Eighth Edition) (St. Paul, MN: West Group, 1999), 1482.

means making oneself responsible for preserving someone else's dignity by removing his/her burden(s).

As a result, this concept can be extended to create a broader meaning of *takāful*, defined as communal mutual support and care, as well as joint responsibility and solidarity, in society. It starts with kinship ties among familial networks and goes beyond this to establish mutual social support and responsibility.¹⁸ A *kāfil* is viewed as a legal guarantor when he/she is the breadwinner, provider, protector, and legal guardian of another person. The guarantee may be financial (e.g., cosigning a credit transaction) or physical (e.g., providing safety and shelter from potential harm).

Introducing the story of Maryam as a model for *kafāla*, the Qur'an uses it to explain two essential elements of orphan care: (1) Identify the goal; "So her Sustainer (*Rabb*) graciously accepted her with good acceptance and caused her to grow in a good manner and put her in the care of (*kaffalahā*) Zakariya (3:37) and (2) Devise a clear process and conditions to identify the best caregiver, especially when more than one person is making himself/herself available. This procedure can be adjusted as long as it serves the child's best interest: "[O Prophet] That is from the news of the unseen which We reveal to you. And you were not present with them when they threw their pens to draw lots, to know who the guardian of Maryam should be; nor were you present with them when they disputed" (3:44). This story reveals that the proposed caregivers must meet the relevant criteria. The story shows that Maryam's maternal aunt and her husband Zakariya were chosen because there was no maternal grandmother.

There must be a comprehensive description of how the *kāfil* treats, nurtures, trains, and raises the orphan: "Every time Zakariya entered upon her in the prayer chamber, he found with her provision. He said, 'O Maryam, from where is this [coming] to you?' She said, 'It is from Allah. Indeed, Allah provides for whom He wills without account'" (3:37). His question exemplifies how the *kāfil* nurtures and disciplines the orphans: "Keep a close check on orphans till they attain the age of marriage" (4:6). The story further reveals the significance of continually evaluating the child's progress and how he/she turns out. "The angels said, 'Maryam, Allah has selected you and purified you. He has selected you over [all] the women of your time. O Maryam! Remain truly devout to your Sustainer, and prostrate yourself in worship, and bow down with those who bow down [before Him]'" (3:42-43).

This concept also appears twice in the story of Musa, where it is defined as the most perfect type of care possible. In *Sūrah Ṭaha*, Musa's sister recommends to

¹⁸ Jamila Bargach, *Orphans of Islam* (Lanham, MD: Rowman & Littlefield Publishers, Inc. 2002), 29.

Pharaoh's wife that Musa's mother care for and nurse him: "And I bestowed upon you love from Me that you would be brought up under My eye. [And We favored you] when your sister walked along and said, 'Shall I guide you to one who *yakfulah* (will take care of him)?' Thus We returned you to your mother, so that her eyes might be cooled and that she might not grieve..." (20:39-40). In *Sūrah al-Qaṣaṣ*, Musa's mother asked Musa's sister to

"Go, and follow him." So she watched him from a distance, like a stranger, without anyone noticing her. We had already made him refuse all wet nurses. So his sister said to them, "Shall I tell you of a family who (*yakfulnah*) will bring him up for you and take good care of him?" Thus We restored him to his mother so that she might be comforted..." (28:11-12)

Allah emphasizes in these stories that He is the One who takes care of these children and makes the best arrangements for their care so that they will grow in good manners. He also did this for the orphaned Muhammad (peace be upon him) (93:9) and the two orphans in *Sūrat al-Kahf* (by protecting their wealth) [18:81]. All of these verses indicate that Allah helps people who take care of orphans.

Allah stresses that any relationship must be established based on a true connection set by the Creator, as opposed to a man-made (and therefore false) one, for the latter relationship will deconstruct the essence of humanity. An example is the pre-Islamic custom known as *zihār*: "Those who separate themselves from their wives by pronouncing, 'To me you are like my mother's back,' must concede that they are not their mothers; none are their mothers except those who gave birth to them – surely they utter an evil word and a lie. Allah is pardoning and Most-forgiving" (58:2). Both of these man-made relationships are false, for the mother is the mother, the daughter is the daughter, the wife is the wife, and so on. We cannot claim that our wife is our mother, or that our niece is our daughter, because Allah has clearly defined everyone's role. There is divine wisdom in the blood relationships He has assigned to us.

As *al-Muṣaddiq*, the Qur'an is the confirmer or verifier of truth, and as *Muhaymin* it is the overseer, protector, guardian, witness, determiner of the truth, and judges us by the truth: "And We have revealed to you, [O Prophet], the Book in truth (*muṣaddiq*), confirming that which preceded it of the Scripture and as a criterion (*muhaymin*) over it" (5:48). This methodology teaches us that Allah's authority (*sulṭān*) both confirms and protects the Qur'an concepts: "Would you dispute with me about mere names, which you and your fathers have invented, and for which Allah has revealed no authority? Wait then if you will: I am waiting alongside you" (7:71) and

All those you worship instead of Him are mere names you and your forefathers have invented, names for which Allah has sent down no authority: all power belongs to Allah alone, and He orders you to worship none but Him: this is the true faith, though most people do not realize it. (12:40)

Reading the Qur'an in its entirety (*al-wahḍa al-binā'īya*) reveals that when it endorses a word, that word becomes a concept through which the Qur'an clarifies its meaning, applies through specific examples, and then protects its meaning by moral principles and legal rulings. Applying this method helps and guides us to verify, assess, and distinguish between true and false concepts, practices, and even man-made customs.

Therefore, we have to consider how the Qur'an uses the word. Given that the Qur'an attests to its words' definition(s) and determines their specific meaning(s), all of its terms or concepts must be defined in the light of the text's unity and divine language, as well as read conceptually, in order to trace the derivation of its words. This is a crucial element of building our model of orphan care. For example, *tabanni* (adoption) and *da'iy* (to be claimed as sons), are defined as follows:

1. The Qur'an never uses *tabanni*; rather, it describes this situation as *natakhḍhu' walada* (to claim him as our son). For example: "And the one from Egypt who bought him (Yusuf) said to his wife, 'Make his residence comfortable. Perhaps he will profit and benefit us, or we will claim him as a son'" (12:21) and "The wife of Pharaoh said, '[He will be] a comfort of the eye for me and for you. Do not kill him; perhaps he may benefit us, or we may claim him as a son.' And they perceived not" (28:9). Both verses emphasize that the goal was not the child's welfare or benefit, but to benefit those who wanted to claim him.

Reading the Qur'an in its entirety shows that this exact *āyah* is primarily mentioned in a specific context: "They say: 'Allah has taken a son.' Exalted is He; He is the Self-Sufficient One; everything in the heavens and on Earth belongs to Him. Do you have any evidence for this claim? Would you ascribe to Allah something which you do not know? Say, 'Those who invent falsehoods about Allah will never prosper' (10:68-69) and "Say: 'Praise to Allah, who has not taken a son and has had no partner in [His] dominion and has no [need of a] protector out of weakness; and glorify Him with [great] glorification'" (17:111; also see 2:116; 18:4; 19:35, 88, 91-92; 21:26; 23:91; 72:3).

2. *Da'iy*: (pl. *ad'iyā'kum*): "And He has not made your wives whom you declare unlawful your mothers. And he has not made your

claimed/adopted sons (*ad'iyā'kum*) your [true] sons. That is [merely] your saying by your mouths. But Allah says the truth, and He guides to the [right] path” (33:4). Allah then defines the system of (*maḥārim*)¹⁹:

Prohibited to you [for marriage] are ... your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful. (4:23)

Then the Qur'an explains *da'īy* in the social context:

And once when Zayd had come to the end of his union with her (Zaynab bint Jahsh), We married you (Muhammad) to her in order that the believers find no uneasiness regarding marrying the ex-wives of their claimed sons (*ad'iyā'hum*) when the latter have come to the end of their union with them. (Q 33:37)

In this way, the Qur'an closed the door against all such false claims or misunderstandings. According to one hadith, the Prophet also forbade people from claiming to be the children of unrelated men: “Whoever makes claims to one who is not his father while knowing that he is not his father will be barred from entering Paradise.”²⁰ In other words, every individual's rightful identity must be preserved because developing an identity is an essential component of a personality.²¹

The Qur'an, as mentioned above, is both the *Muṣaddiq* (confirmer or verifier of truth) and *Muḥaymin* (guardian and determiner of the truth) and judges us by the truth (5:48). Orphan care is an example of a divine concept that is often

¹⁹ Also see 24:31, 61; 25:54, 33:55.

²⁰ Muhammad b. Isma'il al-Bukhari, *Ṣaḥīḥ al-Bukhārī* (Damascus and Beirut: Dar Ibn Kathir, 2002), 1676, hadith no. 6766.

²¹ Shabnam Ishaque, “Islamic Principles on Adoption,” 22 *Int'l J.L., Pol'y & Fam.*, 393, 401-06 (2008) (The child may take mother's name if born out of wedlock).

misinterpreted, despite Allah's clear definition of it, and *kafāla* shows how to both understand and put it and its associated concepts into perspective. It thus challenges our way of thinking in order to reveal the root of our sociocultural problems and then guides us to correct them by dealing with the issue holistically.

The historical record contains many examples of the marginalized and the weak being otherized and politicized for worldly gains. For instance, references to child adoption have been found in ancient Greek, Babylonian, Roman, Japanese, Chinese, and Egyptians law codes; however, the overall goal was often driven only by the desire to secure a male heir.²² While adoptive families are created through law and custom, and not through biology or blood,²³ *kafāla* is quintessentially about taking care of children as opposed to forming a new family.²⁴

As Islam requires people to recognize the truth in all cases, such a false relationship would deprive these children of their dignity and honor and, in a sense, render them the property of biologically unrelated adults who seek to gain some benefit from them. Thus, as distinct from the American adoption system, their ties with their biological family and extended family members cannot be severed. In fact, *kafāla* stipulates specific roles for each family member so that a fostered child will grow up healthy in all aspects of its life – especially in terms of his/her spirituality.

The Qur'an reveals that such children are not only our responsibility, but also our primary investment in the only thing that matters: the afterlife. Therefore, in terms of orphan care, the Qur'an uses *kafāla* to define who these children are and reveal the best arrangement for taking care of them; illustrates how to practice it by the stories of Maryam, Musa, and Prophet Muhammad; and then sets rules to hold people accountable when this concept is neither understood nor implemented correctly (See 2:83, 220; 4:2-3, 6, 8-9; 6:152; 12:23-29; 17:34; 33:4, 5; 89:17; 93:9; 107:2).

²² Burton Z. Sokoloff, "Antecedents of American Adoption," *The Future of Children* 3, no. 1 (1993): 17-25. Leo Huard, "The Law of Adoption," *Vand. L. Rev.* 9, 743, 743-45 (1956) (Pointing out that the primary purpose of these ancient adoptions was to secure familial continuity rather than serve the welfare of the adoptee). <https://heinonline.org/HOL/LandingPage?handle=hein.journals/vanlr9&div=50&id=&page=>. Also see Barbara B. Woodhouse, "Waiting for Loving: The Child's Fundamental Right to Adoption," *Capital University Law Review*, 34, 2 (Winter 2005): 310-12. (Explaining that the Roman practice of adoption was seen as, most importantly, a way to "[maintain] a continuous family line" and create an heir for childless males).

²³ Joan H. Hollinger and Naomi Cahn, "Forming Families by Law: Adoption in America Today," *Human Rights* 36, no. 3 (2009): 16-19. Accessed October 31, 2020. <http://www.jstor.org/stable/25762010> and <https://heinonline.org/HOL/LandingPage?handle=hein.journals/huri36&div=37&id=&page=>.

²⁴ Raffia Arshad, *Islamic Family Law* (London: Sweet & Maxwell/Thomson Reuters 2010), 170.

It is important to emphasize Prophet Muhammad (peace be upon him) teaches us how to implement the Qur'anic teaching by using *kafāla* to refer to orphan care as well. He used *kāfil* (caretaker), instead of replacing it with other words and stated: "I and the one who cares for an orphan will be together in Paradise like this," and he held his two fingers together to illustrate (*Ṣaḥīḥ al-Bukhārī*, hadith no. 5659).

Kafāla in Practice

The *kāfil* of orphans or abandoned children largely assumes responsibility for their physical, spiritual, and emotional/mental care, as well as the management of their finances. While the *kāfil* can be a relative or a non-relative of the orphan's biological parents, according to Islamic law such children can never be deprived of the biological rights that all children have upon their biological parents, like lineage, inheritance, naming, and other associative rights. Regardless of why the parents surrendered their child to a *kāfil*, *kafāla* preserves the child's relationship with them and never terminates the parents' legal rights.²⁵

How Prophet Muhammad (peace be upon him) lived reveals how *kafāla* is practiced within the Islamic context. After all, He was protected by Allah, as *Sūrat al-Duḥā* emphasizes: "Did Allah not find you an orphan and give you shelter and care?" (93:6). According to the social norms of his time, Prophet Muhammad (peace be upon him) was born an orphan, since he did not have a living father. Upon his birth, and according to custom, his widowed mother Amina gave him to Halima, a woman who belonged to the nearby nomadic Banu Sa'd clan, to serve as his wet nurse and caretaker. His biological mother never lost her parental rights during the intervening five years.

When Amina died one year after reassuming physical custody of her son, Muhammad's grandfather 'Abd al-Muttalib became his caretaker. Upon his death two years later, Muhammad was passed on to his paternal uncle Abu Talib.²⁶ Neither man was regarded as his biological father, and Muhammad continued to be acknowledged as his father Abdulla's son and a member of his father's Banu Hashim clan. Although born an orphan and then passed from his mother to Halima, his grandfather, and his uncle, everyone took good care of him, for they were genuinely compassionate and loving caregivers. This solid support network helped Muhammad (peace be upon him) develop emotional stability during his tough childhood, increased his self-resilience, and enabled him to embrace change and view challenges as opportunities to fulfill his responsibilities. As a result, he grew into an extraordinary and highly respected man: "And We have not sent you, [O Muhammad], except as a mercy to the worlds" (21:107).

²⁵ Ibid., 169-71.

²⁶ 'Abd al-Malik ibn Hisham, *al-Sīra al-Nabawiya* (Beirut: Mu'assasat al-Ma'arif, 2004), 84-94.

The Qur'an presents a framework for changing a well-established but mistaken social custom and thereby challenges the status quo. The Prophet (peace be upon him) was born into an Arabian society characterized by corrupt norms. The Qur'anic-Prophetic approach to cultural change is based on affirming existing customs (*'urf*) that are good and abolishing those that are harmful (*'amr bi al-ma'rūf wa nahiy 'an al-munkar*) (3:104, 110, 114; 7:157; 9:71, 112; 22:41; 31:15, 17). For example, the Qur'an criticizes and later abolished the pre-Islamic Arab practice of killing female infants and young girls due to such man-made notions of honor and poverty (16:58-59, 81:26, 6:151, 17:31). Its innovative strategy is as follows: Identify the harmful custom that needs to be changed, explain how it negatively impacts people, offer the best concept to replace it, and then reveal how this change will benefit everyone.

Orphan care begins with preserving these children's lives and dignity. For instance, the pre-Islamic period's norm was to raise abandoned, kidnapped, or captured children as adopted sons or daughters. Moreover, a kinship group would commonly disown its original members and replace them with strangers. Islam came to eliminate or at least minimize harm and establish a new social order based on a solid foundation of biological and blood ties. Since the prevailing norm of *tabanni* (adoption) meant considering the child of an unrelated "man" and/or unknown biological parents as one's biological child, Islam replaced it with the concept of *kafāla* while preserving the biological relationship. For example, upon his marriage to Khadija, Prophet Muhammad adopted and then freed Zayd ibn Haritha, her slave, and began calling him Zayd ibn Muhammad.²⁷ This was prior to this custom's prohibition (33:5). There was no way to end this wrong, but prevalent, custom other than through divine intervention. Even though Zayd was known as "the beloved of Allah's Messenger," Allah ordered the Prophet to abolish this man-made relationship by marrying Zaynab bint Jahsh, his former "son" Zayd's ex-wife – an action that his society regarded as "unethical" and "shameful." The Qur'an denounced this customary practice (33:37) and then emphasized its abolition: "Muhammad is not the father of any of your men. He is, rather, Allah's Messenger and the seal of the prophets" (33:40).

Consequently, the adoption systems found in the West, which are to a certain extent similar to those of pre-Islamic Arabia and thus redefine the family, are considered, under Islamic law, legally invalid and unlawful.²⁸ The solid foundation established by the Qur'an clearly defines and preserves each family member's roles and obligations. In his *The Family Structure in Islam*, Muslim sociologist Hammudah 'Abd al 'Ati explored the Islamic definition of family and

²⁷ See 'Abd al 'Ati's analysis on 25-27.

²⁸ See Hollinger and Cahn. "Forming Families by Law."

revealed its comprehensibility, transparency, and simplicity. According to him, the family is a human social group whose members are bound together by blood ties and/or the marital relationship. As such, its members are bound together by mutual expectations of rights and obligations prescribed by religion, enforced by law, and observed by the group's members. Among these expectations are certain mutual commitments pertaining to identity and provision, inheritance and counsel, affection for the young and security for the aged, and the maximization of effort to ensure the family's continuity.²⁹

It is a great responsibility to raise and bring up a dignified child who, as he/she grows up, will submit to the Creator and strive to fulfill his/her purpose: being Allah's *khalīfa*. The Qur'an considers the family vital to humanity's continued wellbeing. Furthermore, the extended family can provide tremendous benefits for all members when it exists in conjunction with the other basic characteristics of Qur'anic teachings. The Qur'an details the relationships, as well as each individual's responsibilities and rights, based on blood and marital ties: "It is He who has created human beings from water and He has granted them the ties of blood as well as marriage. Your *Rabb* is all powerful" (25:54).

In addition to the family's nuclear members – the mother, father, and their children – the Qur'anic family model also includes the grandparents, uncles, aunts, and their offspring. The Qur'an both prescribes and strengthens such solidarity by making repeated references to the rights of kin (e.g., 17:23-26, 4:7-9, 8:41, 24:22) and the importance of treating them with kindness (e.g., 2:83, 16:90). Although raising a child is the parents' responsibility, the extended family's support is crucial to nurturing and nourishing a child until the goal is attained. If its members are already practicing *kafāla*, caring for a relative, orphan, or abandoned child becomes very easy. The extended family as a whole provides psychological and social diversity in terms of companionship for children as well as for adults – beneficial learning and socialization experiences for the former and the necessary sense of security and usefulness for the latter – thereby solving the generation gap.³⁰ Since there is less dependence upon one-to-one relationships, fewer emotional demands are made on each member.

In addition, any disagreement or clash between adults, children, or persons of different generations does not reach the same damaging proportions it may in a

²⁹ Hammudah 'Abd al 'Ati, *The Family Structure in Islam* (Indianapolis: American Trust Publications, 1977), chapters 1-4.

³⁰ Lamya al Faruqi, "Women, Muslim Society and Islam" (Indianapolis: American Trust Publications, 1994), 40-43. Also see Zainab Alwani, "Muslim Women and Global Challenges: Seeking Change through a Qur'anic Textual Approach and the Prophetic Model," *Institute of Objective Studies* (New Delhi: Genuine Publications and Media Pvt, 2012).

nuclear family, for alternative family members are always on hand to ease the pain and provide therapeutic counselling and companionship. According to this ideal model, each orphaned or abandoned child would have a network or a support system. As a result, if a child were to become an orphan, some family members would immediately step in and claim the role.

However, our contemporary reality does not reflect this model in all of its aspects, and Muslim communities worldwide are confronting numerous challenges, among them dysfunctional family systems. Implementing this family structure is especially critical, for our goal is to raise a *yatīm* as a human being who is continuously self-aware, practices *tazkiya*, is Allah-conscious, maintains good relations, and respects the surrounding social and physical environments. Ideally, children should grow up to uphold *‘umrān* and see nature as Allah’s signs, and an ideal family should raise them to envision themselves as travelers moving toward their real destination, the hereafter, and thus working to spread good, eliminate evil, and make proper judgments in all aspects of life.

Tracing *Āwā* in the Qur’an

In terms of sheltering orphans and abandoned children, the Qur’anic-Prophetic model is holistic: “Your *Rabb* has not at all abandoned you, nor is he displeased with you. Did Allah not find you an orphan and give you shelter and care (*fa āwā*)?” (93:3, 6). Reading the Qur’an holistically and tracing the meaning of *āwā* reveals a comprehensive model (2:220). This term means to provide a safe refuge – a home, shelter, asylum, or sanctuary – from danger. In the context of *Sūrat al-Duhā*, *āwā* provides a holistic description of an ideal shelter with a mission to improve a displaced person or orphan’s life. The Qur’anic-Prophetic model not only provides a physical shelter from danger and the elements, but also a safe base that offers a sense of peace, identity, and dignity.

Sūrat al-Kahf mentions *āwā* three times to teach us how to create such a holistic model. In short, it relates the story of the Companions of the Cave, who prayed for mercy from the *Rabb al-‘ālamīn* (the Lord of the worlds); asked for sound judgment concerning their affairs; and voiced their belief and hope that Allah would grant them guidance, knowledge, provision, patience, and security from their enemy: “When the youth took refuge (*āwā*) in the cave, they said: ‘*Rabbanā* (Our Sustainer), grant us mercy from Your presence and make us incline to sound judgment with the right guidance in our affair’” (18:10).

Verse 18:16 reveals how they discussed the matter, showed their trust and strong belief in Allah, and how they made a plan to deal with their situation: “And when you have withdrawn from them and all that they worship other than Allah, take refuge in the cave. *Rabbukum* (Your Sustainer) will spread out for you of His mercy, and make you incline to ease in your affairs.” This particular story teaches us how Allah loves and takes care of those who believe in Him.

We shall tell you their story as it really was. They were young men who believed in their Lord, and on whom We increased them in guidance. We strengthened their hearts, when they rose up and declared, “Our Lord is the Lord of the heavens and the Earth. Never shall we call upon any deity other than Him: for that would be an outrageous thing to do.” (18:13-14)

This story emphasizes how Allah does not abandon His servants, as mentioned in 93:3. Allah details how He made the Sun move and maneuvered it gently in the cave to keep them healthy and safe, as if putting the universe at their service.

And [had you been present], you would see the Sun when it rose, inclining away from their cave on the right, and when it set, passing away from them on the left, while they were [laying] within an open space thereof. That was from the signs of Allah. He whom Allah guides is the [rightly] guided, but he whom He leaves astray – never will you find for him a protecting guide ... We turned them over [during their long sleep to keep them comfortable]. (18:17-18)

On the other hand, the Qur’an draws our attention to an important point: Those who seek refuge sometimes focus only on the structure’s physical aspect and ignore the surrounding spiritual, emotional, and sociocultural characteristics. The Qur’an manifests this inaccurate view through Prophet Nuh’s son: “He said, ‘I will take refuge on a mountain to protect me from the water.’ [Noah] said, ‘Today there is no protection for anyone from Allah’s command except for those on whom He gives mercy!’ And the waves came between them, and he was among those who were drowned” (11:43). This story shows that youth, as well as all of humanity, can choose to change their reality.

We both seek and are obliged to provide refuge. Tracing *āwā*’s movement in the Qur’an, we find that people naturally seek help first from their close kinfolk: “And when they entered upon Yusuf, he gave lodging to his own brother to stay with him; he said, ‘Indeed, I am your brother, so do not despair over whatever they had done’” (12:69). This presents Yusuf as a role model in terms of taking care of his brother and giving him solace and *āwā* in the true sense of both terms: helping one another, spreading kindness, and creating a sense of belonging and trust in the community. Kindness and caring are contagious because they inspire others, influence people’s behavior, and are key to creating a more trusting community.

Sūrat al-Anfāl mentions the verb *āwā* three times in the context of sheltering people communally by sharing the first generation’s story and experience: “And remember when you were few and oppressed in the land, fearing that people

might abduct you, but He sheltered you, supported you with His victory, and provided you with good things – that you might be grateful” (8:26). The Muslims of Madina, who became known as the Ansar after the Prophet’s arrival, shared all of their possessions with the Makkan refugees. This sincere relationship reflected *taqwā*’s true meaning and how Muslims must be constantly aware of Allah’s presence, especially of His bounties and blessings.

Cultural Change Toward Orphans in Seventh-Century Arabia

The Qur’an and Sunna created a cultural change by honoring those Ansar (Helpers of Madina) who took care of orphans. After the Battle of Uhud, the community faced a crisis: How should they take care of the large number of orphans and widows? *Sūrat al-Nisā*’, revealed after this battle and at a time when the refugees had been in Medina for about four years, deals with various issues concerning women, orphans, and the family. In fact, Allah addresses the Ansar as if the orphans and the needy are already living in their homes. Some of the key points are as follows:

- Raise them and educate them to take care of their own financial affairs until they are mature enough to take care of it themselves, as reflected in Qur’an 4:6.³¹
- When disadvantaged individuals and orphans are present while discussing which part of the deceased’s inheritance each family member is entitled to receive, include both of these groups in the distribution of the inheritance and speak to them kindly, as stated in Quran 4:8. This practice, unfortunately is a forgotten *sunna*.³²
- Allah urges the guardians to be mindful of Him in terms of how they treat the orphans in their care by asking them how they would feel if their own children were to become orphans and helpless. Taking advantage of the orphan’s property is like “swallowing fire” (4:9-10).
- The Qur’an gives special attention to female orphans, emphasizing that they must be given their full rights, properties, and money and not be kept from marriage so that their caregiver can keep their money, as reflected in Qur’an 4:2-3, 127.

³¹ Although the Qur’an permits poor caretakers to consume part of an orphan’s wealth, certain scholars now maintain that the caretaker is required to restore it once he/she is more financially stable. Some jurists disagree on the grounds that whatever he takes is his wage for assuming his role; others hold that he can only take enough to fulfill his needs. Other jurists argue that the caretaker must return whatever he has taken when he becomes financially self-sufficient. Muhammad ‘Ali al-Sabuni, *Mukhtaṣir Ibn Kathīr* (Beirut: Dar al-Qur’an al-Karim, 1981), 1/359.

³² See the hadith narrated by Ibn ‘Abbas, *Ṣaḥīḥ al-Bukhārī* 2759, book 55, hadith 22; vol. 4, book 51, hadith 21.

The measure of justice, compassion, strength, and overall success of a Muslim family and community is reflected in how well they treat women, widows, orphans, and the poor – vulnerable groups that Allah has honored and protected. Such individuals are often viewed as weak, but Allah uses them as a way to identify a just and compassionate community. *Sūrat al-Nūr* details how Muslims should act and behave at home as well as model the best practice to create a peaceful environment. In fact this description, which is vital for protecting orphans and all family members, especially the most venerable, is so detailed that it is like Allah entered our houses and told us what to do in different scenarios. *Sūrat al-Hujurat* both explains how to deal with emotional and verbal abuse and models the best way to avoid abuse or oppression: “don’t make fun” (49:11) and “don’t spy or be suspicious and don’t backbite” (49:12).

The following *aḥādīth* represent how Prophet Muhammad (peace be upon him) created the culture of *kafāla* and the importance of opening our homes to orphans. These few examples – and there are many others – show us that the first Muslim generation did not practice *kafāla* by sending money to sponsor a child.

One clear example of this is the following hadith: “Abu Hurayra narrated that the Messenger of Allah (ﷺ) said: ‘The best house among the Muslims is a house in which there is an orphan who is treated well. And the worst house among the Muslims is a house in which there is an orphan who is treated badly’” (*Sunan Ibn Mājah* 3679, book 33, hadith 23; vol. 5, book 33, hadith 3679).

Abu Hurayra reported that the Prophet, may Allah bless him and grant him peace, said, “The person who strives on behalf of the widows and 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* 131, book 7, hadith 3).

Umm Salama said: “The Messenger of Allah enjoined charity upon us. Zainab, the wife of Abdullah said: ‘Will it be accepted as charity on my part if I give charity to my husband who is poor, and to the children of a brother of mine who are orphans, spending such and such on them, and in all circumstances?’ He said: ‘Yes.’” (*Sunan Ibn Mājah* 1835, vol. 3, book 8, hadith 1835).

The concept of brethren means that all of the believers around him/her should be like a compassionate father, mother, brother, and sister to any child who has no father or whose father has died. In other words, no one should be left alone and helpless. All children should be raised in a way that neither injures the dignity of their “self” nor deprives them of the good care, sustenance, education, and upbringing needed to succeed in life. The Qur’an repeatedly defines and emphasizes the importance of brotherhood (and sisterhood), but most clearly in relation to orphans, in 49:10, 2:220, 33:5, and 59:10.

Along with this clear directive, jurists developed the doctrines of *kafāla* (long-term foster care) to meet the needs of those children who have no proper care or biological family that can care for them. The Qur’anic directives concerning

guardianship and fosterage are also based on Islam's fundamental principles of generosity, charity, and responsibility for the needy and protecting the vulnerable.

According to the Qur'an and the Prophet's (peace be upon him) life example, *kafāla* is defined as assuming responsibility for orphaned or abandoned children according to Allah's commands: Keeping their best interest in mind and maintaining their relationship with their biological parents and family members, no matter how dysfunctional or unidentifiable they may be.³³ The child has a right to know his/her biological parents and extended family members, and the biological family has the right to maintain contact with the caregiver family members. Every child must be informed of his/her *nasab* (original lineage), if for no other reason than to ensure that he/she does not inadvertently marry a blood relative (e.g., sister or uncle) later in life. Also, there is a certain pride in knowing one's lineage, especially if greatness and/or nobility are associated with one's ancestors.

Maintaining that children know their biological parents and family members holds families accountable for their role, makes it harder for them to remain dysfunctional, and makes the community responsible for helping them behave more responsibly. Taking all of that away by forbidding the parties involved from getting to know each other does not help people adhere to their familial and societal responsibilities.

Conclusion

Researching, reflecting, and analyzing specific Qur'anic verses and practices of Prophet Muhammad (peace be upon him) allows a model for contemporary families and communities to emerge and be fully inclusive of orphaned and abandoned children. First of all, we should take the initiative to educate the community about this model, for Islam considers taking care of orphans an act of piety and a *farḍ kifāya* (communal responsibility). Thus, the entire community must prioritize the welfare of every orphan and abandoned child. We must encourage American Muslims to play an active role in the foster care system, including serving as legal guardians when appropriate. Unfortunately, many Muslim families who live in the West, specifically the United States, are very reluctant to do so when it comes to non-related children, primarily because they do not fully understand American family law. This lack of knowledge has led many Muslims to think that there is no alternative to Western-style adoption. Once we better understand the process of becoming a foster parent, it comes down to our willingness to open our homes and our hearts to care and provide for one or

³³ See Elizabeth Samuels, "The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records," *Rutgers Law Review*, Vol. 53, 373-84 (2001).

more children. We can no longer turn a blind eye when there are hundreds of thousands of children in the United States in foster care, including Muslim children, who are in need of a safe and loving home for a myriad of reasons not through any fault of their own.

The responsibility of *kafāla* for orphaned and abandoned children falls on each and every one of us. Although not every community member can commit to being a foster parent, each one can contribute in a meaningful way. Islam teaches us to think of ourselves more as a collective unit than as separate individuals. Prophet Muhammad said that his *umma* is like a body, for when one part is hurt the whole body is in pain.³⁴ Together, we can have a direct and positive impact on the lives of those children who need it the most. Let us commit to these steps. In chronological order, they are as follows:

First, the local community and/or mosque should organize a committee from among its social service department, the imam's office, and other relevant groups who can work with the local social service organizations and court systems. Once established, this committee should help identify and match Muslim foster homes with Muslim foster children and then ensure that the children's religious rights, considerations, and understanding are respected after they are placed.

Second, become a licensed foster parent if you are qualified and able to do so. Third, contribute money to organizations that support orphans and abandoned children and their guardian/foster parents. Such contributions should not be confused with *kafāla*, a holistic concept that transcends financial support. While this is an important and needed part of *kafāla*, doing so does not make one a child's *kāfil* (guardian parent). Fourth, having community members serve as a support network for the foster parents (*kāfils*) – an “extended family,” so to speak – would be very helpful. The members of the community can help meet some of the children's needs, such as tutoring them in an academic area or life skill, socializing them with other children, providing a meal for the foster family, and taking care of them for a day to give the foster parents some respite. It is important to realize that being a *kāfil* requires a lot of time, energy, and care and will require rearranging the family's daily life. The community support can allow more families that ability to take on the responsibility of being foster parents.

The legal community must also be involved, for lawyers and child welfare social workers are essential to incorporating *kafāla* in the United States. As this

³⁴ Narrated An-Nu'man bin Bashir: Allah's Messenger (ﷺ) said, “You see the believers as regards their being merciful among themselves and showing love among themselves and being kind, resembling one body, so that, if any part of the body is not well then the whole body shares the sleeplessness (insomnia) and fever with it.” *Ṣaḥīḥ al-Bukhārī* 6011, book 78, hadith 42; vol. 8, book 73, hadith 40.

article shows, this concept can benefit American society in many ways. Enabling the current system to make more use of *kafāla*-type guardianship arrangements will take time. However, one can argue that it represents a feasible and effective way to provide a safe, stable, and supportive home environment for those children who cannot reunify with their parents. As Muslims become more involved with the foster care system, lawyers and social workers will be in a better position to advocate for this concept's inclusion in the child welfare system.

As more Muslim individuals and organizations acquire the authentically Qur'anic-Prophetic understanding of *kafāla* and *kāfil*, and as more Muslims open their homes and become *kāfils*, we will grow and develop as a community. In essence, we will return to the practices of the Prophet's time and imitate the first Muslims by stepping up to take care of each other in times of need, sickness, poverty, and vulnerability.