

Islāmic Ruling on Adopting a Child

Darulifta Ahlesunnat (Dawateislami)

Question

What do the noble scholars and jurists of Islamic law say about the following: What are the precautions when adopting a child? What share of inheritance does an adopted child receive?

Answer

Adopting a child is permissible according to Sharī'ah. However, adoption does not change reality, and the adopted child remains the offspring of his or her biological parents. When a person adopts a child, it is considered, in fact, it is as if one has promised to take the responsibility to raise, educate, nurture, and arrange for the child's needs. Therefore, after adopting the child, it becomes the responsibility of the adoptive parents to make arrangements for the child's upbringing, education, and moral development to the best of their ability.

Adopted children generally become a part of the household from a young age. If the child is a boy, he always remains with the adoptive parents, and if it is a girl, she typically stays with them until marriage, and the adoptive parents raise them. The sharī'ah ruling regarding this is that if the boy is a Maḥram (such as he is a nephew) for the adoptive mother or he has a milk relation with her, then there is no issue if he lives with her after becoming bāligh. However, if she is a non-Maḥram and there is no milk relation between them, then it is necessary to observe veiling between the woman and the boy after he becomes bāligh. Furthermore, it is wājib to veil from the woman's bāligh daughters as well. In this case, the woman must ensure that the boy no longer remains in her guardianship after he becomes bāligh. Similarly, if the adopted girl is a Maḥramah (such as she is a niece) for the adoptive father or she has a milk relation with him, she can remain in his guardianship even after reaching adulthood. Otherwise, it would be necessary to give her back to the biological parents or any other Maḥram relative when she reaches the age of puberty (9 years). This is because it is not permissible for her to live in the guardianship of an ajnabi past this age.

These were some points regarding the upbringing of the child. Two additional things should be kept in mind when adopting a child. First: The parents cannot attribute themselves to the child as the parents. However, they can attribute themselves to the child as their guardian. Similarly, it is necessary to insert the name of the biological father in the section of 'father's name' in legal documents, such as ID cards, passports, etc. It is in no way permissible to write the adoptive parent's name as the 'father's name'.

Secondly, the adoptive parents do not become Maḥram for the adopted child. Therefore, if the adoptive parents are non-Maḥram for the adopted child, it will be fard to observe veiling after they become bāligh, as explained above. However, if a

milk relation is established with the child, then observing the veil does not remain wājib. The method of establishing a milk relation is that if a girl is adopted, the milk relation should be established through the husband. For example, the husband's wife, sister, niece (sister's daughter or brother's daughter) should breastfeed the girl. But if a boy is adopted, a milk relation must be established through the wife. For example, the wife herself, her sister, daughter, or her niece (sister's daughter or brother's daughter) should breastfeed the boy. Keep in mind that the milk relationship will be established if the child is breastfed up to the age of two and a half, but breastfeeding a child after the age of two is impermissible. Therefore, to establish a milk relationship, the child should be breastfed before the age of two; it is Ḥarām to do so afterwards.

The Sharī'ah ruling regarding inheritance is that the adopted child will inherit from his biological parents because he or she remains the child of the biological parents. The child will not receive a share from the inheritance of the adoptive parents as a son or daughter. However, if the child is entitled to inheritance due to any other relation, other than as a child, then this is a separate matter. For example, if one adopted their nephew (brother's son), then the nephew would inherit from his uncle in certain situations.

If the adopted son is a non-Maḥram, the woman must remove him from her guardianship once he becomes bāligh. Thus, Muftī Khalīl Khān Barkatī رحمۃ اللہ تعالیٰ علیہ states in Fatawā Khalīliyah:

کسی لڑکے یا لڑکی کو متبنی بنانے کا مطلب یہ ہے کہ اسے غیر کی اولاد تسلیم کرتے ہوئے اپنی اولاد کے قائم مقام بنا لینا اور اپنی اولاد کی طرح اس کی تربیت و پرورش کرنا۔ یہ امر اگرچہ بجائے خود ایک کارثواب ہے لیکن وہ بچہ شرعاً اس کی اولاد قرار نہ پائے گا اور نہ اس بچے کو وہ حقوق حاصل ہوں گے جو حقیقی اولاد کو ہوتے ہیں۔۔۔ (لہذا گود لیا بچہ اگر نا محرم ہو اور اس سے دووہ کا رشتہ بھی قائم نہ ہو) تو وہ بچہ اس (پالنے والی) خاتون کے لئے بھی اجنبی ہے اور اس کی لڑکی کے لئے بھی اور دوسرے اہل خاندان کے لئے بھی۔ وہ تمام احکام جو کسی اجنبی کے لئے ہیں وہ اس بچہ پر بھی عائد ہوں گے۔ خاتون کی بیٹی اسے اپنے بھائی کی طرح سمجھے جیسے اور اجنبیوں کو سمجھتی ہے لیکن وہ اس کا حقیقی بھائی نہیں، یہ اس کی حقیقی بہن نہیں، لہذا تنہائی میں ایک گھر میں نہیں رہ سکتے بلکہ خاتون خواہ دوسرے اعضاء کی موجودگی میں بھی اس پر شرعی پردہ لازم ہے اور بہ حالات موجودہ اس خاتون کو چاہئے کہ وہ اس بچے کو جو کہ اب جو ان ہو چکا ہے اپنے سے جدا کر دے۔

Translation: Adopting a boy or girl means to acknowledge them as someone else's child yet take them in place of one's own child and raise them as one's own child. Although this, in itself, is an act of reward, the child will not be considered the person's actual child, nor will the child have the same rights that a biological child has... (Therefore, if the adopted child is a non-Maḥram and a milk relation is not established with them either) This child is an ajnabi for the adoptive mother as well as her daughter and other relatives. All the rulings that apply to an ajnabi will also apply to the child. The woman's daughter should regard him as she regards other ajnabis; he is not her biological brother nor is she his biological sister. Therefore, they cannot be in one house in seclusion. Rather, he also has to observe shari veiling from the adoptive mother even in the presence of other relatives. In the current situation, the woman should remove this boy from her guardianship, who

has now reached puberty. (Fatāwā Khalīliyah, Vol. 02, p. 144, Publ. Ziyā' al-Qurān Publications)

A daughter will also be separated from her divorced mother after the age of nine and she must live with her father. Thus, it is stated in Tanwīr al-Absār Ma'a al-Durr al-Mukhtār:

(والام والجدة احق بها) بالصغيرة (حتى تحيض) أى تبلغ (وغيرهما احق بها حتى تشتهي) وقد ربتسع وبه يفتى (وعن محمدان الحكم فى الام والجدة كذلك) وبه يفتى لكثرة الفساد

Translation: The mother and grandmother are most rightful of custody of a young girl until she begins menstruating, i.e., she becomes bāligh. Others are rightful of custody until she reaches the age of puberty, which has been declared nine years according to the Muftā Bih opinion. It is reported from Imām Muḥammad رحمه الله عليه that this ruling applies to the mother and grandmother. Fatwa is given according to this due to the widespread moral corruption. (Tanwīr al-Absār Ma'a al-Durr al-Mukhtār, Vol. 05, p. 274-275, Publ. Dār al-Ma'rifah, Beirut)

It is absolutely impermissible for a girl to be in the guardianship of an ajnabi past the age of nine. Thus, Alā Hazrat Imām Aḥmad Razā Khān رحمه الله عليه states in Fatāwā Razawiyah:

(لڑکی جب) بالغہ ہوئی یا قریب بلوغ پہنچی جب تک شادی نہ ہو، ضرور اس کو باپ کے پاس رہنا چاہئے یہاں تک کہ نو برس کی عمر کے بعد سگی ماں سے لڑکی لے لی جائے گی اور باپ کے پاس رہے گی، نہ کہ اجنبی جس کے پاس رہنا کسی طرح جائز ہی نہیں، بیٹی کر کے پالنے سے بیٹی نہیں ہو جاتی، اس نے جو خرچ کیا اپنی اولاد بنا کر کیا نہ کہ بطور قرض، لہذا (واپسی کے وقت پالنے والا اس پر خرچے کی) واپسی کا بھی مستحق نہیں۔

Translation: When a girl becomes bālighah or is close to becoming bālighah, she should live with her father until she gets married. Even so, that a girl will be taken from the biological mother after the age of nine and she will live with her father. She will not live with any ajnabi with whom it is impermissible to live with. Adopting someone as a daughter does not make them a daughter (in actuality). Whatever he has spent on them, he has done so by considering them their children, not considering it to be a debt. Therefore, (when returning the child back) he is not eligible to receive it (anything he had spent on the child) in return. (Fatāwā Razawiyah, Vol. 13, p. 412, Publ. Razā Foundation, Lahore)

It has also been stated in Fatāwā Razawiyah:

حق حضانت لڑکے میں سات اور دختر (لڑکی) میں نو برس کی عمر تک رہتا ہے اس کے بعد عصبہ کے پاس رہے گی جو عصبوت میں مقدم ہے یہاں بھی مقدم ہے بشرطیکہ فاسق بدچلن نہ ہو اس سے صغیر پر اندیشہ نہ ہو اور دختر کے لئے اس کا محرم ہونا بھی شرط۔

Translation: One has right of custody over the son until the age of seven and over a daughter until the age of nine. After this, she will live with the 'Asabah (certain category of relatives). Whoever has priority in 'usoobiyat will also have priority here, given that he is not a fāsiq or an immoral person. Also, there should not be a fear of harm for the minor and they must be a Maḥram for the daughter. (Fatāwā Razawiyah, Vol. 13, p. 402, Publ. Razā Foundation, Lahore)

Regarding attributing the adopted child to their biological father, Allāh Almighty states:

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ ۚ فَإِنْ لَّمْ تَعْلَمُوا آبَاءَهُمْ فَاخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ ۗ

Translation (Kanz al-ʿIrfān): Call them by the names of their biological fathers; this is more just in the Court of Allāh. So if you do not know their fathers, then they are your brothers in religion and your friends. (Al-Qurān al-Karīm, Part 21, Sūrah al-Aḥzāb, Verse 5)

By adopting a child, the rulings relating to biological children will not be applied to them. Thus, it is stated in Tafsīr Mazharī:

فلا يثبت بالتبني شيء من أحكام البنوة من الإرث وحرمة النكاح وغير ذلك - وفي الآية رد لما كانت العرب تقول --- يحرم بالتبني ما يحرم بالنسب

Translation: Adopting a child does not establish any of the rules which are for a biological child, such as inheritance, prohibition of nikāḥ, etc. This verse rejects what the Arabs used to say, that whatever is ḥarām through lineage is also ḥarām through adoption. (Al-Tafsīr al-Mazharī, Vol. 07, p. 284, Publ. Pakistan)

Muftī Aḥmad Yār Khān Naīmī رحمه الله تعالى عليه states in the commentary of this verse:

یعنی ممانعت کے بعد اگر تم دیدہ دانستہ لے پا لکھوں کو ان کے مربی (پالنے والے) کا بیٹا کہو گے تو گناہگار ہو گے۔

Translation: This means that after this prohibition, if you intentionally call the adopted child the son of the adoptive parents, you will be sinful. (Tafsīr Nūr al-ʿIrfān, p. 503, Publ. Naīmī Kutub Khānah, Gujrat)

If the adopted child is non-Maḥram for the adoptive mother or father, it is necessary for them to observe veiling. Thus, it is stated in Tafsīr Sirāt al-Jinān under the above-mentioned verse:

بچہ یا بچی کو دہیں لینا جائز ہے لیکن جب وہ اس عمر تک پہنچ جائیں جس میں ان پر نا محرم مرد یا عورت سے پردہ کرنا لازم ہو جاتا ہے تو اس وقت بچے پر پالنے والی عورت سے اور بچی پر پالنے والے مرد سے پردہ کرنا بھی لازم ہو گا کیونکہ وہ اس بچے کے حقیقی یا رضاعی ماں باپ نہیں اس لئے وہ اُس بچے اور بچی کے حق میں محرم نہیں، لہذا اگر بچہ کو دہیں لیا جائے تو عورت اسے اپنا یا اپنی بہن کا دودھ پلا دے اور بچی کو دہیں لی جائے تو مرد اپنی کسی محرم عورت کا دودھ اسے پلوادے، اس صورت میں ان کے درمیان رضاعی رشتہ قائم ہو جائے گا اور محرم ہو جانے کی وجہ سے پردے کی وہ پابندیاں نہ رہیں گی جو نا محرم سے پردہ کرنے کی ہیں، البتہ یہاں مزید دو باتیں ذہن نشین رہیں،

پہلی یہ کہ دودھ بچے کی عمر دو سال ہونے سے پہلے پلایا جائے اور اگر دو سال سے لے کر ڈھائی سال کے درمیان دودھ پلایا تو بھی رضاعت ثابت ہو جائے گی لیکن اس عمر میں دودھ پلانا، ناجائز ہے اور ڈھائی سال عمر ہو جانے کے بعد پلایا تو رضاعت ثابت نہ ہوگی۔

دوسری یہ کہ عورت نے بچے یا بچی کو اپنی بہن کا دودھ پلویا تو وہ اس کی رضاعی خالہ تو بن جائے گی لیکن اس کا شوہر بچی کا محرم نہ بنے گا، لہذا بہتر صورت وہ ہے جو اوپر ذکر کی کہ بچے کو عورت کی محرم رشتہ دار کا دودھ پلویا جائے اور بچی کو شوہر کی محرم رشتہ دار کا تاکہ پرورش کرنے والے پردے کے مسائل میں مشکلات کا شکار نہ ہوں۔ البتہ ان مسائل میں کہیں پیچیدگی پیدا ہو سکتی ہے، لہذا ایسا کوئی معاملہ ہو تو کسی قابل مفتی کو پوری تفصیل بتا کر عمل کیا جائے۔

Translation: Adopting a boy or girl is permissible. However, when they reach the age in which it is necessary to observe veiling from non-Maḥram males or females, it becomes necessary for the boy to veil from the adoptive mother and the girl to veil from the adoptive father. This is because they are not the biological or milk related parents of the child, which is why they are not Maḥram for the child. Therefore, if a boy is adopted, the woman should breastfeed him or get him breastfed from her sister. If a girl is adopted, the male should get her breastfed from any of his Maḥram relatives. This way, a milk relation will be established between them and the

restrictions of veiling from non-Maḥram will not apply because they are now Maḥram. However, two more points should be kept in mind:

First: The child should be breastfed before reaching the age of two. If he is breastfed between the age of two and two and a half, the milk relation will be established, but breastfeeding at this age is impermissible. If he is breastfed after the age of two and a half, the milk relation will not be established.

Secondly: If the woman got a boy or girl breastfed from her sister, she will become the child's milk aunt. However, her husband will not become the girl's Maḥram.

Therefore, the better option is that which has been mentioned above that the boy should be breastfed from the woman's Maḥram relative and the girl should be breastfed from the husband's Maḥram relatives so that the adoptive parents do not face any difficulty relating to the rules of veiling. However, there are many complications in these matters. Therefore, one should act only after consultation with an authentic Muftī. (Tafsīr Sirāt al-Jinān, Vol. 07, p. 562-563, Publ. Maktaba-Tul-Madīnah, Karachi)

Amīr-e-Ahl al-Sunnah, 'Allāmah Maulanā Ilyās 'Attār Qādrī دامت برکاتہم العالیہ states in Parde Ke Bare Me Suwāl Jawāb:

(گود لئے ہوئے بچہ یا بچی سے) دودھ کا رشتہ قائم کرنے میں یہ بات مد نظر رکھنا ضروری ہے کہ اگر بچی گود لینا ہو تو شوہر سے رضاعت کا رشتہ قائم کیا جائے مثلاً شوہر کی بہن یا بھانجی یا بھتیجی اس بچی کو اپنا دودھ پلا دے اور اگر بچہ گود لینا ہو تو بیوی اس سے اپنا رضاعت کا رشتہ قائم کرے مثلاً بیوی خود یا بیوی کی بہن یا بیٹی یا بھانجی یا بھتیجی اس بچے کو اپنا دودھ پلا دے۔ اس طرح دونوں صورت میں بیوی اور شوہر دونوں کے لئے پردے کے مسائل حل ہو جائیں گے۔

Translation: When establishing a milk relation with the (adopted) child, it should be kept in mind that if a girl is being adopted, the milk relation should be established through the husband. For example, the husband's sister or niece (from sister or brother) should breastfeed the girl. If a boy is adopted, the wife should establish a milk-relation with the child through herself. For example, the wife herself, or the wife's sister, daughter, niece (from sister or brother) should breastfeed the child. In this manner, the issue of veiling will be resolved for both the husband and the wife. (Parde Ke Bare Me Suwāl Jawāb, p. 70-71, Publ. Maktaba-Tul-Madīnah, Karachi)

Regarding the adopted child not gaining inheritance, A'īlā Ḥazrat Imām Aḥmad Razā Khān علیہ الرحمۃ states:

پسر خواندہ نہ چنیں کس را پسرمی شود نہ خودی علاقہ از پدران الحقائق لا تغیر، شرعاً وارث پدرست نہ اینکس دیگر۔

Translation: Neither does the adopted child become the person's child nor does his relation end with his biological father as the realities do not change. According to sharī'ah, he is an heir of his father, not of the one who adopted him as a child.

(Fatāwā Razawiyah, Vol. 26, p. 178, Publ. Razā Foundation, Lahore)

Answering a question, He علیہ الرحمۃ answers in Fatāwā Razawiyah:

متبنی (گود لیا ہوا بچہ) یا سوتیللا بیٹا ہونا شرعاً ترکہ میں کوئی استحقاق نہیں پیدا کرتا۔ اور اگر یہ مراد ہے کہ اس صورت میں زید (لے پالک) اپنی حقیقی والدہ یا والد کے ترکہ سے حصہ پائے گا یا نہیں، تو جواب یہ ہے کہ بیشک پائے گا کسی کا اسے اپنا بیٹا بنا لینا اپنے حقیقی والدین کے بیٹے ہونے سے خارج نہیں کرتا۔

Translation: Being an adopted child or a stepchild does not create an entitlement to receive inheritance. If the question is whether Zaid (the adopted child) will receive a share of inheritance from their biological father or mother, the answer is that he will certainly gain inheritance. Someone adopting him as a son does not remove him

from being the child of his biological parents. (Fatāwā Razawiyah, Vol. 26, p. 84, Publ. Razā Foundation, Lahore)

Sadr al-Sharī'ah, Muftī Muḥammad Amjad 'Alī A'zami عليه الرحمة states in Fatāwā Amjadiyah:

تبنی کرنا یعنی لڑکا گود لینا شرعاً منع نہیں، مگر وہ لڑکا اس کا لڑکا نہ ہوگا بلکہ اپنے باپ ہی کا کہلائے گا اور وہ اپنے باپ کا ترکہ پائے گا۔ گود لینے والے کا نہ یہ بیٹا ہے نہ اس حیثیت سے اس کا وارث، ہاں اگر وارث ہونے کی بھی اس میں حیثیت موجود ہے مثلاً بھتیجا کو گود لیا تو یہ وارث ہو سکتا ہے جبکہ کوئی اور مانع نہ ہو۔

Translation: Adopting a child is not prohibited in sharī'ah. However, this boy will not become their child, instead he will remain his (biological) father's son and he will receive the inheritance of his father. Neither is he the son of the adoptive father, nor will he receive inheritance due to it. However, if he has the eligibility of being an heir, such as he adopted his nephew (brother's son), he can possibly become an heir given that there is no other prevention. (Fatāwā Amjadiyah, Vol. 03, p. 365, Publ. Maktabah Razawiyah, Karachi)

وَاللّٰهُ اَعْلَمُ عَزَّوَجَلَّ وَرَسُوْلُهُ اَعْلَمُ صَلَّى اللّٰهُ تَعَالٰى عَلَيْهِ وَاٰلِهٖ وَسَلَّمَ

(Allah Almighty knows best and His Messenger صَلَّى اللّٰهُ عَلَيْهِ وَاٰلِهٖ وَسَلَّمَ knows best.)

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