

**SUMMARY**  
**OF**  
**FOSTER CARE IN ISLAM BOOK BY KAGEM**

**Care of Orphans in the Prophet Period, Ayşe Esra ŞAHYAR**

Needy and orphaned children, as they existed in every period of history, they were also present during the Prophet. Both many verses from the Koran and many hadiths of the Messenger of Allah have been mentioned about rights of orphans and protecting them as well as not harming those, also treating those as a mirror to the goodness and evil in the human soul, or even the key of eternity of the hereafter. On the other hand, the Koran reminded people that the Prophet was an orphan, too by saying “*Did He not find you an orphan and give (you) refuge?*”<sup>1</sup>

“Righteousness is not that you turn your faces toward the east or the west, but [true] righteousness is [in] one who believes in Allah, the Last Day, the angels, the Book, and the prophets and gives wealth, in spite of love for it, to relatives, orphans, the needy, the traveler, those who ask [for help], and for freeing slaves; [and who] establishes prayer and gives zakah; [those who] fulfill their promise when they promise; and [those who] are patient in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous.”<sup>2</sup>

When the parts where orphans mentioned in the Qur'an and the practices of the Prophet and his companions are examined, it is seen that there are many dimensions to be emphasized on this subject. These practices can sometimes be to open their house to provide residence, sometimes to meet their need of eating, drinking, and educational needs, sometimes to provide psychological support by showing love and compassion.

It is an important issue that the Qur'an draws attention on opening their house to shelter the orphans and people in need.

“To this world and the Hereafter. And they ask you about orphans. Say, “Improvement for them is best. And if you mix your affairs with theirs - they are your brothers. And Allah knows the corrupter from the amender. And if Allah had willed, He could have put you in difficulty. Indeed, Allah is Exalted in Might and Wise.”<sup>3</sup>

Protecting children by living in the same house with orphans, it held an important place in the lives of the Prophet and his companions. Both the Prophet and each of the four halifenes, and many of his companions, care these children in need in their homes. Rasulullah and his followers sometimes care those children and provide them a family environment, sometimes to feed and drink, sometimes to

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<sup>1</sup> ed-Duha, 93/6

<sup>2</sup> el-Bakara, 2/177.

<sup>3</sup> el-Bakara, 2/220.

provide psychological support by showing compassion and caring. Among these forms of caring, it is described as a very valuable act to protect orphan children at home:

*“The most blessed house among the Muslims' houses is the house where an orphan is treated well. The worst house among the Muslims is the house where an orphan is treated badly.”*<sup>4</sup>

Some of the orphan children in the homes of the Prophet and his companions are sometimes children of widowed women, sometimes close relatives, sometimes distant relatives, or children who do not have any family relationship.

Our Prophet (PBUH) was a child who had been taken under protection by his uncle after his grandfather. After Abu Talib, the uncle of our Prophet, he told that the person who was of help to him was Fâtima.<sup>5</sup> The gratitude of the Prophet to his uncle's wife, Fatima, who is almost a mother for him, reveals that there is support of her to Abu Talib from every direction. The mother of believers, Hz. Âişe, she took his brother Abdurrahman's orphaned daughter Esma<sup>6</sup> and her other brother, Mohammad's two sons, Kâsım ve Abdullah<sup>7</sup>. It is noteworthy that in the Prophet's time, close relatives have been given priority in the protection of children. On the protection of relatives' children, kinship care, we can speak about the protection of Mistah, the grandson of Abu Bakr's aunt, as an orphan.

Undoubtedly, the children who were protected in the early days of Islam were not only limited to the children of relatives. Sometimes children of other tribes are taken under protection, care and their education are undertaken. It is also worth remembering that there are verses of the Qur'an that point out that orphans who are under the protection of children may be distant relatives of children, whether male or female, sometimes married to foreigners or guardians.

There is also an example in the life of the Prophet that children who do not have a kinship relationship with him were also cared. Indeed, the orphan girls named Küveyse and SumeYTE grew up under the protection of Rasulullah.<sup>8</sup>

After Uhud, the Prophet's saying, "What do you say, if I become your father? Will this make you happy?" to the crying child named Bahîr al-Cühenî whose father was killed in the war, is a sign of his caring<sup>9</sup>

Another issue that needs to be considered in respect of the protection of orphan children is the need for state protection and support to prevent financial difficulties as well as to prevent any abuses. Indeed, there are examples showing that in the Omer period people are financially supported

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<sup>4</sup> İbn Mâce, Edeb 6.

<sup>5</sup> Zehebî, *Siyer*, II, 118.

<sup>6</sup> Bk. İbn Hibban, *es-Sikât*, IV, 63; İbn Hacer, *Tehzib*, XII, 398.

<sup>7</sup> Bk. İmam Mâlik, *Muvatta*, Zekat 10; İbn Asâkir, *Târîhu Dimaşk*, LVIX, 164; Mizzî, *Tehzîbu'l-Kemâl* XXIII, 430.

<sup>8</sup> Bk. İbn Hacer, *el-İsâbe*, VIII, 298; XII, 432.

<sup>9</sup> İbn Hacer, *el-İsâbe*, I, 435

by the state on this issue. For example, when one of companions of the Prophet, Abu Cemile Süneyn es-Sülemi, finds an abandoned child and takes his protection, Hz. Omer said that the child support payment will be covered by the government.<sup>10</sup>

Mâûn Sura came with verses condemning the ones who hurts orphans. Also, the Messenger of Allah encourages people to host the orphans and people in need, as well as he emphasizes on the protection of their rights and justice and compassion towards them, and accepts the right of orphans as the most important rights of people. His saying of “*My God, I strongly warn people about the rights of the two weak, the orphan and the woman, I forbid them to extend their rights*”<sup>11</sup> reveals the sensitivity of this subject in an obvious way.

Therefore, what is essential in orphan protection is to show compassion and loving-kindness, respecting justice and righteousness, feeding and dressing them, providing necessary education, marrying and their social integration.

In fact, much more important source for orphans, rather than providing eating and drinking, is loving environment, compassion, caring and psychological support. In this frame, Rasulullah instructed compassion and mercy on the orphans as followings “*Whoever caresses an orphan's head for Allah's good pleasure, goodness is written in the number of every hair that his hand touches. Whoever behaves well to the orphan boy or girl next to him, they will be like me and him in heaven*”<sup>12</sup>. When we deal with what lies within the framework of the practices of the Prophet and Companions, protecting the orphans are actually shaped in the sense of reintegrating them into people and the society.

## REFERENCES

- Ahmed b. Hanbel, Ebû Abdullah Ahmed b. Hanbel eş-Şeybânî, *el-Müsned*, I-VI, Kahire, ts.  
Buhârî, Ebu Abdullah Muhammed b. İsmail el-Buhârî, *el-Câmiu's-sahih*.  
\_\_\_\_\_, *et-Târîhu'l-kebir*, (thk. es-Seyyid Hâşim en-Nedvî), I-VIII, Daru'l-fikr, ts.  
İbn Asâkir, Ebu'l-Kâsım Ali b. el-Hasen, *Tarihu Dimaşk*, (thk. Amr b. Garâme), I-LXXX, Daru'l-fikr, 1415/1995  
İbn Hacer, Ahmed b. Ali b. Hacer el-Askalânî, *el-İsabe fî temyîzi's-sahâbe*, (thk. Adil Ahmed Abdülmevcûd), I-VIII, Beyrut 1415.  
\_\_\_\_\_, *Tehzibu't-Tehzib*, I-XII, Hindistan 1326.  
İbn Hibban, Ebû Hâtım Muhammed b. Hibban el-Büstî, *es-Sikât*, (thk. Muhammed Abdülmuîd Hân), I-IX, Hindistan 1393/1973.  
İbn Mâce, Ebû Abdullah Muhammed b. Yezîd el-Kazvinî, *es-Sünen*.

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<sup>10</sup> Buhârî, Şehâdât 16.

<sup>11</sup> İbn Mâce, Edeb 6; Ahmed b. Hanbel, Müsned, II, 440.

<sup>12</sup> Ahmed b. Hanbel, Müsned, V, 250.

İmam Mâlik, Ebu Abdullah Malik b. Enes b. Malik, *el-Muvatta*.

Mizzî, Ebu'l-Haccac Yusuf b. Abdurrahman el-Mizzî, *Tehzîbu'l-Kemâl fî esmâi'r-ricâl*, I-XXXV, Beyrut 1400/1980.

Zehebî, Ebû Abdullah Muhammed b. Ahmed, *Siyeru a'lâmi'n-nübelâ*, (thk. Şuayb el-Arnâvud), I-XXV, Müessesetü'r-risâle, 1405/1985.

## **Foster Care Practice in Ottoman Society, Abdullah Bay**

In the Ottoman Empire as well as in the Turkish-Islamic states, the protection of children in need has importance. In general, it can be seen that the Ottomans has developed further by continuing its practices from the Islamic heritage.<sup>13</sup> Particularly, a system based on institutional care is not preferred.

<sup>14</sup> This has several reasons, such as giving priority to education in the family and preventing epidemic diseases when they are widespread.<sup>15</sup>

In the Ottoman Empire, *hidane* practice as a means of Islamic Family Law has features that can be regarded as the first step of the foster family system. The Islamic Family Law encouraged kinship care by giving priority to relatives for the care of children in need, even relatives have held responsible for it. In the case of death or divorce of one or both of the parents, care and decency of the child, can be taken by the appointment of an intelligent, adult and trustworthy person for *hidane*, who become mother in first-degree as long as they do not have another marriage, in cases where the mother can not look for various reasons, the relatives of mother and then the father side of the child,<sup>16</sup>. However, if there are no close relatives on both sides, non-intimate (not mahrem) male relatives will be held accountable for “*hidane*”<sup>17</sup>.

In cases where protective measures were not possible around the relatives, the child was protected and cared by people from outside of family. With this practice, girl and boy children who were cared called with different names like “handmaid” “sonship” “adopted”.

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<sup>13</sup> Mehmet İpşirli, “Avarız Vakfı”, *DİA*, IV, İstanbul 1991, s.109; Reşat Ekrem Koçu, “Avarız Sandıkları”, *İSA (İstanbul Ansiklopedisi)*, III, İstanbul 1960, s.1343-1344.

<sup>14</sup> İslam Tarihinde XIX. Yüzyılın ikinci yarısına kadar Sultan Gökbörü'nün Tebriz'de inşa ettiği yetimhane dışında kurumsal örneklere rastlanmaz. Geniş bilgi için bkz. Osman Gazi Özgüdenli, “XIV. Yüzyıl Başlarında Tebriz'de İki Yetimhane”, *Savaş Çocukları: Öksüzler ve Yetimler*, (Ed. Emine Gürsoy Naskali, Aylin Koç), İstanbul 2003, s.161-181.

<sup>15</sup> XVIII. Yüzyılda Avrupa'da kurumsal çözüm çerçevesinde bebekler hastanesi'ne yerleştirilen çocukların % 90'ının verem ve veba gibi salgın hastalıklar ve hijyen ortamının sağlanamaması gibi çeşitli sebepler yüzünden öldüğü belirtilmiştir. XX. Yüzyılın ortalarında Türkiye'de de kuruma yerleştirilen çocuklarda bulaşıcı hastalıklar yüzünden ölüm oranlarının yüksek olduğunu belirten bazı eleştiriler yapılmıştır. Abdullah Karatay, *Cumhuriyet Dönemi Korunmaya Muhtaç Çocuklara İlişkin Politikanın Oluşumu*, (Yayımlanmamış Doktora Tezi, Marmara Üniversitesi, Sosyal Bilimler Enstitüsü), İstanbul 2007, s.53-54.

<sup>16</sup> Sözlükte “*bir şeyi yanına almak, çocuğu kucacağına almak ve beslemek*” anlamına gelir. Geniş bilgi için bkz. Ali Bardakoğlu, “Hidane”, *DİA*, XVII, İstanbul 1998, s.467-471; Bu hükme uygun olarak “*birbirini müteâkiben bundan akdem vefât eden Müslazım Mustafa Efendi ibn-i Aslan ve zevcesi Şöhret Hatun*”un oğlu Faik, teyzesi Atiye Hatun'a *hidane* hakkı olarak verilmiştir. *TKS (Trabzon Kadı Sicili)*, 2107, s.105, h.6; Muhammed İbnü Mahmud El-Üsrüşeni, *Ahkam'üs-Sığâr*, (Ter. İbrahim Canan), İstanbul 1984, s.106-112.

<sup>17</sup> İbrahim-i Halebî, *İzahlı Mülteka el-Ebhur Tercümesi*, II, (Çev. Mustafa Uysal), 1968, s.166-171; Aktan, *a.g.m.*, s.426-427.

In the Ottoman society life, collective laws regulating the institution of adoption and kinship and foster care, have not been prepared as a social institution. Practices has been shaped by “fetwa” given in case of need for centuries and over time a disorganized family law was formed.

In Ottoman society, all the decisions related to children were given directly to the responsibility of the courts as they were directly evaluated within the family law. In the foster care practice which all the work and transactions were done through the courts, the procedure was started after the judge gave “hüccet”, the proof of witness<sup>18</sup>. The main purpose of these processes, which have several advantages and some basic reasons for both sides, was the protection of children.<sup>19</sup>. Anyone who wanted to foster a child or place it with his family had to apply to the court.

The separation of religion was considered to be strictly forbidden. It was imperative that the children were placed in families in their religion, taking into account the religion they belong to. Non-Muslim families were forbidden to adopt Muslim children on the grounds that there is a risk to influence their preference of religion. However, the non-Muslim parents could voluntarily place their children beside Muslim families.<sup>20</sup>

Gender was also taken into account because of the privacy of the children, usually the girls were placed next to female parent and the boys were placed next to male if they were not less than 7 years old. In theory, the child who lived with his family until the age of fifteen years, in practice until its full age, and he/she was placed next to someone who was smart, moral, mature, and physically competent. Adoptees were taken back when the adopting person did not fulfill the conditions, did not fulfill his obligations, neglected and abused the child, was subjected to ill treatment and prevent the adopted child from communicating with his / her biological family.<sup>21</sup>

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<sup>18</sup> BOA, ZB (*Zaptiye Nezâreti Evrakı*), 455/21. Zaptiye Nezâretinden Sivas Vilâyetine Şukka. 20 Mayıs 1325/1 Temmuz 1907.

<sup>19</sup> BOA, C.ZB (*Cevdet Zabtiye*), 410; Hür kişileri sattıkları tespit edilen dört kişinin Hanya'ya sürülmeleri hakkında emirname. BOA, C.ZB, 282. 1 Ramazan 1181/21 Ocak 1768; Mehmet adındaki genç ve hür bir çocuğu esir diyerek satmış olan Ayşe Hatun'un Bursa'ya sürülmesi için emirname. BOA, C.ZB, 239. 19 Cemaziyü'l-Evvel 1186/18 Ağustos 1772.

<sup>20</sup> BOA, DH.MKT (*Dahiliye Nezâreti Mektûbi Kalemî*), 392/7. Manastır ve Mısır ile Dahiliye Nezâretinin Evlatlık Çocuk Hakkında Yazışma Kayıtları. 9 Muharrem 1313/2 Temmuz 1895; BOA, MVL (*Meclis-i Vâlâ Evrakı*), 945/59. Besleme Hakkında Meclis-i Eyalet Bosna'dan Sadarete Gönderilen Mazbata ve Muhtelif Mahkeme Kayıtları. 7 Şevval 1278/7 Nisan 1862; Günümüzde evlatlık edinmede din engeli bazı ülkelerin kanunlarında yer almıştır. 1967 Evlat Edinmeye Dair Avrupa Sözleşmesi'nde de göz önünde bulundurulmuştur. Geniş bilgi için bkz. Emine Akyüz, “Evlat Edinilen Çocukların Korunması ve Eğitimi”, *Türk Aile Ansiklopedisi*, II, Ankara 1991, s.486-495.

<sup>21</sup> Ahmed İbni Rüşd el-Hafid el-Kurtubi, *Bidâyet'ül Müctehid ve Nihâyet'ül-Muktesid*, IV, (Ter. Vecdi Akyüz), İstanbul 1991, s.67; Ahmed Midhat, “Firkat”, *Letâif-i Rivayât*, İstanbul 1287, s.34; Aydın, “Evlat Edinme”, s.527-529.; Aktan, *a.g.m.*, s.423; BOA, MVL, 497/149. Riyâsetpenahiden Zabtiye Müşiriyetine İstida'.15 Muharrem 1283/30 Mayıs 1866.

In the practices where direct inheritance was not possible, the adopted children could be inherited in two ways as "hibe", "grant" and "ferağ", "leave"<sup>22</sup>. If the heir of the adoption does not exist, he can leave the full of his goods to children or if any, one of third of his.<sup>23</sup>

In the implementation of the foster family law, which is also considered as adoption in the Ottoman society, it seems that some basic conditions are followed. This system applied throughout Ottoman history has been abandoned with the approval of the Civil Code and the foster family has been left ambiguous, and modern adoptive institution is preferred instead.<sup>24</sup>

In the Ottoman Empire, the foster care system has begun to become a subject of the fetwas from the time of Fatih the Conqueror. Which existed in the Ottoman society since early times but the presence of it began to feel with the decline of the Empire economically, sons and daughter are frequently encountered in court records of major cities such as Istanbul, Edirne, Ankara, Bursa and Manisa<sup>25</sup>.

In the Ottoman society, the adoption system of unaccompanied and orphaned children and placing them in the family environment are institutionalized and those have been widely applied in all social strata. In this way, the children in need were provided with support by ensuring that children's relationships with their biological family and his/her environment were maintained in a healthy manner.

In the implementation of the institution, the most important consideration of Ottoman law is protection of privacy. Mahremiyah (privacy), which is a major obstacle to the spread of the practice today, has been resolved through the Ottoman architecture. Venue setup of classical architecture based on detached houses facilitate living adopted children with families. As a consequence, the application has been widely applied<sup>26</sup>.

The institution began to change with the legislative movements that started with the Tanzimat period, With the adoption of the Civil Code from Western countries, it has led to the abolition of the common adopted culture. The new adoptive institution is not widely accepted by the society under the influence of Islamic law which is effective in society, so that often families without children prefer to

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<sup>22</sup>TKS, 2093, s.63, h.6. Hibe Hücceti. 6 Zi'l-kade 1328/8 Kasım 1910.

<sup>23</sup>BOA, *A.DVN (Divan Kalemî Defterleri)*, 104/4. Medrese Talebesi İbrahim'in Arzuhali. 7 Ramazan 1271/ 23 Mayıs 1855; Babanın hayatta iken hibeden dönebilme hakkı vardır. Geniş bilgi için bkz. Köse, "Hibe", *DİA*, XVII, s.421-425; *KJD (Kastamonu Jurnal Defteri)*, I, 92a, h.4; Rize Nüfus Defterleri'ndeki bir "oğulluk" kaydında, Memiş bin Abdurrahman'ın oğulluğu "Ali bin Derviş" şeklinde, öz babası ismiyle kaydedilmiştir. Nüfus Defterleri'nde bu kurala uyulduğu tespit edilmektedir. BOA, *NFS.d.* 1143, s.10-17. Rize Müslim Nüfus Defteri; Osman Çetin, *Sicillere Göre Bursa'da İhtida Hareketleri ve Sosyal Sonuçları (1472-1909)*, Ankara 1994, s.88-89.

<sup>24</sup>Doğan, *a.g.m.*, s.153.

<sup>25</sup>Çetin, *a.g.e.*,s.59-71; Düzdağ, *a.g.e.*, s.35,120; Yahya Araz, *Osmanlı Toplumunda Çocuk Olmak*, İstanbul 2013, s.142-175.

<sup>26</sup>Bekir Onur, *Türkiye'de Çocukluğun Tarihi*, Ankara 2005,s.138-140.

adopt children of close relatives. It is possible to say that the foster care did not take place in the law until 1949. It has been started to be reapplied since 1961.

From this date on, the state has made great efforts to promote the foster care, but the practice can not be widespread, so institutional care can not be abandoned which is no longer preferred in the world. Some social scientists argue that the protective family practice is not suitable for the Turkish family structure. However, in Ottoman society, the application was intensely popular.