

## Acknowledgment

The Public Security Directorate(PSD) / Family Protection Department(FPD) with the support of the United Nations High Commissioner for Refugee (UNHCR) have prepared this field's guidance, The Standards of The Best Interests of The Child In Accordance with Jordanian Legislations, Islamic Shari'ah, and International Standards, to be used as a reference for decision makers and service providers, taking into consideration that achieving the best interests of the child at all stages and by all concerned parties is one of the principles set out in the Convention on the Rights of the Child. The guidance is based mainly on provisions of Islamic Shari'ah, national legislation, and the text and explanations of international conventions related to the child's best interests.

Honored experts Judge Dr. Ashraf AL-Omari and Dr. Zaid AL-Kilani, from Sharia'h Judge of the Supreme Judge Department, and Colonel Dr. Ayed Raja Khilailah from the Public Security Directorate prepared the original form for this guideline. The preparation of the guideline was supervised and reviewed by a committee headed by Brigadier Dr. Attallah Srhan, Director of the Family Protection Department, and a group of officers from the Family Protection Department, in addition to the United Nations High Commissioner for Refugees (UNHCR). We are grateful to those who participated in the preparation of this field guideline and who have contributed to its development and publication.



## Table of Contents

|  |    |
|--|----|
| Acknowledgment.....  | 5  |
| Introduction.....  | 5  |
| General Basis of Interest in Islamic Shari'ah.....   | 6  |
| The Need for Controls and Accurate Understanding to Define Interest Standards in Islamic Fiqh.....   | 8  |
| Objectives and Foundations of the Study.....   | 8  |
| Definitions.....   | 9  |
| The Concept of Childhood in Islamic Shari'ah.....  | 10 |
| The Standards for Determining the Best Interest of the Child.....  | 10 |
| 1.First Topic: Achieving the Child's Best Interests in Health.....   | 12 |
| 1.1 Child's Health According to International Standards.....   | 12 |
| 1.2 Child's Health in Jordanian Legislations.....  | 14 |
| 1.3 Child's Health in Islamic Fiqh.....  | 17 |
| 1.3.1 Noticing the Child's Well-Being and Health Through the Inheritance of the Offspring.....   | 18 |
| 1.3.2 The Child's Right to Life.....   | 18 |
| 1.3.3 Ensuring Sufficient Maintenance for the Child.....   | 20 |
| 1.3.4 Responsibility of the State to Assist Those Who Take Care of the Child and Who are Unable to Provide the Necessary Living Conditions for the Child's Development.....  | 20 |
| 1.3.5 The Child's Right to a Level of Health that Preserves his/her Body and Mind, Including Vaccination.....  | 21 |
| 1.3.6 The Child's Right to Development at an Adequate and Sound Level.....   | 22 |
| 1.3.7 The Child's Right to Enjoy his/her Childhood, the Right to Rest and Enjoy Leisure Time and Play as Age-Appropriate.....  | 23 |
| 2.Second Topic: Achieving the Child's Best Interests in Documentation (Legal Identification).....  | 24 |
| 2.1 Every Child has the Right in Registration Immediately after Birth in the Official State Records.....   | 24 |
| 2.1.1 Addressing this Interest According to International Standards.....   | 24 |
| 2.1.2 Addressing this Interest According to Jordanian Legislations.....  | 25 |
| 2.1.3 Addressing this Interest According to Islamic Shari'ah.....  | 30 |
| 3.Third Topic: Achieving the Child's Best Interests in Shelter (Residence, And Custody).....   | 35 |
| 3.1 Addressing this Interest According to International Standards.....   | 35 |
| 3.2 Addressing this Interest According to Jordanian Legislations.....  | 37 |
| 3.3 Addressing this Interest According to Islamic Shari'ah.....  | 42 |
| 3.3.1 The child has the right to get a fair and affectionate treatment that insures his/her welfare by his/her parents or any other person.....  | 42 |
| 3.3.2 The child has the right to have someone to nurture him/her and to raise, educate, provide his/her vital and psychological needs and not to separate him/her from his/her parents as a general outcome.....       | 44 |
| 3.3.3 The child has the right in every right available whether his/her parents are available or in dispute, whether he/she was an orphan or a foundling, healthy or with special needs and a citizen or a refugee..... | 44 |

|  |    |
|--|----|
| 4. Fourth Topic: Achieving the Child's Best Interests in Education.....  | 45 |
| 4.1 Addressing this Interest According to International Standards.....   | 45 |
| 4.2 Addressing this Interest According to Jordanian Legislations.....  | 47 |
| 4.3 Addressing this Interest According to Islamic Shari'ah.....  | 50 |
| 5. Fifth Topic: Achieving the Child's Best Interests in Freedom of Expression<br>and Freedom of Thought.....     | 51 |
| 5.1 Addressing this Interest According to Jordanian Legislation.....   | 52 |
| 5.2 Addressing this Interest According to Islamic Shari'ah.....  | 54 |
| 5.3 A Child is Given the Choice Between the Father and the Mother in<br>Custody Issues.....                      | 54 |
| 5.3.2 Shari'ah Evidence with Regards to Hearing the Child's Opinion.....   | 55 |
| 6. Sixth Topic: Achieving the Child's Best Interests in Criminal Prosecution...                                  | 55 |
| 6.1 Addressing his/her Age, Sense of Dignity and Self-Worth and Right to a<br>Fair Trial.....                    | 55 |
| 6.2 Addressing This Interest According to International Standards.....   | 55 |
| 6.3 Addressing This Interest According to Jordanian Legislations.....  | 57 |
| 6.4 Addressing This Interest According to Islamic Shari'ah.....  | 65 |
| 7. Seventh Topic: Achieving the Child's Best Interests in Alternative Care....                                   | 65 |
| 7.1 Addressing this Interest According to International Standards.....   | 65 |
| 7.2 Addressing this Interest According to National Legislations.....   | 66 |
| 7.3 Addressing This Interest According to Islamic Shari'ah.....  | 78 |
| 8. Eighth Topic: Achieving the Interests in the Child Right of not Marrying at<br>an Early Age.....              | 79 |
| 8.1 Addressing This Interest According to International Standards.....   | 79 |
| 8.2 Addressing This Interest According to Jordanian Legislations.....  | 80 |
| 8.3 Addressing This Interest According to Islamic Shari'ah.....  | 82 |
| 9. Ninth Topic: Achieving the Child's Best Interests in Family Reunification<br>Especially in Refugee Cases..... | 82 |
| 9.1 Addressing This Interest According to International Standards.....   | 82 |
| 9.2 Addressing This Interest According to Jordanian Legislations.....  | 84 |
| 9.3 Addressing This Interest According to Islamic Shari'ah.....  | 85 |
| Conclusion.....  | 86 |
| Recommendations.....   | 86 |
| Recommendation 1.....  | 86 |
| Recommendation 2.....  | 86 |

# The Standards of the Best Interests of the Child in Accordance with Jordanian Legislation, Islamic Shari'ah, and International Standards

## Introduction:

One of the most important indicators of the development and prosperity of international conventions is their great emphasis on human rights in general and on the rights of the child in particular. A number of international conventions have been adopted<sup>1</sup> establishing these universally-acknowledged rights for the world's children, and requiring that children be able to enjoy such rights wherever they are, without regard to race, color, gender, language, religion, political opinion, wealth, disability, place of birth, or national, ethnic or social origin.

The international community has not only recognized wide variety of rights for children, but also has created a set of legal instruments<sup>2</sup> with the necessary powers to ensure enjoyment of these rights, including by monitoring signatory countries 'implementation of obligations under the conventions.

The most important principle established with regard to children's rights is that the best interests of the child shall be a primary consideration in all actions that involve children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Ensuring the best interests of the child may require even greater emphasis for refugee children, whose rights and interests may be under greater threat. This is due to the circumstances and conditions in which the child is found, as a refugee, it is necessary to take into account the specificity of the child refugee because it is directly related to the consequences of the armed conflicts from the collapse of the social structure, The lack of family support, design and social infrastructure, especially in the refugee camps.

As the principle of the best interests of the child is a general concept,<sup>3</sup> we will identify and detail the necessary elements and standards relevant achieve the child's best interests for the purpose of assisting the relevant authorities, institutions and bodies in the Hashemite Kingdom of Jordan to achieve these interests.

---

1 - The main international conventions that were adopted in this regard:

- Convention on the Rights of the Child 1990 and its three Protocols.
- Convention on the Elimination of All Forms of Discrimination against Women and its Protocol.
- Universal Declaration of Human Rights.

2 - The most important instruments are as follows:

- Committee on the Rights of the Child established under Article 43 of Convention on the Rights of the Child.
- Committee on the Elimination of Discrimination against Women established under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

3 - Despite the earlier international documents to the protection of the rights of the child, such as Geneva Convention 1924 about the rights of the child, Convention on the Rights of the Child 1959, Universal Declaration of Human Rights 1948 which issued two Articles for the rights of the child (25 and 26) and other international conventions on the same subject, the Convention on the Rights of the Child adopted on 20 /11/1989 is considered as the main international reference for the care and protection of children.

Furthermore, this study will present the set of rights stipulated in international standards and in Jordanian legislation alongside those of Islamic Fiqh\*, and to shade the light on the extent to which these standards are matching the provisions of this Shari'ah and what is corresponding to the term of (the most important interest of the child). We hope that understanding of this point of view will enhance the understanding and work of public institutions about children's affairs on how to assess and determine the best interest from a general perspective, where the international and national standards do not interfere with the Islamic Shari'ah, since the best interest is achieved by assessing and adapting all what had been stated to achieve the nominal goal.

### General Basis of Interests in Islamic Shari'ah

As Islamic Shari'ah is one of the most divine laws that urges respect for the interests of the child and provides guidance on achieving them through legislation and in practice, and as recognized by the jurists, who used a set of rules governing these provisions and concepts, as they said: "Wherever the interest is, so there is Allah's law" and "If the signs of truth appears, the evidences of mind is proven and the hidden things appear in any way, so there are Allah's law, His religion, satisfaction and command"<sup>4</sup>. Islamic Fiqh followed this approach, among others issues, but the specificity of some cases is confirmed by special rules and specific concepts of additional care for them. The most famous of these concepts is a famous principle in Islamic Fiqh that relates to our subject and states that "Every person who acts on behalf of others must act in their interest"<sup>5</sup>.

In this study, we will work on achieving and entrenching the child best interests in accordance with his/her rights, which were adopted by international conventions in the view of Islamic Shari'ah. This is in addition to drawing the way of achieving these rights legislatively and practically.

However, as the jurists set out many of provision which in this concern; including this important regulating legal maxim, which is an extremely important criterion for judging any related conduct, whether it is permissible or prohibited. Thus, these rulings and maxims could be implied as a law for all those who might undertake a responsibility, which relates to another party. This is such as; a governor, judge, employee, trustee, guardian or headmaster. Hence, any of their acts and transactions must be based on the aim to achieve the interest of those under their mandate. This is because; they do not behave personally for themselves, or according to their own choice and desire. Respecting this rule, all who dispense justice must take into consideration these interests.

The evidence of this rule is derived from the statement of the Prophet peace and blessings of Allah be upon him who is reported to have said: "Any governor who is in charge of an other's affair, dies while acting dishonestly towards them, Allah will exclude him/her from Paradise".

---

\* the theory or philosophy of Islamic law, based on the teachings of the Koran and the traditions of the Prophet.

4 - Ibn Qayyim al-Jawziyya in I'laam ul Muwaqqi'een.

5 - Al- Subky 310/1, (Al- Ashbah & Nadhaer)

Hence, the Shari'ah has made innate the consideration of the interest, with a further intent, namely, the existence of the religious qualm in dealing with the rights' system pertaining to those "under guardianship" (if the context is religious), or, "under the mandate" (if meant by it the UNHCR), and has not sufficed with a mere permission and forbiddance of this moral qualm.

However, the rights of children are among the most important issues to which this rule applies, due to their natural vulnerability and inability to consider themselves independently.

In a reference to one action of the parents towards children in a material case, God said, "Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire and they will be burned in a Blaze". (Surah An-Nisa, Chapter No. 4, Verse No.10). Another example refers to the moral and psychological rights when God said, "And they ask you about orphans. Say, Improvement for them is best and if you mix your affairs with theirs - they are your brothers."<sup>6</sup>

The jurist al-Shafi'i al-'Izz ibn Abd al-Salam said "Not only is one good with the ability to make good, but it leads to great hardship and they do not choose to act according to their choice of rights themselves"<sup>7</sup>.

This is a very important Juristic text because it emphasizes that a person does not consider the interest according to his or her own opinion merely. Yet, he or she must seek and strive for the best interests according to many considerations prescribed. As well as the need for flexible legislative texts giving the judge or management the right to assess the interests of the child when considering any dispute or subject in which the child is a party or which affects of his/her interests. This should be performed away from rigidity and verbatim when handling such cases Further, it should be taken into account; the conflict between interests, or contradiction, or sometimes priorities related to them. This process requires a great depth of scrutiny in assessing these issues. Therefore, Islamic scholars have given special care to the conflicts of interest, if any, and how to deal with these cases, including the conflict between private interests.

It is therefore necessary that the rules of interest, their controls and the know-how as to realizing and applying them be available for any party or any person who deals with or decides a judgment or an issue relating to those who are in need of care, especially children. That is why we shall be examining how the Shari'ah and the Islamic Fiqh (jurisprudence) has catered for the rules of interest related to the affairs and rights of the children whether in terms of "tak'eed" (formulating Fiqh or jurisprudence/ making rules), "ta'seel" (rooting; nativization; documenting or tracing the roots in the Shari'ah), "the kulliyat" (the general rules/ the general context), "tatbeekat" (applications/ practices), or the "juz'eyat" (parted rules, taken out of context) and "fir'eyat"(maybe the same as juz'eyat) as per several testimonies which we shall be referring to herein in the study.

---

6 - Surah Al-Baqara (the Cow) Chapter No. 2 Verse No.220

7 - Rules of Judgments: 2/75 and see the Al- Ashbah & Nadhaer of Ibn Najim: 139 See Maqased Al-Shari'ah, Tahir bin Ashour: Part 3 Page 206

### The Need for Controls and Accurate Understanding to Define Interest Standards in Islamic Fiqh:

It is very easy for anyone to advocate for a child's interests and their right to care and consideration, the concept's legitimacy in legislation, and its priority in diligence but the problem is: Are advocates for interests and able to speak clearly about a defined concept with a specific established meaning set?<sup>8</sup>

Therefore, one of the significant rules in the interest-related work is knowing that many actual issues are subject to discretion in passing judgement (juristic deduction/independent judgement) and that conclusive Shari'ah / religious texts for such cases are limited, and offer a general judgment which we can develop in terms of the interest-related work by those competent.

And that is what should be taken into account when endorsing legislations in specific, so that independent judgement shall have a role in their formulation, especially for new cases or those which are time-influenced judgements.

### Objectives and Foundations of the Study:

This study was launched on the recommendations of a Regional Conference held in Amman, Jordan, on 9-10 December 2015, under the title "Strengthening national protection systems in the case of asylum, principles and implementation", which included in its conclusions the desirability of developing guide on the principle of best interests of the child from perspective of the Islamic Shari'ah and Jordanian and international law; to be used as a reference for decision-makers and service providers.<sup>9</sup>

This study was produced through a participatory process. Upon agreeing on the divisions and topics to be addressed, tasks were distributed amongst participants and a time frame established for completing the necessary work. Finally, the separate elements were brought together into an integrated final document, and reviewed as a single unit by the participants.

Since the rights of the child are an integral part of the human rights system, this study starts from the basic principles of these rights as reflected in human rights treaties, bearing in mind that human rights are the same for all human beings regardless of race, gender, religion, or national or social origin. Such rights are inalienable and inter-connected, and no one may be deprived of these rights even if not recognized by national laws. Children's rights are included in conventions concerning civil, political, economic, social, environmental and developmental

---

8 - Dr. Ahmed Al-Risouni for mentioned text.

9 - The conference was attended by more than 100 participants in the field of family and child protection and protection against violence based on gender, represented by governmental and non-governmental organizations and representatives of international organizations and Academics in the MENA region. The conference aims to promote discussion among all sectors and specialists at the regional level, Sharing experiences and best practices on how to activate the approach based on the best interests of survivors, building on the experiences of host countries to overcome challenges and obstacles to providing comprehensive services to survivors of domestic violence, child abuse and violence based on gender in the case of asylum, and come up with practical recommendations in line with the principles of a focused approach to the best interests of survivors of violence.

rights. In this study, the focus is placed on those specific rights established and detailed in the Convention on the Rights of the Children, which is the most essential and important treaty relating to children, and in particular on the best interests of the child as the primary consideration. The Committee on the Rights of the Child's explains that consideration of the best interests of the child involves three elements:

A. A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children, or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

B. A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation, which most effectively serves the best interests of child, should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

C. A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

#### Definitions:

- The Child: Every human being below the age of eighteen years, unless under the law applicable to the child.<sup>10</sup>

- Human Rights: Fundamental standards, which people cannot live in dignity as human beings and are the basis of freedom, justice and peace. Their respect for the development of the individual and the society will be fully developed.<sup>11</sup>

- Children's Rights Convention (UNCRC): Is an international convention supervised by the United Nations.

Its main thrust is to urge the countries of the world to take legislative and administrative measures to ensure that the best interests of the child are taken into consideration in all child-related practices both at the level of government policy

---

10 - Article 1 of the Convention on the Rights of the Child, adopted and opened for signature, ratification and

accession by General Assembly resolution 44/25 of 20 November 1989 Entry into force: 2 September 1990, in accordance with Article 49 and ratified by the Kingdom of Jordan under the Ratification Act Convention on the Rights of the Child No. (50) For the year 2006, published on page No. 1993 of the Official Gazette No. 4787 dated 16/10/2006.

11 - Research entitled, "The concept of human rights and the role of educational institutions, Hussein Ali Hamdani, published on website [http://www.siironline.org/alabwab/human\\_rights\\_\(14\)/042.htm](http://www.siironline.org/alabwab/human_rights_(14)/042.htm)

and at the level of individual decisions concerning children's rights, care and growth.

- Best Interests Determination: describes the formal process with strict procedural safeguards designed for particularly important decisions.<sup>12</sup>
- Unaccompanied Children: (also called unaccompanied minors) are children who have been separated from both parents and other relatives. Further, they are not being cared for them; by an adult who, by law or custom, is responsible for doing so.<sup>13</sup>
- Separated Children: Are children who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.<sup>14</sup>
- Alternative Care: A procedure for the child living outside his family with an alternative family, or in one of the specialized institutions in this field for an extended period ending with the independence of the child and the adoption of himself and then the integration within the community.<sup>15</sup>

#### The Concept of Childhood in Islamic Shari'ah:

In the light of the international defining of the childhood concept, which contained in Article 1 of the Convention on the Rights of the Child, as noted above, this concept may also be defined according to the Islamic jurisprudence, where the age of childhood was determined as an extended period from birth to adulthood. Puberty in accordance with the Islamic law is the age of the assignment of religious duties and then comes another stage, which is the adolescence/ adulthood stage.

#### The Standards for Determining the Best Interest of the Child:

The Convention on the Rights of the Child is an international treaty that the United Nations supervises, signed by all countries except the United States and Somalia<sup>16</sup>. The Convention is one of the most important international foundations for the rights of the child and the protection of the child. The essence of the Convention is to urge the countries of the world to take legislative and administrative measures to ensure that the best interests of the child are taken into consideration in all children-related practices. Both at the level of government policy and at the level of decisions taken on children individually with respect to the rights, welfare and development of the child in a positive manner.

Also, the best interests of the child must be considered in dealing with him or her; from the concept of that each child is unique and deserves protective measures

---

12 - UNHCR guidelines on the best interests of the child issued in May 2008 as well as the national framework for protection from domestic violence.

13 - Item 7 of General Comment No. 6 (2005).

14 - General Comment No. 6 (2005).

15 - Al-Hawat (Dr. Ali al-Hadi) - et al. - Care of the deprived child - Psychosocial foundations for alternative care for children, 1989, p.29

16 - Official website of the Committee of the Rights of the Child.

based on the child's own circumstances. This is because decisions affecting any child may be significantly different from each child in different context.

There are general disciplines from the perspective of Islamic jurisprudence, which contribute to the protection and enforcement of the child's interests. The most important of these is codification. As per the jurisprudents/ jurists, standards that do not take a mandatory form and remain left to people's consciences do not accomplish the target and purpose of protecting the child and maintaining his rights, welfare and protection from the dangers which may cause them abuse and neglect. Hence, there is an urgent important need to have binding legalisations that guarantee rights and interests, and organize them all in accordance to the saying: "God forbids committing sins in the law more than what he has forbidden in the Holy Quran" followed by monitoring as to execution, implementation, accountability and assessment, in a clear indication to the role and responsibility of the state. It should also be noted that an important principle in Islamic jurisprudence is the criterion of flexibility in determining the interests of the child when applying the sub-criteria. The interests of the child are an evolving and variable concept within the agreed-upon criteria system, which is why we cannot regard it as a specific and restricted procedure that is the optimal for the child in all cases and times. Most often, we need to study the cases to determine where specifically the interest lies, according to the circumstances and variables of the case. Hence, flexibility has been an important criterion in the determination of the interest and transferring its tasked-with realization on the ground, or, as some jurisprudents express, to strive as to how to apply these criteria and putting them to use on the ground by the specialists and experts in the field because children are not one category.

This study will address the following main topics relevant to determining the best interests of child and welfare.

It includes under each topic specific details from the perspective of the International Standards, National Legalisations and Islamic Shari'ah:

**First Topic:** Achieving the Child's Best Interests in Health.

**Second Topic:** Achieving the Child's Best Interests in Documentation (Legal Identification).

**Third Topic:** Achieving the Child's Best Interests in Shelter (Residence, and Custody).

**Fourth Topic:** Achieving the Child's Best Interests in Education.

**Fifth Topic:** Achieving the Child's Best Interests in Freedom of Expression and Freedom of Thought.

**Sixth Topic:** Achieving the Child's Best Interests of Child in Criminal Prosecution taking into account his age and sense of dignity and worth.

**Seventh Topic:** Achieving the Child's Best Interests in Alternative Care.

**Eighth Topic:** Achieving the Interests in His/her Right of Not Marrying at an Early Age.

**Ninth Topic:** Achieving the Child's Best Interests in Family Reunification especially in refugee cases.

## First Topic

### Achieving the Child's Best Interests in Health

A child's health and wellbeing in all its forms is considered a great interest for him/her that must be attended to and achieved, in accordance within international standards, national regulation and Islamic Shari'ah.

#### Child's Health according to International Standards:

This right is found in several articles of the CRC. <sup>17</sup> Article 6 declares that every child has the right to life and it binds the members to ensure to the maximum extent possible the child's survival and development of the child.

Article 24 of the CRC recognizes the child's right to the enjoyment of the highest attainable standard of health, and to facilities for the treatment of illness and rehabilitation of health. The Convention demands clear executive steps that can be easily measured. These steps are: (a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.

(f) To develop preventive health care, guidance for parents and family planning education and services.

Article 25 of the same Convention recognizes the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

The obligation arranged in Article 26 of the same Convention on Member States, states that the child has the right to benefit from social security, including social

---

17 - Jordan ratified this agreement by ratifying the Convention on the Rights of the Child No. 50 of 2006, which was published with this agreement in the Official Gazette No. 4787 dated October 16, 2006. Pursuant to the principle of treaties, the treaties come second after the Constitution in the hierarchy of legislation in Jordan and these decisions are higher authority than national laws. The Court of Cassation has decided on this in many of its decisions. Among these decisions is its decision No. 954/2009 issued by the Jordanian Court of Cassation in its capacity as juridical, which states: "The jurisprudence and the judiciary unanimously agree that international conventions concluded by States is a nominal order of the local laws of this state and that these agreements are first to apply, even if the texts contradict and the application of international conventions and laws of the jurisdiction of the judiciary without leaving the parties to the dispute choose the Convention, or the law they wish. This is because it is related to the public order and requires that the conventions and treaties have passed their constitutional stages in the country that is considering the dispute.

insurance and shall take the necessary measures to achieve the full realization of this right in accordance with their national law, and that such benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

The prohibition of the imposition of the death penalty or life imprisonment for crimes committed by persons under the age of 18 without the possibility of release imposed by Article 37, paragraph (a) directly contributes to the protection of the child's right to health.<sup>18</sup>

This child's right to health and his or her health condition are central in assessing the child's best interests.<sup>19</sup> However, if there is more than one possible treatment for a health condition or if the outcome of a treatment is uncertain, the advantages of all possible treatments must be weighed against all possible risks and side effects, and the views of the child must also be given due weight based on his or her age and maturity. In this respect, children should be provided with adequate and appropriate information in order to understand the situation and all the relevant aspects in relation to their interests, and be allowed, when possible, to give their consent in informed manner.<sup>20</sup>

For example, as regards to adolescent health, the Committee has stated<sup>21</sup> that states parties have the obligation to ensure that all adolescents, both in and out of school, have access to adequate information that is essential for their health and development in order to make appropriate health behavior choices.

This should include information on use and abuse of tobacco, alcohol and other substances, diet, appropriate sexual and reproductive information, dangers of early pregnancy, prevention of HIV/AIDS and of sexually transmitted diseases. Adolescents with a psycho-social disorder have the right to be treated and cared for in the community in which he or she lives, to the extent possible. Where hospitalization or placement in a residential institution is necessary, the best interest of the child should be assessed prior to taking a decision and with respect for the child's views. However, the same considerations are valid for younger children. The health of the child and possibilities for treatment may also be part of a best-interests assessment and determination with regard to other types of significant decisions (e.g. granting a residence permit on humanitarian grounds).

This right is also interpreted<sup>22</sup> as including the right of the fetus to have the health care and appropriate nourishment through the care of his pregnant mother.

The child has the right to have the highest achievable level of health care, as well

---

18 - There are other international conventions that urge the States to respect and enforce this right. One example is the third Article of Universal Declaration of Human Rights.

19 - General Comment No. 14 (2013), para 77-78.

20 - Section (31) of general comment No. 15 (2013) on right of the child to have the highest achievable health care

21 - General Comment No. 4 (2013) on teenager's health and growth in the context of UNCRC

22 - This interpretation has been derived from the series of comments of the Committee on the Rights of the Child and specifically Comment No. (15) Of (2013)

as, to use institutions of; prevention, treatment and rehabilitation. In addition, the child has the right of an affectionate relationship from his parents, or any other attending person that attends to his/her interest.

#### Child's Health in Jordanian Legislations:

We find that the Jordanian law provides protection for this right, and that its articles are compatible with the main purpose and with Committee on the Rights of the Child interpretations regarding the right to health. The law believes that the child's right in life, survival and development is of sufficient magnitude to reach every type of care for him/her and his mother before and after birth that ensures him being born healthy and disease-free in addition to preventing him from abortion that the mother turns into due to social circumstances.

In this situation, we find that the constitutional law has taken an important step through the constitutional amendment that took place in 2011.<sup>23</sup> It added a new paragraph to the Article 6 providing legal protection for motherhood, childhood and old age and takes into account young people with disabilities and protects them from abuse and exploitation.

The law also criminalizes acts committed against the child from the moment he is a fetus to the age of 18, including protection of the right to life and physical integrity. Jordanian law protects the right to life of the fetus by criminalizing women who abort themselves by means of their own, or accepting means to abort a pregnancy. Therefore, if this has been committed, she would be subjected to imprisonment in which there is a penalty ranging from six months to three years<sup>24</sup>.

Also, it punishes those who deliberately abort the pregnancy of a woman without her consent by the judgment of hard labor with an imprisonment period of no longer than 10 years. This law has also added to the Penal Code an additional third of the judged period of time if the person who aborted the pregnancy of a woman was a doctor, sergeant, pharmacist or a midwife.<sup>25</sup>

One aspect of the protection of a child's right to live is what the law states in Article No. 358 of the Code of Criminal Procedure.<sup>26</sup> It prevents the execution of the death penalty on pregnant women until after the birth of the newborn for three months. The second paragraph of the Penal Code Article No.17<sup>27</sup> went further than that, where the protection of the right to live of the fetus manifested through replacing the death penalty on a pregnant woman with another penalty for the sake of the fetus's life.

After the birth of the child, the Penal Code, in Article 289, did not overlook criminalizing the act of separating/ abandoning a minor who has not turned 15 years of age without a legitimate or reasonable reason which would result in putting

---

23 - This amendment was published on the page 4452 of the Official Gazette No.5117 issued on 1/2011.

24 - Article 321 of Jordanian Penal Code.

25 - On the other hand, Article 61 of Penal Code, surgical operations and medical treatments Applicable to the origins of the profession on condition to be performed under the consent of the sick or the legal representatives or in case of necessity is not a crime.

26 - Is the law No. 9 of 1961 published on page 311 of the Official Gazette No. 1593 published on 16/3/1961.

27 - Is the law No.16 of 1960 published on page 1487 published on 11/5/1960.

the minor's life at risk, or in a manner that is likely to inflict permanent harm to his/her health, shall be punishable by imprisonment of three months to one year. And the imprisonment punishment shall be one to three years if the minor has not completed 12 years of age.

Article 150 of the Personal Status Law is in place to stipulate the mother's obligation to nurse/ breastfeed her new born and she is compelled to that in case of the new born refusing to be nursed/ breastfed by a woman other than their mother.

Even in the case of a woman causing the killing of her child by an act or abandonment of her new born, with this act of killing being committed prior to the mother fully regaining consciousness ensuing from the giving birth to the child, or due the nursing/ breastfeeding ensuing from the birth of the child, it provides for the penalty shall be no less than five years and this thereby constitutes further protection for the child's right to life.

This protection continues to be validated by criminalizing the killing of humans in general and decides penalties according to the way of killing <sup>28</sup> in a way that the penalty may reach the death sentence.

Article No. 27 of the Civil Health Insurance Law <sup>29</sup> stipulates that all Jordanian children under six years of age must be treated free of charge in the health centers and hospitals of the Ministry of Health under the condition that they are not included in any other health insurance. Article No.4 of the instructions of citizens' inclusion in health insurance<sup>30</sup> considers the enlistment of family members under the age of eighteen years mandatory, unless they have another health insurance. This is considered an important step in the domain of children's health care and other vulnerable persons in the society, in along with other allocations to support mother and child health programs.

Paragraph C of Article No.7 of the National Aid Fund Act<sup>31</sup> requires the Fund to spend its money to accomplish a set of goals such as recommendations to the Ministry of Health for the distribution of health insurance cards for the non-capable of the beneficiaries of the Fund's services, according to the provided terms and conditions of the applicable civil health insurance system.

As for the benefit of children from social security services, the concept of protection has been strengthened enough to include all members of society including children, in a way that guarantees the contribution in the accomplishment of the economic development and social-psychological stability of the worker and his/her family members, especially children. Besides, Article No. 62 of the Social Security Act<sup>32</sup> imposes increase of the old age pension, if the insured individual has to sponsor another person, according to percentages and bases that are specified in that Article.

---

28 - Articles (326, 327,328,343) of Penal Code.

29 - Is the System No. 83 year 2004 published on page 3257 of the Official Gazette No.4666 published on 1/7/2004.

30 - This text was added according to the amended instructions of citizen's inclusion in health insurance No. 1 for 2008 published on page 210 of the Official Gazette No. 4881 issued on 31/1/2008.

31 - Is the law No. (36) For year 1986 published on the page 1838 of the Official Gazette No. 3425 issued on 1/10/1986.

32 - Is the law No. 1 for year 2014 published on page 493 of the Official Gazette No. 5267 issued on 29/1/2014.

Article 79 of the same Act is in place to stipulate that provided-for/ supported sons, daughters, brothers and sisters and the born-alive fetus shall be regarded as entitled family members' recipients of the insured person, pensioner or ill-health retirement pension.

Article 80 of the Act grants the children of the insured person, pensioner or superannuation benefits a specific percentage of the salary according to the table attached to the Article<sup>33</sup> in case of the insured person's death.

For the protection of worker trainees of less than 16 years of age from the social dangers in case of entering the work market, Article 5 of the law states to enlist this category for the insurance of work injuries. This insurance provides the trainee with the right to a pension or compensation in case he suffers from a work injury. It is worth mentioning that, the Social Security Institution in this domain does not encourage Child Labor, but at the same time, it seeks to ensure their rights and protect them from work dangers when they are involved in work trainees.

Chapter C of Article No.4 of The Juvenile Law<sup>34</sup> prohibits sentencing a juvenile to hard labor, or execution, which means that the death penalty may not be imposed on a child under the age of 18 nor should the penalty of life imprisonment. The law states that these penalties must be reduced on the following that we will build later on. Hence, this law is a direct child rights protection in life, so he can never be sentenced to death, or hard labor, which provides juvenile protection from being exposed to a great harm, because of the implementation of those sanctions.

Paragraph A of Article No.15 of the Reforming and Rehabilitation centers Act<sup>35</sup> necessitated that pregnant inmates should be treated appropriately as directed by their doctor.

To promote and protect the child from consuming substances that affect his health badly, paragraph A of Article No.4 of the Code of Conduct Control<sup>36</sup> bans a series of conducts related to the juvenile and under criminal liability as the following:

1. To sell tobacco, alcohol, narcotics or psychotropic substances for the juvenile, even if it was under a medical prescription for narcotics and psychotropic substances, as well as selling volatile substances.
2. To allow the juvenile to go to nightclubs, bars or pubs.
3. To serve alcohol or hookah for juveniles in restaurants, coffee shops and similar places that serve the above.
4. To use a juvenile for the act of begging.

"Paragraph B" of the same Article defines who is to be liable as to carrying out a violation of the prohibited criminal acts as under:

1. The owner, the manager or the clerk of a tobacco shop or a liquor store.
2. The pharmacist responsible in the pharmacy who sold the narcotics or volatile substances.

---

33 - Is the Scale of assessments in salary or compensation No. 4 for year 2014, published on page 589 of the Official Gazette No. 4 for year 2014.

34 - Is the law No. 32 for year 2014 published on page 6371 of the Official Gazette No. 5310 issued on 2/11/2014.

35 - Is the law No. 9 for year 2004 published on page 2045 of the Official Gazette No. 4656 issued on 29/4/2004.

36 - Is the law No. 37 for year 2006 published on page 1753 of the Official Gazette No. 4759 issued on 16/5/2006.

3. The owner, the manager or the employer of the nightclub, bar or pub.
4. The owner, the manager or the employer of the restaurant, coffee shop or any other facility that serves alcohol, or hookah.
5. The person who uses a juvenile in the act of begging.

Paragraph C of the same Article commits the specific person mentioned earlier to put a visible announcement on the entry of their places that set forth the ban. Article No.5 of the same law commits to check the age of the person who enters such a place, if he shows that he is younger than 18 years by checking his ID, or any other official document that proves his age. Paragraph A of the same Article states the penalty of imprisonment for a period of no longer than six months, or by paying a fine of not more than five hundred JDs, or both penalties for all who commit the following violations of the law.

1. Sells the juvenile tobacco, alcohol or volatile substances or charged him to buy any of them, or dispense him/her a medical prescription of narcotics or psychotropic substances.
2. Allows the juvenile to enter a nightclub, a bar or a pub.
3. Offering a juvenile alcohol, or hookah.
4. Using a juvenile in the act of begging and all the money that came from this will be confiscated.

Paragraph B of the same Article doubles the penalties in case of repeating the prohibited acts. Paragraph A of the third Article of the same Act bans the juvenile from the following:

1. Buying tobacco, alcohol, narcotics, psychotropic substances or volatile substances for himself/herself, or any other person.
2. Smoking tobacco, or hookah, or consuming alcohol, narcotics, psychotropic substances, or volatile substances.
3. Going to nightclubs, bars or pubs.
4. Begging.

The juvenile who commits any of these actions is penalized with a fine of 20 JDs and it is doubled in case of repetition. Paragraph B of the same Article bans any person who charges a juvenile to buy tobacco, or alcohol or to dispense a medical prescription for narcotics, psychotropic substances whether it was for him/herself, or someone else, or using a juvenile in the act of begging.

Personal Status Law<sup>37</sup> the expense of children needing health treatment, and if the father was incapable of paying the bill of doctor, or school, and the mother was capable to pay it; the mother will pay all the expenses, as long as the father will pay back when he can afford it (Article No.193 & 194 of the same law).

#### Child's Health in Islamic Fiqh:

Islamic Shari'ah in general, took into account the right of child's health care. According to many partials, it confirms overall the importance of this criterion in the point of view of Islamic Fiqh; as the following:

---

37 - Is the law No. (36) for year 2010 published on page 5809 of the Official Gazette No. 5061 issued on 17/10/2010.

**First:** Noticing the child's well-being and health through the inheritance of the offspring.

The Shari'ah has made the observation of the safety and health of the child through features of inheritance in offspring of the best practical practices to achieve their interests. Thus, Shari'ah has urged to the good selection of husband, or wife, and noting the importance of genetics in reproduction, the Prophet Mohammed, peace be upon him, says, "Choose for yourselves a good healthy wife, because genetic defects can be inherited by your offspring"<sup>38</sup>.

This is considered one of the child's rights, which is the result of the parents' genetics on both levels, mentally and physically. There is also a legal care for the concept of choosing a well-bred wife considering the future congenital and pedagogical results on the child and keeping him from any handicaps in his life in which he has no choice. From this point, the scholars have noticed originate from endogamy repeatedly. Therefore, Shaafa'i and Hanbalis disliked this kind of marriage as a precaution to the child's health. This subject was discussed lately by scientists who ended up mandating a medical test before marriage, which serves the well-being of the generations. Sheikh Ibn Baz has pointed out that; if there was a fear of disease that runs in the family from which the person wants to marry a member, there would be no problem, if he has chosen to marry another woman as a precaution.<sup>39</sup>

**Second:** Child's Right to Life

The Islamic Shari'ah has confirmed the right of child to have adequate health and nutritious care even before he/she is born through both maternal care and after his birth according to the best standards of care and attention.

One of the best practices of Islamic Shari'ah is to prevent attacks on a pregnancy, which are caused by abortion in general, except for some terms and conditions that were set by scholars, where they tend to the fetus's interest and his right to live and they put his interest first before the desire of his parents, or the mother in general for abortion.

One of the supportive practices that bans the abuse on the fetus that Islamic Shari'ah mandates blood money "al-Diyyah" on whoever had a hand in aborting a pregnancy, without having a right to do so, or abusing it. This is based on what came in Sunnah that the Prophet Mohammed (peace be upon him) gave his verdict about two women of the Hudhayl tribe who had fought each other and one of them had hit the other with a stone.

The stone hit her abdomen and as she was pregnant, the blow killed the child in her womb. They both filed their case with the Prophet (peace be upon him) and he judged that the blood money falls due for what was in her womb.<sup>40</sup>

One of the best practices that insures the interests of child one of the best practices whereby the child's interest is realized is that Islamic Shari'ah cared about the safety of the fetus and its nourishment through the provision of alimony to pregnant women in order to ensure a healthy pregnancy and that care is afforded to the fetus even if

---

38 - Sunan Ibn Majah /1968, Al-Hakim 2/163, Al-Baihaqi 7/133

39 - From the official website of Sheikh Ibn Baz <http://www.binbaz.org.sa/noor/10883>

40 - Related by Al-Bukhari in his Saheeh No.: 5317

the fetus' mother is ineligible by virtue of the law for spousal alimony in some cases where no-pregnancy is executed for instance in disobedience instances.

Allah the Almighty states that, "And if they should be pregnant, then spend on them until they give birth." Surat At-Talaq (The Divorce). Chapter No. 65, verse No. 6.

One of the evidence that Islamic Shari'ah cares about the child's nourishment and growth is to ease on the pregnant woman in mandatory Shari'ah assignments such as fast breaking, it fasting negatively affects the pregnancy and exempting breast-feeding woman fasting in Ramadan.

It was narrated from Anas bin Malik that, "The Prophet said to him, "Allah, the mighty and sublime, has waived fasting and half of the prayer for the traveler and for pregnant and breastfeeding women."<sup>41</sup>

Ibn Abbas said: This was a concession granted to the aged man and woman who were unable to keep fast; they were allowed to leave the fast and instead feed an indigent person for each fast; (and a concession) to pregnant and suckling woman when they apprehended harm (to themselves)<sup>42</sup>.

One of the evidence that Islamic Shari'ah cares about the fetus's health and its life is not to frighten the pregnant woman, or to expose her to anything that might jeopardize her pregnancy.

Abu Al-Hasan Al-Bassri said: (Omar bin Al-khattab sent to a woman whose husband is absent, and Omar was taking care of her, but he denied, she was told to reply, she said: what do I have to do with Omar? (Omar was known to be a very tough person that many was afraid of him) by the time she was walking down the road, she went into labor, as the case she went in a house and gave birth to her baby. The baby cried twice and then died. Omar then consulted the companions of the Prophet (peace be upon him) in the matter. Some of them told him that there was no sin committed by his side, you did nothing but a well be Omar then said addressing Ali, what do you think in the matter, Ali said: they were wrong in their advisory, and if they said the consult according to your desire, they did you wrong, and the child's blood money falls due on you to pay. This is because you scared the woman, and the child's death is your fault, Ali told Omar to split the baby's blood money among Quraish trip)<sup>43</sup>.

The child's right to life is protected by the prohibition on killing, and it is one of the grave sins and the Shari'ah has forbidden harming them. Shari'ah texts are very clear in this subject especially killing the girls where this habit was prevalent among some of the tribes in the period before Islam. Almighty God has said, "And when one of them is informed of [the birth of] a female, his face becomes dark, and he suppresses grief. He hides himself from the people because of the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decided".<sup>44</sup>

---

41 - Related by An-Nasa'i and At-Tirmidhi. He said: This Hadith is Hasan.

42 - Related by Abu Dawud.

43 - At -Talkhees Al Habeer Fe Takhreej Ahadeeth Al- Rifai Al Kabeer (Ad-Dayat Book part four pages 69)

44 - Surah An- Nahl (The Bees), chapter 16, verses No. 58-59.

God also has said, "When the female (infant), buried alive, is questioned, for what crime she was killed" a disapproved act that came in an expressive scene to describe what some Arabs did in the period before Islam.

God also said: "And do not kill your children for fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin."<sup>45</sup>

God said as warning for those who jeopardize a child's life, "Those will have lost who killed their children in foolishness without knowledge..."<sup>46</sup>

**Third:** Ensuring Sufficient Maintenance for the Child One of the practices that insure the child's interest, as set by Islamic Shari'ah, is the stipulation that it is obligatory to provide for him, and to specify the designated party towards that end, and in a binding manner, with this being apparent in the designation of the father of the child with that at the outset as long as he is able to carry that out.

Almighty God has said:" Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth. And if they breastfeed for you, then give them their payment and confer among yourselves in the acceptable way; but if you are in discord, then there may breastfeed for the father another woman. Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease"<sup>47</sup>. This means that the father or the guardian must support the child financially according to his capacity.

Almighty God said: "Upon the father is the mothers' provision and their clothing according to what is acceptable".<sup>48</sup>

Prophet Mohammed (peace be upon him) has said, "A father is a shepherd in charge of the inhabitants of his household and he is responsible for his flock; a woman is a shepherdess in charge of her husband's money, house and children and she is responsible for them."<sup>49</sup>

Muslim has narrated that 'A'isha has reported, "A poor woman came to me along with her daughters. I gave her three dates. She gave a date to each of them and then she took up one date and brought that to her mouth in order to eat that, but her daughters expressed desire to eat it. She then divided the date that she intended to eat between them. This (kind) treatment of her impressed me and I mentioned that; which she did to Allah's Messenger (peace be upon him). Thereupon he said: Verily Allah has assured Paradise for her, because of (this act) of her, or He has rescued her from Hell-Fire"<sup>50</sup>

**Fourth:** Responsibility of the State to Assist Those Who Take Care of the Child and Who are Unable to Provide the Necessary Living Conditions for the Child's Development.

---

45 - Surah Al Isra', chapter 17, verse No. 31.

46 - Surah Al-An'am: chapter 6, verse 140

47 - Surah At-Talaq (The Divorce): chapter 65, verses (6,7)

48 - Surah Al-Baqarah (the Cow): chapter 2, Verse 233

49 - Agreed upon.

50 - Sahih Muslim: 4/2027 No. 2630

One of the best practices that ensures the interests of child is the Shari'ah's requirement that obliges the state, on its highest levels, to ensure the appropriate living conditions for the child. One evidence of that is the famous story of Omar bin Al-khattab when he was the head of the state, and he went out on a cold dark night to check his folks when he saw a fire from far. Abdul Rahman Ibn Aouf was with him (may Allah be pleased with them), so they went to the place where they saw the fire, and found a woman with three children around her crying and starving. Omar sat with them and asked the mother, "What is wrong with you, servant of God?" she replied, 'Only God knows what's came upon us." Omar then said:" Who could inform me about your conditions?" she said: "You're the head of us and do not know of our conditions?" Omar went to the in rush Money House and left his companion along with them. The guard asked him:" Is there anything wrong Commander of the Faithful?" Omar did not reply and opened the door; he took a bag of flour, a ghee jar and a honey jar, Omar said to the guard:" Load them on me", the guard then asked: "Do I carry them for you or hoist on you?" Omar then replied, "Hoist them on me." The guard wanted to help Omar in carrying the food, but Omar did not accept, Omar said: "Please hoist them on me. Will you carry my burdens for me on the Day of Resurrection?" Omar then carried the food and went on hastily to reach the orphans and their mother. When he arrived, he baked bread with his own hands for them, cooked them food by himself, and did not accept the help his companion had offered. He then fed the children until they were full.

"By God, you are more entitled to be the caliph than Omar" or "By God, you are more entitled to succession than Omar".

Omar said addressing her: "servant of God, when tomorrow comes, come to Omar's house for I will be there and I will talk to him about your conditions. He then left with his companion and sat behind a rock looking at the children. His companion told him: Let us leave Commander of the Faithful. Tonight, is a very cold one." Omar said, "I swear to God, I will not move until I see those boys happy and laughing as they were crying hard earlier."

This story is very famous, cited, and is taught for our children in schools. It is a clear evidence of our social and religious inheritance that confirms the necessity of Addressing about the child's physical and mental wellbeing by the highest authority in the State.

**Fifth:** The right of child to a level of health that preserves his/her body and mind; including vaccination.

It is certain that Shari'ah law is keen about the health of the body for all people especially children. It is the parents' responsibility according to the saying of Prophet Mohammed (peace be upon him): "All of you are shepherds and each of you is responsible for his flock." and rules of amends.

Perhaps the interest of Muslims in medicine since ancient times confirms this and the evidence of the most important Andalusian literature in its time is the book (Creation of the Fetus and the Management of Pregnant and Born) by Oraib Ibn Saeed Al-Qortobi in the fourth century AH. In his book, he focuses on treatment and on nutritional and developmental measures for the child from pregnancy until maturity.

It was reported from the Islamic Fiqh Academy, in its second statement, the condemning of the issuance of a fatwa (Advisory Opinion) of some Muftis to ban the polio vaccine. In this regard, the Secretariat of the International Islamic Fiqh Academy denounced and deplored the fatwas issued by some of the Muftis who prohibited vaccination based on false information and false ideas without taking into account the concerns of the consequences of their Fatwas of children being exposed to this heinous disease without guilt. However, their parents have responded to these Fatwas.

One evidence of Islamic Fiqh consideration for child's health and preventing of what it mentioned of Subtleties even in the matters of table manners such as washing hands before eating and it is preferred not to dry them before eating because the tissue might have dirt that may stick on the hands and that might hurt the person. Also, it is preferred to let the boys wash their hands before older people-unlike after eating- because there might be no more water and a child's dirty hands may cause a greater harm to them than the elders' would<sup>51</sup>, all of that to maintain safety for children.

**Sixth:** The right of child to development at an adequate and sound level One of the best practices that insure the interests of child is to live at an appropriate level to their physical, mental, religious and social development.

A proof to that is that Islam has urged the mother to breastfeed her child and ordered her to carry that out, ordering also making available opportune circumstances for the mother to carry out her duty. In case she could not, feed her baby for any reason, an alternative wet-nurse must be provided for the child. Almighty God has said, "Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period].

Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is seeing of what you do."<sup>52</sup>

The author of the book of shadows of the Qur'an says that, "The divorced mother is obliged with her infant child, a duty which is imposed by God, and is not left to her passion or natural disposition, which may be spoiled by marital changes. Hence, if the cloud falls on the young, then God assigns the infant and imposes him/her to be under the care of his mother. Indeed, God Almighty is a better handler to people's issues than themselves, and the most merciful. Health and psychological research shows today that a two-year period is necessary for the child to grow healthy from both the physical and the psychological sides. Glory be to Allah, he knows that the two years period of breast-feeding is the best for the health of child for those who want to complete nursing.

---

51 - Book of Etiquette of eating.

52 - Surah Al-Baqarah (The Cow), chapter 2, verse 233

**Seventh:** The child has the right to enjoy his/her childhood, he/she has the right to rest and enjoy leisure time and play as age-appropriate.

Many Hadiths said that, Prophet Mohammed (peace be upon him) treated children with kindness; played with them and let them play. The Caliphs and all the Companions practiced the same after his time. For example; “The Prophet (peace be upon him) passed by some persons of the tribe of Islam practicing archery (i.e. the throwing of arrows) Allah’s Messenger (peace be upon him) said: “O offspring of Ishmael! Practice archery (i.e. arrow throwing) as your father was a great archer (i.e. arrow-thrower). I am with (on the side of) the son of so-and-so-.” Hearing that, one of the two teams stopped throwing. Allah’s Messenger (peace be upon him) asked them, ‘Why are you not throwing?’ They replied, “O Allah’s Messenger (peace be upon him)! How shall we throw when you are with the opposite team?” He said: “Throw, for I am with you all.”<sup>53</sup>

Jaber said, “I entered the house of the Messenger of Allah, peace be upon him, and he was crawling on his knees and on his back, was Hassan and Hussein (the grandchildren of the Prophet), may Allah be pleased with them said: Yes, the camel is yours, and you are the best riders”.

The Prophet (peace and blessings of Allah be upon him) used to ride his grandchildren Hassan and Hussein on his back and say, (My two sons are the best horseback-riders). Prophet Mohammed used to lead the prayers, one day the granddaughter of “Zaynab” (Prophet’s daughter) and crawled all the way, to where he was praying, he started to lift her and if he stands in his hands during the prayer. The Prophet (peace and blessings of Allah be upon him) said: “Whoever has a boy; he must treat him and play with him as boys do”. The Prophet (peace be upon him) would line Abdullah, Obeid Allah and Kathir of Abbas, and then says:

“Who preceded me, He has such and such “, He said: They race to him, and they fall on his back and chest, kissing them and staying next to them.

At-Tabarani said, of Jaber: We were with Prophet Mohammad and were invited for food, while Hussein was playing on the road the Prophet Mohammad hurried in front of the people, and then he stretched out his hands. He put one of his hands in the chin of Hussein, and the other between his head and ears, and then embraced, and kissed him.

Al-Ghazali said in the Book of al-Ihya’, i.e. Revival:” He must be allowed (he refers to the boy who is enlisted in school) after leaving the school to play as long as it does not exhaust him and that would relieve him from the obligations of studying. To forbid a child from playing and always obliging him to study would create a huge amount of stress and would cause the child to hate studying which would turn him to try to end that stress by all means at once.”<sup>54</sup>

Once upon a time, Mahmoud ibn al-Rabi’ when he was five years old stood in the hands of the Prophet. The Prophet threw a little water in his face as a joke that was a blessing because as he grew he did not remember seeing the Prophet except for

---

53 - Narrated by Al-Bukhari in his Saheeh No.: 2684

54 - Al-Ghazali, Ihya Ulum Al-Din, part: 3, page: 73

that joke. Hence, he became one of the companions of the Prophet.<sup>55</sup>

Anas said, "I have never seen any one more compassionate with children than the Prophet (peace be upon him). Imam Muslim has entitled in his Sahih, in the Book of Virtues a chapter that he called: "the compassion and modesty of the Prophet (peace be upon him) with boys and children, and virtue coming from these actions towards the young."

## Second Topic

### Second Topic: Achieving the Child's Best Interests in Documentation (Legal Identification)

Ensuring a legal personality for the child preserves his or her identity with all its aspects and is considered an important interest that must be sought and obtained. It is an interest set by international standards, national legalisations and Islamic Shari'ah.

The legal personality is identified by its ability, or capability to obtain the rights and bearing obligations. The legal personality is not connected to consciousness or will, not even human nature, but is connected to legal, dutiful rights and those who have these rights. A person, from a legal standpoint, is anyone who enjoys a legal personality (or, A person, as viewed by the law, is every person who has a legal personality".<sup>56</sup>

The following section gives more details about the main elements of these rights; as follows:

**First:** Every Child has the Right in Registration Immediately after Birth in the Official State Records:

#### Addressing this Interest According to International Standards:

Section 1 of Article No.7 of the agreement directly states that (A child is registered immediately after birth). The same obligation was mentioned in the international covenant on Civil and Political Rights<sup>57</sup> by stating: "Every child must be registered immediately after birth"<sup>58</sup>.

The importance of this right comes from being the first step to insure getting most of the child's other rights. Children may be deprived from rights connected to health, education, social welfare, survival, growth and access to good services.

---

55 - Narrated by Al -Bukhari, book of Knowledge, Chapter18: At what age may a youth be listened to, Hadith No.75.

56 - Was extracted the content of this Paragraph after referring to several references including, Dr. Fathi Abd-AL Raheem Abdullah and Ahmad Shawqi Mohammad Al-Rahman, The entrance to the law, the general theory of truth, Knowledge facility, Alexandria 2001, Dr. Nabil Sa'd Ibrahim, introduction to Law, theory of truth, Knowledge facility, Alexandria 2001.

57 - The Covenant was adopted and displayed for signature, ratification and accession by General Assembly resolution of the United Nations 2200 thousand (D-21) dated in 16 December 1966 date of entry into force: 23 March 1976, in accordance with Article No. 49.

58 - It should also be noted that Article six of the Universal Declaration has provided for this right by saying: Every human being, wherever he/she, has the right to recognize his or her legal personality.

The committee pointed to the importance of having a well- managed general registration system that is easy to access and free of charge. This effective system must be flexible and responsive according to family circumstances.

For example; providing mobile registration units, wherever it is acceptable. It is mandatory to register all children after birth without any kind of discrimination. Late registration of the birth accessible and insure that children who have not been registered have the same possibility to maintain healthcare, protection, education, and other social services<sup>59</sup>.

#### Addressing this Interest According to Jordanian Legislations:

The grounds of this right may be found in the addition of the Constitutional Amendment of 2011. <sup>60</sup> Article 6 states that the law protects motherhood, childhood and agedness or ageing and tends for young people and people with disabilities and protects them from abuse and exploitation. Direct and detailed protection we find that Civil Regulation No. (10) Of 1988<sup>61</sup> has created an official institution called Civil Status and Passports Department, and a network of Civil Status directorate offices across the Kingdom with jurisdiction over specific areas<sup>62</sup>. regulation No. (9) Of 2001<sup>63</sup> created a registry and called it Civil Registry and identified it as the main registry on which all the data of Jordanian families and the civil status cases are recorded according to identification papers. That law entrusted those offices with the task of registering Jordanian families' data, listing cases, issuing certifications, ID cards, family book, passports and verifying the national number according to the law. This law also obligates officers to receive notifications and to register the received data immediately once they receive it<sup>64</sup>. The same law grants the right for every person, without reference to nationality, to have a certified copy (or it can be: an original copy) of his/ her records or registers, or those connected with his origins and family offshoots/ branches.<sup>65</sup>

The law ordered that birth must be reported within 30 days after the date of its occurrence. If the place where the birth incident occurred doesn't have an office, the mayor must be informed and on the behalf of that person, the mayor will inform the affiliated office during the period of 30 days of the incident. The stated period shall increase to 90 days in case the birth incident is outside the borders of the Kingdom. An official birth notification form is to be used in all cases.<sup>66</sup>

---

59 - The recommendation was received in the general comment No. 7 (2005) on the rights of children in early childhood Issued by the Committee on the Rights of the Child on 30/12/2005.

60 - Is the same amendment that we referred to previously.

61 - Is the system regulating the Civil Status and Passports issued Article 120 of the Constitution published on the page 264 of the Official Gazette No. 3530 issued on 1/2/1988.

62 - The Second and sixth Articles of system No. 10 for year 1988.

63 - Is the Civil Status Law published on the page 1204 of the Official Gazette No. 4480 issued on 18/3/2001.

64 - The third and eleventh Articles of law No. 9 for year 2001.

65 - The Ninth Article of law No. 9 for year 2001.

66 - Article 13 of law No. 9 for year 2001.

The law specifies that the person responsible for reporting the birth of a child are: the father, mother, adult relatives up to fourth kinship, doctors, directors (in situations such as hospitals, maternity houses, jails, or quarries), midwives, and mayors<sup>67</sup>.

The law specifies the documentation needed for informing the incident as the following: day, date, hour, minute and place of birth incident, name the gender of the born child, name of parents of three sections, national number, religious affiliation, residence place, and number of entry<sup>68</sup>. The law also obligates reporting of the death of a newborn child as long as the baby has exceeded the age of six months<sup>69</sup>. The law also handles the cases of reporting foundlings and registering them. The law obligates every person who identifies a foundling to deliver him or her to the police station or to the mayor of the village where no police station is available, indicating the time and circumstances of finding that child, delivering the clothes he was found to be wearing and all other things. The law obligates the police station or the mayor to write a report of the incident indicating the age of the child, and the marks he has after consulting a doctor who has been appointed by the government. to be delivered, together with the new born, to any of the institutions or authorized persons at the Ministry of Social Development to report the birth instance to the Civil Status Office within the specified period following choosing a suitable assumed name/ alias for the new born and his parents.

If a person claimed the child's parentage and submitted a conclusive judgment in the case, the child is annexed to his documents and the names changes accordingly.<sup>70</sup>

The law also requires registration of births even if it was not reported during the initial thirty-day period required by law, during the first year from the child's birth if born in the Kingdom (and during two years if it took place outside of the kingdom), as long as the officer investigates properly and makes sure that the information is correct.

The law allows registering the children born out of wedlock at any time without adherence to the legal period of registering an incident of birth, and acknowledges the legal identity of children conceived outside of marriage. The Department registers those children civilly, gives them a national number, adds them to the family book, and gives them ID cards and passports. The national numbers issued for children conceived outside or marital bond do not hold any marks or identifiers or certain numbers that indicate they are conceived out of martial bond. In 2002, the legislature introduced an amendment to the Personal Status Code granting the departmental committee responsible for correcting names the power to correct the name of a child born outside of wedlock or a foundling.<sup>71</sup>

---

67 - Article 14 of law No. 9 for year 2001.

68 - The adjustment to these statements by the amended law No. (6) For year 2011 amended law for Civil Status Law published on the page 1749 of the Official Gazette No. 5090 issued on 2/5/2011. By amendment to regulation (2) of Article 15 of law No. 9 for year 2001.

69 - Article 17 of law No. 9 for year 2001.

70 - Article 19 of law No. 9 for year 2001.

71 - Article 34 of law No. 9 for year 2001.

In the case of reporting an incident of birth after the end of these dates, the person must go to the competent magistrate's court and obtain a definitive judgment then register the incident according to the verdict<sup>72</sup>. If the child is not registered within thirty days of birth, payment of 10 JDs is required for registration.<sup>73</sup>

The legislator in Article 49 of The Personal Status Law<sup>74</sup> has not overlooked legislating penalties to reinforce the concept of this right to the child, by means of punishing everyone who has provided false statements with the intent of obtaining an identity card for a child, with imprisonment for a period no less than a year and no more than three years.

Furthermore, it punishes those responsible of reporting the birth instance to register it. The Law also penalized a late notified. The legislator, in the Penal Code, also penalizes every person who has carried out an act that has led to a minor becoming attributed to a woman who has not given birth to the minor, or to a man other than the minor's father, with hard labor for a term<sup>75</sup>. It also penalizes every person who commits a minor to a foundlings home and conceals the minor's identity, while being aware the minor is registered with the Civil Status Registry as a recognized illegitimate new born or as a legitimate new born, with at least a two-year imprisonment term.

Prior to that, the Personal Status Law, in Article 36, has rendered obligatory the authentication and registration of the marriage contracts, and has criminalized the contraction of marriages without an official certification<sup>76</sup> due to what stems from this authentication of guaranteeing the rights of the child as to his/ her parentage and identity, and what emanates from that of rulings as to care, guardianship, representation, inheritance, nationality etc.

The Jordanian government has at times waived time limits for marriage registration, to allow those without documented marriages to document their marriage contracts and register their children without a penalty or fine. Such waivers have in particular aimed to address the needs of Syrian refugees, and to protect the rights of Syrian children.

Many thousands of refugees and their children have benefited from these waivers.

## **Second: Every Child Has the Right to a Name and Parentage: Addressing This Interest According to International Standards:**

This right is detailed in Article 7 of the CRC, which states that the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and has as long as possible the right to know his parents and to be tended by them. In CRC Article 8, States Parties undertake to

---

72 - The birth registration mechanism has been amended after the prescribed periods under the amended law No. (6) for year 2011 amended law for Civil Status by amendment to regulation (3) of Article 15 of the law No. 9 for year 2001.

73 - Paragraph (c) of Article 13 of law No. 9 for year 2001.

74 - Is the law No. (9) for year 2001 published on the page 1204 of the Official Gazette No. 4480 issued on 18/3/2001.

75 - Articles No. (287, 288) of the Penal Code No. 61 for year 1960.

76 - Article 279 of the Jordanian Penal Code saying (Shall be punished by imprisonment from one to six months all who performed marriage ceremonies or been involved in a manner inconsistent with the provisions of the Personal Status Law or any other regulation.)

respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity. This obligation is also included in Article 24 of the International Covenant on Civil and Political Rights, which states that every child shall be registered immediately after birth and shall have a name, and that every child has the right to acquire a nationality.

The main importance of a child's registration, name and parentage is that these are some of the main elements in determining the person's identity. Through this identity the child can be recognized amongst others; name and parentage, after being documented and approved by official documentations as we have pointed before and having a national ID card, enables the person to The Civil Status code devotes a whole chapter recognize himself amongst any other similar person whether the similarity was in appearance, age or any other cases of that. Also, its main importance in documentation, and having any other needed documents such as driving license, profession and commercial license and any others that is important during traveling outside of the country<sup>77</sup>

#### Addressing This Interest According to Jordanian Legislations:

Many Articles in Jordanian legislation require the child's parents and the authorities to guarantee naming every child, knowing his parents, receiving care and attendance from them, and acquiring a nationality.

Paragraph 1 of Article No.30 of the Civil Code <sup>78</sup> stated: "Personality begins at the birth of a living child", Article No.38 of the same law states that: "Everyone must have a personal and family name, in order to pass on to his children".

Paragraph 2 &3 of Article No. 15 of the civil code state that reporting of the incident of birth must include the data and documents of the new born gender, his or her name, parents' full names, their nationality, their place of residence, their professions, their religious views, and their place of entry. Paragraph B of Article No.19 of the Civil Status Law obligated the secretary of the office to choose a name for the foundling child, and if anybody claimed to be blood related to that child, after registering the incident of birth and obtaining a conclusive judgment in the matter, the child is annexed to the document and names can be changed accordingly.

Paragraph A of Article No. 32 of the civil status law clarifies the correction mechanism of the physical and written errors related to the names and related to the child born outside of wedlock.

Corrections shall be made by, a committee composed of the secretary of the office and his/her assistant. Paragraph E of the same Article stated that; to file a lawsuit at the competent court, if the matter was related to the person of the entry.

---

77 - Some countries allow movement among them by identity card for examples Jordan, Syria previously, Egypt and Sudan Previously.

78 - Is the law No. (43) for year 1976 published on page No. 2 of the Official Gazette No. 2645 issued on 1/8/1976.

The Civil Status code devotes a whole chapter of children's parentage to organize this subject which includes ten Articles (165-156).<sup>79</sup>

Article 157 of it comes to tackle the issue of the proof of parentage, whereby it recognizes the proof of parentage of the new born to his/ her mother and the proof of parentage of the new born to his/ her father in only cases of matrimony, recognition, evidence, or by definitive scientific means, coupled with the matrimony.<sup>80</sup>

The legislator's elaboration in the Personal Status Law can be sensed in terms of the issue of the parentage of the child as it permits the declaration of parentage, whether explicitly or implicitly (Article 61 therein). Furthermore, as it stipulates it obligatory to demonstrate the new born lineage in the null and void contract or fornication, if the child is born in a minimum duration of pregnancy from the date of the consummation or fornication (Article 158 therein).

According to the Civil Status Law, birth incidents may be registered and certificates issued for Jordanians born in or outside of the Kingdom, and for foreign children who were born in the Kingdom. As we mentioned above, having a name is one of the natural rights for children, and in order for his personality not to be affected by the child's name when the child reaches adolescence, the law forbids registering children with names that contradict religious, social values or public order. As manifestation of maintaining the identity of the child, the indicted law obligates that the informing about the birth incident shall include all the personal information related to the gender, the name, the parents' names, their nationalities, place of residence, their professions, and their religions. The department shall issue ID cards for minor children after obtaining the approval of the guardian.

Children born out of wedlock can register at any time without being bound to the legal dates and periods for birth incidents and recognition of the legal personality of the children born out of wedlock. The institution registers them, issues for them ID /National numbers, adds them in family books and gives them ID cards and passports. These numbers that are issued for those children don't bear any marks, signs or special numbers which indicate that they are children born out of wedlock. The Civil Status Law was legally amended in 2002. The amendment gave the formed correction committee the authorization to correct the name of the child born out of wedlock and the foundling.

### Third: The Child's Right to Acquire a Nationality:

#### Addressing This Interest According to The International Standards:

And the right to acquire a nationality from section 1 of Article No.7 of the Child Right Convention by stating: 1-..... and the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and has as long as possible the right to know his parents and to be tended by them. as well as from the Paragraph of Article No.8 by stating (1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality,

---

79 - Chapter one entitled (lineage) of chapter six and includes ten Articles.

80 - Is the Personal Status Law No. (36) for year 2010 published on page 5809 of the Official Gazette No. 5061 issued on 17/10/2010

name and family relations as recognized by law without unlawful interference. (2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity. This obligation was mentioned at the of Paragraph 3 of Article No.24 of the international covenant on civil and political rights by stating every child has the right to acquire a nationality and before that Article No.15 of Universal Declaration of Human Rights indicates this right as follows: (1) everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

#### Addressing this Interest According to Jordanian Legislations:

The Jordanian Constitution confirms in Article No.5 that Jordanian nationality shall be defined by law. It is possible to deduce from this constitutional provision that the law protects the right to acquire nationality throughout the requirements and provisions of acquiring the Jordanian nationality by a law issued by the Jordanian Parliament and to complete all the constitutional procedures that are needed for its issuance. The constitution comprehensively guarantees to protect this right and does not leave this important matter to the administration to decide of its own will.

The Jordanian Nationality Law was issued implement this constitutional requirement.<sup>81</sup>It determines in Article No.3 the conditions under which the child acquires the Jordanian nationality legally, and these conditions are:

- Any child whose father holds Jordanian nationality.
- Any child born in the Hashemite Kingdom of Jordan to a mother possessing Jordanian nationality and a father whose nationality is unknown or who has no nationality father or whose affiliation is not established.
- Any child born in the Hashemite Kingdom of Jordan to unknown parents, including a legal presumption considering foundlings in the Kingdom as born in the Kingdom pending evidence to the contrary.

Article 9 of the same law states that the children of a Jordanian citizen are Jordanians wherever they were born, while Article 10 obligates that a minor shall keep his Jordanian nationality although his father acquires a foreign nationality.<sup>82</sup>

Article 287 of the penal code protects a child's identity by penalizing every person who kidnaps a child under the age of 7 years, switches a child with another or refers a child to a woman who did not conceive him/ her with the penalty of imprisonment for three months to three years. Article 288 penalizes whoever admits a minor in a foundling house and conceals his identity knowing that the child is registered in the civil status registry with the penalty of imprisonment for at least two years.

#### Addressing these Interests According to Islamic Shari'ah:

**First:** Reservation of rights of documentation for not being lost and the documentation here is a means, not an end.

The Islamic Shari'ah is concerned with the documentation of rights, as stated in the

---

81 - Is the law No.6 for year 1954 published on page 105 of the Official Gazette No. 1171 issued on 16/2/1954.

82 - Is a relatively new rule by the amended law No. 22 for year 1987 and the previous sentence was obliged the minor's children loss of their Jordanian nationality in case the father loses his Jordanian nationality.

Holy Qur'an and Sunnah. Documentation is a way to prove the rights and prevent a conflict before it occurs. Therefore, it is the right of the child from the State and any person who deals with children to document any right for this child to keep and preserve it, either in his parentage, properties or any other issue.

Almighty God said, "O you, who have believed, when you contract a debate for a specified term, write it down. In addition, let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So, let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of unable to dictate himself, then let his guardian dictate in justice" <sup>83</sup>.

Compared to debt documentation, documentation has been applied to every subject that an interest is provided by documenting it.

Narrated by Hudhayfah, The Prophet (peace be up on him) said to us: "List the names of those people who have announced that they are Muslims. "So, we listed one thousand and five hundred men. Then we wondered, "Should we be afraid (of infidels) although we are one thousand and five hundred in number?" No doubt, we witnessed ourselves being afflicted with such bad trials that one would have to offer the prayer alone in fear."<sup>84</sup>

Omar Ibn AL-Khattab has created documentations and documented the people's names and their characteristics. The scholars defined the passport in the name of the road papers. It was organized in a specific format by the state.<sup>85</sup>

We stress the importance of documentation as many rights nowadays are linked to it and so that no uncertain person shall consider it an illegitimate/ unreligious issue or that it is not tied to religion, leading to people undervaluing it and thereon losing their rights and the rights of whom they support of children.

**Second:** The child has the right to a decent name that would not disgrace him/her. The child is responsible to choose an appropriate name for the child that is not disgraceful or odd, so it would not be a reason to be mocked or underestimated by others.

Decent names affect the child's personality development, raise morals and draw an endearing self-image of the child in himself, his family and social environment <sup>86</sup>.

The Prophet (peace be upon him) was asked:" Prophet of God, we learned what the right of the parent to the child, what is the right of the child to the parent? He said:" is to give him a good name, and improve his manner."<sup>87</sup>

Narrated by Abu AL-Darda: The Prophet (peace be upon him) said: "On the Day of Resurrection you will be called by your names and by your father's names, so give yourselves good names."<sup>88</sup>

It is narrated that the Prophet (peace be upon him) changed the names of some companions into decent names. Abdallah Ibn Omar said that: "a daughter of Omar

---

83 - Surah Al -Baqarah (The Cow), Chapter 2, Verse 282.

84 - Al-Bukhari, Sahih al -Bukhari, Book of Fighting for the Cause of Allah (Jihaad), Chapter No. (181): The listing of the people by the Imam, al-hadith No. 2895.

85 - Nationality in Islamic Shari'ah, Rahil Gharaibeh: 98

86 - Mohammed Aqla, Book of Child education in Islam, (Amman: Modern Letter Library, 1410 AD), 26

87 - Related to Al-Baihaqi, Shuab Al-Iman, No. 8405

88 - Related to Abu Dawood, in his Sunnah, No. 4297

called 'Asiyah'(disobedient) then the Prophet of Allah (peace be upon him) named her 'Jamilah'(beautiful)"<sup>89</sup>. The prophet (peace be upon him) named another man called 'Ga'alan'(cockroach). The Prophet here only corrected the case of the first name without denying the man's identity or the relation with his parents.

**Third:** The child has the right to join his / her real father or mother

The Islamic Shari'ah has affirmed the child's right to have a clear kinship to his parents and has shown its importance. Islamic Shari'ah forbids adoption in all of its forms due to the consequence of the rights connected with verification of lineage.

The greatest evidence of that is the saying of Almighty God," and has not made your adopted sons [true] sons. That is merely your saying by your mouths, but Allah says the truth, and He guides to the [right]4 call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you.

And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful"<sup>90</sup>. In return, Shari'ah urged custody and guardianship, whether for orphans, or those who lost family lodging for any reason. The scholars emphasize on the importance of parentage for the child due to its connection with many other rights. Personal Status Law prioritizes the parentage and puts it the first right of child rights because it is connected to other rights such as, inheritance, spending, support, custody and care.

The Shari'ah has considered the child who is born alive, even if only for a few seconds, a human being full of humanity in terms of inheritance and material and moral rights. If he dies at that moment, he shall be named, washed, prepared for burial and have the funeral prayer, exactly as adults.

**Fourth:** The child's right to preserve his / her identity

The legal structure of Prophet Mohammad (peace be upon him) was founded on an important basis: to demonstrate and establish the legal link between the individual and the state, which makes the individual citizen in the state and what it contains of rights and duties of citizenship, which is the contemporary legal term of nationality. Some of Articles in the Constitution of Al-Madinah al-Munawarah explain the relationship of individuals with their state. For example, the first Article: "This is a book from the Prophet Muhammad between believers and Muslims of Quraish and Yathrib, and those who followed them. And he fought with them; they are one united nation unlike other people".

The subsequent Articles in the paper explain the meaning of one nation, citizenship and affiliation in the state. It also added that the citizens of this country enjoy the right to protection, security and physical care, and that the reference of citizens to their effective law, and other detailed Articles explaining the relationship of individuals within the state <sup>91</sup>.

The evidence of the above statement is the right to a nationality and national identity as abiding as it is and linked to the legal status in the Islamic Shari'ah, since the establishment of the State.

---

89 - The musnad of imam, Ahmed ,2/18

90 - Chapter 33, Surah Al-Ahzab (The Combined Forces), Verses No. (4,5).

91 - Biograpghy of Ibn- Kathir/ Ibn-Kathir Part 2 Page 321

Human affiliation to the state, belonging to it, and receiving its protection and care is one way of cooperation, which was stipulated by the Holy Quran as one of the goals for which mankind was created for “O mankind, indeed we have created you from male and female made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is knowing and Acquainted”<sup>92</sup>. The acquaintance in the previous verse carries various meanings; to know your parentage, so that each individual recognizes his parents, and to communicate among you and cooperate on righteousness and piety<sup>93</sup>.

The idea of such a productive cooperation, the state of rights and duties, is embedded in the Islamic Fiqh (jurisprudence) as an essential necessity for the legally competent persons (the legally competent is a literal translation; not clear what is meant by the Arabic word; it can be also: the guardians, the designees, the trustees, the duty-bearers etc.).

It is stated in the Literature of the World and Religion: “Man is imprinted on the lack of his gender”<sup>94</sup> which means to have forbearance towards lack of things and the probability of what he is not capable of. Therefore, a meeting should be held, so the individual will be able to, by collaborating with his brother and his relative, supply a need and carry burdens that need a collective effort. This is because the one who needs something is always trying to make connections and the one who assists is always contacted<sup>95</sup>.

As to what Shari’ah assured about the child has the right of nationality even he or she was a foundling, his or her descent and original nationality are not known, if he or she is found in the land of Islam, he or she acquired the nationality of the state and its subordination in order to preserve his identity and rights<sup>96</sup>.

**Fifth:** The child’s right of possessing and a full eligibility of obligation since birth.

Therefore, he/she has the right of inheriting, will, dedication, charitable donation and others.

The Shari’ah considers as valid; the right of possessing for the child, since he/she is in the embryo whereas the embryo has the pending right of inheritance in case of the death of his inherited and waits his allocation until childbirth. If he/she is born alive then he/she has the right of inheritance. The Islamic jurists have allowed the will for an embryo<sup>97</sup>.

If the child is born alive then the child can inherit a fortune in accordance with the legalisations. Further, some other dealings are allowed, for instance, gifts and endowments, although there are some disagreements between some Islamic jurists in these details.

The Quran singled out the orphans, God said, “And give to the orphans their properties and do not substitute the defective [of your own] for the good [of theirs].

---

92 - Chapter 49, Surah Al-Hujurat (The Rooms), verse No. 13

93 - Intermediate interpretation Sayed Tantawi, part 13, page 517.

94 - Chapter 4, Surah An-Nisa (The Women), verse No. 28.

95 - Al- Mawardi, Book of (The Ethics of Religion and of this World), pages No. (129, 132).

96 - Nationality in Islamic Shari’ah, Rahil Gharaibeh, page No.

97 - Al-Bahuti, Kashf al-Qina’, 4/653.

And do not consume their properties into your own. Indeed, that is ever a great sin”<sup>98</sup>. To maintain the money of a minor, the Shari’ah distinguishes between adolescence and maturity. It made restoring his/her money when he/she becomes an adult even if it does not determine the age of maturity. It leaves it to the circumstances. God said: “and test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them).

**Sixth:** The child’s right of keeping his/her money, developing it, not losing it or being alienated from it.

Islamic jurists created strict rules concerning the disposal, investment and preservation of a minor’s money. Hence, there are many of evidence in jurisprudence related to this issue. The scholars have stated in the “Jenayat” (felonies) chapter that neither the guardian nor the trustee nor the judge can forgive the killer of the child’s devisor; but he/she can make a reconciliation after guaranteeing the child’s right of blood money because he/she is a trustee and the trustee does not have the right to forgive.

Of the optimal practices in selling the properties of the minor is the availability as a precondition of a justification and a reason and a no-deceitfulness/ undervaluation or fortunateness as to the price by increasing the equivalent price.

**Seventh:** The child’s right of being treated by justice among his/her family.

The Shari’ah considered equity among the children in diverse aspects of life due to its great educative consequences on them. Favoring and differentiating between children in life’s matters causes hatred between them, animosity among them, lack of feeling for the child, as well as psychological issues and corruption of the child.

The Prophet said: “Fear God and act equally between your children; act equally between your sons.”<sup>99</sup>

The scholars did not permit discrimination between children in giving and treatment, except for a reason, the initially equity between boys and girls is the foundation of Islam in giving.

If the conditions of the children differ is should be according to need and not just for fondness and favoritism. Some needs to be prioritized include sickness and disability while the messenger of Allah (peace be upon him) was talking to his companions, a boy came up to his father, and wiped his head and placed him on his right leg. He said, “the boy stayed a little, then his daughter came to him, and he wiped her head and put her on the ground then the Prophet (Peace be upon him) said: why you do not put her on your other leg?” He carried her on his other leg. He said, “Now you have adjusted.”

---

98 - Chapter 4, An-Nisa (The Women), verse No.2

99 - Narrated by Al –Bukhari, in his Saheeh, No. 2398.

## Third Topic

### Achieving the Child's Best Interests in Shelter (Residence, Custody and Expense) <sup>100</sup>

#### Addressing This Interest According to International Standards:

According to the Universal Declaration of Human Rights and by international human rights treaties adopted by States, the family is considered to be the natural and fundamental group unit of society, and family is the natural environment for the growth and well-being of all its members, particularly children. Protection and assistance must be provided to support the family so that it can fully achieve responsibilities within the community. The declaration recognizes that the child must be fully prepared so he can live as an individual in the society. The child must be raised according to the spirit of ideals announced in the Charter of the United Nations. These ideals are the spirit of peace, dignity, tolerance, freedom, equality and brotherhood.

Article 5 of the declaration states that the state shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or, community as provided for by local custom. Legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Paragraph 1 of Article No.9 of child right convention states that members shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

Such determination may be necessary in a particular case such as; one that involves abuse, or child neglect by the parents. Another case could occur where the parents are living separately and a decision must be made as to the child's place of residence. In any lawsuits filed to separate the child from both or one of his parents, all interested parties must have the chance to participate in the legal action and to disclose their views <sup>101</sup>, if the case was to separate a child from one or both of his parents. The state must take the right procedures that insure to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the best interests of child.<sup>102</sup>

Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents

---

100 - Sheltering: Known as permanent residence and good reception, care, psychological and social stability, requesting the security, the support, the shelter, the protection and the comfort. (This definition was posted on the website of Al Amal Institute for Orphans).

101 - Paragraph (2) of Article No. 9 of the Convention on the Rights of the Child.

102 - Paragraph (3) of Article 9 of the Convention on the Rights of the Child.

or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.<sup>103</sup>

In accordance with the obligation of States Parties under Article No.10, Paragraph 1, States Parties shall deal with applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

Paragraph 2 of the same Article also granted a child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances

personal relations and direct contacts with both parents. Towards that end, the States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Paragraph 1 of Article No.18, States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. Paragraph 2 of the same Article obligates States Parties to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Paragraph 1 of Article No.27 of the Convention was more explicit in obligating States Parties to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Paragraph 2 of the same convention obligate the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. Paragraph 3 of the same Article obligate States Parties, in accordance with national conditions and within their means, shall respond appropriately to assist parents and others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programs, particularly with regard to nutrition, clothing and housing. While its Paragraph 4 obligates the States Parties to take all appropriate measures to secure.

The recovery of maintenance for the child from the parents or other persons having

---

103 - Paragraph (4) of Article 9 of the Convention on the Rights of the Child

financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

#### Addressing This Interest According to Jordanian Legislations:

At the national level, we find that paragraph 4 of Article 6 of the constitution has highlighted this right by considering the family is the basis of society the core of which shall be religion, morals and patriotism; the law shall preserve its legitimate entity and strengthen its ties and values<sup>104</sup>, as stated in Jordanian National Charter.<sup>105</sup>

The family constitutes the basic unit of society in the Jordan and it is the natural environment in upbringing the individual, educating and building his personality. The state must provide for the family through all of its official and public departments in an effort to form the family, unify it, and ensure decent living. The state institutions are obligated to help the family to perform its responsibilities in raising the new generation in a good way.

The Civil Status Law obligates the father to provide maintenance for his child unless the father is a poor man and cannot spend or is unable to work and earn money due to a physical or mental disease. If the father is absent and it is impossible to get any expenses from him for the child, or the father cannot find work, one of the responsible parties shall support the child. These expenses are considered a debt for the spender and the father must pay them whenever he is able to. The good or bad conditions of the father are taken into consideration when deciding child support as long as the amount is not less than the needed amount. The maintenance of the children shall last until a female, who is not solvent per her work and earnings, marries, and is to last until the male reaches a state whereby he earns what his peers earn unless he was a student/ learner (187, 188, 189, 195).

The law considers child support mandatory rather than optional. As well as emphasizing the father or the guardian's responsibilities for child support, Jordanian law also penalizes the father or the guardian in the event that the child's needs are not provided for.

Article No. 290 in the penal code states that: "A father or guardian of a small child who cannot support himself or was entrusted legally to that guardian to take care of that child is penalized with the penalty of imprisonment for one month to one year if that person refused or neglected to provide the child with food, clothes and shelter. It also penalizes with the same penalty if a father or a guardian intentionally neglected a child under the age of 12 years".

Status Law. The law specified an entire chapter (chapter 3), as mentioned earlier. The law considers the child's welfare as one of the most important elements in the

---

104 - This Paragraph was added to sixth Article by the amended Constitution for year 2011.

105 - A political document issued in 1991, Formulated by a committee formed by Royal Decree which included hundred members, the Charter came to serve as a national reference which emphasizes the commitment of the State and Jordanian society with values of democracy, political pluralism and building a state of institutions and law

Matter of custody and based on this concept, the law enumerates the qualifications of those who wish to enjoy custody of the child. In case the qualifications are not met, custody is then revoked in order to protect the child's interests.

These qualifications are: the person who wants custody must be a wise, healthy adult that is free from any contagious diseases; is trustworthy to be with a child; is able to raise him and keep him safe and not to lose the ward under his care for being occupied from him/ her, and not make the ward stay at the dwelling of those hateful and harmful toward him/ her.<sup>106</sup>

Prior to this, the Law had set the priority of entitlement to custody, and provided a detailed organization as to the custody of the child, which has been dealt with under Articles 170-186 under this Law. the law set the custody to be for the biological mother<sup>107</sup>. In case of divorce or separation, after the mother, the right of custody goes to her mother, then to the father's mother, and then to the court to decide which is the most suitable relative for custody, based on consideration of the child's welfare<sup>108</sup>.

The law did not forget to discuss dropping the right of custody in certain cases such as: if one of the qualifications required for custody was incomplete as the law stated in Article (173) the custody of the mother is up until the child completes 15 years of age, any person other than the mother until the child completes 10 years of age, after turning 15 years of age, the child has the right to choose to stay with the mother up until the age of maturity. On the other hand, the women's custody extends if the child was sick with a disease that requires the women care unless his welfare requires other than that. The law also deals with the custodian or the child's travel out of the state.

The law recognizes no effect on the child's right, if he/she, or the custodian travelled with each other internally, unless the travel may affect the welfare of the child. If the child's travel was proved to affect his welfare, the right of custody is passed to the next eligible person for custody<sup>109</sup>. "If the child has Jordanian nationality, the guardian has no right to take him or travel with him outside of the kingdom to live abroad, unless the custodian has the approval and after checking the insurance of the child's welfare"<sup>110</sup>. Under the law, the power of parental approval for travel is not absolute. The law allows that in case of parental disapproval of travel, and where the travel is temporary, the judge may give the custodian permission to travel with the child after checking the assurance of the child's welfare and statement of the period intended for visiting and taking sufficient evidence that guarantees the child's return to the state after finishing his travel as long as the custodian is willing to provide guarantor who is willing to be penalized with imprisonment until the

---

106 - Paragraph (A) of Article No. 171 of the Civil Status Law.

107 - Relative Mother means; Mother of descent which child's parentage to her because of birth, so it goes out with a mother because of the breast feeding because who breastfed a child for certain conditions is considered a mother of this child in Islamic jurisprudence in number of judgments but not all of it.

108 - Article No. 170 of Civil Status Law.

109 - Article No. 175 of Civil Status Law

110 - Article No. 176 of Civil Status Law

custodian complies until he or she return the child back to the kingdom<sup>111</sup>. If the custodian father wants to travel and stay outside of the kingdom, and the mother custodian did not want the custody of the child or was deprived from it for any reason, the father can travel with the child and stay with him after giving the guarantees the court requires for approval <sup>112</sup>.

Article No.178 of the law entitles the custodian to have a fare the custody of the child from the delay of request not the judgment out of justice, because the lawsuits differs from one case to other and some might take a long or a short time and to the law stated the fees from the delay of judgment to forbid circumvention and the effects of defenses in the case to extend the duration to evade paying the custody fare of the period between the request and the judgment as it is applied at the time being. Article No.179 recognizes the entitlement of the custodian to be paid for housing according to financial abilities of the person in charge of expending.

The Law of 2010 highlights the matter of keeping the necessary documents concerning child custody. Article No. 80 of the law states the obligation of the custodian to keep the original documents, or necessary documentation to arrange the child's interest inside of the kingdom or certified copies as the matter such as; birth certification and the health insurance card. To protect the child's life and welfare, Article No. 186 of the law states that, if the mother is appointed, she should be the custodian and if she has refused the custody of her children, then the judge would investigate and appoint the most eligible person to be entitled to obtain custody.

As for visitations, some laws were innovated to give the custodian of the guardian the right to visit and go out with the child without the need to go to a visit center or visit house. Also, another innovation is the right to call the child through communication devices such as; a phone or, the internet.... etc. This is in order to keep the relationship with the child, to achieve all the child's, mother's and guardian's welfare Paragraph A of Article No.181 of the law.

Article No. 181, Paragraph B The law obligates the applicant for visitation to pay what the custodian pays of costs for the execution upon the request. This is because the custodian is not obligated to take the child in custody for the visitation, but the custodian only permits it.

Article (183) of the law deals with the issue of when the custodian forbids the person who has the order to see the child, visit him, or go out with him, and follow the order. As a result, the law temporally takes away the custody from the custodian and gives it to the next person in priority of those who have the right in custody to confirm compliance with provisions issued in this regard with some terms such as; the custodian does not comply to the provision without a cause and repeating in compliment to the provisions or abstracting. A warning is given to him by an execution judge where these rights are not replaceable and both the child and prevailing party to see visit and go out without child to guarantee the reason in which the custody of the sentenced party was temporarily removed.

---

111 - Paragraph (A) of Article No. 177 of Civil Status Law.

112 - Paragraph (B) of Article No. 177 of Civil Status Law

Paragraph C of the mentioned Article states that: if the prevailing party fails to comply to the date set for the given order to visit, see, or go out with the child, then the judge may act upon request to suspend the execution for a period of time no longer than 6 months. Through this Article many real cases are dealt with through execution of the judgment of legal visitations which was repeated in the lack of seriousness of the prevailing party and his main purpose to harm the custodian which leads to harm the children's custody through bringing him to visitation centers without the effort and expenses preserve of the prevailed party and all that entails that of time, in the matter of child support.

Chapter 4 of the law deals with Article No.190 and discusses the matter of children who must be supported by their wealthy father. It obligates him with the child's education supporting all the academic stages including pre-primary. In this Article, the pre-primary year of education was added to the education expenses of the father considering the circumstances after the obligated modern education and for the importance of this year in preparing the studies for school. Article No.191 of the law discussed the matter of the guardian parent responsible for supporting the child if the parent chooses to teach him in private schools, then he cannot back down from his decision, unless he became unable to pay the expenses of private education, or has a reason not to achieve the child's welfare and because of its importance and to spare the child any legal representation issue, while he is under the age of 18, Article No.196 of the law gave the custodian the right to legally represent the child up until reaching the age of maturity, in custody cases, by supporting and cashing them.

considering the interests of the child, Article No.27 of penal code No.16 of 1960 was amended in accordance to the temporary amended provisional laws No.(86 of 2001)<sup>113</sup> and the amended law No.8 of 2011<sup>114</sup> by adding paragraph No.3. This Paragraph includes the possibility to execute the judgment in the matter of the couple in guardianship, if the penalty of imprisonment, verdict, penalty was in the period of less than two years and for a good reason which is the amendment of 2001 included the statement (in their custody who is under the age of 18) instead of the statement (for a good reason). There was no such provision in the original Code, which means that the Government of Jordan is committed to the best interests of children.

In order to raise children's upbringing and develop their characteristics and their physical, spiritual, mental, linguistic, emotional, psychological and social abilities, Article No.52 of 2005<sup>115</sup> replaced article of preschool institutions law No.66 of 1971. It allows individuals, public institutions, private institutions, companies, associations and officially registered social bodies and any other institutions and which their work requires them or their circumstance of work to have a nursery – it requires authorization in accordance with the provisions of this Statute (Article No.4) – (Article No.3) obligated the nursery school to provide the care for children since the

---

113 - Published on page 6026 of the Official Newspaper No. 4524 issued on 31/12/2001

114 - Published on page 1758 of the Official Newspaper No. 5090 issued on 2/5/2011

115 - Published on page 3332 of the Official Newspaper No. 4715 issued on 1/8/2005

ages of 1 day to 4 years. As long, this nursery works according to specific programs and activities prepared for this purpose according to development standards approved by the Ministry, which aims to raise children's upbringing, develop their characteristics as well as their physical, spiritual, mental, linguistic, moral, psychological and social abilities.

The law stipulate on nurseries; so they can have their license from the Ministry of Social Development to have their proper building according to the terms and conditions of the general safety and health requirements, and to provide furniture and the needed requirements for addressing and raising children in addition to their safety and security. The number of workers in the nursery must be in proportion with the number of children that it offers care for them; in accordance with established standards. The workers educational and professional qualifications must fit the objectives of nursery and goals; also to have a doctor that examines the children periodically and offers for them health care and having specific programs that achieve development requirements for children (Article 5 of the law).

Article No. 67 of the labor Law<sup>116</sup> came to provide every woman worker in an establishment employing ten or more workers shall be entitled to a maximum of one year unpaid leave to bring up her children. She shall have the right to be reinstated at the end of her leave, but shall lose that right, if she was engaged in gainful employment during that period. While Article No. 70 of the same law "Women workers shall be entitled to maternity leave with full pay for ten weeks including rest before and after delivery. Leaving after delivery shall be no less than six weeks long and employment before the expiry of such a period shall be prohibited. Article No. 71 has been ratified after expiry of the maternity leave period prescribed in section 70 of this Code, every woman worker shall have the right, within one year of delivery, to take time off with pay for the purpose of nursing her newborn baby, provided that total time off does not exceed one hour a day. Article No. 72 obligates that the employers with at least twenty married women, who work in their employment, shall provide an adequate facility under the care of a trained nurse for the children of workers' women, who are less than four years of age, if at least ten of them are in such an age group.

Paragraph A in Article No.42 of the law penalizes any adult person who detains a juvenile in any legal jail or lockup at any stage of the lawsuit or during execution of judgment, with the penalty of imprisonment for no less than 3 months and no longer than a year.

Paragraph B of the same Article penalizes any person who publicizes the name of juvenile and picture during taking the prescribed procedures in Juvenile law with the penalty of imprisonment for no longer than a year, or a fine of no more 500 JDs, or both the penalties.

To assure executing reform measures and care and protection programs, hence achieving the child's welfare, Paragraph C of Article No. 42 penalizes with the penalty of imprisonment for no longer than 3 months and a fine which equal to 100 JDs every person who:

1. Has helped or urged any juvenile, in need of protection or care, to escape from

---

116 - Is the law No. (8) Of year 1996, published on page 1173 of the Official Newspaper No. 4113 issued on 16/4/1996.

the juvenile care center/ reformatory.

2. Shelters or conceals any juvenile who has run away from the house of juvenile correction or stops him from returning to that facility or helps him to run away knowingly.

Paragraph D of Article No.42 of the law penalizes any person with the penalty of imprisonment for no less than 3 months, and no longer than 1 year and a fine equal for 300 JDs who:

1. Helps or motivates any juvenile to escape from the house of Juvenile welfare home, or foster house for committing a misdemeanor. Paragraph E of the same Article doubles the penalty if the admitted Juvenile committed a felony.

2. Keeps or hides any escaped juvenile in accordance with regulation 1 of this Paragraph or stops him from returning to that facility or helps him runaway knowingly.

The Jordanian government has also signed a convention with the International Committee of the Red Cross to provide health services, counseling, and shelter for young people who are not accompanying their families, in addition to the basic services provided by the Jordanian Red Cross.<sup>117</sup>

#### [Addressing this Interest According to Islamic Shari'ah:](#)

The Islamic Shari'ah (Law) has declared the right of the child to familial sheltering by the child' parents, since this is incumbent on them to begin with, as long as they are capable of it and the child has not sustained any harm as a result of their custody of the child or custody of the child by either of them.

#### [And the Detailed Issues for This Right:](#)

**First:** The child has the right to get a fair and affectionate treatment that insures his/her welfare by his/her parents or any other person.

Islamic Shari'ah has urged on leniency and renounced violence: The Prophet (peace be up on him) said: (O Ayesha, Allah is the forbearer and he loves forbearance, and rewards for forbearance while He does not reward severity, and does not give for anything besides it (forbearance)).<sup>118</sup>

Abu Hurayrah (may Allah pleased him) narrates: I heard the messenger of Allah (peace be upon him) saying:" Amongst all those women ride camels (i.e. Arab), the women of Qurish are the best. They are merciful and kind to their off-spring and the best guardians of their husbands' properties". Narrated by Muslim, he explained the describing women to be good and kind to child.

Islamic Shari'ah urges on treating children with affection and kindness. As well as to provide emotional security for them and not to be cruel to them. Abu Hurayrah (May Allah be pleased with him) reported: The Prophet has kissed his grandson Al-Hasan bin 'Ali (May Allah be pleased with them) in the presence of Al-Aqra' bin Habis.

Thereupon he remarked, "I have ten children and I have never kissed any one of them.

---

117 - See the agreement signed in Amman on 8/7/2001.

118 - Narrated by Muslim in his Saheeh, No. 4697

“Messenger of Allah looked at him and said, “He who does not show mercy to others will not be shown mercy”.<sup>119</sup> It was narrated about the Messenger of Allah: that he once extended his adoration because one of Fatima’s children road on his back during it so the Prophet intended not to gets up fast so the child would not be subjected to a fall<sup>120</sup>. Ayesah (may Allah pleased her) said, the newborn infants were brought to Allah’s messenger (peace be up on him). He blessed them, rubbed their palate with dates, and invoked blessings on them. <sup>121</sup> AL-Bukhari named a chapter in his Sahih: To Invoke for Allah’s blessings upon The Children, Ibn Hajr (may Allah have mercy on him) commented in his book “Fath AL-Bari” saying: some of the benefits in this Hadith is, leniency towards children, forbearance towards their actions and not to hold them accountable for these actions because they cannot be judged.<sup>122</sup>

Ibn Khaldoun says: “Whoever was raised by tyranny and abuse whether he is educated from royalty or servants; when or if a person is subjected to tyranny and abuse, that affect his personality and drop his activeness down, make him lazy, liar and black hearted (pretending to be another person not the real him) for the fear of the other persons tyranny.

That taught him deceit and Fraud because of that; it has become as habit and moral, and spoiled the meanings of humanity civically and socially, that defends him and his place, he became dependent on others in that, and even in obtain virtues and good manner, so his personality lost its humanity and purpose, deteriorate and go down deep in the darkness.

Because of this, teachers and parents should not be harmful in discipline”.<sup>123</sup>

“The Messenger of Allah (peace be upon him) was visiting al- Ansar and salutes their children<sup>124</sup> and wipe them on their heads and pray for them”.<sup>125</sup>

Shari’ah confirmed teaching children by accompanying them and being kind to them, in the Hadith of ibn Abbas- blessing of Allah be upon them- I was a boy under the care of the Messenger of Allah, and as my hand used to wander around in the dish, he said to me once, “Mention Allah’s Name (i.e., say Bismillah), eat with your right hand, and eat from what is in front of you.” {It is agreed upon this Hadith}.

However, there is diversity in the ways of education and affection, Ibin Abbas (may Allah be pleased with him) who said: one day I was behind the Prophet, (peace and blessings of Allah be upon him) and he said, “O young man, I shall teach you some words [of advice]: Be mindful of Allah and Allah will protect you. Be mindful of Allah and you will find Him in front of you. If you ask, then ask Allah [alone]; and if you seek help, then seek help from Allah [alone].

---

119 - Al-Bukhari, Sahih Al-Bukhari, 7/9

120 - Sunan an-Nasa’i 2/182

121 - Al-Bukhari, Saheeh Al-Bukhari, Hadith No. 6355

122 - Fath Al-Bari Commentary on Sahih Al- Bukhari, 10/434

123 - Ibn Khaldoun, Abd Al-Rahman, The Muqaddimah(the Introduction), Investigation: Abdulsalam Al-Shadadi , Casablanca, Morocco, Edition:1 , 2005 : Part:3 , Page : 224.

124 - Al-Bukhari, Sahih Al-Bukhari, and Chapter: To greet the boys, hadith No. 5893

125 - Fath Al-Bari Sharh Sahih Al Bukhari, Book of: Asking Permission, Chapter: To greet the boys

**Second:** The child has the right to have someone to nurture him/her and to raise, educate, provide his/her vital and psychological needs and not to separate him/her from his/her parents as a general outcome.

Aishah has narrated: "A Bedouin came to the Prophet and said, "You (people) kiss the boys! We do not kiss them." The Prophet has said, "I cannot put mercy in your heart after Allah has taken it away from it." Amr bin Shu'aib narrated that his father, from his grandfather, who said that the Messenger of Allah said, "He is not one of us who does not have mercy upon our young, nor knows the honor of our elders" Anas bin Malik narrated that the Messenger of Allah said, "Be kind to your children, and perfect their manners".

In the Sunnah, "The Messenger of Allah (peace and blessings be upon him) was delivering a sermon to us when Al-Hasan and Al-Husain came, wearing red shirts, walking and falling down. So the Messenger of Allah (peace and blessings be upon him) descended from the pulpit and carried them." Also, Abdullah ben Alzubeir said: "I have seen Hassan bin Ali comes to the Prophet (Peace Be Upon Him) while he prostrated, he rode his back and the Prophet did not let him down, "so that he will be the one who descends, and he comes while the Prophet is kneeling, so he opened his legs until he comes out from the other side.

From his playing with Hussein and kissing him that while Hussein was playing on the road.

The Prophet Mohammad hurried in front of the people, then he stretched out his hands, making the boy escapes here and here and making him laugh until he caught him then he made one of his hands in the chin of Hussein, and the other on his head, then embraced, and kissed him".

**Third:** The child has the right in every right available whether his/her parents are available or in dispute, whether he/she was an orphan or a foundling, healthy or with special needs and a citizen or a refugee.

God said, "So as for the orphan, do not oppress [him]" <sup>126</sup>

Almighty God considered orphan restraining and subjugation as a mark of denial of religion. He also warned about abusing him in any way in consideration to the child's mental state, "Have you seen the one who denies the Recompense, for that is the one who drives away the orphan and does not encourage the feeding of the poor"<sup>127</sup>

God says, "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". <sup>128</sup>

God says, "And if you mix your affairs with theirs - they are your brothers. And Allah knows the corrupter from the amender."<sup>129</sup>

Prophet Mohammed (peace be upon him) recommended orphan's guardianship and custody as he said the Messenger of Allah said, (The best house among the Muslims is a house in which there is an orphan who is treated well.

---

126 - Chapter 93, Surah Ad-Duhaa "The Morning Hours", verse No. 9

127 - Chapter 107, Surah Al-Ma'un (The Small Kindnesses), Verses No. (1-3)

128 - Chapter 2, Surah Al-Baqarah (The Cow), Verse No. 177

129 - Chapter 2, Surah Al-Baqarah (The Cow), Verse No. 220

And the worst house among the Muslims is a house in which there is an orphan who is treated badly.

” And he indicated with his fingers, his index and his middle finger” I and the sponsor of an orphan shall be in Paradise like these two).<sup>130</sup>

The Prophet Mohammed (peace be upon him) acted according to his commandments Abdullah Ibn Ja’afar –blessing of Allah both of them said: “Prophet of Allah –peace be upon him- wiped my head, he said: “I guess he repeated 3 times and when Prophet wiped he said “Oh God, Grant Jafa’ar succession in his child”<sup>131</sup> as he consoled him after Jafa’ar’s martyrdom in the Battle of Mu’tah.

## Fourth Topic

### Achieving the Child’s Best Interests in Education

#### Addressing This Interest According to International Standards:

Article No.28 Paragraph 1 States Parties recognize the right of the child to education and with a view to achieving this right progressively and based on equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all.
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of dropout rates. While the second Paragraph from the same Article States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

Article No.29 Paragraph 1 States Parties agree that the education of the child shall be directed to:

- (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of

---

130 - Narrated by Al-Bukhari.

131 - Narrated by Al-Hakim, book of Al-Mustadrak, 1/372

understanding, peace, tolerance, equality of gender, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;  
(e) The development of respect for the natural environment.

The comments on the content of the previous paragraphs<sup>132</sup> have been that the right to education recognized as per Article (28) is a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centered, child-friendly and empowering, and it highlights the need for educational processes to be based upon the same principles it enunciates. The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

The interpretation of this right<sup>133</sup> has been expanded to include that the best interests of the child entail that the child receives a good education, comprising the preschool education, the formal and informal education and any pertinent activities, free of charge. All measures and procedures connected with a certain child or specific group of children must take into account the best interests of the child or children in the field of education.

In order to promote education, or better quality education, for more children, States parties need to have well-trained teachers and other professionals working in different education-related settings, as well as a child-friendly environment and appropriate teaching and learning methods, however, education is not only an investment in the future, but it is an opportunity for joyful activities, respect, participation and fulfillment of ambitions as well. Responding to this requirement and enhancing children's responsibilities to overcome the limitations of their vulnerability of any kind, will be in their best interests.

The preceding shows, that the best interest of the child requires that the child begins with education from the moment of birth and there is a significant correlation between the child's right to development of physical, intellectual, spiritual, moral, social, and his/ her right to education. Developing child's skills and abilities to enable him learning as well as empowering him from the rest of the skills and abilities, so parents or persons acting on their behalf (other primary caregiver) who are the primary teachers for children.

Human rights education should be included within early childhood education. Such education should be participatory and empowering to children, providing them with practical opportunities to exercise their rights and responsibilities in ways adapted to their interests, concerns and evolving capacities. Human rights education of young children should be anchored in everyday issues at home, in childcare

---

132 - Paragraph (2) of General Comments No.1 of year (2001)

133 - Paragraph (G) of (1) of (A) of fifth of general comments (14) best interest.

centers, in early education programs and other community settings with which young children can identify.<sup>134</sup>

#### Addressing this Interest According to Jordanian Legislations:

We find in Article No.6 of the Jordanian Constitution<sup>135</sup> that it has established a general principal includes to ensure the State within its means of education. Article No.19 guarantees the right of congregations have the right to establish and maintain their own schools for the education of their own members. The constitution did not only set the general principles but also added explanations in Article No.20 after having been substantially amended under the amended Constitution in 2011 by replacing the “primary” word with “basic” word as a result the (primary) where the education, Basic education shall be compulsory for Jordanians and free of charge in Government schools.

After these principles, the laws came to explain these principles and specific terms and provisions. The law of education <sup>136</sup> in Article No.3 approved that education is a right for all, each according to his abilities and receptiveness.

Also, in Article No.6 of the same law to instruct the Ministry of Education to establish and manage educational institutions of all types and levels, to provide qualified human resources and the necessary educational materials, and to provide suitable buildings for the education and supervision of all educational institutions in order to ensure compliance with the provisions of the law and encourage the activities of students in educational institutions and organize this activity in all fields of sport, scout, art, culture, social and productive, as well as providing adequate guidance and preventive health care in educational institutions.

From Articles No. (7 to 13) of the same law, also explain the meaning of compulsory free education that the constitution ensured, in Article 7 of law the stages of education and its institutions were divided and defined into three types. Firstly, pre-school stage for a period of two years, secondly primary education for a period of 10 years and thirdly, secondary education for a period of two years. It approved of the same subject to instructions issued by the Minister of Education<sup>137</sup>, accelerate

---

134 - Paragraph (33) of General Comments No. 7 (2005) Child Rights in Early Childhood

135 - Constitution of the Hashemite Kingdom of Jordan of year 1952.

136 - Is the law No. (3) Of year 1994, published on page No. (608), of edition No. (3958), issued on 2/4/1994.

137 - The Minister of Education issued instructions for the academic acceleration of distinguished students in the primary education stage, No. (8) Of year 2008, consisting of nine Articles. Accelerated student is defined as a student who has applied the terms of academic acceleration from the fifth grade to the eighth grade.

Academic Acceleration goals have been identified by motivating outstanding students and provides educational opportunities commensurate with the abilities of outstanding students. The instructions also specified the conditions that must be met in the nominated student for acceleration are also specified as:

1-To be one of the primary grades students from the fifth grade to the eighth grade.

2-To be one of the high achievers within the percentage determined by the Ministry of candidates for acceleration.

3-Recommend to the nominated student for acceleration by a committee headed by the school principal and the membership of the material teachers: math, science, English language in addition to the educational counselor if he is found, with approval of the guardian according to specific models adopted by the ministry for this purpose.

4-The student's IQ should be within the level determined by the Ministry according to one of the mental abilities tests.

the superior students reducing the number of years of studying that is necessary to end the primary education period not exceeding two years and secondary education according to the system of classes or according to foreign programs that is not less than three semesters without the summer semester. In paragraph 1 of Article No.8, determines the objective of the kindergarten stage is to provide a suitable environment that provides the child with a balanced education that includes aspects of the physical, mental, spiritual, and emotional character that help him/her to form healthy habits and develop his social relationships and promote positive attitudes and love school life.

The same Article obligates, in its (2, 3) paragraphs, the ministry to establish kindergartens within the limits of its potential according to a phased plan and to organize the technical and administrative affairs of kindergartens according to the instructions issued by the minister.<sup>138</sup>

The paragraph 2 of Article No.9 defines the aim of primary education to achieve the general aims of education and preparing the citizen in various aspects in his physical, mental, spiritual, emotional and social personality.

Article No.10 state that the primary education should be obligatory and free in public schools. The student must be admitted to the first year of study if he/she completed the age of 6 years at the end of December of the admission year that he accepted in. The student must not be suspended from his regulation before he completes sixteen years old, unless he has a special medical condition based on a report by the specialized medical committee.

Article No.11 defines secondary education as the education, which the students join according to their abilities and tendency, and this education offers specific cultural, scientific and professional experiences that meet the ongoing and waited for needs of the Jordanian society in a level that helps the student to complete higher education or enter the work market.

Article No.12 determines that the secondary education consists of two main courses:

(a) Comprehensive secondary education course which is based on a common cultural and specific Academic or professional base.

(b) Applied secondary education course which is based on professional preparation and training. Article No.27 of the law obligated the Ministry of Education to distribute assigned schoolbooks for primary education students in all public schools free and for only one time throughout the year.

Considering private school students of all stages and the public schools students of secondary education and primary education after the first time, the law states that

---

138 - State Kindergartens No. (2) For the year 2015 were issued by the Minister of Education in which kindergartens were attached to public schools, as well as determine who is accepted in kindergarten, a child who will be five years old at the end of December of the academic year, in which he is accepted, it also identified the priority of admission to kindergarten is for the children of the region's population which served by the school according to the following priorities:

-The poorest children and the guardian shall attach the documents proving that.

-The Children who are closest to the school.

- Children of teachers and school workers in no more than (20%) of the total number of admitted children

assigned school books are sold according to the price rate set by the Ministry according to the instructions issued by the minister for this purpose. Such instructions are always issued for this purpose and the instructions currently in force are the instructions of selling schoolbooks and learning materials and distributing them No.3 of 2015.

Article No.29 obligates the Ministry to run a general test for the students in the comprehensive Secondary Educational curriculums that offers the passing student either of the following certificates.

1. Secondary school certificate showing the type of specialization.
2. School Proficiency certificate.

Paragraph E of Article No.4 of Juvenile law obligates the competent authorities in all cases, when the Juvenile is subjected to be arrested or to be penalized with a penalty that takes away his freedom that the juvenile can enroll in school. Every competent authority is responsible to take all the needed measures to ensure that says, unless the matter threatens the juvenile's life according to specific instructions issued for this purpose.

Chapter (7) of the law, which includes Article No. (31- 40) discusses the matters of establishing, permitting and organizing private and foreign educational institutions and the terms of function, we can conclude out of these Articles, the law obligates the Ministry of Education to supervise the stages of the educational process of all levels in the kingdom starting with kindergarten until the end of the Secondary Education of its two sections, academic and vocational, and it grants the ministry a set of powers in order to achieve these purposes.

Article No.190 of civil state law obligates the wealthy father with expenses of educating his children at all educational levels including pre-year education before the first grade until the child grants his first college degree, all if the child is eligible for education.

Regarding the obligation of the kingdom under Article No.28 of the Child's Rights Convention to encourage the development of different forms of secondary education, including general and vocational education, making them available and accessible to every child, we find that the law of vocational training <sup>139</sup> has established an institution called Vocational Training Corporation (VTC) <sup>140</sup> which is related to the Ministry of Labor.

This corporation provides vocational training opportunities to prepare the professional workforce and raise its efficiency in various specializations and levels of non-academic vocational training. In addition, to work on diversity of vocational training including Vocational apprenticeship for the youth and adult to practice long-term structured training taking into account the legislation in force, training of the workers in the institutions in specialized training centers and their workplaces for the purpose of raising their competencies, intensive and fast training in diverse occupations in the field of occupational safety and health. The vocational Training Corporation offers supporting extension services of establishing and developing

---

139 - Is the law No. 11 of year 1985, published in the Official Newspaper No. 3290 issued on 1/1/1985.

140 - Article No. 3 of the Vocational Training Corporation Law No. 11 of year 1985

small and medium institutions<sup>141</sup>.

The Disabled Persons Rights Act<sup>142</sup> obligates the relevant government bodies, according to their specialization, to provide appropriate study opportunities for public education, vocational education, higher education and vocational training for persons with disabilities and to develop their abilities according to the needs of the labor market, including the training of the trainers who are working in their fields of specialization (paragraph 2, 3 of the law).

The Labor law<sup>143</sup> provides for protection of the child's rights to education, both academic and vocational, through the legal prohibition of labor of children who are under the age of 16 years in any manner whatsoever, except for vocational training. This law penalizes the employers who violated the provisions concerning in the employment and protection of juveniles or any system or decision issued a fine of not less than (300 JD) and not more than (500 JD), the court shall not decrease the punishment to the minimum or take into account mitigating circumstances, and doubles the punishment in case of repetition.

The new Juvenile Law (2014) obligates at all times when the juvenile is in legal action, that the precaution and procedures shall not affect the juvenile's enrollment to school. All the assigned authorities must take the needed measures to guarantee that, unless it threatens the juvenile's life.<sup>144</sup> The same law allows the principal of the house, where the juvenile is admitted to enroll the juvenile in any public or private institution to complete his/her studies or vocational training, as long as the juvenile returns to the house of after finishing each day.<sup>145</sup>

Although the law requires notifying the court or executive judge when any procedures is followed.<sup>146</sup>

Paragraph D of Article No.7 of National Assistance Fund law obligates the fund for its disbursement to achieve a set of goals such as providing vocational training for the beneficiary categories of the fund to the institutions and competent bodies.

#### [Addressing this Interest According to Islamic Shari'ah:](#)

The importance of Education was very clear in Islamic Shari'ah and has been present from the first legislative provision by the statement of Almighty God from the Prophet (peace be upon him) in the first related verses of the holy Quran: {Recite in the name of your Lord who created (1) created man from a clinging substance. (2)} "Surah Al-Alaq.

The rest of verses then show the importance of Education and knowledge.

All mighty God said: {Recite and your Lord is the most Generous (3) who taught by the pen (4) taught man that which he knew not. (5)} "Surah Al-Alaq Prophet Mohammed (peace be upon him) indicates the structures of scholars and how they influence the society and the importance of knowledge and seeking it in a statement

---

141 - Article No.4 of the Vocational Training Corporation Law No. 11 of year 1985

142 - The published law No. 31 of year 2007.

143 - Is the law No. 8 of year 1996, published on page No. 1173 of the Official Gazette No. 4113 issued on 16/4/1996.

144 - Paragraph (E) of Article No. (4) of the Act.

145 - Paragraph (B) of Article No. 31 of the Act.

146 - Paragraph (C) of the same Article.

in the Hadith Al-Jami'e, The Messenger of Allah has said, "He who follows a path in quest of knowledge, Allah will make the path of Paradise easy to him. The angels lower their wings over the seeker of knowledge, being pleased with what he does. The inhabitants of the heavens and the earth and even the fish in the depth of the oceans seek forgiveness for him. The superiority of the learned man over the devout worshipper is like that of the full moon to the rest of the stars (i.e., in brightness). The learned are the heirs of the Prophets who bequeath neither dinar nor dirham but only that of knowledge; and he who acquires it, has in fact acquired an abundant portion."

In Islam all the evidence collaborated in showing the importance of knowledge and education for all the members of society in general. The evidence also shows the importance of teaching and educating the youth, especially that the result would achieve the child's welfare and would defend him. When the prophet captured a number of Quraish soldiers in the Battle of Badr, the ransom of freeing them was teaching the young Muslims reading and writing. Ibn Abbas reported that"; the captives on the day of the Battle of Badr could not find money to ransom themselves. So, the Prophet made their ransom that they teach the children of the Ansar how to write".

## Fifth Topic

### Achieving the child's Best Interests in Freedom of Expression

#### Addressing this Interest According to International Standards:

This right can be defined as the right to freedom of expression of thoughts and opinions verbally, written or in an artistic work without any governmental censorship or restraints as long as the expressed thoughts or opinions represent what might be considered as a violation of the state's law and customs or to the group that allows the freedom of expression, properly, the freedom of expression is the accompanied by a set of rights and boundaries, such as religious freedom, press freedom and freedom of peaceful demonstrations.<sup>147</sup>

Article No.12 of the convention obligates that the States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard either in any judicial and administrative proceedings affecting the child, directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Paragraph 1 of Article No.13 confirms the concept of this right as it clarifies what the right includes which is the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of

---

147 - A Research entitled (Freedom of Expression) published on 8/10/2016 on the "Wikipedia" website on the link.

<https://ar.wikipedia.org/wiki> As well as a research entitled (The Human right to freedom of expression), Abdul Amir Shamkhi Al – Shallah Published on the link: <http://www.nrtv.com/ar/birura-details.aspx>

all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

Paragraph 2 of the Article allows the exercising of this right and may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (A) For respect of the rights or reputations of others; or (B) For the protection of national security or of public order, or of public health or moral. That means that any decision does not care for the child's opinion or that takes them for granted according to the child's age and maturity, does not consider the effects on the child's or children's determination of the best interests.

If the child is too small or weak (affected by disability, or belonging to a minority group or of foreign nationality) that does not deprive him the right to expression of opinion or underestimates his own opinion in determining his best interests.

The adoption of specific measures to assure equality of rights among the children in that cases must be subjected to an individual assessment that provide the children with the opportunity in the process of making decision, and to provide reasonable facilitative arrangement<sup>148</sup> and reasonable support whenever it is needed, so that they can get the full chance to participate in assessing their best interest<sup>149-150</sup>.

#### [Addressing this Interest in the Jordanian Legislations:](#)

Paragraph 1 of Article No.15 of the constitution obligates the state to guarantee freedom of opinion; and every Jordanian shall freely express his opinion by speech, writing, photography and the other means of expression, provided that he does not go beyond the limits of the law. Paragraph 2 of the same Article ensures freedom of the press and publications within the limits of the law, as the freedom of opinion and expression is adjoined with the human personality regardless of age; this freedom is also granted according to Article No.7 of the same constitution.

As well, is mentioned in Article No.7 of the first chapter of national charter (respect reason, and faith in dialogue and recognize the right of the others to disagree and respect the other opinion). A set of Articles in the education law provides protection for this right. Article No.3 of chapter 2 of the law defines the philosophy of education's foundations in the Hashemite Kingdom of Jordan. Amongst these foundations what was mentioned in Paragraph C of section two of this Article under the name of social foundations, respect for individual freedom and dignity. Paragraph J of Article No.4 considers the overall objectives of education in Jordan are to form the human being who is capable of objective, critical thinking and following the scientific method of observation and research to solve problems.

---

148 - See the Convention on the Rights of Persons with Disabilities, Article 2 "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms"

149 - Paragraph (A) of Article (1) of (A) of Fifth of the comment No. 14

150 - See Article 19 of The Universal Declaration of Human Rights which reads as follows: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The next Article No.198 of the General Penal Code offers an indirect protection for this right through the concept of violation of the text. Article states (Publishing any pejorative or derogatory material is illegal unless the subject of that material is true and publishing it would benefit the public interest).

Article No.3 of publication and press law<sup>151</sup> states that (The press and printing are free and freedom of opinion is guaranteed to every Jordanian. Jordanians have the right to express their opinion freely through speech, writing, photography, drawing, and all other means of expression and information. Article No.4 ensures that (The press shall freely exercise its task of presenting news, information, and commentaries and shall contribute to the dissemination of thought, culture, and science within the limits of the law and within the framework of preserving public liberties, rights and duties as well as respecting the private life of others. Article No.5 of the same law considers the Freedom of the press shall include enabling Citizens, Parties, Associations, and Cultural, Social and Economic Organizations to express their thoughts, opinions, and accomplishments.

The law on the Rights of People with Disabilities <sup>152</sup> also protects this right through the provision of Article No.3 of the philosophy of the kingdom toward the disabled persons emerges from several foundations, includes ensuring the rights of children with disabilities, and build on their abilities, develop their skills and integrate them in the community, participate in the development of plans and programs and make their own decisions.

The content of the legal and constitutional texts (or provisions) guaranteeing the right of the child to the freedom of opinion and expression can be summed up through their execution by the Judiciary. Several judgements were issued whereby the courts of law which have released them have affirmed the freedom of opinion and expression. Of these rulings, the Decision (or Ruling) of the Court of Cassation, Criminal, Number 2004/1118. The Supreme Court Decision (or Ruling) Number 1997/352). Jordan's Children Parliament project is one of the main projects achieving the child's right to expression. The project was launched by the Jordanian Women's Union (a non-governmental body) in 1997, also a free platform concerning childhood rights and influences authorities and decision-makers. It was formed following convening the founding conference of the parliament, in which several working papers that are directly related to the children and their rights were discussed. At the end of the conference, the deputies of the first term of the Jordan Children's Parliament were elected. The objectives of the Jordan Children's Parliament, which consists of 120 members elected for a two-year term, requires that the candidate be 14 years of age and not older than 16 years of age on the date of candidature, include the dissemination and promotion of the work of the International Convention on the Rights of the Child, promoting gender equality and democratic behavior and performance, spreading the culture of democracy, training children on the responsibilities of citizenship and participation in the public life and empowering children to influence the public opinion and decision-makers

---

151 - Is the law No. (8) of year 1998 published on page 3162 of the Official Newspaper No. 4300 issued on 1/9/1998.

152 - Is the Law No. (31) of year 2007 published on page No. 2612 of the Official Newspaper No. 4823 issued on 1/5/2007.

towards their best interests.

Article (6) of the National Council for Family Affairs<sup>153</sup> Law obligates the Council to work to activate family involvement in public life as well to ensure special care for affairs concerning women, youth and children, and to continue efforts to achieve the International Conventions and Charters goals related to family, women, children and youth affairs which approved by The Hashemite Kingdom of Jordan.

#### Addressing this Interests According to Islamic Shari'ah:

Islamic Shari'ah cares about hearing the child's opinion in many matters that indicated this approach in general. We can indicate through:

**First:** A child is given the choice between the father and the mother in custody issues. For example, "A woman came to the Messenger of Allah and said: May my father and mother be ransomed for you! My husband wants to take my son away, but he helps me, and brings me water from the well of Abi 'Aniyyah. The Messenger of Allah said, "O boy, this is your father and this is your mother; take the hand of whichever of them you want." He took his mother's hand and she left with him." The Companions agreed on this matter.

Hearing the child's opinion at age seven that he/she wanted to live with one of his parents was abided in the time of Righteous Caliphs Omar and Ali – may the blessing of Allah be upon them as well as Judge Shurayh.

Assigning a custodian based on the child's opinion is not applied unless it guarantees the child's welfare and does not compromise it, is one of the settled principals in Fiqh. The scholars set the example of it therefore, if the father was more eligible than the mother he shall be prioritized even if she had the right in custody. A child's choice was for the purposes of leisure, indolence preference and amusement over studying. So, if the child chose that, his opinion is not heard and he shall be placed with the person who would serve him well.

Scholars have said that: "Giving the child the choice at that age is only approved if both parents were good, decent and keen on achieving the child's interest, giving the choice is not an absolute rule, what is absolute is the interests of child and amending rules to achieve it according to the case".

Sheikh Abdull Rahman al-Sa'di (may God have mercy on him) has issued a ruling when he was asked about the most eligible person to foster a female child after completing seven years of age. Therefore, he replied that she should be fostered by her father, according to the famous opinion at the doctrine of Imam Ahmad. However, her mother according to a second narration in the same school should foster her. The latter opinion is the one, which the law states and obligates. If the custodians have ignored his/her obligation in custody and neglected what is best So, hearing the child standards are as follows:

The child's age and the case must be taken into consideration; also, the parents must not affect the child in any way to lead him into a specific opinion, or to make him/her a for the child, the custody is revoked and the other party is assigned; both the narrations are correct because they prioritize the interest of the child.

---

153 - Is the Law No. (27) of year 2001 published on page No. 2778 of the Official Newspaper No. 4496 issued on 16/7/2001.

parity in the dispute. Further, the educational and social background of the child should be taken into account.

#### Second: Shari'ah Evidence with Regards to Hearing the Child's Opinion:

Ibn Abbas narrated:

"I entered with the Messenger of Allah, I and Khalid bin Al-Walid, upon Maimunah, so she brought us a vessel of milk. The Messenger of Allah drank from it. I was upon his right and Khalid was upon left, so he said to me, "the (turn to) drink is for you, so if you wish, you could choose to grant it to Khalid.' So, I said: 'I would not prefer anyone (above myself) for your leftovers.'" When the Prophet -peace be upon him – finished his drink, he wanted to honor the oldest who is on his left side, and he knows that who is on his right side is the owner of the right despite his young age. So, he asked the little one, when the boy refused to give up his right, the Messenger of God gave it to him.

## Sixth Topic

### Achieving the Child's Best Interest in Criminal Prosecution

#### Addressing for His/Her Age, Sense of Dignity, Self-Worth and Right to a Fair Trial

##### Addressing this Interest According to International Standards:

Paragraph 1 of Article No.40 of the CRC obligates States Parties to recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, It reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(A) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.

(B) Every child who is alleged as, or accused of having infringed the penal law has at least the following guarantees:

- To be presumed innocent until proven guilty according to law.
- To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense.
- To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.
- Not to be compelled to give testimony, or to confess guilt; to examine, or have examined adverse witnesses and to obtain the participation and examination of

witnesses on his or her behalf under conditions of equality.

- If he is considered to violate the penal code, a higher, competent, dependent and impartial authority, or a judicial body according to the law, must be provided to reconsider the judgment, or any imposed measures according to that.

- To have the free assistance of an interpreter, if the child cannot understand, or speak the language used.

- To have his or her privacy fully respected at all stages of the proceedings.

Paragraph 3 of the same Article, States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children who are alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(A) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

(B) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards be fully respected.

Paragraph 4 of the same Article deals with a variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

A comprehensive policy for juvenile justice must deal with the following core elements.

the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age-limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty including pretrial detention and post-trial incarceration<sup>154</sup>.

As stated above, a juvenile justice policy without a set of measures, which are aimed at preventing juvenile delinquency, suffers from serious shortcomings. States parties should fully integrate into their comprehensive national policy for juvenile justice the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) adopted by the General Assembly in its resolution 45/112 of 14 December 1990<sup>155</sup>.

In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law.

These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children.

The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give

---

154 - The Comment No. 10/2007, The Child rights in juvenile justice

155 - The General Comment No. 10/2007, The Child rights in juvenile justice

way to rehabilitation and restorative justice objectives in dealing with child offenders. This is done in concert with attention to effective public safety<sup>156</sup>.

Two kinds of interventions are used by the State authorities for dealing with children alleged as, accused of, or recognized as having infringed the penal law: measures without resorting to judicial proceedings and measures in the context of judicial proceedings. The Committee reminds States parties that utmost care must be taken to ensure that the child's human rights and legal safeguards are thereby fully respected and protected<sup>157</sup>.

#### Addressing this Interest According to Jordanian Legislations:

New juvenile law<sup>158</sup> definition: a juvenile is a child or young person, who, under the respective legal systems, may be dealt with for an offence in a manner, which is different from an adult in Article (2) of child right convention, Paragraph A of Article No.4 of the Law obligates Addressing for the interest of juvenile and protect, reform and rehabilitate him/her, when applying the Juveniles law.

The new juvenile law includes one of the most important provisions which the criminal responsibility raised to 12 years, Paragraph B of Article No. 4 provided for (Notwithstanding the provisions of any other Legislation, Criminal proceedings shall not be instituted in respect of an offence committed by a person under twelve years of age), which means that children who are under the age of 12 years, have no competence to violate the penal law and incriminating supplementary texts. Paragraph C of the same Article prohibited the infliction of sentences of death or life imprisonment on a minor.

Paragraph D of Article No.4 of the law also bans hand-cuffing the juvenile, or using force against or isolate him, except when the juvenile shows insurgency, or violence and according to the border line as necessary. Paragraphs (E, F) of Article obligates the authorities at all times when the juvenile is arrested, convicted, or legally pursued to facilitate school enrollment, to offer him care and turn him to the specialized medical authorities to receive the needed treatment disregarding having an illness, addiction, or other than that.

All the legal authorities must take the necessary measures to assure that, unless it jeopardizes the life of juvenile, it also bans publishing his/her name and picture during taking the stated necessary measures, even if any text contradicts this concept in any other section (section 1 of Paragraph G of Article No.4). The Law states not to apply the stated provisions of repetition in the Penal Code or any other Code/Law, the authorities must cross-off any record what so ever when the juvenile completes 18 years of age (section 1 Paragraph G Article No.4). The Law considers juvenile cases to be the urgent cases (Paragraph (I) Article No.4).

The Law bans mixing of the detained or convicted juveniles with the convicted or detained adults at all stages of investigation or trial and during the execution. The Law obligates the competent authorities to take the necessary measures to separate the juveniles according to their cases classification, severity, or applied

---

156 - The same as the previous comment

157 - The same as the previous comment

158 - Is the law No. (32) for year 2014 published on page 6371 of the Official Gazette No. 5310 issued on 2/11/2014.

judgment upon them, and to separate the detained of them from the convicted (Article No.5 with its two Paragraphs).

The Law repeated legality settled in Fiqh, the Law depends on the age of the juvenile committing an action, or needing for care or protection. It considers the civil status records an evidence on the juvenile date of birth, unless it was proven to be forged. it also requires to decide the age of the person present before the court before initiating the trial in case he was proclaimed to be a juvenile, and to prove his age by a medical committee (Article No.6 of the Law). The Law obligates the Judicial Council to appoint members from the public prosecution to look in to the cases of juveniles (Article No.7 of the Law).

The Law states special concepts for juvenile detention; the juvenile must be released, if he/she was detained for a misdemeanor for a financial guarantee bond, personal pledge, or a cash insurance that guarantees his attendance in all stages of investigation or trial, unless the interest of juvenile requires otherwise. The Law authorizes the prosecutor or the court to release the detained juvenile, if the circumstances of the lawsuit of the juvenile require that to a legal or financial guarantee bond that guarantee his attendance in all stages of investigation or trial. The prosecutor is limited to renew the juvenile detention for once and he has to inform the house of juveniles in writing, if the investigation requires detaining the juvenile, the prosecutor must ask the court to extend the period of detention for no longer than 10 days at a time. The juvenile who commits a misdemeanor or a felony is detained only in a juvenile house and the period must not exceed 10 days; however, the juvenile's interest must be cared for Article No.9.

The law obligated establishing an office at every court for a probation officer and one of its employees must be specialized in psychology or sociology.

The probation officer is obligated to have a detailed written report that includes the information of the juvenile status, his/her family and the surrounding financial, social and environmental circumstances, which he brought up in his school and his/her educational achievement as called for it Article No.10. The law also obligated to consider as long as possible depending on the probation officer who is being called for juvenile police at all stages of investigating and trial, if he works in the same area jurisdiction Article No.10 To ensure achieving the juveniles best interest through not to subject him to legal procedure which causes negative effects on his/her family, the law stipulates creating a specialized police force to handle juvenile and possesses a qualified, trained and capable team that can handle them; they are called " juvenile police". It authorizes this administration settling disputes in violations and misdemeanors, which sentences are no longer than 2 years and with consent of disputed parties to settlement in the crimes, which are judged, based on a complaint by the victim. Paragraph A of Article No.13 of the law also grants the same authorization settling a dispute for the settling judge to settle it by himself or refer it to any other body, or an individual who can settle it relied on by the minister according to an issued state meant for the purpose Paragraph C of the same Article. However, for more protection for the juvenile, Article No.14 of the law considers the procedures of settling a dispute to be confident and may not be protested, or what it contained of waivers by the disputed parties before the court, or any other body and it bans detaining the juvenile during the process of settlement. It also allows the

disputed parties, at any point during the process of the settlement, to apply for the competent body who handles the case to refer the case to a competent court, as long as it is done by a dispute settlement judge.

The law obligates the Judicial Council to allocate prosecutors members handle juvenile cases in Article No.7, it also obligates not try the juveniles except before competent juvenile courts under the provisions of the law. It obligates to the judges that have been named as juvenile judges and the judges that execution of judgment with expertise, to take into account that the judges continue to consider juvenile cases in juvenile courts on the basis of their grades. The law also obligates forming juvenile peace courts in every governorate at least, which is specialized in looking into violation misdemeanor that has the sentence of no longer than 2 years and protection or addressing measures, and to form juvenile first instance courts in the center of every governorate if it is needed, specialized in looking into felonies and misdemeanors which sentences are longer than 2 years.

However, the judgments of these two courts must be subjected to the provision and procedures of appeal and protest stated in the law of peace courts and code of criminal procedure as applied. The ever- patronizing patron, the guardian, custody or the representative lawyer may act on behalf of the juvenile in this procedure. The law organizes the courts jurisdictions as it is; either where the crime happens, where the juvenile lives, or is found, where he/she was arrested, or where the house he/she was placed in is located. Article No.15.

The law obligates in Article No.16 separation between the juvenile and whoever is not a juvenile in the trial, if the juvenile is associated in one crime, or crimes correlations, etc., they must be differentiated by a decision by the public prosecution and organize a special file of the events to be tried by the juvenile judiciary according to provisions of this law.

The law also obligated that juvenile trials be conducted in camera under penalty of nullity. No one is allowed to attend the trial except for the Probation Officer, the juvenile's representative and his parents, or the ever-patronizing patron, guardian, or custodian as appropriate and whomever the court decides to attend who is related directly to the lawsuit. (Article No.17of the law).

Article No.18 obligates the court to take into consideration the best interest for juveniles according to the of report probation officer and the presented evidence in the case including respecting the right of juvenile and ways to reform him/her and integrate him/her into the society. However, the courts must hold its session on weekends, official holidays or evenings if the interest of child requires to. Article No.19 Article No.20 adherences to Court's relevance in delay the court hearing. A court cannot be adjourned more than 7 days unless it is necessary. Otherwise, it must be stated in the minutes of hearing. The court must adjudicate in the cases of misdemeanors in 3 months of recording it in court registry, to adjudicate in the cases of felonies in 6 months of recording it in the court registry, except for cases that the verdict is based upon an absolute medical report hearing a witness testimony.

Article No.21 of the law obligates the court to appoint a lawyer in criminal offenses, if he does not have one, or was incapable to hire one. The lawyer fees are paid from the treasury of state according to the code of criminal procedure. It is also obligated for a power of attorney for the juvenile to attend all stages of investigation and trial.

Article No.22 bans adjudicating a juvenile, unless one of his partner, the ever-patronizing patron, guardian or custodian, as if the juvenile admits the charge, his confession shall be registered as similar as possible to the words he used.

However, a juvenile confession is not sufficient evidence to be sentenced, if the court was not convinced when the juvenile refuses to answer, he/she will be considered not guilty and the court orders to write that in the court's registry if the juvenile denied or refused to answer or the court was not convinced with his statement, then the court shall hear the testimony. In case the court after hearing the testimony, finds out that the evidence is sufficient to condemn the juvenile, and then the court shall issue its decision of acquittal, or no liability as appropriate. If there turns out to be evidence against the juvenile, the court shall hear the defense statement of juvenile in the presence of his legal representative in criminal cases of misdemeanors, or violations. However, the court shall undertake the report of probation officer and the juvenile and his representative as well as the court may discuss the report. If it was important for the interest of juvenile, the court may let him/her out of the court hall without his legal representative and the probation officer. The public prosecutor or the court may use modern technology, as a protection for the minors, in the process of hearing and discussing the witnesses, as long as these appliances allow any opponent to discuss the juvenile, or the witness during the trial. This modern technology may be used in the process of hearing the juvenile as witness at any lawsuit.

The new juvenile law explained the non-custodial measures that the court has the right to execute, in addition to the penalties that the law stated, these penalties are<sup>159</sup>:

- A. Caution and reprimand: the court shall blame and reprimand the juvenile about what he did and warn him not to repeat such behavior, as long as it does not demean his dignity.
- B. Extradition: the juvenile shall be delivered to one of his parent, the custodian. If none of them mentioned was eligible to raise him, the juvenile shall be extradited to one of his family, if not, to a trustworthy person, or a family whose supporter shall undertake to raise after the consent of court. The verdict to extradite a juvenile to someone who is not responsible for this support shall not be for more than a year.
- C. Community service in one of the community centers of any voluntary civil society organization for no longer than a year.
- D. Enrolling in vocational training in one of the specialized centers, which are approved upon by the Minister for this case for no longer than a year.
- E. Performing certain duties, or to refrain from doing certain tasks for no longer than a year.
- F. Enrolling the juvenile in rehabilitation programs organized by the Ministry or any other civil society organization, or any other approved bodies by the Minister of Social Development

---

159 - Article (24) of law

G. Judicial Supervision: it is to put the juvenile in his natural environment under guidance and supervision with putting into consideration the duties set by the court. Judicial supervision shall not be more than a year.

Considering the imposed penalties for juveniles; the law handled them by dividing the age period into two where the juvenile has legal liability between ages 12-18; the first period is called "An Adolescent". An Adolescent is the category of persons 12 years of age until 15 years. The second period the law calls "Young man". A youth is a category of people 15 years of age until 18 years<sup>160</sup>.

Article No.25 has assigned penalties for the category as following:

A. If a young person who commits a felony punishable by the death penalty shall be sentenced to a term of 8-12 years' detention.

B. If a young person has committed a felony that requires the penalty of hard labor for life, he is then sentenced to be admitted in a juvenile rehabilitation house for no less than 5 years and no longer than 10 years.

C. If a young person has committed a felony that requires the penalty of temporary hard labor or arrest, he shall be sentenced to be admitted in a juvenile rehabilitation house for no less than 3 years and no longer than 5 years.

D. If a young person who commits a misdemeanor punishable by detention shall be placed in a juvenile reformatory for a period not exceeding one third of the term of the penalty prescribed by law. The court may reduce the penalty sentence of any youth convicted of a misdemeanor with any measures mentioned earlier, if there were any reductions and estimated reasons.

E. If any youth violates the law, then the court shall blame him.

Article 26 of the law has assigned penalties for the category of adolescent:

A. If an adolescent who commits a felony punishable by the death penalty is sentenced to a minimum 6 years and not more than 10 years.

B. if an adolescent has committed a felony that requires the penalty of hard labor for life, he is then sentenced to be admitted in a juvenile rehabilitation house for no less than 3 years and no longer than 8 years.

C. If an adolescent has committed a felony that requires the penalty of temporary hard labor or arrest, he shall be sentenced to be admitted in a juvenile rehabilitation house for no less than one years and no longer than 3 years. The court may replace the penalty with any measure mentioned earlier, if there were any reduced and estimated reasons.

D. If an adolescent has committed a felony, then the court must penalize him with any of the previously mentioned measures.

E. If an adolescent violates the law, then the court shall blame him.

Article No.27 of the law created a new, unfamiliar judicial vacancy –during preparing this study<sup>161</sup> under the name of "Executive Judge". The law assigned him a set of duties that include visiting juvenile institutions and welfare prescribed for juveniles within its competence every three months at least. However, the judge must hand a report of the visit for the president of the judicial council and a copy for the minister

---

160 - This division came in the second Article of the Law.

161 - Here is a draft law amending the criminal Proceeding Law, which included the creation of such a vacancy and we had the honor to participate in the drafting committee of this project.

of development as well as observing applied effective measures on the juvenile in accordance to this law or the effective legalisations and constantly assure that the juvenile has complied with the conditions of the sentence. The judge may assign a Probation Officer to do that and to submit any needed reports (Paragraph A of Article No.29).

The law links the transfer of sentenced persons, who have completed 18 years before completing his/her sentence to a reform and rehabilitation center, to the decision of the executive judge. The law authorized the judge to extend the 18 year old convicted stay in juveniles rehabilitation house until he completes 20 years of age so that, the convicted can complete his studies or his/her vocational training based on a written request by the director of the competent organizational unit in the Ministry of Social Development to follow up the juvenile's matters/issues according to the juvenile law <sup>162,163</sup>. Paragraph B of Article No.29 of the law obligates that the juvenile is not detained during executing the sentence that are not custodial penalties.

The law divides the places where the juveniles are maintained into three institutions: a reformatory institution which is the established accredited home where detained juveniles are maintained to be raised and rehabilitate them according to juvenile law; a juvenile rehabilitation home which is an established or accredited home to reform convicted juveniles to be raised and rehabilitated according to the juvenile law and a juvenile care home which is the established or accredited home where juveniles needing protection or care are admitted to be taught and trained<sup>164</sup>.

Paragraph (B, C) of Article No.31 authorizes the director of the home where a juvenile is admitted to enroll any juvenile in any public or private institution to complete his vocational or educational studies as long as the juvenile returns to the home after finishing on a daily basis. However, the director must have the consent of the director of the directorate who must inform the court or the executive judge if any measures were applied according to the provisions and regulation in this Article for this matter<sup>165</sup>.

Paragraph A of Article No.32 of the Juvenile Law strongly urges to achieve the child's best interest; as it authorizes the executive judge to release any convicted juvenile admitted in a juvenile rehabilitation home, after consulting with the principle of that home, and if a set of terms and conditions were available.

Paragraph B of the same Article obligates the executive judge to review the cases of convicted juveniles who are sentenced to deprivation of liberty, periodically every three months to study the possibility of their release according to the pointed terms already mentioned in Paragraph A.

The law authorizes the executive judge, if it turned out that the juvenile is not committed to the terms of release that already mentioned the purposes that the law considered for an early release for the juvenile, to warn the juvenile about the necessity to observe the terms.

---

162 - Thus, the term "Directorate" was defined in Article 2 of the Juveniles Law.

163 - Paragraph (b) of Article No. (30) of the Juveniles Law.

164 - These divisions and definitions are mentioned in the second Article of the Law.

165 - These procedures have already been referred to when addressing the child's right to education

The judge has the right in canceling the decision of the juvenile's early release and returns him to complete the period of the custodian penalty measures, in which the period of time when the juvenile was abiding the terms is divided from the sentence. The judge's decision in declining the juvenile's release or returning him to the juveniles' rehabilitation home is appealable at the competent court of appeal.<sup>166</sup>

Paragraph F of Article No.32 of the Juvenile law allows the director of the directorate to grant the juvenile a vacation of no longer than a week to visit his family in holidays and necessary cases if he/ she were well behaved and after consulting with the principal of the home.

Paragraph (A, B) of Article No.37 of the law authorizes conduct monitoring and with the consent of the director of the competent organizational unit in the Ministry, on the follow up of juvenile affairs, any person who needs welfare to approach the court, and to seek assistance from any individual of the judicial control to ensure his appearance before the court. The court has the right to maintain this person at any Juvenile home until deciding the case if his interest requires that. It has the right also to take any of the following measures, if it was convinced that the person appearing before it is under 18 and a juvenile who needs welfare or protection:

1. Order the juvenile's parents, patron, guardian or the assigned person to protect the juvenile properly to sign an undertaking that ensures providing the care for him/her.
2. Admitting him/her into a juvenile welfare home or any similar accredited institution, as long as it accepts, for no longer than 2 years. The conduct monitoring must present a detailed report for the executive judge to reconsider the case every 3 months.
3. Placing the juvenile under the custody of an adequate family, or a person for the period set by the court, subject to approval from any of them.
4. Placing the juvenile who needs protection or care under the supervision of conduct monitoring for no less than a year and no longer than 5 years whether this decision connects to take any of the measures mentioned in this Article or not.

Paragraph C of the same Article allows conduct monitoring with the consent of the director of the competent organizational unit in the Ministry to follow up the juveniles affairs, to appear before the executive judge any person who needs welfare or protection is about to finish the period that the law stated, to be spent at any institution if the executive judge finds out that he will be harmed when released until the end of the duration of his stay in the institution, then he decides to extend the period until the juvenile is 18 years of age at any of the following cases:

1. One of his/her parents, guardian, patron or the person assigned to support him/her is accustomed to consuming alcohol, moral corruption or crimes.
2. There is no one to care for him sufficiently or incapable of looking after himself.

Paragraph D of the same Article allows the executive judge to extend the time of stay for the juvenile in the institution, in the case where he has not completed his training period in the craft, or the profession that he started until he finishes his training or turns 20 years of age. Those who completed 18 years of age must approve on that.

---

166 - Paragraphs (D, E) of Article No. (32) of the Juvenile Law

The law makes sure to consider the best interest of child. The law allows the court to issue the decisions according to the provisions of this Article No.37 in the absence of the juvenile who needs welfare, or protection. All issued decisions of this Article are subjected at the competent court (Paragraphs E, F of Article No.37 of juvenile law).

Paragraph B of Article No.38 of the same law grants the principle of the home and with the consent of the director of the directorate to allow the juvenile who needs welfare, or protection, to visit his parents in holiday, or any occasions for specific days, then he returns back to the home, according to directions issued for this purpose.

Paragraph C of the same Article allows the director of the directorate with the consent of the court, to allow for whoever is eligible to accommodate the juvenile who needs welfare, or protection, and who is admitted in any juvenile welfare home during holidays, occasions and weekend for specific days, then he returns to the home.

Article No.40 of juvenile law as it considers the concept of the best interest of Juvenile, authorizes the executive judge to release any admitted juvenile, who needs welfare or protection to any juvenile home. According to the terms set for this purpose, if the judge sees that the juvenile, who needs protection requires that. Article No.41 Aftercare of the juvenile after admission period in the juvenile reformatory home, the juvenile rehabilitation home, or the juvenile welfare home to ensure his incorporation in the society and to protect him/her from delinquency. However, the judge must be precise with the foundations of post care and the procedures according to a regulation issued for this purpose.

Paragraph A of Article No.42 of the law to penalize every adult who detain a juvenile in any legally accredited detention centers, or at any stage of the lawsuit, or while serving the sentences of imprisonment for not less than three months, and not longer than one year. Paragraph B of the same Article penalizes every person who publishes the name and picture of the juvenile during applying the stated measure in the juvenile law with the penalty of imprisonment for not exceeding a year, or a fine of not exceeding 500 JDs or both of the penalties.

Paragraph C of Article No.42, and for the purposes of applying the reforming measures, protection and care programs, and therefore, achieving the best interest of child, penalizes every person who helps, motivates conceals, or shelters a juvenile who needs protection, and care to escape a juvenile welfare home, or forbids him/her of returning, or helps him not return to it, knowingly. This is punished with a penalty of imprisonment for not exceeding three months and a fine of not less than 100 JDs.

On the other side, Article No.5 of Protection against Family Violence Act No.6 of 2008 stipulates that: Crimes against natural persons are considered domestic violence, except for crimes falling under the jurisdiction of the Criminal Court. Article No.3 of the law defines the family members including the sons and a child, under the age of 18 in the custody of a foster family.

Paragraph B of Article No.4 of law obligates that all procedures and information related to domestic violence heard by any relevant body including courts are dealt with the utmost confidentiality.

Paragraph C of the same Article, the court may take into consideration the reports related to domestic violence that are submitted to it by formal competent bodies

#### Addressing this Interest According to Islamic Shari'ah:

Islamic Shari'ah cares for the child by setting special procedures in the field of litigation to allow for the child to litigate his or her interests, including:

- Legal representation for him/her by his patron or the guardian. If the interest of child conflict with his/her representations, we move into a new procedure by assigning a temporary patron to defend the rights of child and Addressing for them.
- One of these procedures is not to accept any declaration against the minor, and if the guardian declared any right against the minor then the guardianship is revoked.
- A deliberate felony is considered to be a mistake according to the rule (child's premeditation is a mistake committed by him/her).
- Setting a certain age for punishment and legal liability and relating many provisions to the legal age of discretion when a person becomes adult.
- Accepting testimony of children according to specific rules and situations that the scholar mentioned unlike the general regulation of testimony to care their interest.

### Seventh topic

#### Achieving the Child's Best Interests in Alternative Care

##### Addressing this Interest According to International Standards:

Paragraph 1 of Article No.20 of the convention clearly states that: (A child temporarily, or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State). Paragraph 2 of the same Article obligates, States Parties shall in accordance with their national laws ensure alternative care for such a child.

Paragraph 3 of the same Article defines the content of this care by stating that: (Such care could include, among other things (inter alia), foster placement, Sponsorship (kafalah) of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background).

Some explanations concerned with this right, in which the child must live in a supportive, protective and addressing environment that helps them to develop their full potential.

Children with inadequate or no parental care are at special risk of being denied such a nurturing environment. In case the child's own family is unable, even with appropriate support, to provide adequate care for him/her, or abandons, or relinquishes the child, the State is responsible for protecting his/her rights child and ensuring appropriate alternative care, with or through competent local authorities and duly authorized civil society organizations according to the assets or through it. It is the role of the State, through its competent authorities, to ensure the supervision of the safety, well-being and development of any child placed in alternative care and

the regular review of the appropriateness of the care arrangement provided.<sup>167</sup>

A set of requirements have been established in alternative care to complete the child's right in this care: All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life. Should have been regarding to the importance of ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their caregivers, with permanency generally being a main aim. Children must be treated with dignity and respect at all times and must benefit from effective protection from abuse, negligence and all forms of exploitation. This is so whether on the part of care providers, peers, or other parties, in whatever care setting they may find themselves. Removal of a child from the care of the family should be seen as a measure of last resort and should be, whenever possible, temporary and for the shortest possible duration and removal decisions should be regularly reviewed and the child's return to parental care, once the original causes of removal have been resolved or disappeared.<sup>168</sup>

Paragraph 5 of Article No.3 of optional protocol to the convention the right of the child concerning selling children and exploiting them in prostitution and pornographic<sup>2</sup> materials, States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.<sup>169</sup>

[Alternative Care has been divided into many forms as follows:](#)<sup>170</sup>

1. Kinship care: Family-based care within the child's extended family, or with close friends of the family known to the child, whether formal, or informal in nature.
2. Foster care: Situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment in a family other than his/her own family that has been selected, qualified, approved and supervised for providing such care.
3. Other forms of family-based, or equivalent family.
4. Residential care: Care provided in any non-family based group setting, such as places of safety for urgent care, transit centers in emergencies, and all other short and long-term residential care facilities, including group homes.
5. Independent living arrangements and monitoring children.

[Addressing this Interest in the Jordanian Legislations:](#)

The important amendment in the amended Constitution in 2011, which already mentioned in this study, is made to provide protection – even indirectly- for this right.

---

167 - The resolution of The General Assembly of the United Nations No. 64/142 on 24/2/2010

168 - The same as the previous resolution.

169 - Adopted and offered for signature, ratification and accession by the resolution of The General Assembly of the United Nations No. 263, Fifty-fourth session of 25/ May /2000, Entered into implementation on 18 January 2002

170 - The Guideline of the Alternative Care of Children, A framework established by the United Nations issued in 20/11/2009.

The amendment added a new Paragraph for Article No.6 of the law, Serial No.5, which includes obligation of State authorities to provide legal protection for motherhood, childhood, old age and Addressing for youth and the people with disabilities, as well as protection from abuse and exploitation. As well as what was mentioned in chapter 5 of the National Charter that: The family is the principal block of society. It is the natural environment for the rearing, education and personality growth of the individual. The official and popular institutions of the state must provide for the formation, cohesion and well-being of the family. They must assist it in the task of providing future generations with a sound upbringing. Item (4) of the same chapter states that good motherhood is the basis of good childhood, to which every child has a natural right. State and society must provide special care for mothers and children. In addition to item (5) that children have the right to expect the best possible level of care and protection from parents, as well as from the state.

The Jordanian law uses the two sentences: (Alternative family) and (Foster family) as interchangeably. The law defines them in Article No.2 of Child Welfare Regulation from birth until the age of 18 <sup>171</sup>. As any adequate family besides the original family that the Minister (i.e. Minister of Social Development), or the court, for a limited, or unlimited period, to support and care for any child under the age of 18 and needs temporary, or permanent care and protection.

Article No.3 of the same regulation came to determine the normal duties of a natural family under the supervision of the Ministry in the matters relates to the care, health, safety, well-being and the education of the person added to any of these families. These families have the right to oversee the child as parents for the period, which the Minister or the court determines. Article No.4 of the regulation obligates the Ministry of Social Development or the court to conduct a complete social study for either the alternative foster, or original family to bind the families to fulfill their obligations towards their children or their entrusted children. A study must be conducted on the child and his original family before accepting him/her in any institution of the Ministry of social Development, or any other accredited institution<sup>172</sup>. In addition to this; a condition stipulated; that the Alternative family must be of the same religious view of the admitted person. In case of non- confirmation of the religion, or doctrine of the child, she/he is considered a Muslim. The allowance disbursed (2-5) JDs for the alternative family for each admitted person from the budget amounts for this purpose in the balancing of the Ministry of Social Development and by a decision from the Minister in the light of a previous social study conduct by an employee appointed, or delegated by the Minister about the status of the alternative family, living costs in the area where the family lives and the needs of the person intended to be entrusted for it. The Minister, or the court may assign the father of the child, or the person responsible for supporting him/ her to contribute in the costs of his care according to his financial abilities status.<sup>173</sup>

---

171 - Is the Regulation No. 34 of 1972 published on page 1004 of the official gazette No. 2360 on 1/6/1972, issued by Article No. 4 of the Law of the Ministry of Social Affairs and Labor and its amendments No. 14 of year 1956.

172 - Article (6) of the same previous regulation.

173 - Articles (5,7) of the Regulation.

It is the same provision allowed by Article No.8 of the regulation for the ever-patronizing patron, the guardian, the supporter, the national foundation or the custodian by stating that(1-5) JDs are disbursed for them monthly for every child they have of those in need for care, or a attention from a contribution of ministry for the ever- patronizing patron, guardian supported, or the custodian to fulfill the entrusted to him/her towards the children in the matter of healthcare, safely, well-being, academic or vocational education for the period set by the minister of social development or the court, in the light of a thorough social study conducted by an employee appointed or delegated by the minister for this purpose about the children's status and the living costs in the area and their needs. From time to time, the minister or the courts may, and based on a written report, change the decisions in this matter. However, Article No.9 of the regulation authorize the minister or the court to appoint the child's father, guardian or supporter to contribute in the childcare costs in the institutions where the minister or the court decides to entrust him according to the ability of the father, patron, guardian or the supporter to pay this amount to the institution where the child is entrusted for official receipt.

The law does not neglect to authorize the minister or the court, from time to time and based on a thorough social study conducted by the specialized employee to reconsider any child entrusted for an alternative, foster family or an institution or to be admitted elsewhere, if necessary.<sup>174</sup> On the other hand the law gave the father, guardian, patron the right to demand the child to reclaim, if the circumstances which obligated the father to give the child for an alternative family, or institution changed. The minister, or the court may allow returning the child to his father, guardian or supporter without restrictions or conditions, or according to some conditions, if they were convinced that the father's, guardian's, supporter's circumstances changed and they justify the return.<sup>175</sup>

The Kindergarten regulation was established in 2005<sup>176</sup>. Paragraph 3 of the regulation defines the concept and tasks of the kindergarten, where it provides care for the children from the age of one day to four years and raises them; develop their physical, spiritual, cognitive, linguistic, emotional, psychological and social characteristics. The regulation allowed individuals, public and private institutions, companies, associations and officially registered social bodies, and any other entity whose nature of work, or the circumstances of their employees require the presence of a kindergarten to apply for a license in accordance with the provisions of this Law Article No.4.

The regulation states a set of requirements and terms that must be available in the kindergartens, so that they can have their licenses. For example, the construction of the building meets the terms and requirements of public health and safety, availability of furniture and supplies that meet the requirements of childcare, development and safety.

---

174 - Article No. 12 of the same previous regulation.

175 - Article No. 13 of the same previous regulation.

176 - Is the Regulation No. 52 of 2005 published on page 3332 of the official gazette No. 4715 on 1/8/2005, the Regulation have been replaced by the Kindergarten, No. (66) of year 1971

The number of employees in the home corresponds to the number of children who are cared for in accordance with established standards, appropriate qualifications of educational and professional staff in the kindergarten with its goals and objectives, having a doctor who periodically monitors children and provides them the health care, the existence of specialized programs that meet the developmental requirements of children Article (5). Then the regulation formed commissions and empowered to carry out inspections at kindergartens, received compliant about it and submit its recommendations. (Article No.6 et seq.)

In 2009, The Residential Children's Care Home (Licensing and Management Regulation) was established<sup>177</sup> Article No.3 of the regulation states the task of the home is to provide a suitable environment for the child to develop in a safe and healthy familial atmosphere to become socially and emotionally competent and able to learn, all in case.

When it is not possible for the child to live in the care of any member of his family, or suitable alternative family, it may be determined that a child may reside in residential care may.

Article No.4 provides a set of activities and commitments that the residential care must perform as the following:

- 1- Provide a suitable family model for the development and welfare of child.
- 2- Provide material and moral support for the child to grow in a safe environment that works to develop and support him/her in all aspects of life socially, healthily, vocationally, educationally and psychologically, to enable him/her to integrate into his/her society.
- 3- Keep the ways of communication with the original family of the child in all circumstances and conditions and reintegrate him/her with them, if possible.
- 4- Ensure that the child enjoys the rights established in national legislation and ratified International Conventions, particularly Convention on the Rights of the Child.
- 5- Ensure that the child be heard carefully and respond to his/her requests in a consistent manner with achieving his best interest in all programs and plans related to him/her with consideration to his/her age category.
- 6- Review programs and plans for children periodically by the supervisors and ensure effective implementation.

#### Article 5 of the Regulation Classified Residential Cares as Follows:

- 1- Temporary residential care: A home that receives a child who needs temporary care for emergency reasons for a period, no longer than three months renewed once by a decision of the Minister, and the child is returned after the disappearance of the reasons to his original family, or alternative family.
- 2- Family homes: The homes that receive the child who was deprived from the care of his original family, or the alternative family, until the age of 12 years.
- 3- Youth Homes: These homes receive a child from the age of 12 years who was deprived of the care of his original family, or alternative family until he turns 18 years of age.

---

177 - Is the Regulation No. 49 of 2009 published on page 4151 of the official gazette No. 4976 on 16/8/2009, issued by Article No. 4 of the Law of the Ministry of Social Affairs and Labor and its amendments No. 14 of year 1956

4 - Therapeutic Home: It receives an abused and mistreated child where it provides specialized treatment services.

To achieve improved quality residential care services, Article 6 of the regulation allows individuals and public official institutions, associations and competent social bodies which are registered with the Ministry<sup>178</sup> to apply for a license to establish kindergartens for children in accordance with the provisions of this regulation as following:

1. The building must fulfill the requirements and terms of public health and safety in accordance with the relevant effective legalisations.
2. The building must fulfill the care requirements for the targeted age group, which are stipulated in directives issued for this purpose.
3. The number of employees in the home must be consistent with the number of children cared in accordance with instructions issued for this purpose.

Paragraph1 of Article No.12 of the regulation stipulated providing a set of general terms, if the child is accepted in the home as the follows:

(1) There must be a need for institutional social welfare services, due to the lack of any possibility for original, or alternative family care, and that the child is one of the following categories:

- An orphan child or a child without parental care.
- A child suffers from family disintegration.
- Child who is subjected to cases of abuse, or violence.
- A child of unknown parents.

(2) The gender of the child (male or female) should match the gender of the children in the home.

(3) The child shall have all necessary medical examinations, appropriate to his age, gender and the nature of the situation when entering the home.

(4) The decision to admitting the child in the home is issued by the minister, or the competent court in accordance with the age group and the social study according to the capacity of the home, including consideration of the suitable home for children in marginal ages.

(5) The number of children in the home should not exceed nine children.

(6) In the transition from one place to another, the gender, age, maturity and special circumstances of the child shall be taken into account and any considerations determined by the Committee to the Prevention of Child Abuse.

(7) Combining natural brothers and sisters together within the family home must be taken into account whenever possible.

---

178 - It must be noted here to Dar Al - Amman which is a therapeutic center for sheltering children, that provides protection and treatment for child victims of abuse and the rehabilitation of their families, and since its opening in 2000 as one of the Jordan River Foundation, it has dealt with hundreds of cases in the areas of shelter, care, behavior modification and counseling and family visits, where it deals with the age group from birth to 12 years for males and 13 years for females, and it is the only home of its kind in Jordan and the Arab region as a center for psychological and social treatment and rehabilitation, Where the therapeutic service is offered for children living there, In addition to the service of some children without the need to separate the child and admitted to the Dar al-Amman. The fact that the abuse has not reached the limit requires this, children who are handed over to either an alternative family, or other protection and care center.

(8) Preparing for each transition before the child leaves for the care location at least six months prior to the transfer date and taking into account his/her educational status.

(9) Provide educational opportunities and job training for young people who leave the home to help them achieve financial independence and self - reliance, in cooperation with the ministry.

Paragraph 2 of the same Article No.12 determines special terms that must be provided for the child according to the classification of the home as follows: -

**First: Family Homes:**<sup>179</sup>

1. The conditions for general acceptance shall apply to the child.
2. His age and gender must fit with what is planned for the family homes.
3. Review the factors behind placement of child in the home every quarter to determine whether institutional care arrangements could be replaced with care in the original family, or a different family.

**Second: Therapeutic Home:**

1. The child who has been a victim of abuse and violence shall be transferred to the home by virtue of an interim retention decision by the Minister, the specialized court, or the Family Protection Department.
2. The condition of the child who has been subjected to abuse and violence, together with the situation of the child's family, shall undergo a social assessment as soon as the child is admitted to the home.
3. The abused or taunted child must have medical reports within 24 hours before entering the home whenever possible.
4. The abused or taunted child must undergo a psychological assessment program within two weeks when entering the home.
5. Both health services, therapeutic and preventive in the home, must be provided for the child in accordance with the instructions issued pursuant to the provisions of this System.
6. Provide specialized programs that are suitable for the age and development characteristics of children.

Article 13 of the regulation to divide the children into categories based on age for the purposes of homes admission as follows:

- 1) Children from the age of one day to twelve years or until the age of puberty, whichever of these ages is earlier in the same family home.
- 2) Children between the ages of 12 and 18 in the youth homes.
- 3) The Minister may, upon the recommendation of the case study committee, allow

---

179 - It must be noted here to Dar Al-Wefaq, which was established by the Ministry of Social Development under the Family Protection Act No. 48 of 2004, Issued by Article No. 4 of the Law of the Ministry of Social Affairs and

Labor and its amendments No. 14 of 1956. It was established by a decision of the Minister of Social Development based on the recommendation of the Secretary General of the Ministry, which was referred to as Dar Al-Wefaq, and it was opened on 17 January 2007, AL-DAR provides diagnostic and counseling services to women or girls which are received by Al- Dar and work to solve the problems and difficulties that faced, Including the reception of the home for those accompanied by children up to the age of three years, Al- Dar may receive children over the age of three years and not exceeding five years and for a period of one month at most in special cases and by a decision of the Committee.

The child after the age of 18 to stay in the home until the completion of his Academic Education or vocational training. However, the child must not exceed the age of twenty.

Article 17 of the regulation binds a set of obligations as the follows:

- 1) Taking all measures to ensure the health, upbringing, development and protection of the child.
- 2) Preventing any form of abuse, or violence against children in the home under legal liability.
- 3) Informing the child's parents, the ministry and the competent authorities in case of illness or a threat to his security and safety.
- 4) Working on finding alternatives to other institutional social care for children in accordance with an integrated plan that takes into account the best interests of the child.
- 5) Reviewing the reasons for accepting of the child in the home once every three months to assess the possibility of replacing institutional care under the care of his or her family or alternative family and work on developing programs to rehabilitate the original or alternative families of the children.
- 6) Refraining from publishing, or exploiting the child's images, or using them for purposes other than the official or necessary purposes determined by the case study committee and in a manner that does not conflict with the best interests of the child.
- 7) Organizing and maintaining administrative and financial records, subject to scrutiny by the competent and concerned authorities of the Ministry.
- 8) Opening a file for each child and to maintain its confidentiality and make it not available for viewing, or circulation, except for the concerned specialists and under the responsibility of legal liability.
- 9) Providing the Ministry with statistics and information concerning the children and the home.

After that, the Jordanian law deals with the matter of the child's custody in custodian families through issuing the custody legalisations issued in 2013<sup>180</sup>. Article No.2 of these legalisations defines the following. The child in custody as the child that the provisions of custody are applied on him in accordance to the provisions of the childhood care system and also defines the child of unknown parentage as the child that no mother or father of him/her who are known.<sup>181</sup> The custodian family is the family who the Minister of Social Development entrusts with fostering of the child of unknown parentage, or a competent court of Addressing for the child as an alternative family according to the provisions of these instructions, or the family that has embraced Islam for at least three years and proved by an Act of Affirmation of Islam issued as appropriate.

---

180 - These instructions were published on page 1454 of the Official Gazette No. 5216 of 1/4/2013

181 - According to a circular issued in 2000, the Ministry of Social Development classified children of unknown parentage into three categories: Foundlings, they are unknown; because of their lack of knowledge of their parents. And Victims of incest: They were born out of sexual relations, which took place between some incestuous people, who are bound by the blood ties of kinship. The sons of adultery who their mothers are known: They were born out of illicit sexual relations which require a judicial judgment of one, or both of the parties to these relations. They usually have these children into ratios conflict.

The same Article specified the period of custody, that it starts from the date of receiving the child and for a lifetime, unless any reasons occurred that prevents the continuation of the child staying in custody with that family and by a decision from the Minister, based on a placement of the custody committee.

Article No. 3 of these legalisations establishes a committee by a decision of the Minister of Development that examines the applications of the families that desire custody and the needed interviews. As well as making recommendations to the General Secretary for a placement for the Minister to make the right decision. However, a set of conditions must be available from the applicant for the custody<sup>182</sup>:

1. The applicant must be a part of a family consistent of a couple.
2. The applicant must believe in Islam, or has been a Muslim for at least three years and has a certified affirmation act of Islam.
3. The inability of one or both spouses to have children.
4. The age of the husband must not be less than (35) or more than (55) years and the age of the wife must not be less than (30) and more than (50) years old.
5. The couple resides in a common residence.
6. The applicant family for custody must be married for at least (5) years.
7. The monthly income of the family must not be less than (500) JDs.
8. The age of the child who is intended to be in custody must not be less than (5) years for the wife who exceeds the age of (45) years and the husband who exceeds the age of (50) years.
9. The custodian family must provide all types of necessary care such as; education and health care as well as psychological, material and social wellbeing. The couple must provide healthy, physical and psychological conditions enabling them to raise a child properly.
10. The applicant for custody cannot have a criminal record in any indecent felony, or misdemeanor, or punished by prescribed penalties.
11. The familial bond between the couple must be affectionate, coherent and harmonious.
12. The application for custody must be signed by the couple.
13. The custodian family must provide the sanctity of blood; if the child in custody is a male then he must be breastfed from a woman who is a relative of the wife. If the child in custody is a female then she must be fed from the breast of a woman who is a relative of the husband.

Article No.9 explains the responsibilities for the custodian family:

1. Provide all the forms of social addressing to the child in custody, represented in an alternative familial rearing, treatment, education, spending and anything else related to Addressing. Making sure of these matters by familial checking up should take place after the child is placed in custody once per year and when it is necessary.
2. The ability to prepare the child in custody to face the different circumstances of life, in the different aspects, in order to be able to be an independent person.
3. The custodian family commitment of informing the child in custody in order to face the different circumstances of life in different aspects to be able to be an

---

182 - Article No. (4) of the instructions

independent person in his social reality when he becomes five years old on condition of coordinating with the technical department.

4. Inform the ministry about all the changes that occur to their place of residence and their relationship with the child in custody.

5. Any other matters determined by the minister to achieve the best interest for the child.

In order to protect the child from carelessness and abandonment; Article (290) of the General Penal Code <sup>183</sup> was created to punish by imprisonment from three months up to a year for each parent, or the guardian or the trustee of a minor who does not complete fifteen years old, or person was entrusted lawfully and legally to take care of that child, refusing or neglecting providing the child by food, clothes, bedding and other necessities while he is capable of providing them. Doing this causes harming the child's health, or any person who being the parent, or guardian or the trustee of a minor who does not complete fifteen years old, or person was entrusted to lawfully and legally to take care of that child and willingly abandons – without any reasonable reason – such a child despite the fact that he is able to provide him, and left it without any means of living, for any cases mentioned in paragraph one from this Article, imprisonment from six months to two years. If the minor did not complete twelve years of age.

As mentioned in the new Juvenile Law,<sup>184</sup> it discusses the matter of homeless children and beggars who always exist in life conditions that are not appropriate, or suitable for the child's necessity to education and appropriate attention. Those children are called juveniles who need protection and attention. Article No.33 identifies the cases where the child needs protection and attention:

A. If he/she was under the care of a parent or guardian, improper to care for him/her, for the habit of criminality, or drunkenness, or addiction to narcotic drugs and psychotropic substances, or their congenital disintegration, or convicted of crimes against morality with any of his sons, or anyone entrusted to him for their care.

B. If he/she performed acts related to prostitution, infidelity, corruption of creation, or gambling, or any illegal acts, or the service of those who carry out these acts or a mixture of those who are known for their bad conduct, or used in any of them, including begging, or panhandling.

C. If he/she did not have a stable place, or was usually in the streets.

D. If he/she does not have legitimate means to live, nor a trusted host, and either both of his/her parents, or one of them is dead, imprisoned, or away.

E. If he/she has bad behavior, outside the authority of his/her father, guardian, trustee, or mother, or the guardian is dead, away, or not qualified.

F. If he/she begs, even if he is hiding it in anyway.

G. If he/she is badger, or misuses the garbage.

H. If he/she is exposed to intentional harm from his/her parents, or one of them, in a way that exceeds the discipline's limitations which is allowed legally and by public custom.

---

183 - Is the Law No. 16 of year 1960.

184 - Is the Law No. 32 of year 2014 published on page 6371 of the official Gazzete No. 5310 on 2/11/2014.

I. If he/she is at risk to being exposed to a great danger in case he/she stays with his family.

J. If he/she does not complete twelve years and committed a misdemeanor or a felony.

K. If he/she is a working juvenile contrary to current laws.

The paragraph A of Article No.34 of the same law to give the executive judge the ability, and according to the report of the director of the competent organizational unit in the ministry, to follow up the juvenile affairs, depending on the report of the conduct observer and after executing the forejudged duration to decide if the juvenile, who needs attention, should go to a Juvenile welfare house in each of the following cases:

1. If he needs protection, or attention according to Article No.33 of this law and to the decision of the executive judge.

2. If he does not finish the duration of education, or training in the enrolled courses. While Paragraph B of Article No.34, mentioned previously, has given the executive judge the ability, if he is convinced by the accuracy of the reasons mentioned in the Paragraph A and according to the report of the director of directorate<sup>185</sup>, of making a decision considering the juveniles need for attention and protection.

Article No.35, of the same law, gives the ability to the court that is specialized in juvenile's cases and resolving conflicts of taking the protection measures that suit the situation of the juvenile. This depends on a complaint of the juvenile, one of his parents, his guardian, his trustee, the entrusted person having the lawful care of him/her, or the judicial police, if the juvenile faces any of these cases that are mentioned in Article No.33 of this law.

Article No.36 of the same law obliges the court, according to a complaint from the juvenile, one of his parents, his guardian, his trustee, the entrusted person having the lawful care of him, or the judicial police, to request a report from the conduct observer about the conditions and the circumstances that surrounds him/her such as; his family, social environment and health and listening to the juvenile, his parents or one of them, his guardian, his trustee, or the entrusted person having the lawful care of him; this is supposed to be done before taking any action to protect him/her. If the court finds out that there is a necessity to impose a temporal action for the interest of the juvenile, until the procedures complete, it has to clarify the reasons of taking quick actions.

The law obligates that the conduct observer and any person who works in medical, educational and social fields should inform the juvenile police, or the nearest security point if they find a juvenile, while on duty, involved in any of the cases that considers the juvenile as a person who needs protection and attention.<sup>186</sup>

And for achieving more of the best interest of the child, the law allowed<sup>187</sup> for the conduct observer with the acceptance of the director of directorate<sup>188</sup> to provide

---

185 - Article No. 2 of the Juveniles Act defines the term "Directorate" as the organizational unit competent in the Ministry to follow up the affairs of juveniles.

186 - Paragraph (C) of Article No. (36) of the Juveniles Law of year 2014.

187 - Paragraphs (A, B, C) of Article No. (37) of the Juveniles Law of year 2014.

188 - See previous definition of "Directorate".

anyone who needs protection, or attention to the court that is specialized in deciding the juvenile cases and resolving the conflicts. He has the right to ask for the assistance of one of the judicial police to make sure of court appearance, and the court has the right of making the decision of keeping that child in one of the juvenile welfare houses until the determination of the procedure, if his interest acquired this. If the court is convinced, after the assurance of that person who is provided to it is under eighteen years old and that he is a juvenile who needs protection and attention, then it takes one of the following actions.

1. It commands his/her father, guardian, trustee, or the person having the lawful care of him in an appropriate way and to sign on a commitment that guarantees providing this attention.
2. Sending him/her to the juvenile welfare house or to any similar approved organization in condition of that organization approves it for a period that does not exceed two years; the conduct observer must provide a detailed report to the executive judge every three months to revise this decision.
3. Placing him/her under the care of an appropriate person or family for the duration that the court decides in condition of the acceptance of any of them on this.
4. Placing the juvenile who needs protection and attention under administration of the conduct observer for a duration that is not less than one year and does not exceed five years whether this decision was related to taking measures that are mentioned in this Article, or it was not related.
5. The conduct observer can, by the acceptance of the director of directorate, be present in front of the executive judge any child who needs protection, or attention and he is almost going to finish his duration that the measure determined that he should spend it in any organization, if he/she is liberated and going to be harmed when the duration of his permanence in the organization ends. After this, the conduct judge can decide to delay until the juvenile completes eighteen years old in any of the following cases:

-If one of the parents, his guardian, his trustee, or the person having lawful care of him/her is used to intoxication, moral corruption or criminality.

-The non-existence of who cares about him/her, or his incapability of taking care of him/herself.

The paragraph D of Article No.37 of the juveniles Law authorized the executive judge to extend the residence of the juvenile in the institution, if the training period is not completed in the trade, or profession that he/she started training, until the completion of training or the age of twenty, subject to the consent of a person who has completed 18 years of age.

The paragraph B of Article No.38 of the same law gives the ability to the administrator of the juvenile welfare house with the acceptance of the director of directorate, to give the juvenile who needs protection and attention a permission to visit his family in holidays, occasions and vacations for specific days and then he/she goes back to the juvenile welfare house according to the instructions that are created to this objective.

The paragraph C of the same Article with the acceptance of the court of allowing the director of directorate whom he/she sees as appropriate to host the juvenile who needs the protection and the attention and lives in one of the juvenile welfare house

in holidays, occasions, vacations for days which he determines in condition of going back to his juvenile welfare house.

The law obligates the juvenile welfare house that guarantees taking care of the juvenile, who needs protection and attention, commitment of guardianship on him/her and it is responsible of sustenance and he/she remains under its care even if his father or any other person asks to bring him/her back. If the person who is responsible for alimony of the juvenile who needs protection, attention and who is capable to afford his sustenance totally or partially, then the Minister of Social Development or who delegates him in writing and on the behalf of the juvenile who needs protection and attention can take actions to begin the judicial procedures for the competent authorities to obligate the one who is responsible for the sustenance according to what these authorities determine<sup>189</sup>.

As Article No.40 of the juveniles Law is created, for applying the concept of considering the best his/her interest, to give the executive judge the right to decide that any juvenile who needs protection and attention and under the commitment of any juvenile welfare house, can go out of it according to some conditions determined for this purpose, if he sees that this is for the interest of the juvenile who needs protection and attention. Also, Article No.41 states that he has to provide after-care for the juvenile, after his duration in a Juvenile correction House, or a Juvenile rehabilitation house, or a Juvenile welfare house, to guarantee his coherence with the society and to protect him/her from delinquency in condition of determining the principles of after-care and its procedures according to a system created for this purpose.

The paragraph B of Article No.38 of the same law gives the authority to the principle of the juvenile welfare house with the acceptance of the director of the directorate to allow the juvenile who needs protection and attention to have a vacation to visit his/her family in holidays, occasions and vacations for specific days and then he returns to the juvenile welfare house according to instructions that are created for this purpose.

The paragraph C of Article No.15 of the law of the Reforming and Rehabilitation centers allows the inmate to keep her baby until he is three years old, then the baby is given to his relatives or to one of the specialized care homes for this purpose. While the paragraph D of the same Article allows the inmate to access the center with her if he does not complete three years old. Both (A, B) Paragraphs of Article No.7 of the law of the National Aid Fund obligate the fund to spend its money to achieve a group of purposes, some of them; protecting and addressing for individuals and families in need through supplying money frequently and emergently, trying to provide job opportunities, production of the individual or the family or increasing it through vocational and physical rehabilitation.

C. The recommendation to the Ministry of Health of issuing health insurance cards for who cannot pay for it of those who benefit from the services of the fund according to the rules and the conditions quoted in the system of current civilian health insurance.

---

189 - Article No. 39 of Juveniles Law of year 2014

D. Providing vocational training for the beneficiary categories of the fund for the organizations and parties specialized in this.

#### Addressing this Interest According to the Islamic Shari'ah:

The Islamic Shari'ah has declared the right of the child to a familial sheltering, whether by the parents of the child or any other person, and has in all cases rendered it obligatory. It is stipulated in the Sharia it is the duty of the state, as per the Islamic Sharia (Law), to support and relief the children who have lost their shelter/ home or family or both. And that is expressed by Al-Imam al-Juwayni in his book "Al-Ghayathi" which is deemed the most important reference in the religious policy and affairs of the states, as he says in terms of the most important duties of the state: "to carry out guardianship over those on the verge of loss for the purpose of protection, keeping and relief, with this being of two kinds thereof, one, by guardianship over the one with no guardian, of children and those insane toward themselves and their money".

This guardianship includes addressing, maintaining and saving. This legal ruling, which imposes the state and the individuals to the obligation toward those who are homeless or lost their families has been derived from the general legislative evidence which are considered to be principles around which judgements revolve, of it as Allah, says: "and cooperate in righteousness and piety, but do not cooperate in sin and aggression". Surat al-Ma'ida (Al-Ma'ida Chapter in Koran).

Also, "The Prophet (peace be upon him) said, "All of you are guardians and are responsible on the Day of Resurrection for your subjects"<sup>190</sup>

The verses that refer to the Prophet, as the legislative status, remind him of God's blessing on him when he was an orphan and provided him with shelter, as a reference to providing a shelter to the orphan or the one who loses his family or his shelter <sup>191</sup>. God said: "Did He find you an orphan and give you refuge" Al-Doha 6.

Housing means to provide shelter and attention, and both are God's abundance on the Prophet and obligated on the Islamic nation toward orphans, the homeless or those who lost their home or family. Ibn Rushd transmitted the nation's agreement on this, he says: "according to the agreement, no contradicting in the nation about the obligation of foster care of children; because the human is created weak and needs someone to take care of him and to raise him to benefit himself and to be independent, this is a collective duty; the child should not be left without foster care or education until he is destroyed and lost.

If someone does that, then it will be omitted from the others."<sup>192</sup>

This right of child who lost his/her housing, or family is a collective duty on the nation. Hence, if nobody of them undertakes it, then everybody is considered as being sinful. As it is mentioned in al-Mughni, "the child's care and custody are obligatory; because he will be harmed by leaving him [without them], he must be

---

190 - Related by Al-Bukhari and Muslim

191 - See Al-Tabari, Collection of statements on interpretation of verses of the Qur'an', part No. (24) of page no (88) Al-Alusi, Spirit of meanings, part No. 15 of page No. 383.

192 - Abu Walid Ibn Rushd, Al-Moqademat Al-Momahadat, part No. (1) of page No. (64)

saved from destruction, he must afford him/her and help him survive from destruction.”<sup>193</sup>

Islamic history cites many organizations that concern addressing about those who have lost their families or their housing. Such as, the one, which was founded by Al-Waleed, bin Abd Al-Malek in Damascus. He has assigned doctors and specialized employees and told them not to ask people. Another example is, the organization that was founded by Nour Al-Deen Zenki for orphans, poor people and widows. Ibn Jubayr, in his description of Damascus has said, “for the male orphans have a big site in the country, which has to be Waqf to take the teacher from it to them, and this is from the strangest things to recount about the prides of this country. These houses are present in Hejaz, Egypt, Iraq and the nations of Islam in general.”<sup>194</sup>

## Eighth Topic

### Achieving the Interests in the Child Right of Not Marrying at an Early Age <sup>195</sup>

#### Addressing this Interest According to International Standards:

Although the Convention on the Rights of the Child does not refer to that right directly and particularly, but a basic of that right can be found in the second Paragraph of the Convention on Elimination of all Forms of Discrimination against Women <sup>196</sup>, which includes not causing any legal effect on the engagement of the child or his marriage.

The betrothal and the marriage of a child shall have no legal effect, in the same Paragraph obligated the Members State<sup>197</sup> and all necessary action, including legislation, shall be taken to specify a minimum age for marriage, to make the registration of marriages in an official registry compulsory and to determine the concept of a child which is mentioned in this text. It should be revisited to Article 1 of the Convention on the Rights of the Child that “every human being below the age of 18 years unless, under the law applicable, majority is attained earlier”.

One explanation about this right state that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health in the world, including HIV/AIDS. Both the legal minimum age and actual age of

---

193-Ibn Qudamah, Al Mughni, part No. 8 of page No. (250)

194 - See Ibn Jubayr, The Travel of Ibn Jubayr, Part No. (1) of page No. (220) and an Article entitled the masterpieces of Muslim endowments in the site of the Islamic story of writer Issa Kaddoumi

195 - On 17 November 2011, the United Nations General Assembly adopted the resolution (A/RES/66/170) which is designated on 11 October each year as the International Day of the Girl. The prevention of early marriage was chosen as the theme of the International Day of the Girl.

196 - This Convention was adopted by the General Assembly of the United Nations and was submitted for signature, ratification and accession by its resolution 34/180 of 18/12/ 1979. Further, this Convention consists of thirty Articles, which constitute the binding legal template for accepted principles and measures to achieve equal rights for women everywhere.

197 - The Hashemite Kingdom of Jordan signed the Convention on the Elimination of All Forms of Discrimination on 3 December 1980 and ratified it on 1 July 1992

marriage, particularly for girls, are still very low in several States Parties of the convention. There are also non-health related concerns: children, who marry, especially girls, are often obliged to leave the education system and are marginalized from social activities.

Further, in some States parties, married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention<sup>198</sup>. Another explanation includes that the adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs, particularly caused by early pregnancy and unsafe abortion practices, and to support adolescent parents<sup>199</sup>.

#### Addressing this Interest According to Jordanian Legislations:

The personal state law of 2010<sup>200</sup>, has created substantive and procedural provisions relating to marriage. The first Paragraph in Article No.10 has determined the marriageable age is 18 as a general concept, but the law, as an exception and in accordance with strict legalisations has allowed in the second Paragraph, the approval of the chief justice in accordance with directives issued by the chief justice for this purpose. He may authorize the marriage of a person who has attained 15 years of age if he regards it as an utmost necessity; anyone younger than this age is not allowed to get married.

The groom must be a suitable match for the bride in terms of his capacity to pay maintenance and the dowry, achieving an interest by marriage to each other, Also, the dowry in such a case must be at least (Article No.20) and to make sure of the acceptance of the bride and her choice and the allowance to include conditions in the marriage contract that are not contrary to the legal provisions. These include her right to work, to complete her education after marriage or to live in a specific area and others (The paragraph B in Article 37 of the law).

The instructions issued by the Chief Justice in 2011, published in the official Gazette on 16-1-2011, determine the concepts and the standard to be followed when considering permission to marry for those who are over 15 and under 18 years of age.

The case is examined by the court thoroughly, and verifies the existence of a genuine interest that obligates the necessity of giving the permission to get her married, otherwise, no permission is given for marriage.

On 1- 8-2017, Supreme judge has issued new instructions<sup>201</sup> to replace the aforementioned instructions. These instructions obligated the court before approving the child's marriage who is between 15 and 18 years old, to verify the satisfaction, choice and the required necessity of the interest in order to achieve

---

198 - The General Comment No. (4) of year (2003)

199 - The same pervious comment

200 - s the Law No. (36) of year 2010 published on page 5809 of the official Gazette No. 5061 issued on 17/10/2010 which abolished the Law No. (61) of year 1976

201 - The text of these instructions is published on the website of the Supreme Justice Department

a benefit or prevent a corruption using the appropriate verification method. Here the law imposes restrictions on the power of the court to approve the marriage of who is over 15 years and under 18 years, the law gave the freedom for the court to verify those requirements also in the manner it deems appropriate, such procedure - if properly implemented - will achieve the best interests of the child, to verify that there is no pressure exerted on a child in this age and this marriage will achieve a real interest or to prevent spoilage is very important for the benefit of this child.

As stipulated instructions not to exceed the age difference between the two parties 15 years, here the law was more clear and assertive, hence the court does not have the authority to approve if there is a difference in age also it sat a number of instructions to approve the marriage which indicate that the groom must not be married, which is a clear and specific limitation on the validity of the court approval, Since the text is absolute, the court must verify it according to the Kingdom's restrictions and beyond, especially since there are a number of grooms from non-Jordanian nationalities or those who are residents outside the country, which help the court in the process of the verification related to this condition in the appropriate mechanism in the manner it deems appropriate.

For the purpose of approving such marriage, the law requires the court to verify that marriage as long as it will not be the reason for dropping out of school, and as the law gave the freedom for the court to verify this condition, the court must not give the consent unless it is convinced beyond any reasonable doubt that the marriage case will not affect the continuity of the minor's school education.

The court's instructions also obliged to explain to the fiancée the right to require any condition for which she has an interest. Indeed, such obligation may be helpful for the court, if she has a relative who is able to advise her because she does not have experience in life that allow her to impose conditions that satisfy her interest.

The court was instructed to verify that the groom who did not complete 18 years of age shall be entitled to the approval of the Department of the Supreme Judge before having the permission of marriage, and to verify the ability of the groom to spend, pay dowry and prepare the marital home. The court shall, in accordance with the instructions, refer the unconditional marriage application to the Department of Legacy and Minors Affairs <sup>202</sup>.

The Supreme Justice Department to express his opinion, including marriage permission requests of the groom, the law wanted to oblige the court to refer these requests to the Directorate to examine these cases by specialized committees, which includes a group of experts to take more than one opinion in order to determine the best interest of the fiancé.

The instructions also required the couples to present a certificate proving that they have passed the marriage course organized by the Supreme Judge Department.

The fact that, the law stresses on the new regulations to consistent with the exception, which represented by approving the marriage of a minor, and that the law imposed restrictions on the court and procedures must be taken to achieve the

---

202 - A new department established under an amended system for the administrative system of the Department of the Supreme Judge No. 24 of 2015

best interest of the child which is originally stated in the law of Personal Status, “to not approve the marriage of whom are under the age of 18 and its exception” thus it must be considered as departure from the original concept and It is necessary to ensure that all the controls, conditions and provisions stipulated by law and instructions are available for authorization and may not be extended.

The basis is not to authorize the marriage of those under the age of 18 years, and the exception that is mentioned in the Personal Status Law is on this concept. It should be considered as a departure of this basis and it is necessary to make sure of the availability of all of the legalisations, conditions and provisions that the law imposes to give the permission of this marriage, and it is not allowed to expand by it.

#### Addressing this Interest According to Islamic Shari’ah:

The Islamic Shari’ah does not determine absolutely a specific age for marriage, but it leaves it to the appreciation of the interest through the choice of the individuals themselves, this is after the age of adolescence or through some arrangements set by the state, that specify the minimum age for marriage that it is considered from the allowable acts. The Ruler (the State) has the right of limitation for this allowable act according to what the state sees as achieving the public interest. The country has the right to impose the procedures that achieve and lead to preserve it and has the right to apply the punishment for an offender, considering one of the reinforcement measures. From this understanding, the provisions of the marriage, are taken from the laws of the Personal Status Law that are derived from the provisions of Islamic Shari’ah, including the Jordanian Law that applied this standard and made the age of marriage, as a basis, the maturity age which is eighteen years old. While it does not absolutely allow the marriage under the age of 15 years old, under any condition, and gives those who are between 15 and 18 the capability of getting married, provided that some specified conditions and requirements are met. This is made as an exception. It is also connected to the necessity of having judicial acceptance, according to specific standards, as mentioned before. However, all of that is based on the method of Shari’ah in adopting seeking for interest and avoiding corruption in its legal reasoning.

## Ninth Topic

### Achieving the Child’s Best Interests in Family Reunification Especially in Refugee Cases

#### Addressing this Interest According to International Standards:

This right is stated in Article No.9, and Article No.22 of the Convention on the Right of the Child, as mentioned in Article No.9 States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the

parents are living separately and a decision is made as to the child's place of residence.

Also, Paragraph No.3 of the same Article states that States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interest.

Paragraph 2 of Article No.22 of the Convention obligates States Parties to provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set out in this Convention.

This right can be understood as aiming ultimately to address the fate of unaccompanied or separated children by identifying a lasting solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.<sup>203</sup> Efforts to find durable solutions for unaccompanied, or separated children should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied, or separated. Following a rights-based approach, the search for a durable solution commences with analyzing the possibility of family reunification as a priority, if it is in the best interest of the child.

In the same comment, it is stated that tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child, or jeopardize fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee.

Subject to all of these conditions, such tracing efforts should be continued during the asylum procedure. For all children who remain in the territory of the host State, whether on the basis of asylum, complementary forms of protection or due to other legal or factual obstacles to removal, a durable solution must be sought.

The comment, also, includes the obligation of States under Article No.9 of the Convention to ensure that a child shall not be separated from his or her parents against their will. All efforts should be made to return an unaccompanied, or separated child to his or her parents except where further separation is necessary for the best interests of the child. The considerations are explicitly listed in Article No.9, Paragraph 1, sentence 2; namely, cases involving abuse, or neglect of the child by the parents, may prohibit reunification at any location, other best interests considerations can provide an obstacle to reunification at specific locations only.

---

203 - Comment No. 6 of Year 2005

The principles of the Office of the United Nations High Commissioners for Refugees (UNHCR) considers as the best interests of the child the reunification of the family whenever it is possible, generally, upon verification of the family and child's identify and the wishes of each for reunification. The process of the reunification must not be delayed because of the best interest determination procedures.<sup>204</sup>

#### Addressing this Interest According to Jordanian Legislations:

Such a topic is not easily addressed in national legislation, especially in countries that are already burdened by many refugee situations. However, Article No. 26 of Residence and Foreigners' Affairs Law<sup>205</sup> contain provisions on residence of all foreign nationals, including children. The texts that are related to this topic as the following:

Article 2 of the law has determined the meaning of "Foreigner": any person who does not possess Jordanian nationality. Also, Paragraphs (A, B) of Article No.4: travel documents shall be understood to include laissez-passers issued by the United Nations to its officials and international laissez-passers issued by States to Stateless persons, or refugees residing in their territory, which authorized for the foreigner to enter or leave the Kingdom. Articles No. (2, 4) and the Paragraph C of the same Article consider the refugees recognized as such, their wives and minor children under 16 years of age of persons in the above categories which they are granted the international laissez-passers, the Paragraph D of the same Article states that the Minister may exempt the nationals of any foreign State from the requirement that they should obtain a visa or bear a passport on entering the Kingdom. Article No.6 Allows for a foreigner who enters the Kingdom otherwise than via the points and roads designated for this purpose for reasons of force majeure, such as an emergency landing or entry where there is no border check-point or yet political asylum. The said foreigner shall report in person to the nearest branch office of the Directorate or to any competent security post within 48 hours at the most. Thus, his status is corrected and his presence within the Kingdom consistent with the provisions of the law taking into account the existing coordination between the Commission and the national authorities in refugee situations.

Article No.20 States that the Director may authorize a foreigner to stay in the Kingdom for a period not exceeding three months and may, in consultation with the competent departments and authorities, extend the said period for three more months against payment of a fee of one Jordanian dinar. Such authorization shall extend to his wife or wives and to all his children registered in his passport or equivalent document. Article 25 through the concept of violation of the substance of this Article, rather, they can get the permission according to their parents or one of them who live there. This is through the contraction of the concept of this Article which limits the commissioning of the children of a foreigner, on reaching the age of 16 years are required to obtain a residence permit while residing in the Kingdom. Article No. 26 of the same law shall be granted to a minor child whose only provider resides in the Kingdom with a residence permit; That the agreements concluded by

---

204 - Page No. (29) of the principles

205 - Is the Law No. 24 of year 1973 published on page No. 1112 of the official Gazette No. 2426 issued on 16/ 6/ 1973

the government have the capacity to compel those Governments to respect and implement them, the memorandum of understanding signed between the Jordanian government and the United Nations High Commissioner for Refugees (UNHCR) on 04/05/1998 forms a legal bond to help the refugees in the reunification process.

This memorandum includes a group of rules concerning the topic of reunification:

1. A specific definition of a refugee is determined and the respect of the principle, that no person seeking asylum in Jordan will be expelled or returned to borders or countries where his or her life could be threatened and to give him the right of litigation in front of all the courts and the right of having judicial assistance.

2. The refugees who are settled in a third country are exempted of paying fines of overstay that is caused because of their violation of the Residence and Foreigners' Affairs law as well as the payment of departure tax.

3. Allow the UNHCR representative to interview asylum seekers and detained refugees at security centers or Reforming and Rehabilitation Centers whether to register an asylum application and pursue their cases.

4. The release of recognized refugees, detained at security centers, in case that the reason for their suspension is for having breach of Law of Residency and Foreigners Affairs.

5. The Ministry of Interior approves the refugees' identification cards which are recognized by the United Nations High Commissioner for Refugees (UNHCR).

According to the Government's agreement to define the refugee concept and to exempt those who are resettled in a third country from overstay fines, as well as allowing UNHCR to meet asylum-seekers, these measures help to stand up with situations that can be reunited.

#### [Addressing this Interest According to Islamic Shari'ah:](#)

The Islamic Shari'ah has taken into account for a child to be raised in his or her original family, and it has given the family great importance, making it the basic nucleus of the society. Therefore, many provisions were built on the need to reunite families and not to separate them from each other, particularly not to separate the child from his mother nor from his parents except for specific reasons relating to the interest, safety and the protection of the child from any risks he may face. And among the texts that indicate it, the "Messenger of Allah" (peace be upon him) said "Do not separate the mother from her son", it is also narrated by the Prophet (peace be upon him) that he said: "Whoever separates between a mother and her child, then Allah will separate between him and his beloved on the Day of Judgment." As well, it was narrated that "Abu said al-Ansari", brought captives from "Bahrain" to the Messenger of Allah (peace be upon him) and while he was looking at them then saw a woman crying, so he asked her "what made you cry?" and she said, "My son is sold in Bani 'Abs. He told Abu Usayd, "ride and follow him", so he rode and brought him back.

## Conclusion:

This guidance includes the law, rules and legalisations, which establish the legal substance that should be considered in the process of determining the best interests of the child. It also includes how to achieve and apply them to the level of international standards, the Jordanian legislation and the Islamic Sharia'h for the use and reference of any party or person who deals with or decides a regulation or an issue concerning the child.

This guide took in consideration the rights that relate to the child and his life by dividing the study into topics, then separating a topic to interrelated rights, and finally dividing each one into three sections. So that, international standards for such rights are defined in the first section of the topic, and the texts of the Jordanian legislative are defined in its second section, then separating the third section to address the legal provisions associated with those rights.

Therefore, this guidance document enables all the employees and those who deal with the issues of the children including judges, staff, civil society organizations, service providers, and scholars to access and to gain a holistic understanding of the necessary provisions, rules and the standards that they will need to decide on any issue concerning the child and his best interest. Through improved understanding of the full spectrum of the interconnected children's rights and the availability of this outline of relevant international, national and legal provisions have been developed and modified over time, the service provider or practitioner will be better able to ensure that the child's best interests are given primary consideration in all decisions and actions concerning the child.

It remains to be noted that, the determination of the provisions and rules concerned with the rights of children may not be fully sufficient and that for the purposes of fullest consideration of the child's best interests, executive procedures which are coherent with the rules and provisions included in this guide, and which are specialized for children, must be further defined and followed by the relevant institutions and individuals.

Also, in consideration of the interdependence and overlapping that affects the human life and the frequent mobility between countries which are often forced by armed conflicts and that causes refugee situations as currently witnessed in the Middle East, where almost none of the countries in this region is free from the refugee situations, those who prepared this guide conclude with the following recommendations:

### Recommendation 1:

- To prepare a guide that includes the executive procedures specialized for children which are followed by official and civil authorities in the Hashemite Kingdom of Jordan and their compatibility with the criteria of the best interests of the child arising from the provisions and rules included in this guidance document.

### Recommendation 2:

- To prepare a guidance document that includes the provisions and rules that achieve the best interests of the child in the national legislation of the Middle East and North Africa countries, considering that the preparation of this guide was a

requirement resulting from a regional conference held in Amman in 2015, implemented by the Family Protection Department in the Public Security Directorate, the National Council for Family Affairs and the Office of the United Nations High Commissioner for Refugees (UNHCR).

Finally, we hope that we have succeeded in preparing and designing this guide to achieve the purpose that it was prepared for, apologizing for any lack of ambiguity, but over every possessor of knowledge is one [more] knowing.

The views expressed in this publication reflect the expert views, and do not necessarily reflect those of the United Nations or of UNHCR. This book is also available in Arabic language & English version at: UNHCR's Inter Agency Information Sharing Portal.

Translation done by: Bir Ziet for "Legal Transition", Amman – Jordan

Special thanks to Dr. Adnan Assaf who edited and did proofreading of the English Version