

CHAPTER 2

CHILDREN'S RIGHTS FROM AN INTERNATIONAL AND ISLAMIC LAW PERSPECTIVE

2.1 INTRODUCTION

A crucial point that is often overlooked is that children are often victims of abuse and exploitation from as early as their conception to their birth, and all throughout their growing years. For instance, one would regularly hear or read of parents who do not regard their foetuses as a living being, and hence, opt for abortion, which debatably is legalised murder. It can be argued that under specific circumstances, foetuses too, can be legally protected, although the law would be limited and cases of abortion every so often would remain unnoticed therefore, unreported. As a result, unreported cases of illegal abortion would mean that the foetus has lost his or her rights to life.

This chapter focuses on the rights of children in Malaysia, entailing foetuses that are physically developed beings whose right to life is legally protected from the time of its birth and all throughout the growing years, from both international and Islamic law standpoints. The time and effort spent in protecting the rights of children in all aspects will invariably influence the progress of humanity as they are the ones who will shape the world's future development. Change can be brought about through suitable legal implementation, knowledge, technological advancement and resources. Undeniably, children will benefit greatly in terms of exercising their rights, should they receive conscious and sincere aid from all levels of the social hierarchy.

Significant strides forward have been made by the Malaysian government with the support from many NGOs to reduce child poverty, to make schools accessible to children and safeguard them from harm and diseases. However, many underprivileged children are left behind as issues of inclusion and accessibility, and poverty remains. A report from UNICEF on the issues affecting children in Malaysia reveals that:

“You may not see them every day. But there are too many children in Malaysia who still live in poverty; are at risk of violence and exploitation; are embroiled in the justice system; live with disabilities; are indigenous children at risk or have no valid documentation and are stateless. The lack of opportunities prevents them from having access to services vital for achieving their full potential.”¹⁰⁸

This chapter encompasses everything from the definition of “child”, categories of children, and children’s rights from international and Islamic legal viewpoints, to the issues affecting children in Malaysia, with a special focus on the plight of abandoned children.

2.2 DEFINITION OF TERMS

There is no universal definition of “child”. Various definitions of “child” have emerged owing to socio-cultural differences. Even in law, there are differences in how the term “child” is defined.¹⁰⁹ The law in Malaysia makes provisions for every child in different aspects, based on the circumstances the child has been put through. It is argued that a standardised legal meaning of the term “child” is needed to ensure consistency

¹⁰⁸ UNICEF, Issues Affecting Children in Malaysia, A Brief Look At Child Rights and Issues In Malaysia, at <https://www.unicef.org/malaysia/issues-affecting-children-malaysia>

¹⁰⁹ Different statutes have different interpretations of the term “child”. See Child Act 2001, Majority Act 1971, UN Convention on the Rights of the Child (UNCRC), and from Islamic law perspectives, i.e. Fiqh Islam.

and impartiality in legal proceedings and sentencing. A uniform definition of who is a “child” would leave no room for ambiguity and dispute in legal proceedings. Arguably, the harmonisation of the term “child” between the statutes is necessary for the purpose of protecting the rights of the children.¹¹⁰ Also, it is important to standardise all the laws related to children, including under civil law and Islamic law of each state in Malaysia to avoid confusion and to provide further protection for children.¹¹¹

A child can be defined differently in different legal contexts since every law is enacted with different objectives. “Children” under the UNCRC¹¹² is defined as “everyone under the age of eighteen (18),” while the Child Act 2001¹¹³ describes a child as (a) a person under the age of eighteen years; and (b) in relation to criminal proceedings, meaning a person who has attained the age of criminal responsibility as prescribed in Section 82¹¹⁴ of the Penal Code.

The Age of Majority Act 1971 defines a child as a person below the age of 18 years.¹¹⁵ However, this law is only applicable if there is no definition given in any other written law.¹¹⁶ According to Noor Aziah Mohd Awal, the Adoption Act 1952 defines a child as “an unmarried person under the age of twenty-one and includes a female under that age who has been divorced”,¹¹⁷ while the Guardianship of Infants Act 1961 (GIA)

¹¹⁰ Noor Aziah Hj. Mohd Awal, Al-Adib Samuri, Jasri Jamal “Pengharmonian Definisi Kanak-Kanak di Malaysia: Isu & Cabaran”, Persidangan Meja Bulat Pengharmonian Undang-Undang Kajian Undang-Undang Bertulis, 18 November 2015, IKIM.

¹¹¹ *Ibid.*

¹¹² Article 2 of the UN on the Convention on the Rights of the Child (UNCRC)

¹¹³ Section 2 of the Child Act 2001. (Act 611)

¹¹⁴ Section 82 of the Penal Code states, “Nothing is an offence which is done by a child under ten years.”

¹¹⁵ Act 103, s 2.

¹¹⁶ *Ibid.*, s 4(c)

¹¹⁷ ¹¹⁷ Noor Aziah Mohd Awal, “Legal Status and Rights of Illegitimate Children in Malaysia: The Conflicting Rights?” International Survey of Family Law 2009.

defines a Muslim child as a person under the age of 18 whilst a non-Muslim child is a person under the age of 21.¹¹⁸

Islam, being the official religion in Malaysia, and Islamic law being applicable to all Muslims in Malaysia, it is important to note the definition of “child” from the Islamic law standpoint. Islamic law describes a child as a person who has not attained *baligh*. *Baligh* for a female is when she starts her menses and for a male is when he has “wet dreams”.¹¹⁹

While there is a multitude of definitions of the term “child”, this chapter concentrates mainly on the child from the day of birth until the age of 18, with a focus on babies or infants in the context of child abandonment or baby dumping. “Baby” is defined as a very young child, especially one that has not yet begun to walk or talk.¹²⁰

Baby dumping cases are most likely to be some subset of the cases where a victim under age 18 was murdered by some means other than the use of a firearm, another weapon or poison since the most typical method of killing an infant in the instances recorded in recent news clippings is abandonment or putting the infant into a toilet or latrine.¹²¹

2.3 CATEGORIES OF CHILDREN

This section outlines the various categories of children: (i) illegitimate children; (ii) adopted children; (iii) *laqit* (children who have been abandoned without knowledge

¹¹⁸ No 13 of 1961, s 2(3)(a)(i) and (ii).

¹¹⁹ Surah An-Nur: 59. See also Muhammad bin Ali bin Muhammad al-Syaukani, Fath al-Qadir, Beirut: Dar al-Fikr; Abi al-Sucud, Muhammad bin Muhammad al-cAmady, Tafsir Abi Suud, Beirut: Dar Ihya'al-cArabi, Vol 6, 193.

¹²⁰ n.a. 2021. “Meaning of Baby in English”. *Cambridge Dictionary*. <https://dictionary.cambridge.org/dictionary/english/baby>.

¹²¹ Hubbard, D. 2008. *Baby Dumping and Infanticide*. (Monograph). Gender Research & Advocacy Project, Legal Assistance Centre, Windhoek, Namibia. p.2.

of their lineage); and (iv) stateless children (i.e. without citizenship), identified under the *Shariah* and civil courts in Malaysia.¹²² However, it is important to note that the classifications tend to vary between Muslim and non-Muslim children.

Children born out of wedlock are considered illegitimate in status under common law. It could be argued that regardless of whether the child is illegitimate or not, every child should be entitled to full recognition as a member of a family group and benefit from legal rights. In *Re Lowe*,¹²³ Romer J. said:

“Legitimacy is the question of status.... This status of legitimacy can be obtained by being born legitimate or by being legitimated by virtue of the provision of the Act....”

In Malaysia, Section 112 of the Evidence Act 1950 provides for the presumption of legitimacy.¹²⁴ Section 112 states:

“The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”¹²⁵

The presumption of legitimacy will apply if the following criteria¹²⁶ is met: (i) the child must be born during the subsistence of marriage; (ii) the marriage of the child’s mother to the man must be valid; (iii) in cases that involve the divorce of an expecting mother, the child must be born within 280 days after the divorce of his parents and the

¹²² Noor Aziah Hj. Mohd Awal, Al-Adib Samuri, Jasri Jamal “Pengharmonian Definisi Kanak-Kanak di Malaysia: Isu & Cabaran”, Persidangan Meja Bulat Pengharmonian Undang-Undang Kajian Undang-Undang Bertulis, 18 November 2015, IKIM.

¹²³ (1929) 2 Ch. 210 at pp. 212-213

¹²⁴ Act 56. The Evidence Act 1950 is also applicable to Sabah and Sarawak.

¹²⁵ S.112 of the Evidence Act 1950, for further reading, please refer to Norliah Ibrahim. Legitimacy, Illegitimacy and Legitimation. A comparative study. (Unpublished Master Thesis). IIUM. 1992.

¹²⁶ Norliah Ibrahim, Najibah Mohd. Zin, Nora Abdul Hak, Roslina Che Soh, Noraini Hashim, Azizah Mohd, Normi Abd. Malek, Mohd. Hisham Mohd Kamal, *Family Law (Non-Muslim) in Malaysia*. (2013), IIUM Press, p. 351.

mother must remain unmarried to be considered as a legitimate child; and (iv) the parties involved in the marriage must have access to one another at the time when the child was conceived.

A child is said to be illegitimate when he is born out of wedlock. However, an illegitimate child may be legitimated either by statute or procedure but this only applies to non-Muslims in Malaysia.¹²⁷ The legitimation process enables a person who is born illegitimately to be subsequently legitimate.¹²⁸ In Malaysia, the law that deals with the legitimation of children born out of wedlock is encapsulated in the Legitimacy Act 1961.¹²⁹ It is important to understand that the legitimation under the Legitimacy Act 1961 is acquired by the subsequent marriage of the parents, solemnised and registered in accordance with the provisions of the Christian Marriage Ordinance 1956 or the Civil Marriage Ordinance 1952, the Christian Marriage Ordinance or the Marriage Ordinance, 1959, Sabah or the Church and Civil Marriage Ordinance of Sarawak or any Enactment or Ordinance repealed by any of the said Ordinances.¹³⁰ It is noted that since March 1982, all marriages of non-Muslims in Malaysia must be solemnised and registered in accordance with the Law Reform (Marriage & Divorce) Act 1976 (LRA) Malaysia.¹³¹ For the purposes of this discussion, an “illegitimate child” refers to a child

¹²⁷ The Legitimacy Act 1961 came into effect in Peninsular Malaysia on 23 March 1961 and in Sabah and Sarawak on 1 January 1972. The Act provides for the legitimation of a person by the subsequent marriage of his parents. The subsequent marriage must be in accordance with the provisions of the Law Reform (Marriage and Divorce) Act 1976.

¹²⁸ *Attorney General (Vic.) v Commonwealth* (1962) 107 C.L.R. 529 at 589.

¹²⁹ Act 60. The Legitimacy Act 1961 is also applicable to Sabah and Sarawak with effect from 1 January 1972.

¹³⁰ See Law Reform (Marriage and Divorce) Act 1976, s. 5.

¹³¹ Nor Liah Ibrahim, Najibah Mohd. Zin, Nora Abdul Hak, Roslina Che Soh, Noraini Hashim, Azizah Mohd, Normi Abd. Malek, Mohd. Hisham Mohd Kamal, *Family Law (Non-Muslim) in Malaysia*. (2013), IIUM Press. p.351.

that is born out of wedlock and has not been legitimised pursuant to the Legitimacy Act, 1961.

For Muslims in the Federal Territories, the relevant law is found in the Islamic Family Law (Federal Territories) Act 1984.¹³² The Act provides that *nasab* or paternity of the child is established in the man where a child born to a woman, who is married to a man more than six months from the date of the marriage, or within four months after dissolution of marriage, either by the death of the man or by divorce, provided that the woman is not remarried. Nevertheless, the man may disavow or disclaim the child before the court, by the way of *li'an* or imprecation. Therefore, the paternity of a child who is born more than four months¹³³ after the dissolution of the marriage either by the death of the man or by divorce shall not be established in the man, unless he or any of his heirs asserts that the child is his issue.¹³⁴

Meanwhile, the paternity of the child shall not be ascribed to her husband in the case of a woman who is not remarried making a declaration that the period of *'iddah* has been completed, whether the period is for death or divorce, and she subsequently delivers a child, unless the child was born less than four months from the date of the dissolution of the marriage either by the death of the husband or by divorce. It is to be noted that the legitimation of an illegitimate child does not apply to Muslim children.

Section 113¹³⁵ provides for *syubhah* intercourse. According to Section 2(1) of the Act, "*syubhah* intercourse" is described as intercourse performed on the erroneous impression that the marriage was valid or intercourse by mistake, which also includes

¹³² Act 303

¹³³ Section 112, Islamic Family Law (Federal Territories) Act 1984.

¹³⁴ Section 111, Islamic Family Law (Federal Territories) Act 1984.

¹³⁵ Section 113, Islamic Family Law (Federal Territories) Act 1984 (Act 303)

any intercourse not punishable by *hadd* in Islam. Hence, when a man has *syubhah* intercourse with a woman, and she subsequently delivers a child between six months to four years after the intercourse, the paternity of the child shall be ascribed to the man.

The second category is adopted children, who are described as children who are adopted from the real parents. Under the Adoption Act 1952, an adopted child refers to an unmarried person under the age of 21 and includes a female under that age who has been divorced, who is authorised by the court to be adopted or readopted.¹³⁶ It is to be noted that the Adoption Act 1952 does not apply to any person who professes the religion of Islam, either to allow the adoption of any child by such a person or permit the adoption by any person of a child who according to the law of the religion of Islam is a Muslim.¹³⁷ In other words, Islamic law does not confer the status or rights of a natural son or daughter on the adopted child. This is in line with a verse in the *Quran* which states that a person will not become a natural son merely by virtue of a declaration if he is not someone's real son.¹³⁸ Moreover, there have been narrations on the unfair practice during the *Jahiliyyah* period whereby a person would adopt someone's child as his own while the real heirs to the property of the man were deprived of his shares.¹³⁹

Nevertheless, customary adoptions do take place within the Malay community where a couple may adopt a child and proclaim the child as the son or the daughter of the male spouse of the couple, who adopts him or her. However, it is important to understand that the links between the child and his natural parents are not cut off. For

¹³⁶ Section 2, Adoption Act 1952.

¹³⁷ Section 31, Adoption Act 1952.

¹³⁸ NJ Coulson *A History of Islamic Law* (1971) at p. 157 in Mimi Kamariah Majid, *Family Law in Malaysia*, 1999, Malayan Law Journal, p. 217.

¹³⁹ Abdul Rahman I Doi *Shariah: The Islamic Law* (1984) at p. 463 in Mimi Kamariah Majid, *Family Law in Malaysia*, 1999, Malayan Law Journal, Kuala Lumpur, p. 217.

example, a Muslim girl is still required to obtain the consent of her biological father as the *wali* or guardian of marriage before getting married.¹⁴⁰

The third category of children are children who are found in public places without any information on the whereabouts or lineage of the parents, also known as *laqit*, which means something picked up from the ground. Hence, it can technically refer to a child who is abandoned and taken up by someone.¹⁴¹ Interestingly, the way that *laqit* is defined varies among the four schools of thought or *Mazhab*. Shafie defines *laqit* as children who are left in places such as the roadside or mosque, with no one to claim them as their own, or no one has any knowledge about the legal parents/guardian even though the children are already *mumaiyiz*.¹⁴² Meanwhile, Hanafi describes *laqit* as living children who are left by their family to prevent their shameful act from being known by the public.

In Malaysia, Section 17(e) of the Child Act 2001¹⁴³ defines an abandoned child as a child who is in need of care and protection after being abandoned by his parent or guardian, who cannot be found even after adequate enquiries had been made and no suitable adult is found who is willing and able to care for the child. Additionally, Section 2 of the same act states that the law protects a child who is below eighteen years of age.

The final category of children discussed in this chapter is stateless children. The Convention Relating to the Status of Stateless Persons 1954 refers to a stateless person as “a person who is not considered as a national by any State under the operation of its

¹⁴⁰ Mimi Kamariah Majid, *Family Law in Malaysia*, 1999. Malayan Law Journal, Kuala Lumpur, p. 218.

¹⁴¹ Abd al-Karm Zaydan, *Majmuah Buhuth Fiqhiyyah*, p. 351 in Mohamad Sujimon, *The Problems of The Illegitimate Child (Walad Al-Zina) Foundling (Laqit) in the Sunni Schools of Law*, 2010, IIUM Press, Malaysia.

¹⁴² *Mumaiyiz* is at the age (about 7 years old but before puberty) when they can differentiate good from bad. Accessed from https://ms.oxforddictionaries.com/terjemah/bahasa_melayu-bahasa_inggeris/mumaiyiz

¹⁴³ Malaysia. 2001. *Child Act (Act 611)*.

law.”¹⁴⁴ In Malaysia, there are four main groups of stateless children: refugees, *laqit*, street children, and certain groups of children in Sabah (a state in Malaysia). Being stateless means that these children are denied the right to education and the right to medical care, to name a few.¹⁴⁵ An estimated 150,000 stateless children born without citizenship have been reported in Malaysia. Being stateless leaves these children vulnerable to discrimination, abuse, exploitation, and human trafficking.¹⁴⁶ That is why it is crucial to discuss children’s rights and protect them from harm. This subject is discussed further in the sub-chapter to follow.

2.4 VIOLATION OF CHILDREN’S RIGHTS AND ITS IMPLICATIONS

As mentioned in the introduction, the rights of the children will be discussed from the perspectives of international law, Malaysian law,¹⁴⁷ and Islamic law. In *Children and the Law*, J. Roche said, “While legitimate children were seen as the property of the father, illegitimate children were seen as the property of no one,”¹⁴⁸ the socio-legal stigma that even in these modern times, children born out of wedlock are forced to confront. An illegitimate child is often considered an inferior being, to be tolerated but never fully accepted by society at large. As observed by Cassandra Lee in

¹⁴⁴ Article 1 of Convention of Stateless Person 1954 as stated in Noor Aziah Hj. Mohd Awal, Al-Adib Samuri, Jasri Jamal “Pengharmonian Definisi Kanak-Kanak di Malaysia: Isu & Cabaran”, Persidangan Meja Bulat Pengharmonian Undang-Undang Kajian Undang-Undang Bertulis, 18 November 2015, IKIM, p. 362.

¹⁴⁵ UNHCR, “UNHCR Welcomes Renewed Commitment by Malaysia to End Statelessness” 10th October 2019 at <https://www.unhcr.org/en-my/news/press/2019/10/5d9e963d4/unhcr-welcomes-renewed-commitment-by-malaysia-to-end-statelessness.html>

¹⁴⁶ Kate Mayberry, “Malaysia is home to an estimated 150,000 stateless children”, accessed on 4th January 2017 at <http://www.aljazeera.com/indepth/features/2014/07/malaysia-stateless-children-legal-limbo-20147149248312626.html>

¹⁴⁷ Discussion on Malaysian law will emphasise on Federal Constitution, Penal Code and Child Act.

¹⁴⁸ Roche, J. in *International Encyclopedia of the Social & Behavioral Sciences*, 2001 <https://www.sciencedirect.com/topics/social-sciences/illegitimate-child>

her persuasive article *Illegitimacy and Inheritance in Malaysia: Two Cautionary Tales*, she writes, “In simple terms, a “*legitimate child*” is a child born in wedlock or having been legitimised pursuant to the provisions of the Legitimacy Act, 1961.”¹⁴⁹ A child born out of wedlock can be legitimised through the subsequent marriage of his/her parents.¹⁵⁰ Children born out of wedlock are commonly known to be raised by a single parent who is usually the mother or in most cases abandoned. It could be argued that illegitimate children are usually born with a bleak future, have to strive harder and grapple with additional issues such as poor health at birth or being premature at birth due to having a young mother, especially those born outside a hospital setting. They also tend to experience delayed development in early childhood resulting in poor academic performance due to the absence of a parent or parents and feelings of inferiority, among other things.¹⁵¹

The impact of birthing an illegitimate child and growing up in a single-parent household can leave significant and permanent scars on these innocent lives as revealed in a study on the effects of out-of-wedlock births on children. The study highlights the sufferings of these children from emotional and behavioural problems, physical abuse, exposure to cigarettes, alcohol, drugs, aggression, an increased propensity to engage in violent, delinquent, and criminal behaviour, poor school performance, expulsion from school, difficult in delaying gratification, poor impulse control and a weaker sense of conscience or sense of right versus wrong.¹⁵²

¹⁴⁹ Cassandra Lee, “Illegitimacy and Inheritance in Malaysia: Two Cautionary Tales, 2019 at <https://www.thomasphilip.com.my/articles/illegitimacy-and-inheritance-in-malaysia-two-cautionary-tales/>

¹⁵⁰ Sections 4 and 5 of the Legitimacy Act, 1961.

¹⁵¹ Rachel Filinson, *Illegitimate Birth and Deprivation: Recent Findings from an Exploratory Study* Department of Behavioral Sciences, Purdue University Calumet, Hammond, USA, Sot. SC;. Med. Vol. 20. No. 4, pp. 307~314, 1985.

¹⁵² Carmen Solomon-Fears, *Non-Marital Birth: An Overview*, Congressional Research Service, 2014.

Even more disturbing is the fact that these children will almost always never recover from these psychological and behavioural ordeals, therefore distorting the normal progression of their life, compared to the life a legitimate child would generally experience.

Congruently, adopted children too, are heavily affected by their ill-fated circumstances, which allow for deep, embedded dilemma in all areas of their lives that often carries on to their adult years. Brodzinsky suggests that “as children grow up, they develop a positive sense of their identity, a sense of psychosocial well-being.”¹⁵³ This concept is rationalised by Okun who justifies that adopted children “gradually develop a self-concept (how they see themselves) and self-esteem (how much they like what they see) and ultimately, they learn to be comfortable with themselves. Adoption may make normal childhood issues of attachment, loss and self-image¹⁵⁴ complicated.

In a study conducted by Allan N. Schwartz on The Psychological Issues Faced by Adopted Children and Adults, he uncovered that those who were adopted “felt rejected and abandoned by their birth parents...accompanied by feelings of grief, loss, and a damaged sense of self-esteem”¹⁵⁵ leaving these children with a permanent thought construct that something must have been wrong with them for their parents to opt to give them away, a feeling that cannot be replaced even if they are loved and supported by their adopted parents and family. Schwartz quotes the psychologist, Eric Erikson,

¹⁵³ Brodzinsky D, editor. The Psychology of Adoption. Oxford; Oxford University Press; 1990.

¹⁵⁴ Okun BF, Anderson CM. Understanding Diverse Families: What Practitioners Need to Know. New York: Guilford Press; 1996. p. 376.

¹⁵⁵ Allan N. Schwartz, "Psychological Issues Faced by Adopted Children and Adults" American Addiction Centre, at <https://www.mentalhelp.net/parenting/psychological-issues-faced-by-adopted-children-and-adults/>

who wrote that “adolescence involves a search for self-identity.”¹⁵⁶ In most adoption cases where the genetic background is unknown to the adoptive family, the adoptee would be left with a huge gap to fill on the commonly pondered theoretical question of “Who am I?”

Through the medical lens, research has shown that adopted children who feel abandoned would show the symptoms such as aggression and angry behaviour, withdrawal, sadness, self-image problems, daydreaming, difficulty falling asleep and nightmares as they try to make sense of their story and identity.¹⁵⁷

Given these facts, it is evident that the grief that adopted children experience is real and should not be denied or avoided especially since the adoption process is an important and challenging social situation, which brings to the adopted child a new affiliation, new social network, new experiences and educational standards. Support from knowledgeable health care providers is invaluable in helping adoptive parents and their child.

Comparably, abandonment can be considered as a serious traumatic occurrence in a child’s life that would trigger many stress factors in the development of a child thus, negatively affecting the expansion of their personal growth. The welfare of the child post-abandonment is crucial in determining the resiliency of the child, “based on personal characteristics, and interactional and environmental factors.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

The dimensions of the environment fostering the healthy development of the child are: stability, continuity and positive feelings, mainly love,¹⁵⁸ as described in the article, *Complex Trauma of Abandoned Children and Adoption as a Healing Process*. Abandoned children often suffer from anger, grief and subsequently inferiority complex issues. Dr. Jonice has thoroughly discussed the three main issues faced by the abandoned child as reproduced below:

1. Trusting others: When your parent abandons you, he or she is violating your most basic human need, which is to have parents who value and enjoy you. If the one who is meant to love and care for you the most in this world leaves you, it becomes very difficult to believe that anyone and everyone who becomes important to you will not do the same. You may end up living your life constantly on-guard for the possibility of being abandoned again. It's hard to trust that your partner, friend or loved one has your best interests in mind. This holds you back from forming rich, deep, trusting relationships.
2. Guilt and shame: All abandoned children are deeply mystified about why their parents left them. Many struggle with the fact that there is no good explanation because, let's face it, apart from death there is no good reason for a parent to leave a child. In the absence of a logical explanation, the child naturally tends to blame herself. This sets up a pattern of feeling deeply responsible for her parent's choice to leave her. The abandoned child often grows up to struggle with guilt and shame.
3. Self-worth: "How could my own parent leave me?" the abandoned child wonders. Being left by the one who brought you into this world naturally makes you

¹⁵⁸ Ana Muntean, Mihaela Tomita, Violeta Stan, *Complex Trauma of Abandoned Children and Adoption as a Healing Process*, *Procedia (Social and Behavioral Sciences)* Vol. 46, 2012, pg. 273-276.

wonder what is wrong with you. The abandoned child is set up to never feel good enough. Deeply, painfully, he feels unworthy of true love and commitment.¹⁵⁹

Under those circumstances, abandoned children usually grow up struggling with separation anxiety and its severity would be damaging for the child if left untreated. Jane Leonard highlights the ways in which child abandonment may manifest itself in children: constant worry about being abandoned, anxiety or panic when a parent or caregiver drops them at school or day care, clinginess, fear of being alone, including at bedtime, frequent illness (which often has no apparent physical cause), isolation, low self-esteem, addiction, disordered eating, lashing out at others (either physically or verbally) and self-harm.¹⁶⁰

On the whole, the fear of abandonment is not a medical condition and therefore, cannot be diagnosed by a doctor. While the reason for fear of abandonment is vague, medical professionals do acknowledge its existence and seriousness if left untreated on a child's mental, emotional, physical and behavioural development.

As a final point, Malaysia's predicament on stateless children, especially illegitimate and abandoned children, is a challenging issue to overcome given that the National Registration Department (NRD) has a complex bureaucratic process that only allows a child to follow the citizenship of the mother. Furthermore, abandoned children are declared as "*bukan warganegara*" or non-citizen in their birth certificate. The child would subsequently have to apply for a green identity card which is issued to temporary residents or people with no citizenship.

¹⁵⁹ Jonice, "How to Overcome Abandonment Issues from Childhood" at <https://drjonicewebb.com/the-3-main-issues-of-the-abandoned-child-in-adulthood/>.

¹⁶⁰ Leonard, J. *What to Know About Abandonment Issues*, Medical News Today, Feb 26, 2020.

The US Department of State has identified the plight of stateless individuals in the following manner:

“Without citizenship, stateless people have no legal protection and no right to vote, and they often lack access to education, employment, health care, registration of birth, marriage or death, and property rights. Stateless people may also encounter travel restrictions, social exclusion, and heightened vulnerability to sexual and physical violence, exploitation, trafficking in persons, forcible displacement, and other abuses.”¹⁶¹

As a result, stateless children are deprived of their rights even though their residency within a country is recognised. The institute of statelessness as quoted by The Asian Post defined the dilemma faced by a stateless person as follows: often denied access to education, healthcare and other services, no right to a passport; unable to legally cross international borders, may have to join the workforce at an early age, the status of statelessness may be passed down to their children, exposure to harassment, discrimination and predatory practices, uncertain future and exposure to other forms of insecurity.¹⁶²

This raises the question of how being stateless in this modern time would impact the lives of those who do not have a nationality? How does the system of government allow for a person to feel displaced and alienated in their birth country, among the people who share the same language, race and culture? In an online published book titled *The World's Stateless*, the author writes:

“Modern bureaucracies are crafted in a way that takes the possession of a nationality as the norm. Statelessness is the neglected, in fact largely forgotten state of exception. To exercise rights or access services, to be treated as belonging or even with respect – in practice commonly requires a nationality.”¹⁶³

¹⁶¹ US Department of State, Bureau of Population, Refugees and Migration, “Statelessness”

¹⁶² Athira Nortajudin, 27th March 2020, “Malaysia’s Stateless Children” The Asean Post.

¹⁶³ The World Stateless. “Institute on Statelessness and Inclusion,” Netherland, Dec. 2014.

While UNCRC firmly supports the notion that every child born should be entitled to a name and nationality, stateless children share similar feelings of frustration, discrimination and despair that will, consequently, profoundly affect their ability to enjoy their childhood, lead a healthy life, study and fulfil their ambitions. In the words of the former UN High Commissioner for Refugees, António Guterres:

“In the short time that children get to be children, statelessness can set in stone grave problems that will haunt them throughout their childhoods and sentence them to a life of discrimination, frustration and despair... None of our children should be stateless. All children should belong.”¹⁶⁴

A formerly stateless Kenyan Nubian elder, Issa Abdul Faraj had openly declared that:

“In Kenya, if you do not have an ID card, you don’t exist. Technically you cannot even leave your house, because if you leave your house and you are challenged ‘Where is your ID?’ That is considered a crime. Now, if you cannot leave your house, how do you live? How do you look for a job? You can’t even open a bank account, you can’t transact business, and you cannot own anything, because you don’t exist.”¹⁶⁵

With this huge deprivation of a larger sense of belonging and a sense of displacement, the frustrations faced by these stateless children are not only internal but more so externally when faced with the world at large. Presumably, they would feel like foreigners in their own birth country, a stigmatisation that the Universal Declaration of Human Rights aims to eradicate with the declaration that “Everyone has the right to a nationality.”¹⁶⁶

¹⁶⁴ UNHCR, “UNHCR report reveals debilitating impact statelessness children” 3 Nov 2015, at <https://www.unhcr.org/en-my/news/press/2015/11/563762946/unhcr-report-reveals-debilitating-impact-statelessness-children.html>.

¹⁶⁵ *Ibid.*

¹⁶⁶ Universal Declaration of Human Rights, Article 15.

Children today are still being victimised and their rights are violated on so many levels on a daily basis. Unlike most children around the world whose births are eagerly awaited and celebrated on joyous occasions, such as baby showers and birthdays by family, friends and to some extent society, illegitimate, abandoned, adopted and stateless children never truly have the same experience. The reality is that it is highly likely that the birth and future of such children be bleak and filled with uncertainty. Therefore, it is society's responsibility to ensure that these ill-fated children receive a decent life and future.

2.4.1 Children's Rights under International Law

Child abandonment has received increased media attention in the past few years, and many solutions have been proposed, from harsher penalties to new teen activity centres to an anonymous, safe drop-off site; however, no data is available to show the effectiveness of any approach, and no overarching policy decision has been made.¹⁶⁷ The International Society for the Prevention of Child Abuse and Neglect recently compared definitions of abuse from 58 countries and found some commonality in what was considered abusive. In 1999, the WHO Consultation on Child Abuse Prevention drafted the following definition. "Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's

¹⁶⁷ Noor Aziah Mohd Awal, "Legal Status and Rights of Illegitimate Children in Malaysia: The Conflicting Rights?" International Survey of Family Law 2009.

health, survival, development or dignity in the context of a relationship of responsibility, trust or power.”¹⁶⁸

Owing to the acceptance by the courts in the past that children possess certain personal characteristics, many protected rights are deemed necessary under the constitution. Children’s right to life and all the rights that it entails are considered independent rights which should be enjoyed by the children,¹⁶⁹ such as the opportunity to be raised and educated, the liberty to work, rest, openly practice their religious or spiritual beliefs and to be allowed to follow their conscience, to name but a few. In a legal proceeding, the interests of a child and his welfare does take precedence over all other matters. Accordingly, the dominant concern is not with the interest of either the parent or an adult third party. In other words, it is merely incidental for a decision to be favourable to any such party. In theory, the child should be placed firmly at the centre of such proceedings; hence, this clearly implies that the court’s dominant concern must lie with promoting his or her best interests.¹⁷⁰

In 1995, the Malaysian government ratified the UNCRC, an international human rights treaty which upholds the civil, political, economic, social, health, and cultural rights of all children below 18 years old. Adopted by the United Nations General Assembly on 20 November 1989, it sets out basic standards for the welfare of children at different stages of their development. Historically recognised as the pioneer global binding code of child rights, it consists of 54 articles guided by four core principles:

¹⁶⁸ WHO. 2021. “Child Abuse and Neglect by Parents and Other Caregivers. *World Report on Violence and Health*.

https://www.who.int/violence_injury_prevention/violence/world_report/chapters/en/, p. 59.

¹⁶⁹ *Ibid.*

¹⁷⁰ Shannon, G. 2005. *Child Law*. Ireland: Thomson Round Hall.

- (a) Survival rights - These are the right to life and the needs that are most basic to existence including an adequate living standard, shelter, nutrition and access to medical services.
- (b) Development rights - These are things which children require in order to reach their fullest potential. They include the right to education, play and leisure, cultural activities, access to information, freedom of thought and conscience and religion.
- (c) Protection rights - These are rights to be safeguarded against all forms of abuse, neglect and exploitation. They cover issues such as special care for refugee children, torture, and abuses in the criminal justice system, involvement in armed conflict, child labour, drug abuse and sexual exploitation.
- (d) Participation rights - These rights allow children to take an active role in their communities and nations. These include freedom of expression, to have a say in matters affecting their lives, freedom of association and assembly.¹⁷¹

It is worth mentioning that Malaysia assented to the UNCRC, with reservations, on 17 February 1995. This means that Malaysia's ratification of the UNCRC contains several conditions in the form of "reservations", which allow the government to exclude or modify the legal effect of certain provisions in the UNCRC. Although, Malaysia withdrew its reservations in respect of Articles 22, 28(1)(b), (c), (d) & (e), 28(2), 28(3), 40(3) & (4), 44 & 45 in 1998, a few reservations remained as follows:

- i. Article 1 - Definition of a child to be under the age of 18 years.
- ii. Article 2 - Principle of non-discrimination.

¹⁷¹ *Ibid.*

- iii. Article 7 - Right to be registered at birth and to a name at birth, right to acquire nationality, the right to be cared for by his/her parents. The State Party obligation to ensure the implementation of these rights, in particular where the child would otherwise be stateless.
- iv. Article 13 - Right to freedom of expression including the freedom to seek, receive and impart information and ideas.
- v. Article 14 - Right to freedom of thought, conscience and religion.
- vi. Article 15 - Right to freedom of association and to freedom of peaceful assembly.
- vii. Article 28(1) (a) - State Party obligation to make primary education compulsory and available free to all.
- viii. Article 37 - The prohibition of torture or other cruel, inhuman or degrading treatment or punishment, life imprisonment/capital punishment, arbitrary detention. Any child deprived of his/her liberty must be treated with humanity, dignity and afforded the right to prompt legal access, right to a fair trial etc.¹⁷²

At present, Malaysia has five reservations to the UNCRC relating to non-discrimination,¹⁷³ name and nationality,¹⁷⁴ freedom of thought, conscience, and religion,¹⁷⁵ free and compulsory education at the primary level,¹⁷⁶ and torture and deprivation of liberty.¹⁷⁷ The five reservations were made on the grounds that the UNCRC Articles were said to “not conform to the Constitution, national laws and

¹⁷² SUHAKAM, Convention on The Rights of the Child, Report on the Round Table Discussion, Kuala Lumpur, 2004.

¹⁷³ Article 2, CRC

¹⁷⁴ Article 7, CRC

¹⁷⁵ Article 14, CRC

¹⁷⁶ Article 28 (1)(a), CRC

¹⁷⁷ Article 37, CRC

national policies of the Government of Malaysia, including *Shariah* law.”¹⁷⁸ Three earlier reservations to the UNCRC, namely Article 1 (definition of the child), Article 13 (freedom of expression) and Article 15 (freedom of assembly and participation) were withdrawn by the government in 2010. Correspondingly, this is in conformity with the Federal Constitution which sets out the basic human rights standards that also extends to children as follows: liberty of the person (Article 5); prohibition of slavery and forced labour (Article 6), and rights in respect of education (Article 12).

2.4.2 Children’s Rights under Islamic Law

*“...kill not your children because of poverty - We provide sustenance for you and for them.”*¹⁷⁹ This quotation showcases a profound understanding in Islam and its preaching that a child has the right to life from the time of its conception, which is considered to be sacred, and that the child will be provided for by the Almighty. As Prophet Muhammad said, “each of you is a shepherd and each of you is responsible for his flock. The ruler is a shepherd and is responsible for his flock. A man is the shepherd of his family and is responsible for his flock. A woman is the shepherd of her husband’s household and is responsible for her flock”.¹⁸⁰ This is a clear indication of the emphasis placed by Islamic teachings on the importance of family expansion and caring for one’s offspring and family members. The correct Islamic advice for raising and rearing children covers all aspects of life. Just like Islam itself, it is holistic advice. Physical, emotional, and spiritual wellbeing are all equally important. Unfortunately, there have

¹⁷⁸ Ikim Views, Regulating Children’s Rights, Star Online, 12th October 2010, retrieved from <https://www.thestar.com.my/opinion/letters/2010/10/12/regulating-childrens-rights>.

¹⁷⁹ Quran: 6:151

¹⁸⁰ Saheeh Bukhari & Muslim

been many misconceptions on the *Shariah* rulings pertaining to children's rights when in reality, Islam places the interest of the child above all else. Malaysia is one of the few countries that has a dual system of law, civil and *Shariah* law. In matters concerning the rights of Muslim children, "the *Shariah* shall be taken as the definitive source of social interests because Islam enjoys a unique and exalted position by the Federal Constitution."¹⁸¹

Moreover, the protection received by children under *Shariah* is holistic because it addresses and recognises the intrinsic plight of every child in search of the truth. In Malaysia, the law applicable to Muslims, other than statutes of general application which apply to both Muslims and non-Muslims, is Islamic law (the *Shariah*) and the statutory provisions based on Islamic law embodied in various state enactments.¹⁸² Rules concerning the abandoned child are part of Islamic family law and are to be dealt with by the state enactments.¹⁸³ However, the state enactments do not contain provisions on the abandoned child, therefore the law applicable in such a case is Islamic law (the *Shariah*).¹⁸⁴ *Shariah* law advocates the right to life, security and protection of

¹⁸¹ Article 3(1), Federal Constitution

¹⁸² Malaysia consists of thirteen states. All the states have their own Islamic law enactments dealing among others with Muslim personal law. Examples are Islamic Family Law (Federal Territories) Act 1984, Islamic Family Law Kelantan Enactment 2002 and Islamic Family Law Selangor Enactment 2003. For further reading, see Ahmad Ibrahim, *The Administration of Islamic Law in Malaysia* (Ikim 2000).

¹⁸³ Powers to enact law on Islamic law is entrusted to the state as set out in the Federal Constitution in item 1 of the State List. The article provides that, "Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya. Islamic law and personal and family law of persons professing the religion of Islam, including Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship...." See List II, State List, Ninth Schedule, (art. 95B) (1) (a).

¹⁸⁴ It is provided in the Islamic Civil Procedure of the state enactments that where no provision is stated specifically under the enactments, the court will refer to *Hukum Syara'*. See for example *Shariah Civil Procedure Code Enactment* (Selangor). 1991, s. 253(2). *Hukum Syara'* refers to Islamic law of the recognised madhhab. See *Administration of Islamic Law* (Federal Territories Act 1993, s. 2. However, under the new enactments, i.e. in Kelantan, Malacca and Selangor. *Hukum Syara'* is defined as *Hukum Syara'* based on the school of Shafie or any of the school of Maliki, Hanafi or Hanbali. See *Islamic Family Law* (Kelantan) Enactment 2002, (No. 6), s. 2(1), *Islamic Family Law* (state of Selangor) Enactment 2003 (No. 2), s. 2(1) & *Islamic Family Law* (Malacca) Enactment 2002 (No. 12), s. 2(1). 41

honour, right to property and protection of property, right to maintenance (including food/suckling and clothing), right to medical treatment, right to accommodation, right to progeny, and right to education.¹⁸⁵ All these rights have been codified under the Islamic Family Law Act/enactment of the states in Malaysia which provide that the duty to maintain the children is imposed on the father.¹⁸⁶ Rules concerning the abandoned child are part of Islamic family law and should be dealt with by the state enactments. The state enactments do not contain provisions on abandoned children but the Child Act 2001 does. An abandoned child is also known as a foundling (*laqit*) from an Islamic legal viewpoint. As regards the protection of the abandoned child's rights to identity, Islamic law protects the right of a child, including the abandoned child, to a good name as it is the first identity of a child differentiating him from another and the child is called with such name. This is in line with *Surah Al-Ahzab*, verse 5 which states:

“Call them by (the names of) their fathers; that is more just in the sight of Allah. But if ye know not their father's (names, call them) your brothers in faith or your *Mawlas*”¹⁸⁷

On a similar note, the legal requirement for registration of the birth of a child upon birth is more of a mechanism by the State to control and monitor its citizens. In Islamic law, this practice falls under the concept of protecting public interest (*al-masalih al-mursalah*) which is similar to the citizenship of the child being determined by boundaries and limitations. Therefore, it is appropriate to impose rules concerning the determination of a person or a child's citizenship to ensure that citizenship belongs to a particular state based on its area or location.

¹⁸⁵ See Mahmud Saedon Awang Othman, 1998, “Hak Kanak-Kanak Menurut Pandangan Islam”. Vol. 6. Kuala Lumpur: Dewan Bahasa Dan Pustaka, pp. 96-110.

¹⁸⁶ Section 72 of the Islamic Family Law (Federal Territories) Act, 1984.

¹⁸⁷ Al-Quran, *Surah Al-Ahzab* verse 5

On another note, Islamic law also recognises foster care which is described as foster parenting that does not affect the natural status of the child. In line with the provisions in the UNCRC, the Covenant on the Rights of the Child in Islam 2005 (CRCI) emphasises the protection of the right of the abandoned child to identity which includes their name, title, and nationality. Other than that, the CRCI also provides that abandoned children will have the right to guardianship other than adoption which renders paternity status that is not recognised in Islamic law.¹⁸⁸

Meanwhile, on the issue of abandoned Muslim children in Malaysia, an NGO known as Sisters in Islam (SIS) has questioned the need to register the surnames of the Muslim children as “binti/bin Abdullah” when they are born within 6 months of the date of marriage as this would lead to serious and unjust repercussions on the emotional well-being and future of the children.¹⁸⁹ The rationale for this is that it is unfair for the Muslim child to be labelled “illegitimate” and punished for presumably the sin of the parents for conceiving the child before marriage. Apart from that, SIS pointed out that the biological father is denied the duty to exercise all parental responsibilities and to confer all rights the child is entitled to when his name is not included in the child’s name.¹⁹⁰ Nevertheless, it is important to note that the ruling issued by the National Registration Department (NRD) that is believed to be originated from a *fatwa* states that a pregnant woman may get married to the father of the child, but it has been established that “the man cannot be recognised as the father of the unborn baby, the baby cannot inherit from him, cannot be his *mahram* (unmarriageable kin) and the man cannot be

¹⁸⁸ Azizah Mohd. 2011. “Abandoned Children’s Right to Identity Protection in Malaysia” *US-China Law Review*. Vol. 8:389; p 389-400.

¹⁸⁹ Letter to Editor “Respect a Child’s Right to a Name”, an Identity and Family, 6 November 2011. (Sisters in Islam). Accessed at <http://sistersinislam.org.my/news.php?item.927.8> on 5th January 2017.

¹⁹⁰ *Ibid.*

the baby's guardian.” However, it is also stated in the *Qur'an* that no one is to bear the burden of another, nor passes one's burden to another.¹⁹¹ From another perspective, this injunction should act as guidance towards compassionate care and make it possible to fulfil the obligation of providing in the best interests of the child. Unfortunately, this NRD ruling has punished innocent children forcing them to bear the burden of their parents' actions.

Additionally, SIS has railed against the injustice of labelling a child “illegitimate” because it will deprive the child of its rights and entitlements as a family member. Over the years, SIS highlighted that they have received a wide range of complaints about the rights of children born out of wedlock, children conceived out of wedlock but born within a marriage and adopted children. It should be noted that this issue does not only arise at the time of birth registration, but also for identity card application, school registration, marriage purposes, and upon the deaths of their parents. Therefore, the primary concern in all laws, policies, and decisions that affect children should be to uphold the best interests of the child.¹⁹³ Overall, this principle is upheld by Islamic teachings, universal human rights, and Malaysia's law-making process.

Related to the above, it would be relevant to refer to Sections 13 and 13A of the Births and Deaths Registration Act 1957. Section 13 states as follows:

“Notwithstanding anything in the foregoing provisions of this Act, in the case of an illegitimate child, no person shall as father of the child be required to give information concerning the birth of the child, and the Registrar shall not enter in the register the name of any person as father of the child, except at the joint request of the mother and the person acknowledging himself to be the father of the child,

¹⁹¹ Al-Quran, Surah Fatir verse 18.

¹⁹³ SIS believes that there must not be any markings on the birth certificate or identity cards to indicate that the child was conceived or born out of wedlock to prevent further stigmatisation of the child. See Letter to Editor. “Respect a Child's Right to a Name”, an Identity and Family, 6 November 2011. (Sisters in Islam). Accessed at <http://sistersinislam.org.my/news.php?item.927.8> on 5 January 2017.

and that person shall, in that case, sign the register together with the mother.”¹⁹⁴

Meanwhile, Section 13A states that:

- (1) “The surname, if any, to be entered in respect of a legitimate child shall not ordinarily be the surname, if any, of the father.
- (2) The surname, if any, to be entered in respect of an illegitimate child may where the mother is the informant and volunteers the information, be the surname of the mother; provided that where the person acknowledging himself to be the father of the child in accordance with Section 13 request so, the surname may be the surname of that person.”¹⁹⁵

On a related note, it has been argued that the rationale for inserting the titles of “bin” or “binti” into the names of Muslim children is the need to determine the lineage for inheritance purposes.¹⁹⁶ The titles serve as verification that the child is a biological child (legitimate child) of the parent who has been attributed Bin/Binti, and it is common among Malaysian Malays considering that they do not usually have surnames or family names.¹⁹⁷ This is in line with the National Registration Order 8/2009 which states under Section 13 of Births and Deaths Registration Act (Act 299), the surnames of illegitimate children can only be Bin/Binti Abdullah or Asma Al-Husna.¹⁹⁸ In a Court of Appeal case, a couple insisted the NRD should replace the surname of their child bearing the name “Abdullah” with that of the child’s father name in the birth certificate. It is noted however that the court’s decision was not in line with the *fatwa* issued concerning an illegitimate Muslim child.¹⁹⁹ A possible explanation for this is that the scope of jurisdiction of the NRD only extends to civil matters while the issue relating

¹⁹⁴ Section 13 of Births and Deaths Registration Act 1957.

¹⁹⁵ Section 13A of Births and Deaths Registration Act 1957.

¹⁹⁶ N.a., *Why Muslims have ‘bin’ or ‘binti’ in their names*. Retrieved from www.dailyexpress.com.my, 11th January 2017.

¹⁹⁷ *Ibid.*

¹⁹⁸ Section 13 of Births and Deaths Registration Act (Act 299)

¹⁹⁹ N.a. 29th July 2017. *JAKIM awaits apex court decision on surname of illegitimate Muslim children*, retrieved from www.malaymail.com on 19 September 2018.

to the Births and Deaths Registration Act 1957 involves illegitimate Muslim and non-Muslim children. The decision of the Court of Appeal attracted many comments from the public who expressed their concerns about letting the name of the father be used by illegitimate children as it would make it impossible to differentiate between legitimate and illegitimate children. Nevertheless, the Federal Court in a majority 4-3 decision has ruled that a Muslim child conceived out of wedlock cannot bear his father's name. However, the Federal Court also issued a consequential order for the NRD director-general to remove "bin Abdullah" from the birth certificate of the child in the case.²⁰⁰ Some claim that the name of a child falls under the authority of the NRD and that the underlying matter does not concern legitimacy. In response to this, it is argued that perhaps the best avenue is to refer the matter to the *Shariah* court to avoid the overlap between *Shariah* matters and civil matters concerning the Muslims. In any event, the law should be clarified to avoid further confusion on this matter.

In a paper published in an Islamic journal, the researcher, Mahamad Naser bin Disa sheds some light on the biased views held about the implementation of *Shariah* law in Malaysia especially in matters concerning children's rights. The author also observes, "it is justified for Malay Muslim legislature to make the necessary amendment to give enhanced effect to penal laws to fulfil the will of the people and the religious duty of the State in order to protect and safeguard our children's right to a decent upbringing...this becomes even more necessary given the special position of Islam in the Federal Constitution."²⁰¹

²⁰⁰ Murni Wan Omar, 7th February 2018, "NRD right in referring to fatwa in case of Muslim child born out of wedlock, court told." Retrieved from www.nst.com.my on 19th September 2018.

²⁰¹ Mahamad Naser Disa, "An Evaluation of the Implementation of *Shariah* Law in Malaysia in Protecting the Rights of the Children" *Al-Itqan*, Vol. No. 2, Issue No. 2, June 2018, 5-19, IIUM Press.

Undoubtedly, the best interests of the child must be the primary concern in the establishment of all laws, policies, and decisions which may affect the children.²⁰² As has been noted, this principle is also upheld by Islamic teachings, universal human rights, and Malaysia's law-making process. It is argued that the interpretation of the best interests of the child principle should accommodate Islamic law principles. Because decisions of the court may become precedent, cases must be decided carefully and the courts have to treat the welfare of the children as its paramount consideration when taking into account the divergent opinions and justifications.

2.5 CONCLUSION

In conclusion, given the tragic and personal history of every abandoned child, one can be certain that his or her future would be greatly impacted by the traumatic event of the abandonment itself. What makes or breaks the spirit of the child would be his or her resilience in resuming life after the tribulations endured. The resilience of the child is generally based on his or her personal characteristics along with their interactional and environmental factors. To put it differently, a child who succeeds in conquering his or her adversities and complex trauma faced during the time of the abandonment, better and brighter future for instance, is a child who is capable of developing a secure attachment within the adoptive family. This is what defines a resilient child, an individual who is able to make the best out of their worst circumstances in order to achieve a better and brighter future for not only himself but

²⁰² SIS believes that there must not be any markings on the birth certificate or identity cards to indicate that the child was conceived or born out of wedlock to prevent further stigmatisation of the child. See Letter to Editor "Respect a Child's Right to a Name", an Identity and Family, 6 November 2011. (Sisters in Islam). Accessed at <http://sistersinislam.org.my/news.php?item.927.8> on 5th January 2017.

his own future family and his lineage. These are the children who need our help and only when we invest in our children and strengthen our institutions to operate with a child-friendly lens will we allow for a tangible advancement to take shape in Malaysia's development.

This chapter presents an extensive discussion on the four categories of children and the effects of being illegitimate, adopted, abandoned and/or stateless from a medical and socio-cultural perspective, the extent to which international and Islamic laws protect the rights of these four groups of children, and the solutions to overcome the problems faced by each group. This paper also reveals that both international law and Islamic law have adequate provisions for the protection of children. Ideally, what is needed is a broad-based constituency in favour of children's rights. Education and advocacy thus need to be at the core of strategies to expand local understanding of basic human rights. It must be reiterated that we are all responsible for all our children. We need to have a genuinely shared commitment and sustained follow-up to encourage these future goal-setters.

Children who are subjected to abusive acts would not be able to enjoy their rights without the protection of the laws. As will be explained in the next chapter on the Malaysian legal framework on children's rights, Malaysia has in place laws to protect children. It is important to first gain a full understanding of the rights of children from various legal perspectives. Without a clear understanding of the categories of children and their rights, it would be difficult to ensure that the welfare of children is protected.