

The objectives of Islamic legislation in the rulings concerning foundlings

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Abstract:

In this research, I addressed the partial objectives of Kamal Ibn al-Humam, which he stated in his book Fath al-Qadir in the chapter on foundlings. I divided this research into an introduction and two sections. The first section includes two requirements: the first requirement is preserving life, and the second requirement is providing for the foundling. The second section includes two requirements: the first requirement is the freedom of the foundling, and the second requirement is preserving the religion of the foundling. These issues were studied and arranged in three stages: documenting Ibn al-Humam's words, then studying the issue, and finally concluding with a summary of the issue. I then concluded the research with a conclusion that includes the most important results I reached, and I mentioned the most important sources and references that I relied on in this research.

Keywords: (partial collateral damage, foundling, maintenance, freedom)

Introduction

Praise be to God, we praise Him, we seek His help, we ask His forgiveness, and we repent to Him. After that... Islamic law came with what makes humanity happy after its misery, unites its scattered people after their division, and guides them to the most upright path and the most righteous way. It came with the preservation of the five necessities, including the preservation of lineage, to protect societies from corruption, dissolution, and the loss of lineages. The issue of the foundling is one of the jurisprudential issues of great importance because of what it entails in terms of preserving the human being and protecting his dignity.

First: The importance of studying this topic

Studying the topic of foundlings highlights the value of preserving life and human dignity in legislation and demonstrates the human and social dimension of the rulings. It also helps in understanding the legal duties towards the care, maintenance, and guarantee of the rights of foundlings, and contributes to enhancing social awareness of the responsibility to protect vulnerable groups. Studying this issue also contributes to linking the jurisprudential rulings with contemporary reality, which helps in providing practical solutions that take into account the objectives of Sharia and the requirements of life.

Second: The research problem

Linking the branch of jurisprudence related to foundlings to its purpose, which expresses the spirit of Islamic jurisprudence.

Third: Research Methodology

This research relies on the descriptive analytical approach by presenting the partial objectives that show the jurisprudential branches in the chapter on finding lost property, by referring to the approved legal sources from the Book and the Sunnah and the opinions of the jurists.

Fourth: The reason for my choice of this topic

The reason I chose this topic is to address a sensitive issue concerning the protection of children of unknown parentage and ensuring their rights.

Fifth: Research Plan

First topic: Partial objectives in the chapter on finding lost property

First requirement: Reviving the soul

The second requirement: Spending on the foundling

Section Two: Partial Objectives in Elevating the Status of Foundlings

First requirement: Freedom of the foundling

The second requirement: Preserving the religion of the foundling

First topic

Partial objectives in the chapter on picking up

First requirement: Reviving the soul

A foundling is a child found abandoned on the roads, whose father and mother are unknown; the word is derived from the root meaning "to be found".¹

In terminology: "It is the name of a newborn who was abandoned by his family out of fear of the family or to escape the accusation of adultery."²

A foundling is a child who is found in a public place and whose lineage is unknown. The state or society takes care of him, and he has the right to a name, nationality, care, education, and health according to Sharia laws and jurisprudential texts.

Evidence from the Quran and Sunnah:

Evidence from the book:

God Almighty says: "Whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had killed all of mankind. And whoever saves one - it is as if he had saved all of mankind." [Al-Ma'idah: 32]

The implication of the Quranic verse is that picking up a lost animal is obligatory because it saves a life. This obligation is a collective duty; if some people perform it, it is no longer required of the rest, because the purpose is achieved in doing so.⁽³⁾

In this sublime text, we speak of reviving a life, meaning that whoever saves a person who was on the verge of death that is reviving him. Therefore, caring for and protecting a foundling falls under the category of reviving a Muslim life and saving it from certain death.⁽⁴⁾

Therefore, taking in and protecting a foundling is tantamount to saving a Muslim life by preventing the cause of death from being left behind. Protecting a foundling and preventing their death is an obligation upon all who know of them. If a sufficient number of people fulfill this obligation, it is no longer required of the rest.⁽⁵⁾

Therefore, raising it is better than leaving it, because leaving it means neglecting to show mercy to the young, and because it is on the verge of death, and reviving the living is achieved by removing the cause of death from it.⁽⁶⁾

And His Almighty saying: "And cooperate in righteousness and piety" [Al-Ma'idah: 2]

Based on this verse, "Whoever abandons a foundling and does not take him in, and leaves him until he dies, is undoubtedly a murderer."⁽⁷⁾

These pieces of evidence, along with their implications, confirm that taking in a foundling is a partial objective in this legal ruling, and it is between obligation and recommendation.

Evidence from the Sunnah:

The Prophet (peace and blessings be upon him) said: "Whoever does not show mercy to our young and respect to our old is not one of us."⁽⁸⁾

Because raising, protecting, and caring for him shows compassion for children, which is one of the best deeds after faith in God Almighty, as mentioned by the predecessors: "The best deeds after

¹ Majd al-Din Abu al-Sa'adat Ibn al-Athir, *Al-Nihayah fi Gharib al-Hadith wa al-Athar* (Beirut, Al-Maktabah al-Ilmiyyah, 1399 AH - 1970 AD), 4, 264

² Husayn ibn Ali al-Saghnafi al-Hanafi, *Al-Nihayah fi Sharh al-Hidayah* (Center for Islamic Studies at Umm al-Qura University, 1435-1438 AH) 12, 121

³ Zain Al-Din Al-Tanoufi, see *Al-Mumtani' fi Sharh Al-Muqni'*, (Study and Verification, Abdul-Malik bin Abdullah bin Dahish, 1424 AH - 2003 AD) 3, 140.

⁴ Muhammad Abi Zahra, *Zahrat al-Tafasir*, (Dar al-Fikr al-Arabi), 4, 2140.

⁵ Dubayan bin Muhammad Al-Dubayan, *Financial Transactions: Past and Present*, (1432 AH), 20, 225.

⁶ Hussein bin Ali Al-Saghnafi Al-Hanafi, *Al-Nihayah fi Sharh Al-Hidayah* (Center for Islamic Studies at Umm Al-Qura University, 1435 AH - 1438 AH) 12, 121.

⁷ A group of authors, *Encyclopedia of Consensus in Islamic Jurisprudence*, (Kingdom of Saudi Arabia, Dar Al-Fadilah for Publishing and Distribution in Riyadh, 1433-1443 AH, 2012-2021 AD) 3, 826.

⁸ Abu Isa al-Tirmidhi, *Al-Jami' al-Kabir* (Sunan al-Tirmidhi), (Beirut, Dar al-Gharb al-Islami, 1996), 4, 321, 1919.

faith in God Almighty are glorifying God's command and showing compassion for God's creation."⁽⁹⁾

"It was reported on the authority of Al-Hasan Al-Basri, may God have mercy on him, that a man found a foundling and brought him to Ali, may God be pleased with him, and he said, 'He is free, and for me to have been in charge of his affairs like you were in charge of him is more beloved to me than such and such.' So Ali, may God be pleased with him, preferred, despite his greatness, that he be the one who found him, and this indicates knowledge that raising him is better than leaving him. If it is said, 'What is the meaning of this statement, and he was able to take him by virtue of the Imamate?' we say: 'Yes, but his revival was in finding him when he was on the verge of death.'"⁽¹⁰⁾

Sayings of scholars:

This partial intention was not only established by Imam Ibn al-Humam (may God have mercy on him), but I also found it among a group of fundamentalists and others:

There is no disagreement among scholars that taking in a foundling is an individual obligation upon the finder if there is fear for him of death and no one else knows about him, because taking in a foundling has the meaning of saving a Muslim soul from destruction, and saving the living by averting death from him, and saving the human soul is one of the five necessities.¹¹

"Taking a lost item is recommended because it involves saving a Muslim life, provided there is no strong likelihood of it being lost. If there is a strong likelihood of it being lost, then it becomes obligatory."¹²

If someone is not feared to be in danger of falling into a well, then raising him up is a communal obligation (*fard kifayah*), but if there is fear of death, then it is an individual obligation (*fard 'ayn*), like someone who sees a blind person falling into a well; in that case, it is obligatory upon him to prevent him from falling in.⁽¹³⁾ "Taking in is rescuing the foundling from death and volunteering to protect him."⁽¹⁴⁾

Since finding a foundling is recommended, the purpose of this necessitates that it be obligatory if there is fear that the foundling will be lost or perish. Undoubtedly, the obligation to find a foundling is stronger, so giving it precedence is more appropriate.⁽¹⁵⁾

Taking in a foundling is obligatory because it involves saving a Muslim life, just as it involves feeding him if he is in dire need or rescuing him from drowning. It is a communal obligation; if one person fulfills it, the obligation is lifted from the rest. If the group neglects it, they are all sinful if they knew of the child's plight and left him unattended despite being able to take him in.⁽¹⁶⁾

Therefore, it is necessary to take the foundling and not leave him, because if he is left, he will be lost and perish. There is no disagreement among scholars about this, but they differed about the found money. So it is a collective obligation if it is not feared for him, otherwise it is an individual obligation. It is a collective obligation if more than one person knows about it, otherwise it is an individual obligation. It is not hidden that this is the case with every collective obligation. The least

⁹Husayn ibn Ali al-Saghnafi al-Hanafi, *Al-Nihayah fi Sharh al-Hidayah* (Center for Islamic Studies at Umm al-Qura University, 1435-1438 AH), 12, 12

¹⁰Muhammad ibn Ahmad al-Sarakhsi, *Al-Mabsut*, (Egypt, Al-Sa'adah Press) 10, 209

¹¹The rulings concerning foundlings between Islamic Sharia and the law / Master's thesis by student Munir Abdul Ghani Abu Al-Haija / 35.

¹²Kamal al-Din Muhammad ibn Abd al-Wahid, *Sharh Fath al-Qadir ala al-Hidayah*, (Egypt, Mustafa al-Babi al-Halabi Library and Printing Company, 1389 AH - 1970 AD), 6, 110.

¹³Nur al-Din Abu al-Hasan al-Harawi, *Fath Bab al-Inaya bi Sharh al-Nuqaya* (Beirut: Dar al-Arqam ibn Abi al-Arqam, 1418 AH - 1997 CE), 3, 89

¹⁴A group of authors, *Encyclopedia of Consensus in Islamic Jurisprudence*, (Kingdom of Saudi Arabia, Dar Al-Fadilah for Publishing and Distribution in Riyadh, 1433-1443 AH, 2012-2021 AD) 3, 826.

¹⁵Uthman bin Ali Al-Zulai'i, Tabyeen Al-Haqiq Sharh Kanz Al-Daqa'iq wa Hashiyat Al-Shalabi, (Cairo, Al-Matba'ah Al-Kubra Al-Amiriyah, 1314 AH) 3, 297.

¹⁶Muwaffaq al-Din Abu Muhammad Ibn Qudamah al-Maqdisi, *Al-Mughni*, (Kingdom of Saudi Arabia, Dar Alam al-Kutub for Printing, Publishing and Distribution, 1417 AH - 1997 AD) 8, 350.

that is required is to take him not with the intention of raising him, but rather to bring him to the judge.⁽¹⁷⁾

Therefore, the ruling on taking in a foundling is a communal obligation if several people know about it. If only one person knows about it, then it becomes an individual obligation for him to take it in, to preserve life from death, because the foundling is a human being worthy of respect, so it is obligatory to preserve him like someone in dire need of another's food, or even more so.⁽¹⁸⁾

Summary:

study of this objective revealed that:

Taking in a foundling is one of the actions encouraged by Islamic law and is one of the objectives of Islamic law. This is because it involves preserving a life and protecting it from destruction. Therefore, we find that most of the texts indicate the desirability of taking in a foundling if it is not obligatory. From a legal perspective, it is about preserving a life, which is one of the five necessities, and preserving a life from being lost. In terms of status, we find that the status of a foundling is like the status of an orphan, if not higher.

From a social perspective, it lies in a society free from deviance, because taking in a foundling, caring for him, and preserving him in an environment that provides suitable conditions for building a human being and creating hope in a soul that has been destined for neglect since birth.

Because he may be exposed to neglect, deviance and death if he does not find someone to shelter and care for him, this is done by building special institutions that include this category and provide protection for it and provide ways to preserve it from being lost. The Convention on the Rights of the Child and centuries before it, agreements that were ratified by many countries, stipulate that every child has the right to life, growth and protection from neglect and exploitation. On the other hand, caring for the foundling contributes to a society free from crimes and homelessness.

Picking up is a means, and the means takes the ruling of the end, and the end is preserving life, which is necessary, and the means here is necessary, and whatever is not done without it is itself obligatory.

The second requirement: Spending on the foundling

Expenses linguistically mean: "spending" ⁽¹⁹⁾

The treasury (Bayt al-Mal) in Arabic means the treasury of money, and it is the department responsible for collecting and managing national revenues.⁽²⁰⁾

Technically, it is the building or place where the public funds of the Islamic state are kept, including movable assets such as spoils of war and one-fifth of war booty, and the like, until they are spent according to their designated purposes.⁽²¹⁾

This is what is expressed today as the Ministry of Finance in the ministerial formations of the modern state.

Evidence from the Quran and Sunnah:

Evidence from the book:

God Almighty says: "And cooperate in righteousness and piety" [Al-Ma'idah: 2], because neglecting to provide for a foundling leads to his destruction.⁽²²⁾

And His saying, may He be exalted: "They ask you what they should spend. Say, 'Whatever you spend of good is for parents and relatives and orphans and the needy and the wayfarer.'" [Al-

¹⁷Dubayan bin Muhammad Al-Dubayan, Financial Transactions: Past and Present, (1432 AH), 20, 222.

¹⁸Abdul Aziz Muhammad Azzam, Jurisprudence of Transactions, (Al-Risalah International Printing and Computer Office, 1997-1998 CE) 139

¹⁹Abd al-Raouf ibn al-Manawi, Al-Tawqif 'ala Muhimmat al-Ta'arif, (Egypt, Alam al-Kutub, 1410 AH - 1990 AD) 328.

²⁰Dr. Ahmed Mukhtar Abdul Hamid, Dictionary of Contemporary Arabic Language, (Alam Al-Kutub, 1429 AH - 2008 AD) 1, 640.

²¹Adel bin Shaheen bin Muhammad Shaheen, took money for acts of worship, (Dar Kunooz Ishbiliya for Publishing and Distribution, 1425 AH - 2004 AD) 1, 88.

²²Muwaffaq al-Din Abu Muhammad Ibn Qudamah al-Maqdisi, Al-Mughni, (Kingdom of Saudi Arabia, Dar Alam al-Kutub for Printing, Publishing and Distribution, 1417 AH - 1997 AD) 8, 355.

Baqarah: 215], and because the status of a foundling is like the status of an orphan or more, this Qur'anic verse applies to him regarding spending on him.

Spending on him and giving to him is due to his need for it. Orphans are given because of their need, as their fathers left them without money. The needy person is the poor person whom need, illness, or old age has left in a state of want.⁽²³⁾

And His saying, may He be exalted: "And they give food, in spite of their love for it, to the needy, the orphan, and the captive" [Al-Insan: 8]. It appears that what is meant by giving food is its literal meaning, and it has been said that it is a metaphor for showing kindness to the needy and comforting them in any way possible.⁽²⁴⁾

The Quranic verse urges spending on the needy, who is the poor person who does not own anything of the world's possessions, and the orphan whose father died when he was young, so spending on the foundling is even more important.⁽²⁵⁾

In these noble verses there are generalities for preserving the segments that I mentioned, and among the means of preserving them is spending, by which human life is sustained and continues, and among these and the first of them is the foundling, as has been mentioned.

Evidence from the Sunnah:

And his saying, may God bless him and grant him peace, "I and the one who sponsors an orphan will be like this in Paradise," and he gestured with his index and middle fingers.⁽²⁶⁾

On the authority of Aisha (may God be pleased with her), she said: The Messenger of God (peace and blessings be upon him) said: "The profit is with the guarantor."⁽²⁷⁾

About my father's beautiful years⁽²⁸⁾ He was found abandoned during the time of Umar ibn al-Khattab (may God be pleased with him). He said: "I brought him to Umar ibn al-Khattab, and he said: 'What made you take this soul?' He said: 'I found him lost, so I took him.' His guardian said to him: 'O Commander of the Faithful, he is a righteous man.' Umar said: 'Is that so?' He said: 'Yes.' Umar said: 'Go, he is free, and his allegiance is to you, and we will provide for him.'⁽²⁹⁾

Because a foundling is a child of unknown parentage who has no money or guardian, whoever finds him becomes responsible for him. As we have explained, the status of a foundling is like the status of an orphan, so the guardian of a foundling and the one who spends on him is like the guardian of an orphan.

The Prophetic Sunnah spared no effort in establishing the principle of caring for the orphan and adopting his material and moral affairs, which is an apparent objective in this and other Prophetic texts.

Sayings of scholars:

This partial intention was not only established by Imam Ibn al-Humam (may God have mercy on him), but I also found it among a group of fundamentalists and others:

"His expenses are in the public treasury, i.e., if he has no money."⁽³⁰⁾

²³⁾ Muhammad Abi Zahra, *Zahrat al-Tafasir*, (Dar al-Fikr al-Arabi) 2, 680.

²⁴⁾ A committee of scholars under the supervision of the Islamic Research Academy at Al-Azhar, *The Intermediate Interpretation of the Holy Qur'an*, (General Authority for Amiri Printing Affairs, 1393-1414 AH, 1973-1993 AD) 10, 1706.

²⁵⁾ Muhammad Ali Al-Sabouni, *Safwat Al-Tafasir*, (Cairo, Dar Al-Sabouni for Printing, Publishing and Distribution, 1417 AH - 1997 AD) 3, 468.

²⁶⁾ Abu Abdullah Al-Bukhari, *Sahih Al-Bukhari*, (Egypt, Al-Sultaniyya, at the Great Amiri Press, 1422 AH) 8, 9, 6005.

²⁷⁾ Abu Isa al-Tirmidhi, *Al-Jami' al-Kabir "Sunan al-Tirmidhi"*, (Dar al-Risalah al-Alamiyyah, 1430 AH, 2009 AD) 3, 134, 1332.

²⁸⁾ Ibrahim bin Ibrahim al-Maliki, *Bahjat al-Mahafil wa Ajmal al-Wasa'il bi al-Ta'rif bi Ruwat al-Shama'il* (Yemen, al-Nu'man Center for Islamic Research and Studies, 1432 AH - 2011 CE), 2, 301

²⁹⁾ Malik ibn Anas, *Al-Muwatta*, (UAE, Zayed bin Sultan Al Nahyan Charitable and Humanitarian Foundation, 1425 AH - 2004 AD) 4, 1068, 2733.

³⁰⁾ Kamal al-Din Muhammad ibn Abd al-Wahid, *Sharh Fath al-Qadir ala al-Hidayah*, (Egypt, Mustafa al-Babi al-Halabi Library and Printing Company, 1389 AH - 1970 AD), 6, 110.

If the foundling is not known to have any public or private property, then it appears that he should be supported from the public treasury from the share allocated for public welfare without recourse, as stated in al-Rawdah. ⁽³¹⁾

"The expenses of a foundling are paid from the public treasury because he is unable to earn a living and is in need of support, and the money of the public treasury is intended to be spent on those in need."⁽³²⁾

The expenses of a foundling are paid from the Muslim treasury.⁽³³⁾

The expenses of a foundling must be paid from the Muslim treasury.⁽³⁴⁾

Nowadays, governments establish shelters for them and provide them with upbringing and education, and financial assistance to those who care for and raise them. This is called "orphan care," and it is good because of the benefits it brings to the individual and society.⁽³⁵⁾

The expenses for a foundling are not obligatory for the finder by consensus, but rather are the responsibility of the public treasury. If the public treasury is unable to provide them, then it becomes a collective obligation upon the Muslims.⁽³⁶⁾

After this, the scholars of the nation affirm the same right for the foundling and the duty of Muslims to spend on them and take care of them from the public treasury, which is called today the state treasury.

The expenses of a foundling must be borne by the Muslim treasury because he has no guardian to provide for him, which is what is known in our time as the Ministries of Endowments and Social Affairs.⁽³⁷⁾

The expenses of a foundling from the public treasury are not considered a loan, because the expenses of a foundling are obligatory upon the Muslim treasury, as stated in the words of Umar (may God be pleased with him) in the hadith of Abu Jamila.⁽³⁸⁾ "Go, he is free, and his loyalty is yours, and we will cover his expenses."⁽³⁹⁾ ⁽⁴⁰⁾

Summary:

One of the five necessities in the objectives of Islamic law is the preservation of life, and providing for the foundling is a complement to this necessity and a means to achieve it, and it takes its ruling in preservation.

Because the foundling is one of the weakest groups in society, as he has lost the bonds of family and natural protection, the provisions for his maintenance come as a measure to achieve social justice, to achieve a partial objective, and as a means to the necessary preservation of life.

The expenses for foundlings used to come from the public treasury of the Muslims. Nowadays, governments have built "orphanages" because foundlings fall under the category of orphans, and society bears the responsibility for their care and protection. The Prophet (peace and blessings be upon him) made caring for the vulnerable a cause for divine mercy and elevation in Paradise, and he promised the one who sponsors an orphan his closeness on the Day of Resurrection. Foundlings

³¹Shams al-Din al-Shirbini, Mughni al-Muhtaj ila Ma'rifat Ma'ani Alfaz al-Minhaj, (Dar al-Kutub al-Ilmiyya, 1415 AH - 1994 AD) 3, 603.

³²Muhammad ibn Ahmad al-Sarakhsi, Al-Mabsut, (Egypt, Al-Saada Press) 10, 210.

³³Muwaffaq al-Din Abu Muhammad Ibn Qudamah al-Maqdisi, Al-Mughni, (Kingdom of Saudi Arabia, Dar Alam al-Kutub for Printing, Publishing and Distribution, 1417 AH - 1997 AD) 8, 353.

³⁴Ali bin Muhammad Ibn Al-Qattan, Al-Iqna' fi Masa'il Al-Ijma' (Al-Farouq Al-Haditha for Printing and Publishing, 1424 AH - 2004 AD) 2, 174.

³⁵ Prof. Abdullah Al-Tayyar, Prof. Abdullah Al-Mutlaq, Dr. Muhammad Al-Mousa, Simplified Jurisprudence, (Kingdom of Saudi Arabia, Madar Al-Watan Publishing, 1432-1433 AH, 2011-2012 AD) 6, 236.

³⁶Abu Abdullah Muhammad Al-Ba'dani, Fath Al-Allam fi Dirasat Ahadith Bulugh Al-Maram, (Yemen, Dar Al-Asimah for Publishing and Distribution, 1440 AH - 2019 AD) 7, 280.

³⁷The rights of the foundling in Islam and his care / Ahmed bin Abdul Rahman Al-Tuwaijri / 12.

³⁸(Previously translated)

³⁹He has already graduated

⁴⁰Rulings on foundlings in Islamic jurisprudence / Prepared by students Iman Ashour, Mubarakah Bin Khalaf Allah / 23.

are included in this ruling even more so because they have no family, no protection, no money, and no care.

Because of the Almighty's saying: "So as for the orphan, do not oppress him." [Ad-Duha: 9]

The prohibition against oppressing an orphan is in order to protect his rights and take care of his affairs, and the foundling is even more so because he is more vulnerable, so the foundling takes the rulings of an orphan in terms of care, protection and spending.

On the authority of the Prophet (peace and blessings be upon him), he said: "The one who strives for the widow and the poor is like the one who fights in the cause of God."⁽⁴¹⁾ The foundling is considered one of the poor and needy, so spending on the foundling is one of the five necessities.

Second topic

First requirement: Freedom of the foundling

Evidence from the Quran and Sunnah:

Evidence from the book:

God Almighty says: "And We have certainly honored the children of Adam" [Al-Isra: 70]

We have honored the children of Adam with the honor of their father (peace be upon him), then We have made things subservient to them and favored them greatly. This is a divine honor that cannot be taken away.⁴²

The aspects of honor bestowed upon man are that he was honored with reason, honored with discernment, honored with choice, and honored by walking with his head held high, not bowed to the ground. God Almighty distinguished humanity with freedom and choice because freedom is an inherent quality in man.⁴³ Evidence from the Sunnah:

It was narrated on the authority of Al-Hasan Al-Basri that a man found a foundling and brought him to Ali - may God be pleased with him - and he said, "He is free, and for me to have been in charge of his affairs like you were in charge of him is more beloved to me than such and such." So Ali - may God be pleased with him - despite his greatness, preferred that he be the one who found him.⁴⁴

The effect is evidence that the foundling is free, he is a free Muslim, considering the house, because the house is freedom and Islam, so whoever is in it is a free Muslim, considering the apparent or considering the majority, because the majority of those who live in the house of Islam are free Muslims, and the ruling is for the majority, or considering the origin, for people are the children of Adam and Eve, peace be upon them, and they were free.

Scholarly opinions on this matter:

A foundling is considered free because the original state of humankind is freedom, as they are the children of Adam and Eve, who were both free. Those born to free parents are free, and God Almighty created Adam and his descendants free.⁽⁴⁵⁾ The imams have stated that the house requires the foundling to have apparent freedom, and they have also stated that it requires him to be Muslim. The basis of what they said is that our rule is based on the apparent Islam, and that freedom is prevalent among the children of Adam.⁽⁴⁶⁾

"And whoever claims that the foundling is his slave, his claim will not be accepted because the original state is freedom."⁽⁴⁷⁾

⁴¹ Abu Abdullah Al-Bukhari, *Sahih Al-Bukhari*, (Egypt, Al-Sultaniyya, at the Great Amiri Press, 1422 AH) 8, 9, 6006.

⁴² Abu al-Fadl Shihab al-Din al-Alusi, *Ruh al-Ma'ani fi Tafsir al-Qur'an al-'Azim wa al-Sab' al-Mathani*, (Beirut, Dar al-Kutub al-'Ilmiyya, 1415 AH - 1994 AD) 8, 112.

⁴³ Muhammad Metwally Al-Shaarawi, *Al-Shaarawi's Interpretation*, (Akhbar Al-Youm Press, 1997 AD) 14, 8681.

⁴⁴ Muhammad ibn Ahmad al-Sarakhsi, *Al-Mabsut*, (Egypt, Al-Saada Press) 10, 209.

⁴⁵ *Rulings on foundlings in Islam* / Dr. Maryam Ahmed Al-Daghistani / 64.

⁴⁶ Abdul-Malik bin Abdullah Al-Juwayni, see / *Nihayat Al-Matlab fi Dirayat Al-Madhhab*, (Dar Al-Minhaj, 1428 AH - 2007 AD) 8, 558.

⁴⁷ Kamal al-Din Muhammad ibn Abd al-Wahid, *Sharh Fath al-Qadir ala al-Hidayah*, (Egypt, Mustafa al-Babi al-Halabi Library and Printing Company, 1389 AH - 1970 AD), 6, 115.

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The foundling is free in view of the origin, because God Almighty created Adam and his offspring free, and slavery is an exception, as the Commander of the Faithful, Omar Ibn Al-Khattab, may God be pleased with him, said: "When did you enslave people when their mothers gave birth to them free?" So the saying of the Commander of the Faithful, may God be pleased with him, came to emphasize that the origin of human beings is freedom and dignity.⁽⁴⁸⁾

"And the foundling is free because the principle in the land of Muslims is freedom."⁽⁴⁹⁾

If a foundling of unknown parentage is found in Egypt, a Muslim country, he is deemed free, as the default state of people is freedom; that is, freedom is the fundamental rule and slavery is the exception. A person cannot be considered a slave unless this is proven by conclusive evidence.⁵⁰

The ruling concerning a foundling relates to fifteen issues, including the issue of "the foundling's freedom." If someone claims that the foundling is his slave, he is not to be believed, even if the finder is a slave or a slave under a contract of manumission; it makes no difference, and the foundling is free.⁵¹

And the basis for this consensus is the years of Abi Jamila (⁵²) He found him abandoned during the time of Umar ibn al-Khattab (may God be pleased with him). He said: I brought him to Umar ibn al-Khattab (may God be pleased with him), and he said: "What made you take this soul?" He said: I found him lost, so I took him. His guardian said to him: O Commander of the Faithful, he is a righteous man. Umar said to him: Is that so? He said: Yes. Umar ibn al-Khattab said: Go, he is free, and his allegiance is to you, and we will provide for him."⁵³

Scholars unanimously agree on the freedom of a foundling, and that if the finder acknowledges his freedom, then he is free. So if a small child is found lying in a public place or at the door of a mosque, then it is permissible for the one who finds him to pick him up, and the freedom of that foundling is ruled.⁵⁴

A foundling is free and his allegiance is to the Muslims. If the foundling reaches maturity and acknowledges ownership by a man, he is not believed and remains free.⁵⁵

The statement regarding the status of a foundling is based on three conditions: freedom, slavery, and lineage.

As for his status regarding freedom and slavery, he is free in appearance, based on what was narrated about our master Omar and our master Ali, may God be pleased with them, that they ruled that the foundling should be free, and because the principle in Islam is freedom for the children of Adam, and because all people are children of our master Adam, peace be upon him, and Eve, and they were free, and the one born of free people is free, and slavery only occurred due to an incidental cause, which is disbelief, so the principle must be acted upon.⁵⁶ If the objector is unaware, the original ruling remains in effect, which is freedom.⁵⁷

"If a man finds a boy or a girl, they are free."⁵⁸

⁴⁸Shams al-Din al-Zarkashi, *Sharh al-Zarkashi*, (Dar al-Ubaikan, 1413 AH - 1993 AD) 4, 351.

⁴⁹ Ubaid Allah bin Masoud Al-Mahboubi, *Explanation of Al-Wiqaya*, (Jordan, Dar Al-Warraq, 2006 AD) 3, 269.

⁵⁰Abu al-Husayn Yahya al-Shafi'i, *Al-Bayan fi Madhhab al-Imam al-Shafi'i*, (Jeddah, Dar al-Minhaj, 1421 AH - 2000 AD) 8, 8.

⁵¹Abu al-Hasan Ali al-Saghdī, *Al-Nutaf fi al-Fatawa*, (Beirut, Al-Risalah Foundation), (Amman, Dar al-Furqan), 1404 AH - 1984 AD) 2, 589.

⁵²It has already been translated.

⁵³He has already graduated.

⁵⁴A group of authors, *Encyclopedia of Consensus in Islamic Jurisprudence*, (Kingdom of Saudi Arabia, Dar Al-Fadilah for Publishing and Distribution in Riyadh, 1433-1443 AH, 2012-2021 AD) 3, 826.

⁵⁵ Muhammad Ibn Arafah Al-Maliki, *Al-Mukhtasar Al-Fiqhi*, (Khalaf Ahmed Al-Khabtour Foundation for Charitable Works, 1435 AH - 2014 AD) 9, 83.

⁵⁶Ala' al-Din al-Kasani, *Bada'i' al-Dha'i' fi Tartib al-Shara'i'* (Egypt, Al-Jamaliyya Press, 1327-1328 AH) 6, 197-198.

⁵⁷Zain Al-Din Al-Munji Al-Hanbali, see *Al-Mumti' fi Sharh Al-Muqni'*, (1424 AH, 2003 AD) 3, 140.

⁵⁸Abu Abdullah Al-Shaibani, the original, (Beirut, Dar Ibn Hazm, 1433 AH - 2012 AD) 5, 242.

"If the one who found him claims that he is his slave, his claim will not be accepted because a foundling is free."⁵⁹

Summary:

Through my study of this objective, I found that the claim of slavery in the foundling is not accepted because the original principle for a human being is freedom, and this is a definitive rule. The foundling is a person of unknown lineage, not of unknown status, so he is ruled to be free in order to preserve his human dignity and to prevent the enslavement of free people unjustly. No statement or evidence is accepted from anyone who claims that the foundling is his slave, because slavery is a description contrary to the original principle, and the claim of freedom in the foundling is not a presumptive or precautionary ruling. The freedom of the foundling is one of the complementary objectives to the objective of preserving life, and freedom itself is a comprehensive objective in other areas.

The second requirement: Preserving the religion of the foundling

Evidence from the Quran and Sunnah:

Evidence from the book:

His saying, may He be exalted, You will recognize them by their appearance. [Al-Baqarah: 273]

"This means that if a foundling is dressed in Muslim attire, he is judged to be Muslim, but if he is dressed in the attire of infidels, such as having a cross around his neck or wearing a brocade garment, then what first leads everyone to believe that he is one of the children of infidels is judged to be an infidel."⁶⁰

And His saying, may He be exalted, The nature of God upon which He has created mankind. [Romans: 30]

Its meaning is: there is no changing the religion of God. It is a statement with the meaning of prohibition, i.e., do not change the religion of God. The meaning of the verse is: adhere to the nature of God, i.e., the religion of God, and follow it, and do not change monotheism for polytheism. That is the upright religion, as the Prophet, peace and blessings be upon him, said: "His parents make him a Jew."⁶¹ While he possesses innate faith, he is governed by the rulings of his parents, and if he has no parents, he is judged to be Muslim if he is found in a Muslim land, in accordance with the principle of Islam.⁶²

Evidence from the Sunnah:

The Prophet (peace and blessings be upon him) said: "Every child is born in a state of purity (fitrah), then his parents make him a Jew, a Christian, or a Magian, just as an animal gives birth to an animal; do you see any of them born mutilated?"⁶³

What is meant by this is that he is born in the form in which God made a covenant with him, which is His saying: "Am I not your Lord?" They said, "Yes." [Al-A'raf: 172], so if he is not known to have disbelieving parents, then he is a Muslim by virtue of the Islam of the land. So if he is found in the land of Islam, he is a Muslim, and if he is found in the land of war, he is a disbeliever.⁶⁴

Sayings of scholars:

Imam Ibn al-Humam (may God have mercy on him) did not only mention this objective, but other fundamentalists, jurists, and scholars mentioned it as well: If a foundling is found in Muslim lands and the finder is a Muslim, the foundling is judged to be Muslim by the Muslims, even if there are non-Muslims living there, in order to give precedence to Islam and the apparent nature of the land,

⁵⁹ Abu Bakr Muhammad ibn al-Mundhir, *Al-Iqna'*, (1408 AH) 2, 412.

⁶⁰ Muhammad ibn Ahmad al-Sarakhsi, *Al-Mabsut*, (Egypt, Al-Saada Press) 10, 215.

⁶¹ Abu Abdullah Al-Bukhari, *Sahih Al-Bukhari*, (Egypt, Al-Sultaniyya, at the Great Amiri Press, 1422 AH) 8, 52, 2658.

⁶² Abu Muhammad al-Baghawi, *Tafsir al-Baghawi*, (Beirut, Dar Ihya al-Turath al-Arabi, 1420 AH) 3, 577-578.

⁶³ He was previously graduated above.

⁶⁴ Abu al-Wafa Ali al-Baghdadi, *Al-Tadhkira fi al-Fiqh* (Saudi Arabia, Dar Ishbiliya for Publishing and Distribution, 1422 AH - 2001 AD) 170.

and because Islam is superior and nothing is superior to it.⁶⁵ "If a foundling is found in Egypt, in one of the Muslim cities or villages, then he is a Muslim."⁶⁶

"If a foundling is found in Egypt, one of the Muslim cities, he is judged to be Muslim by virtue of the place, for it is a Muslim place."⁶⁷

The status of a foundling in Islam and non-Muslims: If a Muslim finds him in Egypt, in one of the Muslim cities or in one of their villages, the foundling is considered Muslim even if he dies; he is washed, prayed over, and buried in Muslim cemeteries.⁶⁸

If a foundling was found in a city conquered by Muslims, such as the cities of Syria, and there was even one Muslim there, then the ruling would be that the foundling was Muslim, because it is possible that this Muslim had a strong inclination towards Islam.⁶⁹

The determining factor in the Islam of a foundling is the place where the foundling is found. If it is a Muslim place, then he is judged to be Muslim according to the place where he was found.⁷⁰

A foundling is judged to be Muslim in four cases: if he is found in a house inhabited by Muslims, even if there are non-Muslims living under Muslim rule or treaties, as Al-Mawardi stated; or if he is found in a house conquered by Muslims, or which Muslims retained after owning it, or which they inhabited and then the infidels expelled them from; in these four cases, the foundling is judged to be Muslim, giving precedence to Islam.⁷¹

If a foundling is picked up by a non-Muslim in a Muslim country or in one of the Muslim cities, and he raises him according to his religion, he is not left as a Christian unless he reaches puberty. A foundling in Muslim villages is considered Muslim even if he is picked up by a non-Muslim. If a Christian woman picks up a girl and raises her according to her religion until she reaches puberty, she is returned to Islam and is free.⁷²

If a foundling is found in a Muslim country, he is considered Muslim because he has two legal rulings: the ruling of the land and the ruling of Islam.⁷³

If the child is found in a country that is originally an Islamic country, such as the Arabian Peninsula, then the child is considered Muslim.⁷⁴

Thus, the ruling on the foundling's Islam is linked to his affiliation with the household. If the area where the foundling was found had diverse sects or different religions, he is ruled to belong to the religion that is closest to Islam, because Islam is superior and nothing is superior to it.⁷⁵

If a non-Muslim finds him in a Muslim village, he is considered a Muslim, based on the principle that the place is the basis for his status.⁷⁶

If a foundling is found in a Muslim land, he is considered a Muslim, giving precedence to Islam, even if there are non-Muslims living there.⁷⁷

⁶⁵Rulings concerning foundlings in Islamic jurisprudence / Dr. Walid Khalid Al-Rabee / 10.

⁶⁶Kamal al-Din Muhammad ibn Abd al-Wahid, Sharh Fath al-Qadir ala al-Hidayah, (Egypt, Mustafa al-Babi al-Halabi Library and Printing Company, 1389 AH - 1970 AD) 6, 113.

⁶⁷)) Muhammad ibn Ahmad al-Sarakhsi, Al-Mabsut, (Egypt, Al-Saada Press) 10, 214.

⁶⁸Ala' al-Din al-Kasani, Bada'i' al-Dha'i' fi Tartib al-Shara'i' (Egypt, Al-Jamaliyya Press, 1327-1328 AH) 6, 198.

⁶⁹Muwaffaq al-Din Abu Muhammad Ibn Qudamah al-Maqdisi, Al-Mughni, (Kingdom of Saudi Arabia, Dar Alam al-Kutub for Printing, Publishing and Distribution, 1417 AH - 1997 AD) 6, 113.

⁷⁰A group of authors, The Kuwaiti Encyclopedia of Islamic Jurisprudence, (Egypt, Dar Al-Safwa Printing Press, 1404 AH - 1427 AH) 35, 316.

⁷¹Shams al-Din al-Shirbini, Mughni al-Muhtaj ila Ma'rifat Ma'ani Alfaz al-Minhaj, (Dar al-Kutub al-Ilmiyya, 1415 AH - 1994 AD) 3, 604-605.

⁷²) Muhammad Ibn Arafah Al-Maliki, Al-Mukhtasar Al-Fiqhi, (Khalaf Ahmed Al-Khatab Foundation for Charitable Works, 1435 AH - 2014 AD) 9/81.

⁷³Ali bin Muhammad Al-Samnani, Rawdat Al-Qudat wa Tariq Al-Najat (Beirut, Al-Risalah Foundation), (Amman, Dar Al-Furqan), 1404 AH - 1984 AD) 4, 1397.

⁷⁴) Muhammad Al-Shanqiti, Explanation of Zad Al-Mustaqni', (Audio lessons transcribed by the Islamic Network website) 245, 8.

⁷⁵See Fiqh of Transactions / Abdul Aziz Muhammad Azzam / 148-149.

⁷⁶See the Kuwaiti Encyclopedia of Islamic Jurisprudence / 35 / 316-317.

If a foundling was found in a Muslim country where all its inhabitants were non-Muslims under Islamic rule, he would be judged to be an infidel. If there were Muslims in the country, he would be judged to be a Muslim, according to the unanimous opinion of the author, the commentator, and others.⁷⁸

This is only due to the keenness of the scholars of jurisprudence to establish one of the rights of the foundling, while maintaining objectivity and not being biased towards including the foundling in Islam. The important thing in jurisprudence is to take into account his rights, including proving the religion, and I do not think that such sophistication and objectivity exists in anything other than our glorious Sharia.

Summary:

My research on the topic of "The Ruling on Foundlings: Islam or Non-Muslims" reveals that the ruling on foundlings (children of unknown parentage) in Islam is based on the principle of "origin." This means that a foundling is presumed to be Muslim. Therefore, the ruling that a foundling found in Egypt, or in a Muslim village where Islam is prevalent among the inhabitants and governs the laws, is considered Muslim is stronger because it protects the foundling from injustice and guarantees their rights in Islam regarding care, inheritance, and maintenance. This ruling reflects the mercy of Islamic law and its concern for the vulnerable, and one of its objectives is the preservation of the faith.

The ruling on foundlings in Islam shows us the realization of the Sharia objectives "as defined by Imam Al-Shatibi," which is the preservation of religion. The ruling that a foundling is Muslim "based on the original nature" protects the religion from doubts, especially in Egypt as an Islamic land where Islam prevails, which prevents the presumed disbelief and ensures that the child is raised on faith. Establishing the religion for the foundling is a secondary objective that benefits him. Attaching the foundling to Islam by virtue of the home is not merely a dry legal ruling, but rather a continuation of the original and an activation of the nation's guardianship over those who have no guardian, so that this child grows up feeling a sense of belonging to a nation whose home is his cradle and whose religion is his identity.

Third requirement: Crimes against a foundling

The author, may God have mercy on him, said: "This means that if a foundling is found dead in a neighborhood, the people of that neighborhood must pay his blood money to the public treasury, and they must take the oath. Likewise, if the finder or someone else kills him by mistake, the blood money is on his clan to the public treasury. If he kills him intentionally, the choice is up to the Imam, as mentioned previously in similar cases, and he must pay his blood money."⁽⁷⁹⁾

In this section, the author, may God have mercy on him, refers to two important matters: First: establishing the ruling on oaths and guaranteeing the crime in the neighborhood. Second: indicating that the foundling is a Muslim, that his life is respected, and that the Sharia views the foundling as a full member of the Muslim community with full rights even after his death.

The word "diya" in Arabic means: "the right of the slain person and the amount of his blood money, as we say, 'I gave the blood money to the slain person,' meaning I gave his blood money and I took his blood money."⁽⁸⁰⁾

Blood money, technically speaking, is: "Money paid in exchange for something that is not money, which is the life, and the compensation due for a crime against something less than the life is also paid, as well as the value due for all other damages."⁽⁸¹⁾

"The blood money was called 'aql' because the blood money among the Arabs in the pre-Islamic era was camels, and it was the people's money with which they would stop the bloodshed. So the

⁷⁷ Abu Zakariya al-Nawawi, *Rawdat al-Talibin wa Umdat al-Muftin* (Beirut, Damascus, Amman, Al-Maktab al-Islami, 1412 AH - 1991 AD), 5, 433.

⁷⁸ Alaa al-Din al-Mardawi, *Al-Insaf fi Ma'rifat al-Rajih min al-Khilaf*, (Matba'at al-Sunnah al-Muhammadiyah, 1374 AH - 1955 AD) 6, 434.

⁷⁹ Fath al-Qadir / 6 / 111.

⁸⁰ *Lisan al-Arab* / Imam Allama Jamal al-Din Abi al-Fadl Muhammad ibn Makram ibn Manzur al-Ansari al-Afriqi al-Misri / 15 / 185.

⁸¹ *Al-Mabsut* / 26 / 59.

blood money was called 'aql' because the killer was required to drive the camels of the blood money to the courtyard of the heirs of the murdered person, then tie them up with ropes and hand them over to his guardians."⁽⁸²⁾

Qasama linguistically means: "The oaths sworn by the relatives of the murdered person if they claim that the blood of their murdered relative was shed by people whom they accused of it."⁽⁸³⁾

The oath of allegiance (with the letter Qaf pronounced with a fatha) is an oath of allegiance.⁽⁸⁴⁾

Technically: "Repeated oaths in a claim of murder."⁽⁸⁵⁾

Evidence from the Quran and Sunnah:

Evidence from the book:

There are many Quranic verses and prophetic hadiths that prohibit killing. I will mention some of them and I will talk about the verses on intentional killing and the verses on unintentional killing.

Verses about intentional killing:

His saying, may He be exalted: "Say, 'Come, I will recite what your Lord has prohibited to you. [He commands] that you not associate anything with Him, and to parents do good, and do not kill your children for fear of poverty; We will provide for you and them. And do not approach immoralities – what is apparent of them and what is concealed. And do not kill the soul which God has forbidden [to be killed] except by right. This is what He has instructed you.'" Perhaps you will understand. [Al-An'am: 151]

The Quranic verse contains a severe threat and a definite warning to those who commit this grave sin, which is associated with associating partners with God.⁽⁸⁶⁾

God Almighty said, explaining the ruling on intentional killing:

"And whoever kills a believer intentionally, his recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and prepared for him a great punishment." [Women: 93]

"The punishment for the one who intentionally kills a believer is that he is not required to free a believing slave, pay blood money for a Muslim, or fast for two consecutive months. There is nothing but punishment accompanied by God's wrath and curse."⁽⁸⁷⁾

The verse concerning intentional killing was revealed concerning a man from the Ansar who killed the brother of Muqays ibn Subabah.⁽⁸⁸⁾ So the Prophet (peace and blessings be upon him) gave him the blood money, and he accepted it. Then he attacked his brother's killer and killed him. The Prophet (peace and blessings be upon him) said: "There are four whom I do not trust, whether in a state of ihram or in a state of ihram." He named them. He said: "And two slave girls who belonged to Muqays were killed on the day of the conquest of Mecca, and the verse was revealed concerning him: 'And whoever kills a believer intentionally...'"⁽⁸⁹⁾

⁸²Refinement of Language / Muhammad ibn Ahmad ibn al-Azhari al-Harawi / 1/159

⁸³Dictionary of Language Standards / Ahmad ibn Faris ibn Zakariya al-Qazwini al-Razi / 5 / 86.

⁸⁴(Gharib al-Hadith / Abu Sulayman Hamad ibn Muhammad ibn Ibrahim ibn al-Khattab / 1 / 574.)

⁸⁵Al-Mughni by Ibn Qudamah / 8/487.

⁸⁶See the interpretation of Ibn Kathir / Abu al-Fida Ismail ibn Umar ibn Kathir al-Qurashi al-Dimashqi / 2 / 376

⁸⁷The Qur'anic Interpretation of the Qur'an / Abdul Karim Yunus Al-Khatib / 3 / 869

⁸⁸) Muqays ibn Subabah ibn Hazn ibn Yasar al-Kinani al-Qurashi, a poet who was famous in the pre-Islamic era. He resided in Mecca and was one of those who forbade himself wine in the pre-Islamic era. He witnessed the Battle of Badr against the polytheists and slaughtered nine sacrifices at its water. His brother, named Hisham, converted to Islam, but a man from the Ansar mistakenly killed him. The Messenger of God, may God bless him and grant him peace, ordered that his blood money be paid. Muqays came from Mecca, outwardly professing Islam, so the Prophet, may God bless him and grant him peace, ordered that the blood money be paid to him, and he received it. Then he waited for his brother's killer until he caught him and killed him. He apostatized and joined the Quraysh, and the Prophet, may God bless him and grant him peace, declared his blood forfeit. He was killed by Namilah ibn Abdullah al-Laythi on the day of the conquest of Mecca. It is said that the Muslims saw him between Safa and Marwa and killed him with their swords. / See Al-A'lam / Khayr al-Din ibn Mahmud ibn Muhammad ibn Ali ibn Faris al-Zarkali al-Dimashqi / 7 / 283.

⁸⁹It was narrated by Abu Dawood in his Sunan / First Book of Jihad / Chapter on killing a prisoner without offering him Islam / 4 / 320 / 2684 / Sahih li ghayrihi.

The rulings on unintentional killing for Muslims and those under covenant are in the Quranic verse: "It is not for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation to be handed over to his family." [An-Nisa: 92]

Among these rulings are the following:

A report stating that it is absolutely impermissible for a believer to kill another believer, in a manner that precludes the possibility of such an occurrence unless it is unintentional.⁹⁰

The verse concerning unintentional killing was revealed in the case of Al-Harith ibn Yazid.⁹¹ He who emigrated to the Prophet (peace and blessings be upon him) and was met by Ayyash ibn Abi Rabi'ah⁹² In the lava field – a land with black stones – he struck him with the sword, thinking he was an infidel. Then he came to the Prophet (peace and blessings be upon him) and informed him, and the verse was revealed: "It is not for a believer to kill a believer except by mistake."⁹³

And God Almighty said regarding the blood money for unintentional killing, "And whoever kills a believer unintentionally, then the compensation is the freeing of a believing slave and the payment of blood money to his family." [An-Nisa: 92] Thus, the blood money for a believer in unintentional killing is the saving of a believing life.⁹⁴

The crime against a foundling is not merely an individual act of aggression, but rather a violation of a great objective of Islamic law, which is the preservation of life and human dignity. The foundling, by virtue of his weakness and lack of support, is more deserving of protection and care, which makes any aggression against him a crime with a double impact, both legally and socially. Hence, his protection is not a favor, but a moral and legal duty that reflects the humanity of society and its commitment to the values of justice and mercy.

Evidence from the Sunnah:

The hadiths that came in prohibiting killing are very numerous, including what was established in the two Sahihs on the authority of Ibn Masoud, who said: The Messenger of God, may God bless him and grant him peace, said: "The first matter that will be judged between people on the Day of Resurrection will be bloodshed."⁹⁵

And in another hadith narrated by Abu Dawud on the authority of Abu al-Darda', he said: The Messenger of God, may God bless him and grant him peace, said: "A believer remains upright and

⁹⁰See Modern Interpretation / Dr. Roza Muhammad Ezzat / 8 / 202.

⁹¹Al-Harith ibn Yazid ibn Anisa, also known as Ibn Nabisha or Ibn Abi Anisa, from the Banu Mu'ays ibn 'Amir ibn Lu'ayy al-Qurashi al-'Amiri, was killed by 'Ayyash ibn Abi Rabi'a in al-Baqi' after his arrival in Medina, following the Battle of Uhud. / See al-Isabah fi Tamyiz al-Sahabah / Abu al-Fadl Ahmad ibn 'Ali ibn Muhammad ibn Ahmad ibn Hajar al-'Asqalani / 1 / 700-701

⁹²) Ayyash bin Abi Rabi'ah, whose name is Amr and he is nicknamed Dhu al-Rumhayn, son of al-Mughirah bin Abdullah bin Amr bin Makhzum al-Qurashi al-Makhzumi, cousin of Khalid bin al-Walid bin al-Mughirah. He was one of the first to embrace Islam and he made two migrations. His son Abdullah narrated from him, and Anas bin Malik, Abdul Rahman bin Sabit, Nafi', the freed slave of Ibn Umar, and others also narrated from him. He died in the year fifteen in the Levant during the caliphate of Umar, may God be pleased with him. It was said that he was martyred in al-Yamamah, and it was said that he was martyred in al-Yarmouk. / See al-Isabah fi Tamyiz al-Sahabah / al-Asqalani / 4 / 623-624.

⁹³Al-Zuhayli's Intermediate Commentary / 1/361.

⁹⁴See the Qur'anic interpretation of the Qur'an / Abdul Karim Younis Al-Khatib / 4 / 16.

⁹⁵It was narrated by Al-Bukhari in his Sahih / Book of Blood Money, Chapter: The verse: "And whoever kills a believer intentionally, his recompense is Hell" / 9 / 2 / 6864. It was also narrated by Muslim in his Sahih / Book of Blood Money, Combatants, Retaliation, and Blood Money, Chapter: Retribution for Bloodshed in the Hereafter and that it is the first matter to be judged among people on the Day of Resurrection / 5/7/1678

righteous as long as he does not shed forbidden blood. But if he sheds forbidden blood, he becomes corrupt."⁹⁶

The texts of the Book and the Sunnah have combined to establish the ruling prohibiting killing, and there is a ranking of the killer, as mentioned previously. Here, those texts are organized in the line of preserving lives and protecting them from destruction, and it is under the umbrella of the objective of preserving life, the second necessary of the general necessities of Sharia, and there is no doubt. And by way of priority, the foundling will be included in those rulings, as his blood is protected.

Sayings of scholars:

Through my study and research on this topic, I found that Imam Ibn al-Humam was not alone in his discussion of the blood money for a foundling if he was found murdered in a place by mistake, whether he was killed by the finder or someone else, or if he was killed intentionally. Rather, many scholars spoke about this topic "if the foundling was killed intentionally," including:

If a foundling is killed, his fate is in the hands of the Imam; if he wishes, he may kill his killer, or if he wishes, he may take his blood money and place it in the public treasury, because the Sultan is the guardian of those who have no guardian. If a foundling is killed by mistake, then the killer's clan must pay blood money, which is placed in the public treasury.⁹⁷

Imam Shafi'i said: The Sultan has the right to retaliation or compensation.⁹⁸

"If a foundling is killed by mistake, his blood money is the same as that of a free man, to be paid by the killer's clan, and it is taken and placed in the public treasury."⁹⁹

Abu Hanifa and Abu Yusuf, may God be pleased with them all, said: If a man finds a foundling and acknowledges it, then he or someone else intentionally kills him, then if the Imam wishes, he may kill him in retaliation, and if he wishes, he may make peace with him in exchange for blood money.¹⁰⁰

"If a foundling is intentionally killed, the Imam may exact retribution from the killer if he deems it necessary, and he may also accept blood money if he deems it necessary."¹⁰¹)

The jurisprudential system comes in line with the legal view of preserving the life of the foundling and that there is no difference between him and others whose blood is protected. And for the consistency of the rulings with them, they made blood money obligatory and referred the matter to the Sultan. All of this is in appreciation of preserving a partial objective that falls within the rulings of the foundling and preserving the life which is a necessary objective.

Summary:

Through our study of this purpose, it became clear to us that the foundling is considered to have an inviolable self and has the same sanctity as all Muslims in terms of rights. If the foundling is found to have been intentionally killed and his killer is known, then retaliation must be taken from his killer, or blood money must be taken from the killer if the guardian of the blood, who is the Sultan, pardons him. If the killing was accidental, then the blood money is on his clan (the family or relatives of the killer) or from the killer's money. If the killer is not known and the foundling is found to have been killed in a neighborhood, then the blood money is borne by the people of the neighborhood if there is no one else. If the finder himself kills him, then if the killing was accidental, then the blood money is on the finder's clan because he is the perpetrator. If it was intentional, then retaliation is taken from him or blood money is taken from his own money.

⁹⁶It was narrated by Abu Dawood in his Sunan / First Book of Tribulations / Chapter on the Greatness of Killing a Believer / 6 / 325 / 4270 / Narrated by Al-Hakim in Al-Mustadrak and he said it has a sound chain of transmission / Nasb Al-Rayah / Jamal Al-Din Abu Muhammad Abdullah bin Yusuf bin Muhammad Al-Zayla'i / 4 / 326.

⁹⁷) Al-Iqna' by Ibn Al-Mundhir / 2 / 412.

⁹⁸The middle of the Sunnah, consensus and disagreement / Abu Bakr Muhammad bin Ibrahim bin Al-Mundhir Al-Nisaburi / 11 / 438.

⁹⁹Supervision of the doctrines of the scholars / Abu Bakr Muhammad ibn Ibrahim ibn al-Mundhir al-Nisaburi / 6 / 364.

¹⁰⁰See Al-Mabsut / Al-Sarakhsi / 10 / 218.

¹⁰¹) Al-Nabih's Sufficiency in Explaining Al-Tanbih / ahMad bin Muhammad bin Ali Al-Ansari / 11 / 494.

A foundling is entitled to full blood money if he is killed, just like any other person. This is to establish the principle of protecting and preserving life, which is one of the overarching goals of protecting human life, even if its lineage is unknown, and to care for the foundling socially and legally, and to consider him an individual with full rights like any other person.

In Islamic jurisprudence, the protection of the blood of a foundling is not an exceptional ruling but a fundamental principle. Human dignity and the inviolability of life are not contingent upon lineage or guardianship; rather, they are protected by Islamic law itself, and the state and society together strive to uphold them.

Conclusion

Based on the foregoing, the following key conclusions have been reached:

- 1- It became clear to me that caring for a foundling is a religious duty that falls under the objective of preserving life.
- 2- The expenses of a foundling are a responsibility that ensures him a decent life and healthy development.
- 3- The freedom and dignity of a foundling are protected like that of any individual in society.
- 4- Preserving the religion of a foundling is part of preserving his identity and his proper upbringing.
- 5- Society is a key partner in protecting the rights of foundlings and activating the provisions related to them in order to achieve the greater objectives of Sharia in preserving life and promoting social solidarity.

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- Dr. Adel bin Muhammad Al-Ubaissi, Part 12: Dr. Hamad bin Fahd Al-Eid, Part 13: Dr. Awatif bint Nasser Al-Khuraishi, Part 14: Dr. Amal bint Samhan bin Fahd Al-Luhaidan, Prepared for Al-Shamela: The Copyists Association, Implemented by (The Center for Scientific Elites), and sponsored by (Abdullah bin Turki Al-Dahyan Charitable Endowments), Book Numbering: Conforms to the printed version, Publication Date in Al-Shamela: 4 Safar 1440.
57. Book: Sunan Abi Dawud, Author: Abu Dawud Sulayman ibn al-Ash'ath al-Azdi al-Sijistani (202-275 AH), Editor: Shu'ayb al-Arna'ut [d. 1438 AH] - Muhammad Kamil Qara Balli, Publisher: Dar al-Risalah al-Alamiyyah, Edition: First, 1430 AH - 2009 AD, Number of Parts: 7, Note: The book's numbering matches the printed version.
 58. Book: Al-Tafsir Al-Wasit by Al-Zuhayli, Author: Dr. Wahba bin Mustafa Al-Zuhayli [d. 1436 AH], Publisher: Dar Al-Fikr - Damascus, Edition: First - 1422 AH, Number of Parts: 3 (sequential numbering), Note: The book's numbering matches the printed version.
 59. Book: Al-A'lam, Author: Khair Al-Din Ibn Mahmud Ibn Muhammad Ibn Ali Ibn Faris, Al-Zarkali Al-Dimashqi (d. 1396 AH), Publisher: Dar Al-Ilm Lil-Malayin, Edition: Fifteenth - May 2002 AD, Note: The book numbering matches the printed version.
 60. Book: Dictionary of Language Standards, Author: Abu al-Husayn Ahmad ibn Faris ibn Zakariya (d. 395 AH), Edited and edited by: Abd al-Salam Muhammad Harun [d. 1408 AH], Publisher: Mustafa al-Babi al-Halabi & Sons Library and Printing Company in Egypt, Edition: Second, 1389-1392 AH (1969-1972 AD), Number of parts: 6, Note: The book's numbering matches the printed version.
 61. Book: Tafsir al-Qur'an al-Azim, Author: Abu al-Fida' Ismail ibn Umar ibn Kathir al-Qurashi al-Dimashqi (700-774 AH), Editor: Sami ibn Muhammad al-Salama, Publisher: Dar Tayyiba for Publishing and Distribution, Riyadh - Saudi Arabia, Edition: Second, 1420 AH - 1999 AD, Number of Parts: 8, Note: It corrects the omission that occurred in the first volume of the People's Edition.
 62. Book: The Middle of Sunnah, Consensus and Disagreement, Author: Abu Bakr Muhammad ibn Ibrahim ibn al-Mundhir al-Naysaburi (d. 318 AH), Edited by: A group of researchers (Yasser ibn Kamal, Ayman al-Sayyid Abd al-Fattah, Ibrahim al-Sheikh, Khalid Ibrahim al-Sayyid, Muhyi al-Din al-Bakari, Muhammad Saad Abd al-Salam, Ihab Abd al-Wahid, Husam Abdullah Hilmi), Reviewed and annotated by: Ahmad ibn Sulayman ibn Ayyub, Read and revised by: Dr. Abdullah al-Faqih, Publisher: Dar al-Falah, Fayoum - Egypt, Edition: Second, 1431 AH - 2010 AD, Number of parts: 15 (14 and indexes), Publication date in al-Shamela: 23 Dhu al-Qa'dah 1445.
 63. Book: Nasb al-Rayah li-Ahadith al-Hidayah ma'a Hashiyatihi Bughyat al-Alma'i fi Takhrij al-Zayla'i, Author: Jamal al-Din Abu Muhammad Abdullah ibn Yusuf ibn Muhammad al-Zayla'i (d. 762 AH), Introduction to the book: Muhammad Yusuf al-Banuri, Corrected and annotated by: Abdul Aziz al-Deobandi al-Fanjani, up to the Book of Hajj, then completed by Muhammad Yusuf al-Kamilfuri, Investigator: Muhammad Awamah, Publisher: Al-Rayyan Foundation for Printing and Publishing - Beirut / Dar al-Qibla for Islamic Culture - Jeddah, Edition: First, 1418 AH / 1997 AD, Number of parts: 4, Publication date in al-Shamela: 8 Dhu al-Hijjah 1431.
 64. Book: Kifayat al-Nabih fi Sharh al-Tanbih, Author: Ahmad ibn Muhammad ibn Ali al-Ansari, Abu al-Abbas, Najm al-Din, known as Ibn al-Rif'ah (d. 710 AH), Editor: Majdi Muhammad Surur Baslum, Publisher: Dar al-Kutub al-Ilmiyyah, Edition: First, 2009 AD, Number of parts: 21 (19, one part for al-Isnawi's comments, and one part for indexes), Prepared for al-Shamela by: The Copyists Association Team under the auspices of (the Center for Scientific Elites), Publication date on al-Shamela: 18 Shawwal 1435.
 65. Book: *Al-Ishraf 'ala Madhahib al-'Ulama* (Supervision of the Schools of Thought of the Scholars), Author: Abu Bakr Muhammad ibn Ibrahim ibn al-Mundhir al-Naysaburi (d. 319 AH), Editor: Saghir Ahmad al-Ansari Abu Hammad, Publisher: Maktabat Maktabat al-Thaqafiyya, Ras al-Khaimah, United Arab Emirates, Edition: First, 1425 AH - 2004 CE, Number of Volumes: 10 (8 volumes and 2 for al-Fahhar), Notes on the Edition: The editor omitted what he added for brevity from al-Awsat or elsewhere, limiting it to what was

found in the manuscripts of *Al-Ishraf*. He also completed a missing section in Volume 6 of the Qatar edition (edited by Muhammad Najib Siraj al-Din). Published on the Shamela platform: 18 Muharram 1435 AH.

66. Book: Al-Jami' Al-Kabir (Sunan Al-Tirmidhi), Author: Abu Isa Muhammad ibn Isa Al-Tirmidhi (d. 279 AH), Edited, its hadiths authenticated and commented on by: Bashir Awad Maarouf, Publisher: Dar Al-Gharb Al-Islami – Beirut, Edition: First, 1996 AD, Number of parts: 6, Note: We have included the hadiths that were omitted by the editor of the printed edition, with an explanation in the footnote, and mention of the versions in which they were included, Book numbering: Conforms to the printed edition, and it is included in the authentication service, Publication date in Al-Shamela: 8 Dhu al-Hijjah 1431.
67. Book: Al-Mabsut, Author: Muhammad ibn Ahmad ibn Abi Sahl Shams al-A'immah al-Sarakhsi (d. 483 AH), Corrected by: A group of distinguished scholars, Publisher: Al-Sa'adah Press – Egypt, Photocopied by: Dar al-Ma'rifah – Beirut, Lebanon, Number of parts: 31 (the last one is the indexes of the Dar al-Ma'rifah edition), Book numbering: Conforms to the printed version, Publication date in Al-Shamela: 8 Dhu al-Hijjah 1431.
68. Book: Sharh Fath al-Qadir 'ala al-Hidayah, Author: Kamal al-Din, Muhammad ibn 'Abd al-Wahid al-Siwasi, then al-Iskandari, known as Ibn al-Humam al-Hanafi (d. 861 AH), Publisher: Mustafa al-Babi al-Halabi & Sons Library and Printing Company, Egypt, Edition: First, 1389 AH - 1970 CE, Number of Volumes: 1-7 (and its supplement, "Nata'ij al-Afkar," volumes 8-10, published separately in al-Shamela), Photocopied by: Dar al-Fikr, Beirut, Note: At the top of the page is the book "al-Hidayah" by al-Marghinani, followed—separated by a divider—by its commentary "Fath al-Qadir" by Kamal ibn al-Humam, Book pagination: Matches the printed edition, Publication date in al-Shamela: 8 Dhu al-Hijjah 1431