

# The Foundling



Definition: Called foundling because it is found, and too “rescued,” because it is rescued; and adopted child. “Then the family of Pharaoh *altaqata-hu* (picked him up)” [28:8].

Shari‘ah: The name of the child born discarded by his family fearing poverty or running from charges of *zinā*; or he is an infant rescued from the street, no one claiming him.

Picking up the cast out is a *fard al-kifayah*. The root is from what He says,  
“Help each other in goodness and *taqwā* [5:2] and  
“Do good” [22:77].

The picking up is a *fard al-kifayah* because of His word,  
“And one who saves a life, it is as if one saved the whole people” [5:32].

The foundling is a human being, sacred, so obligatory is protecting it.

Announcing it is obligatory, as well as whatever wealth is with it.

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ

وَاعْبُدُوا رَبَّكُمْ وَافْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ

وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا

If the foundling is found in a civilised area, it should not be transferred to the remote area, because of the coarseness of life there and the lack of education and religion and work.

From **al-wasīṭ fī al-madhhab of Abu Hamid al-Ghazali**

If he was found in a civilised area, it is not permissible to transfer him to the countryside or to a village, since that means a constriction of his livelihood. But if found in the outskirts or village, than transferring to the civilised area is permitted. But one aspect is, it is not permitted because his lineage is in the area he was found. If he goes to a like area, then, either it is permitted, because the two livelihoods are equal, or it is forbidden, because his lineage area is not the same. If found in the desert, then he should be transferred to whatever place you want, because the rest of the places are the same or better than it.

It is lawful to pick up with the foundling the money that is with him because it is not really his but is expected to be expended for him. The money may be in the swaddling blanket or in a pocket, or in the basket. If the foundling is found in a house, the house is his. If there are two or more foundlings in a house, it belongs to them.

[from *al-wasīf* There may be near him money placed or an animal tied to a tree. If the money is buried under the place, it may or may not be specifically for him.]

But if there is no money with him, his expenses are from the Treasury, from the Beneficent funds, not to be later returned, because °Umar, God be pleased with him, guided the Companions about that. They all agreed that the expenses are from the Treasury.

[from **Sunan al-kubrā of al-Bayhaqī**, “°Abd al-Razzāq brought to °Umar a rescued foundling and he said, He is free, his guardianship is yours, and his expenses are ours from the Bayt al-Māl.”]

If the foundling is found in an Islamic region, or a non-Islamic region where there are Muslims who rule (themselves) with Islam, then the foundling is Muslim. Even if found in a region of non-Muslims where no Muslims reside permanently, but there are some captives or (itinerant) traders who are Muslim, then the foundling is Muslim.

## What can we take from the classical legal *fiqh* framework for the foundling?

For a foundling—that is, a baby put in a safe place in order to be found and cared for—police and first responders should concentrate on the safety of the child.

Baby hatches and safe havens are legitimate means to ensure the infant's safety.

It is likely that many of the young women who abandon babies are themselves victims.

The announcement and registration of the foundling has been seen as required in the classical legal texts.

Children need to be raised in families. Adoptive families are responding to injunctions in the Qur'ān to do good, and save a life, and are fulfilling a *farḍ al-kifāyah* on the local community. The state should support fully and facilitate the adoption of foundlings.

Foundlings should be given full citizen status and standing by the state. The state should also use funds to provide for expenses, even when the foundling is adopted and under the care of a guardian.

The state should ensure that the foundling be given, geographically speaking, life opportunities equal or better than the place he was found.