The *Sharīʿah*'s Stand on Abandoned Children

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Muslim jurists have addressed the issue of an abandoned child (*laqīṭ*) from different angles beginning with the existence of a basic obligation to save its life. There is general consensus that it is a collective obligation (*farḍ al-kifāyah*) of the community to save the abandoned child, and it is an obligation in the first place of the individual who finds it. That obligation is elevated to an emphatic personal duty (*farḍ al-ʿayn*) of the finder in the event of imminent fear over the death and injury of the child. This is due to the explicit qur'ānic emphasis on the sanctity of life contained in the injunction that "one who saves one life is as if he has saved the whole of humankind". It is accordingly regarded as an act of great merit and service to humanity for the one who actually saves a life.

Other issues that have been discussed are over the parental and religious identity of the child, responsibility for its maintenance and care, and criminal acts. All of the discussion assumes the abandoned child is of unknown identity and parentage, with the central question being the saving of its life. Questions over the causes and circumstances of its birth are secondary.

The one question that is not explicitly addressed in the juristic discourse on *laqīṭ* is when the mother or father is known or identified, presumably because of an unequivocal obligation in the *sharīʿah* over parental responsibility for the safety and upbringing of the offspring. Should there be desperate poverty or disability in meeting this obligation, responsibility falls on the community and state to help out. If it becomes known that the parents of the *laqīṭ* abandoned it deliberately and the person who finds it incurs expenditure for its upkeep, the latter is entitled to reimbursement if the parents happen to be affluent. Otherwise, the expenditure so incurred is considered as charity. Muslim jurists have differed as to whether the one who finds the *laqīṭ* should call for a witness before he picks the child up so as to protect against loss of identity and false claims, especially when it is found together with money and other assets. This is the position of the Shāfiʿī school with the proviso that witnessing is not a requirement if the finder is trustworthy and has a reputation for uprightness.

If the person who finds the *laqīṭ* is upright, financially capable and willing to keep it and undertake responsibility for its care, he has a priority entitlement to do so with the approval of the authorities. It is regarded an act of merit for the finder to do so just as it is also deemed to be of benefit for the *laqīṭ*. According to

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a variant opinion, a mere claim or confession is not enough to establish a priority right and the issue of identity and descent still warrant further investigation. In the absence of a volunteer or claimant, the *laqīṭ* is taken away and placed under the care and responsibility of the state to meet all its needs from the public treasury. The judge is, in this case, the guardian of the *laqīṭ* and makes most of the important decisions concerning its upbringing, and is authorised also to appoint someone else as caretaker of the child. The state's responsibility in this regard is a focal point of juristic debate due mainly to the directive of a *ḥadīth* that "the ruler is the guardian of one who has no guardian". The only exception is when the *laqīṭ* is found with money and assets, or when it turns out to be entitled to inheritance, in which case necessary expenditures are met out of those assets. The state is also considered to be the legal heir of the *laqīṭ* in the event of his or her death.

As for the religious identity of the *laqīṭ*, the leading schools of Islamic law have differed somewhat but most say that when it is found in a Muslim country, or a Muslim neighbourhood and also the person who finds it is a Muslim, the *laqīṭ* is presumed to be a Muslim. Even when a non-Muslim finds the child in a Muslim neighbourhood, a presumption exists that the child is a Muslim. However, if it is found in a non-Muslim country or neighbourhood, a church or a temple, the child's religious identity is determined accordingly. If a Muslim happens to find the *laqīṭ* in a church or non-Muslim neighbourhood, it is presumed to be a non-Muslim. Locality and religious identity of the finder are thus the two most important indicators of identity but most consider locality to carry greater weight. A Muslim neighbourhood in a non-Muslim country would also give rise to a presumption of the *laqīṭ* being a Muslim. As for the personal identity and descent of the *laqīṭ*, it is considered to be of unknown descent (*majhūl al-nasab*) unless there is evidence to suggest otherwise. Anyone who claims the *laqīṭ* to be his child or relative is granted a hearing and the claim is granted if supported by evidence. If more than one person claims the descent of the child, and there is no other sign or evidence, facial characteristics (*qiyāfah*) and racial indicators may be considered. Early juristic discourse on this runs into some length, but now that DNA and other scientific methods have become available, such evidence has been resorted to. In the event when the *laqīṭ* suffers injury or death due to error, it is deemed as unintentional homicide and liable to the payment of blood money (*diyah*), which is payable to the public treasury in the absence, that is, of any other legal heir. In the event of intentional criminality and murder, the head of state, in his capacity as guardian (*walī*) may claim just retaliation (*qiṣāṣ*) or settle for a *diyah* as the Qur'ān grants a certain flexibility for the *walī* to make an appropriate decision. In the event of a deliberate injury on the *laqīṭ* that does not cause death, the court may determine a suitable punishment.