

FOCUS ON SAVING THE LIFE OF THE FOUNDLING*

by

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THE concept of the foundling has gripped the imagination over millennia. The story of Oedipus is about a foundling who doesn't know his background, and so ends up killing his father and marrying his mother.

Stories of foundlings speak to us about social status, and the degree of noble or ignoble birth determines our lives. Muslim scholarship over the centuries developed discussions about the social standing of foundlings.

In Europe in the Middle Ages, from at least the 12th century, societies developed ways to protect abandoned babies. The “baby hatch” was a crib outside a hospital or almshouse where a baby could be safely dropped off and cared for.

The “foundling wheel” was a circle in a wall through which a baby could be placed inside and be safe. Partly, these devices were escape valves, because the Catholic Church did not accept abortion and so needed a place for unwanted babies.

In the last century, European countries have written up different laws for abandoned babies. In some places, the abandonment is criminalised; in others, the safety of the baby is a priority.

In the United States, there are “safe haven” laws which put the well-being of the baby first. Some states allow a woman to deliver in the hospital safely and anonymously and leave without the baby. In order to encourage acceptance of these laws, they are often called “Baby Moses” laws, to remind Christians and Jews that Moses was a foundling.

In Tamil Nadu in 1994, Chief Minister Jayalalitha started a programme that put the baby’s welfare first, called Thottil Kuzhanthai (baby in the cradle).

In 2002, outside a hospital in Trivandrum, an abandoned baby was mauled to death by a dog. The community was so horrified by this event that they created a safe haven for abandoned babies. Since then, there has not been a single abandoned baby death.

In Karachi, the Edhi Foundation has since 1952 had a system of accepting abandoned babies called jhoola, after the name of the hammock where the baby may be placed, to be picked up and cared for inside.

Almost all of the babies abandoned were girls. Among others, the reasons were fear of poverty (because in Pakistan, a female child is too often seen as a burden) and fear of legal repercussions (or that horrible misnomer, “honour” killing).

Abdul Sitar Edhi, who is respected and treasured by all, has stepped in where the government did not, and he bravely faces criticism from the mullahs of the country. He estimates that the jhoola programme has saved 16,000 lives since its start.

The classical fiqh position starts with describing the wonderful benefit and blessing that one receives in “picking up” and caring for a foundling, and moves on to argue that it is fard al-kifayah to care for the foundling, and that if you see an abandoned baby in trouble, it is a fard al-ain on you to care for the baby. It then goes into detail about the legal status of the child and the religious status (for example, what happens if a baby is found in a church or synagogue in a Muslim country?).

Criminalising abandonment encourages someone, already in a terrible situation, to make a worse decision to hide a baby.

The classical fiqh does not try to legislate against promiscuity post facto, knowing that any such activity would harm the baby. In order to save the baby’s life, there can be no criminalisation of abandonment.

There must be a safe and anonymous way a parent can hand over a baby to the care of someone else. This is the priority, and listening to the voices of the classical fiqh scholars, one is heartened to find them searching for ways to encourage people to protect and guard these babies.

They concern themselves with enumerating the blessings that such an act brings forth. We must separate completely the safety of the baby -- which requires non-criminalisation of abandonment -- from the desire to punish promiscuity after the fact.

We live in societies, all around the world, that are highly charged with sex. One of the characteristics of this post-modern, globalised world is a deluge of sex images and messages.

Trying to filter all this from youth today is either impossible, inefficient, or undesirable (if it removes beneficial aspects as well). A better strategy

is to help youth develop their own “filters”, and become themselves able to make good decisions.

But we also must recognise that, probably for most girls having a baby out of wedlock, the “decision” was not hers to make.

We must protect girls from predatory males and from domestic abuse. If society has failed to protect a girl who is now pregnant, the least we can do is make sure she has a safe way to give up her baby.

The classical fiqh also looks at how a mother can claim her child, if later her situation changes. Let us focus our anger at the instigators and not blame the victim. And above all is ihya’ al-nafs, saving a life.

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