



A Comparative Study of Waif Decrees in Islamic Religions and Iran's Law

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Abstract: An important present-era jurisprudential discussion that is constantly being kept ignored is the topic of waif and its relevant issues. Although the verdicts and the issues related to waif and its relevant cases are comprehensively and wholly discussed in the Islamic jurisprudence as well as in the law of Iran and waif has been taken into consideration in the most detailed manner within the paradigm of the Islamic jurisprudence and its relevant verdicts have been expressed by the Islamic jurists and a general consensus has been reached in the majority of the cases but, in the meantime, there are cases such as the permissibility or the forbiddance of adopting waif and the permissibility or the forbiddance of taking witness in adopting waif and so forth for which discrepancies exist among the jurists and it was therefore deemed necessary to deal with such discrepancies in greater details within the framework of a comparative study because according to the present-era expediencies, it seems that some of the waif-related verdicts require scholastic and scrutinizing revisions so as to let them get clear of the difficult and bothering bottlenecks residing therein.

Keywords: waif, jurisprudential verdicts, jurisprudential religions, the law of Iran

INTRODUCTION

The lofty position of the jurisprudence as the very practical program of Islam in personal-social aspects is clearly obvious to everyone and Islam as a divine regenerative school guaranteeing the worldly and otherworldly felicity of the human beings is summarized in ethics and jurisprudence. It is clearly discernable that jurisprudence is not like the experimental, mathematical or philosophical knowledge dealing with a given topic rather it encompasses every phenomenon that is somehow exposed to a canonical verdict. Some jurisprudential topics solely incorporate the fulfillment of some human beings' intrinsic obligations pertaining to worship. Some are connected to the services and cooperative works one of which is waif that has been under the focus since the very beginning of Islam. Waif was dealt with later on with the formation of Islamic religion by the jurists from every religion and it was clearly distinguished in the differences it has with the properties having anonymous proprietor. Also, because waif has different kinds and therefore follows different jurisprudential rules, thus the existence of discrepancies among the jurists is inevitable. The current research paper deals with the survey of the jurists' ideas and their discrepancies and the different kinds of waif. Also, it will provide the readers with a literary and common definition of waif as well as the denotative and connotative meanings it intends to convey in various Islamic religions, its kinds, its position, the waif-related verdicts, the verdicts pertaining to its definition, the verdicts pertaining to keeping waif, the issues associated with waif, founding, the literal and common meaning of waif in Islamic religions, the verdicts dealing with founding and verdicts pertaining to waif and founding, the verdicts regarding two

persons' disagreement on a waif, lost animals, the concept and position of a lost animal and the verdicts related thereto.

1.1. Study Objectives:

- (1) Elaboration of the commonalities and differences between the Islamic religions on waif
- (2) Describing the essential differences in the verdicts and effects of waif in Islamic jurisprudence and Iran's situational law
- (3) Elucidation of the way the time and place influence the verdicts on waif

1.2. Study Hypothesis:

- (1) The similarities in Islamic jurisprudence religions regarding the waif outnumber the dissimilarities.
- (2) The effects and the verdicts of the waif essentially differ in jurisprudential and legal terms.
- (3) Time and place are effective on the waif-relate verdicts.

In the following sections, we deal with presenting cases regarding the study generalities and the subsequent sections provide the readers with a detailed description of the verdicts pertaining to waif, its specific denotations, its verdicts, the verdicts pertaining to the lost animals and finally the article is concluded.

1.3. Lexical and Common Definition of Waif:

The Arabic term "لقطه" is derived from "لقط" meaning "adopting" and "finding something on the ground". It is stated in the dictionary that "لقطه", equivalent to the English term "waif" means adopting or picking up something from the ground. Also, it is stated that "waif" is gaining something with no pain or without being in search of it. Generally, waif means adopting an abandoned property or a stray animal by way of finding it. In the law of Iran, a foundling or waif is a term used to refer to something which is found and it is of two types: a stray animal the verdicts of which are expressed under the title of "stray animals" and foundling or non-animal waif, in its specific (absolute) meaning, the verdicts pertaining to which are expressed under the title of "lost and found things".

Found things are called waif in jurisprudential terms. Should anyone find a property, lower than a dirham (12.6 gram coined silver) in value, s/he can take the possession of that thing and become the owner; but if the item found worth more than the foresaid value then the finder should make declarations to find the owner and in case that the owner could not be found then the alms should be given on his or her behalf (Khou'ee, no date.).

The jurisprudential documents of this latter verdict are the narratives quoted from the Immaculate Imams (peace be upon them) including Imam Sadeq (peace be upon him) who was asked about a found property and His Highness (peace be upon him) ordered that "it does not matter whether it worth a lot or a little, a year should be spent on declaring its being found but if the item found is less than a dirham in value, there is no need for it to be declared".

The law of Iran stipulates that if a person finds a property or something in "Mafazeh" (Mafezeh, derived from Fowz is a wilderness or a desert) or a ruin place that is abandoned, then, the person can take the possession of the property found without declaring it to the others. Some late-coming jurisprudents affirm the aforementioned decree on the condition that there is no effect of Islam thereon and in case that there is found a trace of Islam thereon then it is waif and its being found should be declared and announced for a-year period.

1.3.1. Defining waif from the perspective of Islamic Religions:

From the perspective of Shiite jurisprudents, a found child is called foundling and waif is the term that can be used for a found animal for an Arabic equivalent of "ضالّه", meaning "stray animal", as well as a found thing or child.

In Hanafi jurisprudence, the property that is being found by a person and bearing no sign by way of which the owner could be found should be kept by that person as something entrusted to him or her and it is better for the person to take others as witness that s/he has found such a thing and the property should be kept in a

place safe and sound till the owner is found. The finder of the property should by any means envisaged appropriate release a declaration signifying that a property has been found.

The proponents of Maleky jurisprudence, like the Imamiyyeh jurisprudence, denounce waif. They state that if everyone abandons and does not take the waif the owner will surely come and take it. It is narrated from Omar's son that the good in taking a waif does not worth its bad so one should not pick up a waif because it belongs to the others and it is not allowed to pick it up.

In Shafe'ei jurisprudence, it is generally considered as permissible to take a found property whose owner is anonymous and it is exposed to being wasted. Waif is recounted as something that is picked up and as it is provisioned by the religion picking up a respectable property is canonically unlawful and if the property is found wasting or spoiling it has to be maintained and then it can be possessed in case that its being found is announced and no one claims it (Ashur, no date, 2001).

In Ibn Hanbal's Jurisprudence, waif is a property that is lost by an owner and this is the canonical definition of waif (Salehi, 1998, 380).

1.4. Literal and Common Connotations of Waif:

Waif is grammatically considered as an object like "injured" or "wounded" and "dead" or "killed" and it does not refer to cases like "merciful" to be taken as "one who has mercy" or "knowledgeable" to be taken as a "scholar" and all of the verbs that rhyme with the rhythm of "Fa'ael" like "Lageet=waif" feature an action that has happened between the subject and the object of a verb (Ghorafi, 1994, 129).

Commonly, waif, equivalent in Arabic to "منبوذ" (forsaken) and "ملقوطة" (bound), is a term used to refer to a lost person who does not have a protector and s/he cannot independently satisfy his or her needs. To put it differently, the individual cannot perform corresponding to what is deemed appropriate for him or her so as to be able to repel the dangers and the calamities that can be driven away by a normal person. Therefore, the lost boy and girl kids should be picked up from the ground even if they are not a person's own children.

1.5. Stray Animal:

Stray animal is a term that refers to every animal that is owned by no one and it would be wasted if not taken by anyone but it is disapproved. And, the Narratives, implying the impermissibility of picking up waif, convey the idea that should anyone pick up a waif with the intention to own it, it is canonically forbidden and Sheikh Tusi in his book, "Al-Mabsut", grants this possession of a waif only to the canonical law-maker.

It is stated in article 170 of the civil law that:

Stray animal is a term that refers to every lost animal that is found with no owner but if the aforementioned animal is found close to a pasture or to a water source or if it, running from a wild animal, takes refuge to a place, then it is not at all a stray animal.

2. Verdicts of Waif in its Special Meaning:

2.1. Conditions of Waif in its Special Meaning:

There are certain conditions to be met in order for waif to be realized.

2.1.1. Conditions of Waif in Islamic Jurisprudence:

Imam Khomeini (may Allah sanctify the sacred soil of his tomb) in "Tahrir Al-Wasileh" orders the followings in regard of the conditions of waif actualization:

Waif is authentic when a property is lost by an owner and the things that are taken back from a usurper or a robber is not a waif because they are not lost by the owner.

Also, there are conditions like adoption and collecting from the ground as authenticating criteria for the waif so if someone finds something and announces the news of its being found the right to take possession of the found item is with the adopter not the seer, even though the finder has been the cause of the adoption.

A property the owner of which is anonymous but it is not yet wasted is not allowed to be adopted or its possession to be taken at another one's hand. He who picks up or takes the possession of such a property is to be held liable as a usurper unless there is this fear of the property being wasted. It is in this latter case that

the intention to keep and maintain the property is allowed in which case the property is entrusted in the adopter's hands by religion.

Any property other than an animal that is verified to be lost by an anonymous owner albeit by a person testifying its being lost is called a waif and according to what was mentioned so far it is such a property that is allowed to be possessed and adopted.

Shafe'ei scholars assert that waif (a property being found) features several conditions:

- a) It has to be lost whether as a result of its being thrown away or being left out of negligence;
- b) The lost property has to be found in a land owned by no one such as in the desert, on the road, street, mosque, park and other places of the like and a property being found in a private land is not a waif;
- c) The lost property has to be found in an Islamic land or in a land of Kaffirs where Muslims are also living.

2.1.2. Conditions of Waif in the Law of Iran:

In the civil law of Iran, a found property is an expression that refers to a property characterized by the following conditions (Taheri, 1997, 329):

- a) It has to be owned by someone previously;
- b) An owner should have lost it;
- c) It has to be not in the possession of anyone;
- d) The owner should have not waived it.

2.2. The Legitimacy of Adopting a Waif:

In shahid Awwal's opinion, collecting waif is absolutely disapproved whether be it a valuable or less valuable property or other properties, though picking up the former, the profitable and less valued items the disapproval is more intensified. The reason for such a disapproval is that, firstly, it is narrated from Imam Ali (peace be upon him) that "you should avoid waif because it is lost by a believer and waif is from the fire from hell", and, secondly, it is narrated from Imam Sadeq (peace be upon him) that "only erring individuals pick up waif". Furthermore, some of the jurisprudents believe that picking waif is forbidden due to the Narratives mentioned in this regard. And, the disapproval hinted in such Narratives intends to convey the idea that the finder takes the waif with the sole intention of taking its possession and not for first announcing the news of its being found (Zayn Al-Ddin, 2003 , 78).

Shafe'ei religion has two ideas in adopting a waif: one is that it says "if the adopter is known as a trustworthy person and fears that the property will be wasted if not adopted then it is under such a circumstance that adopting a waif is obligatory and the other is that it says no one is obliged to adopt a waif rather it is recommended to do so" (Tusi, 1986, 580).

Malek states that it is not approved to adopt a waif (Tusi, 1986, 579).

Abu Hanifeh states that it is better to leave adoption undone (Bokhari, 2003, 433).

According to Ibn Hanbal's jurisprudence, it is more preferred to pick up a lost property.

2.2.1. Taking a Witness when Adopting a Waif:

Shafe'ei has two notions in this regard. One is that it says it is recommended and the second is that it says taking another person as witness is compulsory (Tusi, 1986, 580).

Abu Hanifeh states that if a person takes another person as witness in picking up a waif then the adopted property shall be entrusted in him but if no witness is taken the person should be considered as the warrantor of the property found (Tusi, 1986, 580).

Ahmad Ben Hanbal and Malek state that it is recommended to take a witness when adopting a lost property. I do not like anyone touch the waif unless another is taken as a witness (Tusi, 1986, 580).

2.3. Introducing Waif and Declaration Period:

If the waif is lower than one dirham in value it can be possessed instantaneously and without it being announced and the owner being searched. Generally, the finder of the waif cannot take the possession of it with picking it up with no intention of possession; so, if the real owner is found after the waif being adopted and in case it is still existent then it has to be returned to the owner. To be more heedful, even if the adopter

is found taking the possession of the waif then s/he is not to be held by any means liable in case that the property found does not exist anymore and the stronger view holds that if the property is wasted the adopter is not accountable and if the property is wasted after being taken in its possession by the adopter then s/he is not liable so as to be able to be claimed for a return. The same holds before taking the possession of the waif and in case that it is wasted without the finder going to extremes. If the waif is higher than one dirham in value, the finder has to announce its being found and search for the owner. Then, if the real owner is not found and in case taking possession of the waif is illegal and forbidden by the law and religion the adopter is to select one of the two following options: either to donate alms for values equal to the price of a waif not featuring forbiddance and illegality or keeping and maintaining it for its owner in which case the adopter of the waif does not have to give alms for values equal to the price of a permissible waif and at the same time the adopter cannot take the possession of the waif. In case that the waif is a property permissible to be taken in its possession the adopter has one of the following three choices: taking the possession of the waif and giving alms for a value equal to the price of a permissible waif of the same type and keeping it as something entrusted to him or her without being accountable for it.

It seems that letting out the news about an item being found should continue at any circumstances for one year and releasing declarations and announcements and publishing notes and delivering the item to the lost item centers not only does not change the period of declaration but it also does not make the finder freed from the necessity and the duty of declaring the item being found. Based on the article 163 of civil law, the finder of the waif is obliged to continue declaring the item being found for one year.

Abu Hanifeh says the specification of period of time for declaring the news of an item being found is associated with the value of the waif; if it is one hundred dirhams in value the person should release declarations and notes for one year, if it is ten dirhams then one month of declaration suffices and if the waif is three dirhams in value ten days of declaration or one Friday is good and if the value is equal to one dirham three days shall do it. And, the type of the found item shall be announced in the declarations and nothing more. A period of three days has been said to be enough for declaring the news of a sheep being found.

2.3.1. Post-Declaration Real Owner Clarification, Possession, Authentication and the Adopter's Obligation after the Termination of the Declaration Period:

Abu Hanifeh says a poor man can take the possession of the waif after one year of declaration but it is not the same for a rich person (Tusi, 1986, 578). Malek says a wealthy person can keep it for oneself after one year but the poor cannot do the same thing and this is quite contrary to what was said by Abu Hanifeh (Tusi, 1986, 577).

2.4. Adopter's Obligation after the Declaration Period as Outlined in the Civil Law:

In case that the real owner cannot be found after the declaration period, the civil law, in article 163, gives the adopter the options to either keep the waif as something entrusted to him or her or make another uses of it as deemed appropriate.

First of all, if the waif is kept as something entrusted to a person, it shall be kept even after the expiration of the declaration period until a real owner appears and claims it.

Second of all, if the adopter makes another use of the waif, the civil law has not made it clear what would be the examples of other uses. Imamiyyeh jurisprudents believe that the finder can take the possession of waif (in taking possession there is a need for an intention and a satisfaction to be declared) and/or give alms on behalf of the real owner or s/he can donate it as Zakat (poor rate) to the needy people and in each of the two latter cases the finder is to be held accountable and when the real owner is found the adopter or, better said, the finder has to return it back if it is still existent or give something in return, otherwise.

Whenever after taking possession of the waif (after a –year period of declaration) the owner is found, if the exact property is existent the owner will take it back and the real owner cannot be obliged to take back something in return; and, if the exact property is wasted, by way of abuse or going to extremes or as a result of an intentional deed by the adopter (for instance if it has been a sheep that has been slaughtered and

consumed) and/or by way of transferring its possession through sale or donation it is now another person's property, the adopter has to give another property of equal price in return; but, if after a one-year declaration period the property's value is found given out as alms to the poor the real owner, even in case of the exact property being existent, cannot take the original property rather if the real owner does not agree on the waif being given as alms to the poor then s/he can refer to the adopter and claim for something in return in which case the reward and meritorious effects of the alms will be accounted for the adopter.

3. Verdicts of Waif:

3.1. Underlying Premises of Waif:

3.1.1. Foundling:

Foundling refers to picking up a child with unknown parentage whether the adopter is aware or unaware of it as a sufficiency obligation. If there is anyone then s/he should take the child otherwise it is a compulsory obligation for anyone who finds the child to take for reasons such as saving his or her life.

3.1.2. Waif:

Waif can also be used to refer to a child who is lost and has no parent and s/he cannot satisfy his or her needs on his or her own.

3.1.3. Adopter:

An adopter is the one who finds a waif or a foundling and is therefore to be given the right to keep and take care of the thing being found (Rabi'ee, 2010, 572).

3.2. Qualifications of an Adopter:

3.2.1. Maturity:

It means that an adopter should be mature and wise and free. Therefore, adopting by a child and an unwise person is not correct. The adopter should have reached a certain age and the adoption by a child is not correct and his or her finding of the waif is considered as if nothing is found and every mature person who finds a lost child at the hands of a young adopter can take it from him or her and then this latter mature adopter will be considered as the real owner and will be therefore subject to the verdicts and decrees thereabout.

3.2.2. Islam:

The adopter should be a Muslim, of course if the waif is subject to verdicts of Islam meaning that if it has been found in Islamic territories so if a Kaffir finds a child in the Islam territories then the child should be taken away from him or her.

3.2.3. Justness:

Based on the quotation, "and justness is a qualification of the adopter", made by Sheikh Tusi and Allameh in books other than "Tahrir", the reason for conditioning "justness" as a qualification of an adopter is that adopting a child entails keeping and preserving and, after all, tutelage of the child. And, assigning a person with a child's tutelage is some sort of entrusting the child's affairs to that person and a lewd person cannot be qualified for such a thing and also such a lewd person cannot be trusted not to take the child as a servant and s/he cannot be guaranteed not to seize the child's properties. But, the majority of the jurists do not consider justness as a condition for which the adopter should be qualified because the primary principle is not to make the qualifications for adoption so much conditioned and, also, the Muslims are, absolutely, to be trusted and they are canonically considered as trustworthy and, moreover, adoption is somehow considering an individual as really trustworthy and, rather, eventually, it is subject to the same verdict and considered as the same, and conditioning the adopter's qualification on being just is breached where a Kaffir adopts another Kaffir. That is because the jurists believe that such an adoption is permissible and this latter saying, to wit not conditioning adoption on justness qualification, is stronger, though it is more considered as cautious if the justness qualification is regarded as authentic. Yes, if the foundling has along with oneself some properties, it is claimed by some that justness is doubted in this case because betraying a property is an issue that should be considered as more likely to happen than the otherwise.

3.2.4. Residency:

Based on a quotation, the adopter should be a resident. Therefore, the foundling should not be given to the one who travels in the deserts and also s/he has to be taken from the one who wants to take the foundling on a journey. That is because the adoption by such individuals causes the lineage of the foundling to remain anonymous since they take away the foundling from the place where s/he has been lost and it is reckoned that s/he might find his or her relatives and get his or her parentage cleared.

3.3. Adopter's Qualifications from the perspective of Ahmad Hanbal:

- (1) Freedom
- (2) Maturity
- (3) Braveness
- (4) Justness

3.4. Adopter's Qualifications from the perspective of Malek:

- (1) Freedom
- (2) Justness
- (3) Braveness (Ghortabi (Ibn Roshd), 2004, 93)

3.5. Adopter's Qualifications from the perspective of Shafe'ei Jurisprudence:

- (1) Islam
- (2) Justice
- (3) Maturity
- (4) Justice

3.6. Foundling's Obedience of Islam and Blasphemy:

If a foundling is found in the territory of Islam s/he is subject to Islam rules and if s/he is found in the land of the infidels, then s/he is subject to the rules therein unless there are Muslims living in the land of infidels and the child can be likely to be attributed in his or her parentage to them in which case the child can be subjected to the rules of Islam. Such obedience is interpreted as the submission to the "Islam Territory" and submission to "Infidels Territory". Immature or demented child has to follow his or her parents in fidelity or infidelity to Islam; thus, if the parents or one of the two is a Muslim or becomes a Muslim after infidelity to Islam, their immature as well as demented children are subjected to the rules of Islam and if they are both infidels to Islam, based on a popular saying, they are, as well, subjected to infidelity. Based on the ideas opined by a great many of the jurists, an infidel child, away from his or her parents, taken as captive by the Muslims should be obedient to the one who has captured him or her in terms of fidelity to Islam and not to his or her parents (a group of authors, no date, 340).

Based on Hanafi jurisprudence, there is disagreement in regard of the foundling being subject to Islam rules. According to the Narratives, the place of adoption is an authentic condition. If the foundling is found in the territory of Islam then s/he should be considered as a Muslim and if the foundling is found in a Jewish synagogue or if s/he is found in the allegiance of the Christians or if s/he is found in a village all of whom are the infidels submitted to Islam obligations then s/he should be considered as being obedient to them, respectively. It is also stated in a Narrative that the finder is the authentic condition and not the place nor

the time and it is also asserted in another narrative that the conditions should be interpreted in favor of the foundling being a Muslim in regard of both the place and the finder (Samarghandi, 1984, 353).

According to Maleki jurisprudence, every foundling that is found in the territory of Islam and their emplacement is a Muslim or every foundling found in the territory of infidels and their emplacement is a Kaffir and s/he should not be abused unless s/he is found by a Muslim in which case the foundling is subject to the religion of Islam (Ghorafi, 1994, 134).

In Shafe'ei jurisprudence, a foundling should be considered as belonging to the place where s/he is found and there are three types of these territories: the territory of Islam where the Muslims are living, the territory of the Islam where the polytheists are living and the territory of the polytheists where the polytheists live. But, the territory of Islam where the Muslims live includes the entire land of Hijaz, Iraq, Kuffa and Yemen. If a foundling is found in these territories s/he is subject to Islam rules and it does not matter whether the majority of their residents are Muslims or infidels because it is more likely for the foundling to be a Muslim or an infidel and Islam dominates infidelity. As for the territory of Islam where the Kaffirs live the issue takes two forms: either it is a territory that is conquered and possessed by Muslims and the Kaffirs confess to it via paying tributes, so it is the territory of Islam and the foundling found therein is subject to the rules of Islam whether the Muslims reside or do trades in there in which case it is subjected to the rules of Islam and the idea of Islam's domination over blasphemy holds true here as well; or if Muslims do not enter the territory the foundling is subjected to infidelity but if it is the territory of Islam but the polytheists have taken the domination and expelled the Muslims the foundling will be subjected to the rules of Islam even if there are few Muslims therein.

According to Ibn Hanbal jurisprudence, the foundling is decreed to be subjected to the rules of Islam with no disagreement unless the foundling is found in the territory of Kaffirs and no Muslim is found therein. And, this is our verdict and the followers are to adhere (Salehi, 1998, 434).

4. Verdicts Pertaining to the Stray Animals:

Literally and commonly, the term “ضالّة” meaning lost animal is used to refer to any lost thing even non-animal things and this is why an animal, with a tiny share of sanity, has a volition and interest to a place and its owner. So, if it is found in another place then it can be said that it is a stray animal meaning that it has lost its place and owner and cannot find them.

4.1. Qualifications of a Stray Animal:

The qualifications of a lost animal as mentioned by jurists:

- (1) It has to be an animal.
- (2) It has to be owned.
- (3) It has to be lost.
- (4) There should not be any sign of its being under the possession of another person (Helli, 1993, 283).

Article 170 of the civil law expresses the followings as the qualifications and conditions of a stray animal:

- (1) It has to be an animal: by animal, the article intends to convey the idea of the animal being an herbivore that lives on grazing (as it is also understood from the expression “found near a pasture or close to a body of water”) such as camel, cow and sheep and therefore other animals like birds and hounds and other animals of the kind are to be excluded from this definition.
- (2) The animal has to be owned: it means that the animal should have been possessed by an individual(s) and the finder is sure that the animal has not been left there by its owner. All the domestic animals are

possessed by their own owners. This is also true for the nondomestic animals on which there are signs of possession such as collar on the neck or rings round their feet.

- (3) The animal has to have no possessor: it means that it has to be not possessed by anyone. Animals that usually spend their summers freely in the grasslands such as the horses and/or the camels possessed by the nomads should not be regarded as having no possessor.
- (4) They have to be found not on pastures and near body of waters: by the foresaid statement, it is intended that the animal should have been found unable to find food through natural means and survive so it is considered not a stray animal in case that the animal is found on a pasture or near a water source and is not deemed to need a supporter against the wild animals' attacks in such a manner that if it is left on the place where it is found the finder considers it as unlikely for it to be attacked by the wild animals so as to be in need of a protector and/or if it is found capable of defending itself by fighting or escaping such as horses, bulls and deer and other animals of the type that are capable of fighting and running away.

Based on what was said up to here, the animal found cannot be regarded as a waif or a stray animal in case that any of the abovementioned conditions is violated .

4.2. Introducing Stray Animal:

Some of the clergymen qualified to propose decrees regarding the religious issues do not realize as a condition in regard of stray animals a one-year period of declaration including Tooyserkani who orders that making a promise to declare a waif being found for one year is absolutely an act of caution. Some others have said that "declaration for sheep is three days after which the finder can sell the sheep and agree on a price and also the finder has to guarantee that s/he is capable of paying alimony and giving a price equal to the sheep value back upon the real owner being found".

He who adopt something for which the humans' egos are habitually greedy should announce a declaration based on the possibilities without being accompanied by anyone or taking it to a governor; moreover, the finder is held liable even if s/he return the waif to where it was found unless the waif is taken and declaration of its being found is made and the individual does not fear to give the waif back to its real owner with it being recognized. If the declaration period is finished the individual shall keep the waif and maintain it till an owner is found and claims the waif. The finder is obliged to give something in return of the waif back to the real owner if it is destroyed or if it is used up and alms are given in exchange unless it has been something that would spoil or rot.

4.3. Adopting Stray Animal:

Adopting an animal that is powerful enough to repel small birds and adopting an animal that is not powerful to repel small birds; if livestock like camel and animals of the same kin and cows and other animals of the like are found in a place and in a grassland where there is water and they look safe and sound and healthy, neither with broken legs nor with any disease and they seem to be completely healthy on a pasture with no body of water around they have to be left alone and it is not permissible to capture them because the animal can protect itself. Under such circumstances, the animal cannot be by any means taken even with an intention of taking its possession whether the real owner is clear or not. But, can it be captured with the intention of protecting and keeping it for its real owner? There are two statements about this issue. The first statement is that the animal cannot be taken for it to be protected and kept for its real owner to come because there are numerous cases of denying such an act in the Narratives and it does not have anything to do with the case in which the animal is captured to be possessed. The other statement says that the animal can be captured to be kept for its real owner to be found because it is an act of benefaction towards the real owner and doing someone a good is not only permissible but it is also recommended and sometimes it is considered

obligatory. And, based on the both statements, if the finder captures the animal then s/he is to be held accountable till the owner is found and given the animal or the animal is entrusted in the governor.

According to Abu Hanifeh Jurisprudence, the principle here is in the forbiddance and the permissibility of capturing a property owned by another in cases where there is not a fear of the property being wasted.

Shafe'ei says: a lost camel or cow shall be captured because these animals can repel the danger (Shafe'ei, 1979, 79).

If a sheep is found in the desert in such a manner that the finder fears that the animal cannot save itself from the smallest wild animals then it can be captured with the intention to be possessed for an exchange that is no less than the value of the sheep and the finder is liable for the sheep value to be given to the real owner when s/he is found and claims the sheep; however, this is in case that the finder does not think it likely for the owner to be easily found soon in which case the sheep can be captured to be saved and kept for the good of the owner and in doing so the finder is not to be held liable at all and it would be also better if the sheep is handed over to the canonical law-maker to perform as deemed appropriate (Behjat, 2005, 132).

Conclusion

With the comparative study of the verdicts of waif from the perspective of the jurists disregarding the consensus by the scholars in some of the decrees pertaining to waif, there are seen different ideas and notions, some of which are highlighted below:

- (1) It is seen in some of the cases that a jurist has several different ideas regarding a single topic for example in taking another as a witness on a waif, Shafe'ei has two opinions: one is that he says it is recommended and the other is that he says taking a witness is compulsory.
- (2) Adopting a waif, as opined by some Shiite jurists, is abominable and the reason for which is that it is narrated from Imam Ali (peace be upon him) that "one should avoid adopting a waif because it is something lost by a believer and waif is from the fire of hell". Secondly, it is narrated from Imam Sadeq (peace be upon him) that "only the deviants pick up waif" and it is also asserted by several jurists that taking a waif is forbidden and this latter idea is based upon the prohibitions made by a great many of the narrators. Imam Baqer (peace be upon him) orders that "never even touch the waif and wait till its owner comes and picks it up". Of course, the forbiddance of taking a waif is in when it is taken with no intention to be declared and announced. Shafe'ei has two ideas regarding waif: one is that he says that if the adopter is a trustworthy one and fears that the waif will be wasted if it is not adopted then it is, in this case, that adoption is obligatory and second idea is that he says adopting a waif is not obligatory rather it is recommended. From Malek's point of view, waif is abominable and Abu Hanifeh states that it is better if the waif is not taken and taking a waif is better in Ibn Hanbal's jurisprudence.
- (3) As for declaring a waif being found, the majority of the jurists know declaring an announcement as obligatory and some others have underlined its emergency; from the perspective of Maleki jurisprudence if the waif worth a small value it is not necessary for its being found to be declared but if its value is high then declaring an announcement is necessary.
- (4) Regarding the declaration terms, the great majority of the jurists have said it has to last no less than one year but Abu Hanifeh says specifying a period of declaration depends on the value of waif. If the waif is one hundred dirhams in value then it has to be declared of its being found for one year, if it is ten dirhams then it has to be declared for one month, if it is three dirhams in value then it has to be declared for ten days and if it is one dirham in value then it has to be declared of its being found for three days.
- (5) As to the waif status after the termination of the declaration period, after one year, the majority of the jurists believe that the finder has three choices: taking its possession, giving alms for a price equal to waif's value and keeping it till the owner is found. Maleki believes that if the adopter is a rich person can eat

the waif after one year but Abu Hanifeh is of the opinion that if the adopter of the waif is a poor person s/he can take the possession of the waif after a period of one year.

- (6) In regard of the adopter's qualifications, residency and justness are the areas of discrepancy. These two attributes are excluded from the adopter's qualifications.
- (7) Based on the ideas opined by the majority of the jurisprudents, adopting a camel is not permissible because it can survive the dangers of wild animals and also because it can endure several days with no water and grass. This is while in Hanafi jurisprudence, adopting a camel is allowed and they base their reason on the idea that at the time of the great Islam Apostle (may Allah bestow him and his sacred progeny with the best of His regards) there has been a fear of prey, not the fear of people taking it away. But today, corruption and treason are widespread so capturing such animals is preferred.
- (8) Some of the jurisprudents, do not condition the adoption of a stray animal on a period of one-year declaration and some other have said that the declaration period for a sheep is three days.
- (9) In the civil law of Iran, there is not made any reference to adopting a foundling (waif); however, there are detailed investigations made in jurisprudence and it is concluded that it has to be considered as even more important that a found animal, and it is exactly true because when the law deals with scrutiny the issues pertaining to a property larger than one dirham in value and/or a found sheep then how can it remain silent about the verdicts and decrees of a child found in the street or in a desert. Unfortunately, the law has yet stayed speechless in this latter regard.
- (10) The time and place play an effective role in the verdicts and decrees pertaining to waif. As a specimen, the forbiddance and the permissibility of the waif depend on such ideas, inter alia, as immaturity (childhood) and maturity (adulthood) of the adopter.

In a nutshell, after discussing and surveying the verdicts related to waif in the Islamic jurisprudence as well as in the law of Iran and also taking into consideration the various writings by different scholars and university students on waif and also according to the fact that discussions on waif are quite frequently faced with by the people but the jurisprudential topics and verdicts pertaining to waif are not quite common among the people and also because the waif-connected issues are missing from the civil law and the other kinds of waif can be collectively categorized into twenty articles, it is now suggested that the future dissertations and research pertaining to waif should consider the abovementioned constraints in their works so as to make waif verdicts and decrees available for the general public.

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