

**JURISPRUDENTIAL APPROACH TO ABORTION (AL-IJHADH): AN ISLAMIC PERSPECTIVE**

By

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*Abortion can be defined as the deliberate termination of a pregnancy before normal childbirth. It has been argued that the world remains divided between jurisdictions in which abortion is legal and schools have various views and opinions in this regard. Almost all Muslim Scholars and authorities regard ethical dilemmas surrounding abortion as jurisprudential topics. All schools of Islamic jurisprudence regard abortion as forbidden [haram]. On the other hand, they allow abortion, before the point in time in which the ensoulment takes place, only when physicians declare with reasonable certainty that the continuation of pregnancy will endanger the woman's life or put her in intolerable difficulties. The methods employed in this paper are historical and analytical. Historically, the paper tends to unravel the historical events that are pertinent to the topic in Islam, while analytical method is meant to analyse the findings from the historical events. This paper therefore, concluded that abortion is totally forbidden in Islam except the pregnancy that will endanger the mother's life or put her in intolerable difficulties.*

**Key words:** Abortion (*al-ijhadh*), Jurisprudence, Islamic perspective.

**Introduction**

Abortion is one of the problems of societies in the Western world. Abortion has become widely used as a result of moral corruption in many societies, and the increasing illegitimate births that have resulted from the countless occurrences of fornication and adulterous sexual relationship outside marriage. These illegitimate births have reached 45% of the total births according to statistics published by Western sources. This percentage varies according to time and place such that

it reaches 70% in some of these countries (Yaseen M N: 1990).

These illegitimate births have resulted from the unrestricted sexual desire existing in the Western societies, arising from adopting the philosophy (*aqeedah*) of separating personal and public life from the religion (*Deen*) leading to the idea of liberties such as personal freedom. This freedom permits the human to enjoy all kinds of pleasure in life, to the point that fornication, adultery, and relationships outside marriage become widespread

and condoned by the law. This leads Western societies to become like herds of animals as a result of this freedom and the unleashing of their sexual instincts.

The large number of illegitimate births, which account for half of the children in Western societies being illegitimate (Asman O. 2004), led many of these countries to issue new laws to allow women who want to end their pregnancies to do so, especially those resulting from fornication, adultery, or a relationship outside marriage. This is so because in Western societies, it is the mother who has to look after the children born as a result of fornication, adultery, and relationships outside marriage.

As part of what they market to us from their culture, the non-Muslim (*Kafir*) countries in the Western world, headed by the United States have started to advocate for the legalization of abortion. By this, they want to spread corruption among Muslims in order to destroy the family and whatever is left of the Islamic values and morals in the societies of the Muslim world.

This is the reality of the matter in the Western societies. As for the societies in the Muslim world, abortion is not widespread because fornication, adultery, and relationships outside marriage are not common. When abortion is used, it is mostly used to save the life of the mother.

Islam has given Muslim man and woman broad guidelines to think about and apply should any dilemma arise in his or her life. One of these

guidelines is to consider whether a certain action fulfils one of the basic necessities or purposes (*maqāsid*) of Islamic jurisprudence. These five necessities are preservation of religion, life, genealogy/parentage, mind and health, and property. A second guideline is that, warding off harm has a priority over serving a benefit or interest. Muslims believe that the fetus does not become “human” or a “person” until the soul is breathed into it.

(As regards to your creation), every one of you is collected in the womb of his mother for the first 40 days, and then he becomes a clot for another 40 days, and then a piece of flesh for another 40 days. Then Allah sends an angel to breathe the soul into his body [Sahih Muslim]

Therefore, based on this hadith and others like it, there are two interpretations of fetal development. One suggests three consecutive stages, each of 40 days, totaling 120 days before the angel’s breathing the soul into the fetus, and the other suggests that the three stages occur within the same 40 or 42 days. In this article, the researcher is inclined to the first opinion, which is held by the majority of scholars. Before these cutoff dates, the fetus is usually seen as a prehuman because a human being is both a body and a soul. If the soul is missing, it is not fully human. The first stage of fetal development has been called biologic life, as differentiated from human life, which begins after enrolment at the 120th day. From the above discussion, we may consider the permissibility of

abortion from an Islamic perspective in the following circumstances:

1. Abortion is permissible at any point of a pregnancy, even after 120 days, if the pregnancy poses an imminent danger to the mother (e.g. if there is a possibility that she could die).
2. Abortion before 120 days of conception is treated on a case-by-case basis, with the previous rules kept in mind. For example, it is permissible if the mother's health is endangered or if the fetus is found to have an abnormality that is lethal or will cause severe disability.
3. If pregnancy results from a circumstance beyond a woman's will (e.g. rape), she is allowed to keep the child, and if she does not want to keep the child, she may terminate the pregnancy before 120 days from conception. The closer the abortion is to the time of conception, the better. After 120 days from conception, she should continue to carry the fetus until birth, and Muslims should assist her in raising her child should she need help.

### **Abortion in Islam**

To clarify the issue of abortion in Islam, a few subjects should be discussed. These issues involve the significance of life in Islam and when man gains the right to live. Religious scripts would be referred to while discussing these questions.

### **Sanctity of the Human Life**

Islam recognizes the preciousness and sacredness of human life, and believes it should be protected fully because Islam upholds the sanctity of life.

There are a number of Qur'anic verses which testify this, such as:

“And indeed we have honoured the children of Adam, carried them on land and sea, gave them lawful, pure provisions, and greatly preferred them above many of those we have created.”(Q17:70)

Killing children is specifically condemned as they are the helpless victims in every society. In this regard, the Qur'an says:

“You shall not kill your children due to fear of poverty. We provide for them, as well as for you. Killing them is a gross offense.”(Q17:3)

Allah even considers, making unlawful the killing of a single individual human being by regarding it equal to the mass murder of the whole of mankind:

“Because of that, we ordained for the children of Israel that if anyone killed a person not in retaliation for murder or for spreading mischief on earth, it would be as if he killed all mankind. And who saved a life, it would be as if he saved all mankind.”(Q5:32)

Islam upholds the sanctity of life even during the times of war which in itself is an exceptional case. It is reported from Abu Bakr (R.A), the first *Khalif* of Islam, that the Prophet frequently directed his commanders not to kill old men, women, and children; people who took refuge in worshiping places and not to cut trees or kill animals and destroy building. It is very clear that the Qur'an and *ahadith* clearly denote the sanctity of human lives as a whole. However, does life in Islam include that in the womb?

### Abortion According to Sacred Texts

There are no explicit verses or *ahadith* stating the status of abortion. Nevertheless, there are some *ahadith* which can serve as a source for this subject. Although many Qur'anic verses and *ahadith* allude to the sanctity of life, whether this right can be extended to the unborn is open to interpretations of scholars since this issue is not explicitly stated in the sacred texts. Scholars dealing with the subject say that if the mother's life is in danger, abortion can be allowed during all stages of the foetus development. If choosing between the mother's life and an unborn baby's life is inevitable, the mother's life has priority according to Islam. However, in cases of adultery, incest, or illnesses which will render the baby's life very difficult after birth or when some organs are missing, even if those cases do not endanger the mother's life, some scholars allow abortion before the soul is breathed into the foetus. However, at this point we encounter a problem. If abortion is allowed before the soul is breathed, when actually is the soul breathed in? The question cannot be answered following modern scientific data because breathing of the soul is not within the boundaries of scientific field. In order to solve the controversy among the various views stated by scholars, we shall employ the advantages hadith methodology offers, which is discussed in the following paragraphs. First of all we shall try to understand the *ahadith* and prefer a view among the aforementioned ones in the light of Qur'anic verses and science. According to the hadith methodology, if any hadith is in contradiction with

scientific facts, the latter is rejected. Modern medical science will help us in this pursuit since this field informs us of the stages of formation of the foetus daily which are also depicted in the Quran and *ahadith*. Despite not being concerned with the spirit, medical science strictly scrutinizes the physical formation of the foetus. First we shall deal with the *ahadith* concerning this subject.

### Hadith Related to the Ensoulment

A hadith is reported by Al-Bukhari on the authority of Abdullah Ibn Mas'ud about human development in which Prophet Muhammad said:

“In any one of you, all components of his creation are collected together in his mother's womb by 40 days, and in that it is an *alaqah* (a clinging object) like that, then in that it is a *mudghah* (a lump looking which has been chewed) like that. Then God sends an angel and order him with four instructions. He is told to record his livelihood (his sustenance), his age, his deeds, whether he will be miserable or happy, and then the spirit is breathed into him (the soul is acquired)...” [Sahih Bukhari]

The same hadith is also reported by Muslim with a change in the order of some of the words and the phrase “in that” (*Fi dhalika*) was not mentioned in the narration of Al-Bukhari. Muslim's narration on the authority of the same companion Abdullah Ibn Mas'ud is as follows:

“In any one of you, all components of his creation are collected together in his mother's womb by 40 days, then it is a clinging object (*'Alaqah*) for a similar (period). Thereafter, it is a lump looking like

it has been chewed (*Mudghah*) for a similar (period). The angel is then sent to him and breathes into him the spirit. Allah sends His angel to it with instructions concerning four things, so the angel writes down his livelihood, his death, his deeds, his fortune and misfortune.”[Sahih Bukhari and Muslim]

### Materials and Methods

In this article, the researcher reviewed and evaluated the viewpoint of authorities and scholars from different Islamic schools of theology and jurisprudence on abortion and tries to show the areas of need to changes in the related rules and regulations in Islamic communities. The researcher examined related books, articles, *Fatwas* and websites, collected over almost a year through searches of databases such as Medline and Iran *Medex* and search engines such as Google and Yahoo. In addition, *Fatwas* requested from great Sunni and Shiite authorities and references recommended by experts, and also related rules and guidelines in Islamic Republic of Iran were considered search terms included Abortion, Miscarriage, Prenatal diagnosis, Islam and Islamic. Selected collection of above mentioned references were used based on their relevance to the subject of this article and based on the discussion on personal understanding and interpretation of them as well as conversations with experts.

### Results and Discussion

Almost all Muslim scholars and authorities regard ethical dilemmas surrounding abortion as jurisprudential topics. Obviously, all

schools of Islamic jurisprudence regard abortion as wrong and forbidden (*Haram*). On the other hand, they allow abortion, before the point in time in which the ensoulment takes place, or only when physicians declare with reasonable certainty that the continuation of pregnancy will endanger the woman's life or it would put her in intolerable difficulties. The Glorious Qur'an as the most important source for Islamic jurisprudence does not explicitly mention abortion. But it explains the stages of creation of a human in the intrauterine life:

“We created man of an extraction of clay, then We set him a drop in a safe lodging, then We created of the drop a clot, then we created of the clot a tissue, then We created of the tissue bones, then We covered the bones in flesh; thereafter We produced it in another creature. So blessed be God, the Best of Creators.” (Q23:12-14)

And obviously, the Glorious Qur'an gives a very high priority to the sanctity of life:

"Whosoever has spared the life of a soul, it is as though he has spared the life of all people. Whosoever has killed a soul, it is as though he has murdered all of mankind." (Q5: 32)

The Glorious Qur'an makes it clear that a child should not be killed because the parents fear that they will not be able to provide and support him or her - they should trust Allah to look after things:

"Kill not your offspring for fear of poverty; it is we who provide for them and for you. Surely, killing them is a great sin." 17:32

Islamic schools, based on a tenable interpretation of the Glorious Qur'an



and teachings of the Prophet (SAW), do not at all agree with those who say that a woman has full control over her unborn child as part of her body. Islam considers our bodies as a trust, which we have to preserve and maintain. It also confirms that the foetus is the creation of almighty Allah. No one, not even the parents, have the right to make decision about his life, unless its presence threatens the life of the mother.

However, different schools of Islamic jurisprudence hold different views on whether any other reasons for abortion are permitted, and at which stage of pregnancy, one is allowed to assist abortion. For example, among Sunni schools, the Hanafi school (prevalent in Turkey, the Middle East and, Central Asia), permit abortion until the end of the fourth months. According to them, a pregnant woman could have an abortion without her husband's permission, but she should have reasonable justification for this act. One reason, which is mentioned frequently, is the presence of a nursing infant. A new pregnancy put an upper limit on lactation, and the jurists believe that if the mother could not be replaced by a wet-nurse, the infant may suffer or even die. The Shaffi School (dominant in Southeast Asia, southern Arabia and parts of East Africa) allows abortions to be performed up to day 120. For the Maliki School (prevalent in North and West Africa) an abortion is permissible with the consent of both parents up to day 40; it is no longer allowed after that time. For the Hanbali School (predominant in Saudi Arabia and United Arabic Emirates),

abortions are principally prohibited from day 40 onward.

Shiite jurisprudence (one of the large Islamic jurisprudence schools) makes the basis or has great influences on the governmental rules or public attitudes and behaviour regarding public health issues in pregnancy and abortion, in a large part of the world (Iran, most of Iraq, and large parts of Lebanon, Syria, Afghanistan, and some countries in the south of the Persian gulf). Thus, any global, regional, and - in above mentioned countries- national health authorities planning these issues should understand the Shiite perspective.

In the last three decades, because of the commitment of Iranian government to adaptation of the law to the Shiite jurisprudential rules, the religious authorities paid a great deal of attention to issue practicable Fatwas regarding important topics such as abortion.

In the Shiite jurisprudence, the ensoulment occurs after about four months. Before this stage, all Shiite authorities regard abortion as *haram* unless if continuing the pregnancy would put the mother's life in real danger or it will be intolerable for her. But after that, they regard abortion as *haram*, even if it endangers the mother's life, unless in conditions in which continuing the pregnancy results in dying of both mother and fetus, but abortion will save the life of mother. In occasions in which there is equal danger for the mother and fetus, and one of them will certainly survive, it has been said that the pregnancy should be continued till one of them

dies and another one remains alive. If the danger is not equal for mother and fetus, the physician should save the one who has more chance to survive (Syed IB 2007).

Regarding the stages before ensoulment, however, the abortion is permitted if its consequences, including growing the fetus or birth of a child, were intolerable for the parents (put them into Haraj). So, some genetic anomalies as major Thalassemia or Hemophilia have been accepted as permitted reasons for abortion (Sulyman A 2009). Based on these Fatwas, the act of abortion therapy has been approved in Iran's parliament and the health deputy of the ministry of health, has proposed guideline in which he issued a detailed list as the indications for abortion, after confirmation by a committee of experts.

However, the Shiite authorities have not accepted to legitimize abortion in unwanted pregnancies and even in pregnancies that resulted from adultery (*Zina*) or rape.

Whatever be the cause of abortion, many Muslims jurists insist that the payment of blood money (*Diya*) according to related rules is incumbent.

The Iranian parliament has ratified the Therapeutic Abortion Act on June 21, 2005. This Act authorizes therapeutic abortion after an explicit diagnosis by at least three experts that should be verified by the Legal Medicine Organization (LMO). According to this act, Therapeutic abortion should be based on diagnosis of such fetal or

maternal diseases that go ahead to unbearable burden for the mother or endangering her health, for example, severe fetal malformations or retardation, or life-threatening maternal diseases. Abortion should be done before the ensoulment takes place (during the first four months), with the woman's consent and any legal responsibility or punishment would not be inflicted on the physician.

Even though most Islamic authorities have not accepted rape as an excuse for abortion even before four months; in some countries in which the problem occurs in extended dimensions, Islamic authorities issued Fatwas allowing women to abort, for example, it is reported that, for Bosnian women raped by the Serbian army, were issued a fatwa allowing them to abort, of course, they were urged to complete the abortion before the 120 day (Al Bukahir 1987). A similar fatwa was issued in Algeria. In Egypt (where abortion is illegal) in June 2004, Muhammad Saeed Tantawi, the Grand Sheikh of Al Azhar, approved a draft law allowing women to abort a pregnancy that is the result of a rape. His decision caused controversy among other Muslim scholars: The mufti of Egypt, Ali Gomaa, said Tantawi's decision was wrong and violated the Qur'an's injunction that forbids killing innocent souls. This demonstrates that Islamic law has the valuable flexibility to be compassionate in appropriate circumstances.



## Conclusion

In conclusion, abortion is a generally forbidden act according to Islamic teachings. It is permissible under certain circumstances if carried out before ensoulment at four months of gestation and after that to save the life of the mother. Traditionally, the well-being of the mother was the sole consideration for abortion. Currently, some Islamic countries, including Iran, and several Sunni and Shiite scholars, have permitted abortions when the fetus has congenital disorders that are profoundly debilitating or not compatible with life, or when there are serious social or economic hardships entailed in carrying a child to term. The therapeutic abortion legislation in the Parliament of the Islamic Republic of Iran is a step towards crafting a legal mechanism for abortion in accordance with the laws of Islamic law. It is of utmost importance that safeguards against misusing this provision are scrupulously observed to maintain the spirit of Islam's emphasis on respect for life, while recognizing the emphasis on not making religion a burden on people.

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