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The Legality or Otherwise of Abortion Under Islamic Law

Hamidu Ardo, Abubakar Ibrahim Adamu

1. Yobe State University, Nigeria; hamiduardo76@gmail.com
2. Federal University Gashua, Nigeria; abubakardmg124@gmail.com

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Abstract. The legality of abortion under Islamic law is a complex and debated topic. Islamic law has varying interpretations regarding abortion. Abortion is generally permitted in Islam if the mother's life is at risk or in cases of severe fetal abnormalities. However the specific gestational limit for permissibility varies among Islamic schools of thought, the concept of ensoulment, or when fetus is believed to receive a soul, is crucial in determining abortions permissibility. Some interpretations consider ensoulment to occur at conception, while others believe it happens later. Around 120 days after conception. Different schools of thought such as Hanafi, Maliki, Shafii and Hanbali have varying opinions on abortion some are more restrictive, while others allow abortion under specific circumstances. Analytical research methodology was used in this paper. Data are drawn from books, articles, scholarly journals etc.

Keyword: Legality, Otherwise, Abortion, Islamic law

INTRODUCTION

Abortion is a controversial topic involving fundamental moral, ethics, and religious concerns. Since security and the right to life are the fundamental rights of every person, the right to life has remained a contentious topic throughout history. One kind of right of security is life before giving a fetus birth or aborting him is one of the most debated topics between Islamic jurisprudence and contemporary medical sciences as it involves two lives i.e. a fetus and the mother. Islam with other teachings of humanity and human rights greatly respect this sanctity to the point that even the life of a fetus is also viewed as a very valuable creature. Generally, the Muslim authorities view abortions as an act of interference with the rule of Almighty Allah as autonomy on one life and death. In Islam, Allah has the power to procreate so the fetus is formed in the womb, afterward; Allah gives spirit to the fetus, not to the woman. Considering this reasoning, women are not allowed to terminate pregnancy willingly. However, this doesn't mean that Islam opposes abortion at all beyond the question. As there are many schools of thought amongst Muslims and every one of them has his point of view, as a result, the interpretation and analogies of Hadiths applied to the Verses of the Quran, namely murdering humans, are what give rise to the ban or approval of abortion.

Jurist's opinion on abortion

Abortion is one of the most debated topic around the globe for this very reason several scholars share different views as to the legality or otherwise of abortion under Islamic. Differences of opinion among scholars are based on history at the time of the Prophet SAW. There has been a quarrel or fight between two women from the tribe of Huzail, One of them, who was pregnant, was thrown by a stone and hit her stomach, resulting in the death of the fetus or baby in her womb. When the matter was reported to the Messenger of Allah, the maker of the finger (who threw it) was subject to a penalty of ghurrah, which is one twentieth of a diya¹. According to the majority of jurists, it is haram to have an abortion for a fetus that has reached the age of 120 days, while the age before 120 days occurs khilafiyah². There are those who think it is permissible, makruh, and unlawful. The reason for the prohibition of the age of 120 days and allowing before 120 days is the hadith narrated by Imam Muslim and Ibn Mas'ud which states about the creation of the fetus, from nutfah to 'alaqah, to mudghah and until the soul is breathed at the age of 40 days.

Then in terms of legal views regarding abortion, it can be classified into several legal opinions from various scholars, such as the following; Legal opinion of Abu Ishaq al-Marwaei is of the opinion that a person who takes medicine to abort his pregnancy as long as it is in the form of nutfah or mudghah, then it is permissible³.

¹ Moh. Manaf Badrii, Muhibbin Legality of Abortion by Rapes Perspective of Islamic Law, Indonesian Positive Law and Human Rights Budapest International Research and Critics Institute-Journal (BIRCI-Journal) Volume 5, No 3, August 2022, Page: 23506-23513 e-ISSN: 2615-3076 (Online), p-ISSN: 2615-1715 (Print)

² Ibid

³Dewani Romli, "Aborsi..." pg 161

Makruh Legal Opinion In the opinion of Ibn Rushd, from the Maliki school of thought, if a pregnant woman is beaten and causes the death of her fetus, the sanction is not obligatory, but it should be kafarat. The reason is like what has been done in the case of a fight between two women from the Huzail tribe that has been explained. Ibn Wahban argues that abortion is permissible if it is due to age. If not, then the law is makruh. **Haram Legal Opinions** It is forbidden to have an abortion, even if the spirit has not breathed it, because if the semen has settled in the womb, even though it has not passed the 40-day period, it is not permissible to expel it. This opinion was expressed by many scholars of the Maliki School and the Zahiri School. Then according to Imam al-Ghazali, the law of abortion is absolutely haram, even since the meeting of male sperm and female ovum. This opinion is supported by Mahmud Saltut and Yusuf Qardhawi. According to 'Abd al-Rahman al-Baghdadi's opinion, if the abortion is carried out after 40 days of pregnancy, that is, when the fetus is formed, then the law of abortion is haram. The well-known scholar of medicine Ibn-i-Sina composed a chapter in his famous book 'Al Kanoon fi Tibb' about the method and medical indication of abortion. It is implied that recognizing the necessity for abortion because pregnancy might negatively impact a woman's health or life is more sincere and humanistic than the position taken by the Catholic Church today or the clergy in medieval Europe⁴. Abu baker al-rhazi He as a physician of the Islamic faith states in his encyclopedia "Al Hawi" and book "Al Mansouri" that only when continuing a pregnancy poses a danger to the health or life of the expectant mother is abortion legal. Abortion can be performed using abortifacient substances and procedures. Ibn-i-Qayyim is known as a great scholar of the 8 century A.H. He raises the query, "Is the embryo regarded a life before the ensoulment (to breathe spirit in the embryo) of spirit?" in his work "Attibian Fi Aksam Al Qur'an." he answers his query that like a growing plant embryo has the capacity of growing and sustenance when once the spirit is breath into embryo it acquires the perception and volition"⁵. Syafi'iyah school, among which was stated by al-Ghazali in Ihya Ulumuddin, forbids abortion.

This school believes that abortion is an unlawful criminal act regardless of whether there is a spirit or not, because life has started since the meeting between sperm and ovum in the womb of a woman. However, al-Ghazali in the book of al-Wajiz opinion is different from his writings in al-Ihya, he acknowledged the truth of the opinion that abortion in the form of a blood clot ('alaqoh) or a lump of meat (mudghoh) is allowed because there has not been a spirit⁶.

The Scholars did not unanimously agree as to the legality or otherwise of abortion because different scholars perceive abortion differently

Abortion of a Fetus as a Result of Rape

The book haram insurgency in Nigeria has not only inflicted wider spread violence and destruction but has also had a devastating effect on the and deep

⁴ M, Shaloot, "Islam: Creed and Shari'ah,"

⁵ Al Qaiyim, Ibn, "Attibian fi Aksam Al Quran," Maktabat Al Kahira, Cairo. P. 255

⁶ Al-Ghazali, al-Wajiz, Daar al-Ma'rifah, Beirut, pg 158

troubling impact on the status and safety of women in the affected state. Women have been subjected to abuses they have been kidnapped forcefully married to the leaders of the sect, raped, sexual slavery made subject of negotiation for the exchange of their members in captivity, those women experienced unimaginable torture, and demeaning conduct. Sexual violence is employed as a deliberate tactic of terror by book haram, the survivors of this attack are often faces social stigma within their communities .the psychological trauma resulting from their experience can be devastating affecting their mental health and ability to re integrate in to the society .out of 100% of the women that where captive 60& of them will when regain freedom either pregnant or already with their children which were product of rape and forced marriage to the sect members.

Generally Abortion is a controversial topic that draws a lot of attention around the globe especially when related or being considered under the framework of Islamic law, or sharia. One of the most challenging scenarios within this context is the abortion of a fetus resulting from rape. Islamic law like in other aspects of life which has no direct injunction from the Qur'an and Sunnah Islamic jurisprudence offers diverse opinions on this matter and the ethical, legal, and religious dimensions are deeply intertwined. Islamic Scholars have explored the circumstances under which abortion may be considered permissible within sharia. some argue that if the continuation of a pregnancy resulting from rape poses a severe threat to the life or health of the mother, abortion may be permissible as a form of "choosing the lesser of two evils" this view point aligns with the Islamic legal principle of "darura" (necessity)⁷.The threat to life hear does not necessarily means physical health only, it can also include emotional health, that is the trauma experienced as a result of rape. Another point of contention among Islamic scholars concerns the stage of pregnancy at which abortion may be considered permissible .while some scholars permit it within the first 120 days gestation (before esoulment), other hold stricter views, restricting it to the first 40 days or prohibiting it entirely⁸.some Islamic scholars emphasized the mental and emotional well-being of the mother as a critical factor. If continuing the pregnancy causes severe psychological trauma due to the rape, they may permit abortion within a specific timeframe. This perspective recognizes the emotional distress experienced by the victim and seeks to balance it with the preservation of life. A religious decree released in 1998 by Muhammed Sayed Tantawi, the Egyptian Grand Sheikh of Al-Azhar, stipulates that a single woman have to access to abortion if she becomes pregnant as a consequence of rape. In addition, he said in 2004 that if a woman's life is in danger, an abortion should be performed. As fervent believers Rape was used as a tool of war in Algeria; as a result, in 1998, the Algerian Islamic Supreme Council gave a fatwa that permits abortion for rape victims. After significant debate over the subject of Iraqi soldiers raping Kuwaiti women during the first Gulf War, the Kuwaiti muftis, on the other hand, declared that rape was not a legal basis for abortion. The Kuwaiti muftis' claims that the unborn child's life must

⁷ Ibn Qudamah, a prominent scholar in his work "Al-mughni (vol 7, p.346)

⁸ Al-majmu (vol17, p.254).

be protected and that a new life begins at conception are more in line with extreme Christian beliefs than with Islamic law.⁹

Pregnancy and rights of a child in womb under Islamic Law

Islamic law has regards the right accorded to pregnant woman and the child in the womb as an absolute right in a valid marriage, a husband is bound to maintain his wife I.e., provide shelter, health maintenance, food, and clothing. A woman is financially dependent upon her husband after marriage, maintenance is one of the basic rights of a woman under a valid marriage and also when pregnant she is to be maintained by her husband during the subsistence of the marriage and even in circumstances where the marriage has been dissolved until she delivers the child. A woman is entitled to maintenance by her husband under a validly constituted marriage this is according to the provision of the holy Qur'an where Allah the Almighty says

"Men are the protectors and maintenance of women because Allah given the one more (strength) than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient and guard in (the husband's) absence what Allah would have then guard"¹⁰

Therefore, a husband is under obligation to provide maintenance to the wife by virtue of a valid marriage. Likewise a fetus is entitled to maintenance in the womb through the mother. The pregnant woman is expected to take due care of herself during the subsistence of the pregnancy and the child she is carrying. She is to ensure that the child is in good health by avoiding the things that will harm the pregnancy. Put in other words she is to do all that it takes in order to protect the baby in the womb and refrain from doing things that will put the pregnancy in jeopardy

Right to life

Under Islamic law, the life of a human being is sacred and as such, the preservation of life is one of the fundamental principles of Islam, and this applies to a fetus as well. Islamic law recognizes a fetus as a human being after 120 days of gestation, which the soul is believed to be breathed in to the fetus. The protection of the right of the child to life begins under Islamic law even before the child is born.¹¹ This is by prohibition of abortion and any other act either from the child's parents or any other person that is likely to endanger the life of the child.¹² Once a child is conceived, the law accords the fetus a special status and protection. The fetus according to Ibn Qudamah is that which is in the shape of a human being but has not fully developed into a complete human being¹³. It has equally been defined by Qurtubi to mean that which is in the womb whether it is in a form of semen, clot blood or has

⁹ Hessini, "Islam and abortion," 24

¹⁰ Q4:34

¹¹ Mansur, A.I.M., *Huquq al-Tifl wa Aathaariha Baina al-shari'ah al-Islamiyyah wa al-Qanun al-Wada'iyyah*, (Iskandariyyah: Dar al-Jami'at al-Jadeed, 2011), 2.

¹² For example pushing a pregnant woman, scaring her or causing harm to her which will likely affect the fetus

¹³ Ibn Qudama, *Al-Kafi fii Fiqhu Ibn Hambal*, 86

developed into a human being.¹⁴ These views of Hanbali and Maliki scholars have shown that even if a fetus has not fully developed, it is entitled to be protected. This legal protection accorded to fetus under the Sharia is born out of the concept of dhimmah.¹⁵ Dhimmah is defined as “a quality by which a person becomes fit for what he [or she] is entitled as well as what he [or she] is subject to.”¹⁶ The implication of this capacity is that it makes the fetus a repository of rights and obligations. It serves as prerequisite for ahliyyat al-wujub (the eligibility of a person to establish right for and obligation upon himself, technically called, receptive legal capacity).¹⁷ By this position the Sharia, has made itself clear to the effect that human life is sacred and its protection begins from the moment of conception.¹⁸ After this point, however, the fetus is given the same legal status as a born person, and its right to life is protected. Any intentional harm or killing of the fetus is considered a serious crime, and the prosecution of such acts falls under the Islamic concepts of qisas (retaliation) and diya (compensation).

Ahliyyah al-wujub is divided into shakhsiyyah naqisah (incomplete receptive legal capacity) and kamilah (complete receptive legal capacity).¹⁹ The former applies to unborn child. This form of competence accords the unborn child with rights without corresponding responsibility.²⁰ This gesture is in favor of the child due to his or her vulnerability.²¹ With respect to the latter, a person attains complete receptive legal capacity the moment he or she is born. That means such child has rights and corresponding responsibility.²²

The first and foremost right under Islamic law is the right to life because all other rights granted by God can only be secured when there is life. The Qur'an says;

*Whoever kills a human being (without a just cause) it is thought he had killed all mankind.*²³

The power to kill or take another person's life is vested in the authority which can only be decided by a competent authority. This is unequivocally stated in the Qur'an which reads: Do not kill a soul which Allah has made sacred except through the process of law²⁴. Sharia guarantees fetus's life against any form of unfair treatment and or deprivation of life and liberty, it is beyond debate that, in sharia violation of these rights are met with severe punishment of the like manner (abortion is prohibited

¹⁴ Ibn Rushd al-Qurtubi, *Bidayatu al-Mujtahid*, 416

¹⁵ Olowu Dejo, "Children's Rights, International Human Rights and the Promise of Islamic Legal Theory," *Law, Democracy and Development* 12, no. 2, (2008): 76

¹⁶ Abdallah, A.A., *Legal capacity in Islamic law* (Zaria: Centre for Legal Studies, Monograph Series 1, 1978), 6.

¹⁷ Hurriyah El Islamiy, *Definition*, accessed October 19, 2013 www.kantakji.com/fiqh/Files/Finance/N317.pdf

¹⁸ Ibn Hazam Al-Andalusy, *Al-Mahalla*, Vol. 9, (Madinah: Dar al-Fikr Littibaa wal Wal-Tawzi, nd), at 221

¹⁹ Zahraa Mahdi, "Legal Personality in Islam" *Arab Law Quarterly*, 10, no. 3, (1995):

²⁰ *Ibid*

²¹ Olowu Dejo, *Children's Rights, International Human Rights*, 76

²² *Ibid*.

²³ Quran 17 verses 31-33

²⁴ *ibid*

except for a just cause). Akin to the above – explicated elaborated divine protection of Human Right to life and dignity of human person in Sharia, is section 33 of the Nigerian Constitution 1999 (Article 4 of the African charter on Human and Peoples' Rights) the Constitution provides:

Every person has a right to life and no one should be deprived of his life save in execution of the sentence of a court in respect of which he has been found guilty.

This goes to explain the fact that right to life of fetus whether God's given or protected by government is sacred and inviolable. Sharia guarantees the sanctity of human life as evidenced from the word of the lawgiver that

"...kills not your children for fear of poverty. We shall provide for them as well as for you. Surely the killing of them is a great sin²⁵.

From the foregoing analysis on the right to life of a fetus under Islamic it is safe to conclude that a fetus has same right to life as a child who has been born. A child in the womb is to be protected at all cost by the parent and he is entitled to be maintained to ensure he is being given birth alive and that though aborting a child in the womb is not the same as killing a person but it is an ill conduct and forbidden which a person guilty of that is subject to the payment of diyya monetary compensation for the harm caused.

Permissibility or otherwise of Abortion under Islamic Law

Generally under Islamic law there is no direct prohibition or permissibility of Abortion, however the Muslim authorities view abortions as an act of interference with the rule of Almighty Allah as autonomy on one life and death. In Islam, Allah has the power to procreate so the fetus is formed in the womb, afterward; Allah gives spirit to the fetus, not to the woman. Considering this reasoning, women are not allowed to terminate pregnancy willingly. However, this doesn't mean that Islam opposes abortion at all beyond the question. As there are many schools of thought amongst Muslims and every one of them has his point of view, as a result, the interpretation and analogies of Hadiths applied to the Verses of the Quran, namely murdering humans, are what give rise to the ban or approval of abortion.

Liberal theories permit abortion on the view that a woman who is carrying the pregnancy should have complete freedom of her body that since it's her body she should do as she pleases with her body Islam on the other hand had a contrary view where a woman is not giving full autonomy over her body she is to do everything with regard to her body in consideration of the teachings of sharia. Islam recognizes new life and seek to protect it. Different contemporary fatwas permit abortion in cases of serious fetal abnormalities, while some fatwas permit abortion in cases of rape victims during times of war, except Kuwaitis.

Legality of Abortion

The legality or otherwise of abortion under Islamic law is one of the most debatable topics throughout history for the very reason that there is no provision of the holy Qur'an which specifically talks about abortion but rather there are various

²⁵Qur'an 17 verse 31

chapters of the holy Qur'an which talks about killing of a person and similarly provisions of the Glorious Qur'an where Allah SWA talks about qisas retaliation the question is to weather killing should be treated as tantamount to aborting a pregnancy. The Qur'an as the last message from the Almighty to mankind has miraculously described the creation of man.²⁶ These scientific facts were later discovered after over a 1000 years of the revelation of the Qur'an.²⁷ The Qur'an states:

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 transformed it into another creature. So blessed be God, the Best of Creators."²⁸

Allah has made everything which He has created in the best of forms. He said in the Glorious Qur'an thus:

*Who perfected everything which He created and began the creation of man from clay. Then He made his posterity out of the extract of a liquid disdained. Then He proportioned him and breathed into him from His [created] soul and made for you hearing and vision and hearts [i.e., intellect]; little are you grateful*²⁹

The physical structure of Adam (who is the first man created by Allah) was from clay, then Allah breathed life into him.³⁰ His progeny was created from him and his spouse.³¹ The Prophet (PBUH) said:

*Verily the creation of any one of you takes place when he is assembled in his mother's womb; for forty days he is as a drop of fluid, then it becomes a clot for a similar period. Thereafter, it is a lump looking like it has been chewed for a similar period. Then an angel is sent to him, who breathes ruh (spirit) into him. This Angel is commanded to write four decrees: that he writes down his provision (rizq), his life span, his deeds, and whether he will be among the wretched or the blessed...*³²

Based on these authorities, Muslim scholars agree that life is breathed into the fetus 120 days after conception.³³ According to Al-Kuzāt, the soul is breathed into the fetus not after the egg is fertilized, but forty-two nights after the Nutfah has settled down in the womb. This is because the Nutfah settles in the womb when it holds onto the wall of the womb, approximately on the seventh day after conception. Thus, the breathing of the soul occurs after the forty-ninth night, approximately at the beginning of the eighth week.³⁴ It is clear that the ensoulment of a fetus appears to be

²⁶ Naik Zakir A., *Qur'an and Modern Science: Compatible or Incompatible* (Kuala Lumpur: Saba Islamic Media, 2012), 49

²⁷ *ibid*

²⁸ Qur'an, al-Hajj:12-14

²⁹ Qur'an: as-Sajda:7-9

³⁰ Alkhalid, S.A., *Siratul Adam*, (Oman: Alwiraq, 2003), at 25.

³¹ Naik, Zakir A., *Qur'an and Modern Science*, 49.

³² Muslim, H., *hadith 2643*

³³ It is however believed that the foetus is attached to the mother right from conception up to delivery. In other words, the life of the fetus is inseparable from that of the mother. See Ahmad, B. Q., *Huquq At-Tiflu Fii Ashariatu Al-Islamiyatu*, (Libya: Maktabatu al-Wataniyatu Lil Bahthi Wa-Tatwir, 2005), 20

³⁴ Abu Abdullah al-Qurtuby, *Jamiu li ahkam Al-Qur'an*, 6-7; Ibn Kathir, *Tasfir Qur'anal Azim*, 202-207; Abu Zakariyya al-Nawawi, *Al- Munhaju Sharhu Sahihu Muslim Ibn Hajjaj*, vol. 16, (Beirut: Dar

after forty days. However, the period which goes beyond forty days has not been determined absolutely. Therefore, it is impossible to ascertain a specific day for the breathing of the soul. Nonetheless, it is most probable that the soul is breathed in between the first forty and fifty days. According to Muslim scholars, there is no doubt that ensoulment does not take place before it.³⁵

The ascertainment of the stage of pregnancy is very important in the determination of the permissibility of abortion on certain grounds. Generally, abortion is unlawful under Islamic law.³⁶ All the four major Sunni schools of Islamic jurisprudence have agreed that abortion is generally haram in Islam. This is because it involves the termination of pregnancy. According to Ibn Jawziyyah, when the womb has retained the semen, it is not permitted for the husband and wife, or one of them or the master of the slave-wife, to induce an abortion. After ensoulment, however, abortion is prohibited absolutely and is akin to murder.³⁷ Ibn Taymiyah, opined that: "It is the consensus of all fuqaha (Muslim jurists) that abortion is prohibited."³⁸ In a similar vein, Imam Al-Ghazali, stated that it is a crime to disturb the fertilized egg of a human being³⁹. In the words of Qardawi, "While Islam permits preventing pregnancy for valid reasons, it does not allow doing violence to it once it occurs."⁴⁰ This opinion is based on the position that the companions of the Prophet (PBUH) practiced *cortus intereptus* during the life time of the Prophet (PBUH) and he did not stop them.⁴¹ This practice is akin to the modern practice of family planning, in the sense that it is a step that is taken to avoid pregnancy without the use of contraceptives.

Under the Shiite doctrine, life is believed to be breathed into the fetus after about 4 months of conception. Abortion is forbidden before the 4 months except if continuation with the pregnancy becomes intolerable to the mother⁴². The prohibition becomes even more serious after the 4 months. It is opined under this doctrine that after the expiration of the 4 months, abortion is totally forbidden except

al-Ihyau Turath al-Arabiyy, 1392), 120; AlKuzāt S. Mehmud, *Cenine Ruh Ne zaman Verilir?*, *Diyanet İlmî Dergi*, v.38, April/June, 2002, cited in Demirel Serdar. "Abortion from an Islamic Ethical".

³⁵ Abdul-rahman Al-Suwuty, *Al-Deebaju alaa Sahihu Muslim Ibn Al-Hajjaj*, vol. 6, (AlKhabar: Dar Ibn al-Affan, 1996), 5; Abu Zakariyya al-Nawawi, *Al- Munhaju Sharhu Sahihu Muslim Ibn Hajjaj*, 122; Demirel Serdar. "Abortion from an Islamic Ethical

³⁶ Zain al-Deen ibn Najeem al-Hanafi, *Bahr al-Rahiq Sharh kanz al-Daqaaiq*, Vol. 8, (Beirut: Dar al-Marifah, nd), 233; Imam Shawkany, *Fathu al-Qadir*, 102. Shapiro, Gilla K., "Abortion in Muslim Majority Countries: An Overview of the Islamic Discourse with Policy Implications", *Health Policy and Planning* 10,(2013):1093.

³⁷ Al-Kuzāt S. Mehmud, *Cenine Ruh Ne zaman Verilir*

³⁸ Majid K.A., *Islam and Abortion*, accessed February 26, 2014. <https://www.spuc.org.uk/about/muslim-division/prohibit>.

³⁹ Muhammad al-Ghazali, *Ihyau Ulum al-deen*, (Beirut: Dar al-Marifah, 1993), 107

⁴⁰ Al-Qaradawi Yusuf., *The Lawful and Prohibited in Islam*, (al-halal wal Haram Fi al-islam), trans.Kamal El-helbawy,M. Moinuddin Siddiqui, Syed Shukry , (Kuala Lumpur: Islamic Book Trust, 1995), 229

⁴¹ *Sahih Bukhari* vol. 7, hadith 135 and 136; Whaley Zoe, "Birth Control and Abortion in the Practice and tradition of Islam", *Macalester Islam Journal*, 2, no.3 , (2007): 3.

⁴² Aramesh Kiarash, "A Shiite Perspective toward Abortion", *DARU Journal of Pharmaceutical Sciences* 14, no Suppl.1, (2006): 38.

if that will endanger the life of the mother and the fetus. With respect to pregnancy that is due to zina (adultery and fornication) or rape, abortion is totally forbidden. The punishment for abortion under Islamic law is not like murder. Under Islamic law, the person that has caused the abortion has to pay diyyah (blood money) if the fetus is born alive and dies subsequently. But if the fetus is not completely formed, then a lesser fine is to be paid by the wrong doer. The position is the same even if it is the mother that is responsible for the abortion without the father's consent.

Prohibition of Abortion

The general position regarding abortion under Islamic law is that it is forbidden. though there is no direct ruling either in the provisions of the holy Qur'an or the Sunnah of the holy prophet (S.A.W) on this matter it is nevertheless regarded as such because of the high value placed on the sanctity of life it is seen as a form of interference with the rulings of Allah (SWA) As such, life is sacred and highly valued, and for this reason, it must be honored and promoted. The preservation of life is one of the basic necessities and purposes (Maqasid) in the Islamic law. Therefore, abortion is considered unlawful and a major sin (HARAM) in Islam.

Abortion is not allowed after four months have passed since conception because at the time it is akin to taking a life, an act that entails penalty in this world and in the hereafter⁴³. As regards the matter of Abortion before this time elapses, it is considered allowed if necessary. However in the absence of reasonable excuse it is detestable However these is the general provision with regards to this matter there are instances in which abortion may be permissible and in such cases mostly it must be before 120 days which is presumed to the time when the soul enters the fetus and this is confirmed by the Hadith of the Prophet Muhammad (peace be upon him) who stated:

With 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."

this is to say there is lesser degree of harm done when the soul has not yet enter the fetus abortion is to be avoided unless there is a justifiable that warrant doing it such as health issues of the mother ,deformity in the child and so on.

Permissibility of Abortion

Among Muslims, abortion is generally haram, or forbidden however some extenuating circumstances are recognized.

Threat to the woman's life

On the issue of the life of the woman, Muslims jurist unanimously agrees that her life takes precedence over the life of the fetus. This is because the woman is considered the original source of life. While the fetus is only a potential life this is allowed based on the principle that greater evil (the woman's death) should be

⁴³ Sayed al -sabiq, fiqh al -sunnah

warded off by the lesser evil (abortion) in these cases the physician is considered a better judge than the Scholar. The International Islamic Fiqh (Islamic Jurisprudence) Council, which is the central Islamic Sunni institution of the Muslim World League, has also formulated a religious edict for resolving abortion issues among Muslims.

Rape

The grand mufti of Palestine gave a ruling that Muslim women raped by Serb men during the Kosovo war could take abortifacient medicine, because otherwise the children born to those women might one day fight for the Serbs against the Muslims. Abortion may be used to terminate a pregnancy resulting from unlawful and unwilling sexual violence, at any time, on the basis of established necessity, to keep the victims and their families from sustaining any further harm. Concerning rape cases, Sheikh Saeed Muhammad Tantawi, the Grand Sheikh of Al-Azhar Sharrif, which is the highest Islamic council in Egypt, issued a Fatwa in 2007 allowing unmarried women, who are victims of rape, to receive abortions, even after 120 days of conception, as there is an immense need to provide immediate solutions to the victims and their families in such situations⁴⁴. He believes that abortion, in this case, would not contradict Islamic laws and principles. Sheikh Tantawi's ruling is based on the following Qur'anic provisions:

*"...No soul shall have imposed upon it a duty but to the extent of its capacity; neither shall a mother be made to suffer harm on account of her child..."*⁴⁵

*"He who suspects that the testator has committed an error or injustice and then brings about a settlement among the parties concerned incurs no sin. Surely Allah is Much-Forgiving, Most Compassionate"*⁴⁶

In this position, the Holy Qur'an and Fatwa recognize equal rights to life for the mother and the fetus, as both have the same dignity and deserve to be respected and treated as equals. In this position, it is evident that the Holy Qur'an upholds the principle of life but does not explicitly talk about the rights to abortion unless a situation becomes dangerous (i.e., threatening the mother's life) or grave (i.e., cases of rape or fetal malformation). Parallel to this, most Islamic jurists approach this subject to protect the rights of humanity and equality, which, as stated in the Holy Qur'an, are to live and thrive. Islamic jurists have come to an agreement after long periods of studying this matter; abortion after ensoulment is forbidden unless it falls under a necessitated condition and reason. Non-allowance or prohibitions of abortion, in rape cases, may expose the raped women and unmarried girls and their families, in Muslim communities, to further social discrimination and unnecessary grief, shame, and sorrow, in addition to the physical and emotional trauma. Hence, the victims in such cases are given this dispensation out of necessity, rape justifies the need for abortion. Under this religious and legal position, it is readily evident that Muslim mothers and pregnant women are supported with scientific facts, clinical

⁴⁴ Alqahtani Jawhrah Mohammed Abortion from an Islamic Perspective: Permission and Prohibition Positions, International Journal of Innovative Research in Medical Science (IJIRMS) Volume 05, Issue 07, July 2020, <https://doi.org/10.23958/ijirms/volo5-i07/906>

⁴⁵ 2:233

⁴⁶ Q2:182

documents, and medical examinations, which helps them be informed about the abortion and its consequences. Concurrently, women are empowered to make an appropriate judgment and decide whether to proceed with abortion. This, in turn, gives all women the freedom to make ethical and moral decisions and the autonomy to protect their fetus and their own wellbeing or to undergo a safe and legal abortion if so desired without contradicting Islamic bioethical principles

Fetal Deformity

Some Muslims scholars also argue that abortion is permitted if the newborn might be sick in some way that would make its care exceptionally difficult for the parents (Deformities, mental retardation etc.). Abortion of a malformed fetus is permissible at any time if the pregnancy is sure to pose a risk to the mother's life. Additionally, when the fetus is physically deformed, abortion at any stage of the pregnancy is justified on the basis of medical necessity and to preserve the woman's physical and psychological health.

Qur'anic Perspective on Abortion

The Quran does not specifically address abortion. Though there are verses of the Qur'an which speaks generally about killing a soul which Allah has made sacred what is to be considered here is that when the soul got blown in to the fetus? Because as far as traditional discussion that will be the time that if you abort the fetus it will be you are killing a soul but there is a time prior to the soul being blown in to the fetus could not really be called killing a soul except may be as a potential soul the body as a vehicle for the eventual reception of the soul ⁴⁷ Allah has made everything which He has created in the best of forms. He said in the Glorious Qur'an thus:

"Do not kill a soul which Allah has made sacred except in the pursue of justice"

The formation of the human body into a fetus is considered one of the wonders in the Qur'an as it reveals the creative power of Allah. The Quran provides:

*Who perfected everything which He created and began the creation of man from clay. Then He made his posterity out of the extract of a liquid disdained. Then He proportioned him and breathed into him from His [created] soul and made for you hearing and vision and hearts [i.e., intellect]; little are you grateful.*⁴⁸

Based on these authorities, Muslim scholars agree that life is breathed into the fetus 120 days after conception. According to Al-Kuzāt, the soul is breathed into the fetus not after the egg is fertilized, but forty-two nights after the Nutfah has settled down in the womb. This is because the Nutfah settles in the womb when it holds onto the wall of the womb, approximately on the seventh day after conception. Thus, the breathing of the soul occurs after the forty-ninth night, approximately at the beginning of the eighth week.⁴⁹ It is clear that the ensoulment of a fetus appears to

⁴⁷ Let the Qur'an speaks/YouTube channel lectures by Dr Shabir Ally

⁴⁸ Qur'an: as-Sajda:7-9.

⁴⁹ Abu Abdullah al-Qurtuby, Jamiu li ahkam Al-Qur'an, 6-7; Ibn Kathir, Tasfir Qur'anal Azim, 202-207; Abu Zakariyya al-Nawawi, Al- Munhaju Sharhu Sahihu Muslim Ibn Hajjaj, vol. 16, (Beirut: Dar al-Ihyau Turath al-Arabiyy, 1392), 120; AlKuzāt S. Mehmud, Cenine Ruh Ne zaman Verilir?, Diyanet İlmî Dergi, v.38, April/June, 2002, cited in Demirel Serdar. "Abortion from an Islamic Ethical".

be after forty days. However, the period which goes beyond forty days has not been determined absolutely. Therefore, it is impossible to ascertain a specific day for the breathing of the soul. Nonetheless, it is most probable that the soul is breathed in between the first forty and fifty days. According to Muslim scholars, there is no doubt that ensoulment does not take place before it.⁵⁰ That will endanger the life of the mother and the fetus.⁵¹

The Qur'an goes further to provide about infanticide that is killing of children of fear of poverty. As it was provided in the holy Quran where Allah the Almighty said *"Kill not your children for fear of want. We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin"*.

The Quran as discussed above those not categorically talks on abortion rather it makes provision for prohibition of killing of a soul which Allah has made sacred.

Sunnah towards Abortion

Muslims generally believe that an embryo produced at its most basic stage of development is alive, although it cannot be considered fully human until its ensoulment. The second legal basis is contained in the hadith, from various narrations that have been conveyed by the Prophet SAW as a source of reference in applying all problems that can be used as evidence in life, it is of course very necessary in studying the issue of abortion. Found several editorials of hadith with various narrations, which can be traced in various sources of muktabarah hadith books, including the following: Meaning: ...From Ubadah bin Shamit said:

*"We are with the Messenger of Allah. In a gathering, he said: "I was sworn in not associating partners with Allah, do not commit adultery, steal, and do not kill souls which Allah has forbidden except with justice..."*⁵²

Opinion of Classical Jurists on Abortion

The four major schools of thought which are called madhabaz viz maliki shafi'i hambali and hannafi those four schools derive their rules from the quran sunnah and now rules based on ijtihad. the general belief is that abortion is forbidden at any stage of pregnancy on the basis of the following quranic verses⁵³.

"Do not kill a soul which God has made sacred except for the requirements of justice"

Thus the termination of pregnancy at any stage of the pregnancy without medical justification is not allowed even for social or economic condition as stated in the holy quran where Almighty Allah said

⁵⁰ Abdul-rahman Al-Suwuty, Al-Deebaju alaa Sahihu Muslim Ibn Al-Hajjaj, vol. 6, (AlKhabar: Dar Ibn al-Affan, 1996), 5; Abu Zakariyya al-Nawawi, Al- Munhaju Sharhu Sahihu Muslim Ibn Hajjaj, 122; Demirel Serdar. "Abortion from an Islamic Ethical".

⁵¹ Aramesh Kiarash, "A Shiite Perspective toward Abortion", DARU Journal of Phamaceutical Sciences 14, no Suppl.1, (2006): 38.

⁵² M, Al Bokhari, Sahih Al Bokhari. Maktabat Al Nahda, 1956, Cairo.40:60.

⁵³ Abdulrahman al-matari & jafar ali controversies and consideration regarding pregnancy for foetal anomalies in islam

“Kill not your children for fear of want. We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin”.

There is broad acceptance in the major Islamic schools of law on the permissibility of abortion in the first four months of pregnancy. Most of the schools that permit abortion insist that there must be a serious reason for it such as a threat to the mother's life or the probability of giving birth to a deformed or defective child. However, as the Egyptian booklet .says "Jurists of the Shiite Zaidiva believe in the total permissibility of abortion before life is breathed into the fetus, no matter whether there is a justifiable excuse or not." That would be a pure form of what some call "abortion on demand."

However, on certain legitimate grounds, an exception for abortion is provided in all legal schools to defend the natural life of an expectant female. All the various school of thought allows abortion with differentiation in duration but it has not been supported by contemporary Fatwas except on legitimate grounds.⁵⁴ The Maliki School and Imam Al Gazali have both discouraged abortion at all times, except for situations where it is essential to safeguard the life of a lady.¹¹ On the contrary, some jurists permit abortion based on social reasons such as the conception of pregnancy by rape; the nursing child will be affected by the continuation of pregnancy, the non-availability of the wet nurse, or the father is unable to pay for a wet nurse.

Hannafi

Majority Muslims (of the Hanafi school) in later centuries, allowed abortion until the end of the four months. According to them, a pregnant woman could have an abortion without her husband's permission, but she should have reasonable grounds for this act. The Hanafi school (prevalent in Turkey, the Middle East and Central Asia) allows abortions to take place principally until day 120; some jurists restrict this provision to “good cause”, e.g. if the mother is still nursing an infant and fears that her milk may run out during the new pregnancy. In aborting up to day 120, the woman commits a mere moral transgression, not a crime.

Maliki

Most of the Maliki jurists (legal scholars) described abortion as completely forbidden. In their view, when the semen settles in the womb, it is expected to develop into a living baby and it should not be disturbed by anyone. According to Ibn Jawziyyah, when the womb has retained the semen, it is not permitted for the husband and wife, or one of them or the master of the slave-wife, to induce an abortion. After ensoulment, however, abortion is prohibited absolutely and is akin to murder. . The School allows the incorporation of pregnancy assessments before the 120th day with consideration not being involved, yet some scholars of this school only allow before 80 days of pregnancy, with acceptable reasons such as illness or the mother feels unable to conceive.⁵⁵ It is still consider as a sin, but not as big as the sin

⁵⁴ Mathias Forteau, "The UN Secretary-General and the Advisory Opinion," *The Law and Politics of the Kosovo Advisory Opinion*, 2015, 184, doi:10.1093/acprof:oso/9780198717515.003.0009.

⁵⁵ Ibnu Abidin, *Hasyiyah Rad al-Mukhtar 'ala al-Dur al-Mukhtar, daar al-Fikr*, , pg. 302 and 411

of killing humans. In the opinion of most Malikies, abortion is forbidden absolutely despite the difference of opinions among all schools, yet they agree on the point that after four months of conception the fetus is considered a child (emolument) so they prohibit termination of pregnancy.

Shafi'i

The Shafi'i School (dominant in Southeast Asia, southern Arabia, parts of East Africa) allows abortions to be performed up to day 120. For the Maliki School (prevalent in North and Black Africa) an abortion is permissible with the consent of both parents up to day 40; it is no longer allowed after that. This school believes that abortion is an unlawful criminal act regardless of whether there is a spirit or not, because life has started since the meeting between sperm and ovum in the womb of a woman. However, al-Ghazali in the book of al-Wajiz opinion is different from his writings in al-Ihya, he acknowledged the truth of the opinion that abortion in the form of a blood clot ('alaqoh) or a lump of meat (mudghoh) is allowed because there has not been a spirit.⁵⁶

Hambali

Hanbali school (predominant in Saudi Arabia and United Arab Emirates) abortions are principally prohibited from day 40 onward. The majority of Hanbali scholars allow abortion as long as the fetus is still in the form of a blood clot ('alaqoh) because it is not yet in human form.⁵⁷

Fatwa Regarding Abortion

Islamic world league's Fiqh Council's 1990 fatwa (decision) According to this Fatwa, abortion or miscarriage can be carried out at any time to safeguard a pregnant woman's life if her life is endangered. It is further provided in this Fatwa that there is agreement among three expert medical physicians on the decision of abortion with clear medical indications⁵⁸.

Zaidi School of thought: There is also an exception for abortion based on societal and therapeutic reasons in the Zaidi School of Jurisprudence.

Sheikh Yusuf al-qaradawi: According to Sheikh, Yusuf Al-Qardhawi's the lawful and the Prohibited in Islam:

Sheikh Mahmood Shaltout: The Grand Imam Sheikh Mahmood Shaltout Al-Azhari from the 1940s to early 1950s stated: "In the view of the Old scholar abortion is forbidden when quickening takes place within four months of conception as it constitutes wrongdoing to a living thing. Hence, diyah is owed when the infant is

⁵⁶ Al-Ghazali, al-Wajiz, Daar al-Ma'rifah, Beirut, pg 158

⁵⁷ Abi Muhammad Abdullah bin Ahmad bin Muhammad bin Qudamah, al-Mughni, Hajar, Kairo, 2nd Ed, pg 210

⁵⁸ "Al Ganin Al Mushawah (Aborting a congenitally malformed fetus)", The 4th Resolution, Islamic jurist council of Islamic World League, Makkah Al Mukaramah, 12th session 10-17th February 1990 and also quoted appendix No 1, in M. Albar: Dar Al Qalam Damascus and Dar Al Manara Jeddah. 1991:439

delivered dead or 1/20 of diyah is owed when the baby is born alive and passes away shortly upon the delivery.⁵⁹

Sheikh of Al-Azhar: In 1998 and again in 2004, the top Islamic body in Egypt, Sheikh of Al Azhar, issued a theological decree allowing unmarried women to abort their unborn children at any time if they fall pregnant as a result of rape.⁶⁰ But it could not be agreed upon such fatwas as there is a precedent in the era of the Holy Prophet (SAW), that such practice was acted upon but he (SAW) didn't permit so.

A Religious Edict from Jordan: Termination of pregnancy is permitted in the religious edict from Jordan after being allowed one hundred and twenty days for verified fetal abnormalities without the consent of parents. It is permissible to terminate the pregnancy after one hundred and twenty days with the consent of parents in case of a fetal anomaly if such anomaly is documented by three specialists.⁶¹

The current Shi'ite opinion on terminating pregnancies due to fetal abnormalities: The Iranian parliament changed its position on June 21, 2005. Firstly the fetus must be less than four months or one hundred and twenty-day old which means before ensoulment. Secondly, the fetus's profound developmental lag, severe deformities, or defects are documented in the fetus. Thirdly these complications must contribute to causing suffering or obstacles for the mother or fetus. Fourthly the life of an expectant mother is at risk. Fifthly both parents agreed to the process. The doctor who performs abortion must not be punished for his abortion services".⁶²

Findings

1. Abortion is permitted when the mother's life is in certain danger, as confirmed by a medical report
2. Some scholars allow abortion in cases of severe fetal abnormalities that would cause harm to the child or the family
3. Some scholars permit abortion in cases of rape.
4. Abortion before 120 days is considered a sin, but with lesser consequences than aborting after 120 days.
5. Islamic law prioritizes the mother's life and health, and abortion may be permitted if qualified medical professional confirms its necessity.

CONCLUSION

The researcher after conducting this research, reached to the following conclusions Abortion has always been a controversial topic throughout history it is considered a taboo because of the involvement of life in it as life is considered sacred

⁵⁹ M, Shaloot, "Islam: Creed and Shari'ah," Dar al Qalam. 1966.

⁶⁰ Grand Mufti of Al-Azhar," International Women's Rights Action Watch. The Women's Watch," Vol.12, Nos.1/2, December 1998. Cited In: Hessini. L. Abortion and Islam: Policies and practice in the Middle East and North Africa. *Reprod Health Matters* 2007, 15(29):75-84.

⁶¹ S, Al-Hagawi, "Advisory opinion and approval of abortions for abnormal fetuses," Mufti of Jordan. Bahrain. *Al Wasat Arabic Newspaper*; 2007.

⁶² Abdulrahman Al-Matary and Jaffar Ali, "Controversies and considerations regarding the termination of pregnancy for Foetal Anomalies in Islam," *BMC Medical Ethics* 15, no. 1 (2014): 10, doi: 10.1186/1472-6939-15-10.

under Islamic law. Under Islamic law the elementary principle with reference to abortion is that it is haram. There are some Fuqaha who think that within forty days of gestation, it is allowed to have an abortion and according to some within 120 days, if there is any valid reason to justify such an act. The Islam interpretation on Abortion are based on the hadiths along with the ideas of legal and religious scholars and commentaries. The Quran does not openly discuss the issue of abortion. According to some Islamic jurists, the fetus is assumed to turn out to be a living soul after four months of conception, and abortion after that point is usually held as prohibited. There are four different Sunni schools of thoughts Hanafis, Shafi'is, Hanbalis, and Malikis and they hold their own reservations regarding the matter of when abortion can happen in Islam. The mainstream of Muslim scholars authorizes abortion, even though they diverge on the period of fetal growth, after which it comes to be outlawed. The first stage is Nūtfah (sperm) which from formation to 40 days from the time when the semen has fertilized the ovum. At this stage, Hanafis allow abortion, the majority of Shafi'is also authorize abortion and some Hanbalis permit it too, but Malikis do not. The second stage Alaqah (Blood Clot): This is 40-80 days after creation when the fertilized egg has developed like a blood clot. At this stage, Hanafis allow abortion, while only few Shafi'is and the Hanbalis allow it. The stage three is Mudhghah (Embryo): this is the point 120 days after conception where the blood clot has now formed into flesh. At this stage, Hanafis permit abortion, only some Shafi'is and Hanbalis permit it also. The stage four Khalqan Akhār (Spirit), this is the stage 120 days after conception when a soul or spirit has passed into the body. At this point all four schools of thought do not permit abortion. There is no consensus on the point as to when the ensoulment of the fetus takes place. But all the jurists come to an understanding that after the ensoulment, the fetus right to life begins and abortion is normally forbidden according to Islamic teachings. It is admissible to carry the abortion after 4 months of conception to guard the life of the mother. Some scholars have put an upper limit of forty days for a legitimate abortion, others for 120 days.

With the advancement of technology, the stage of the pregnancy can be dictated easier by carrying out ultrasound, it is therefore advisable to take a decision on whether to keep the pregnancy or abort it before it exceeds the 120 days. Governments should also take appropriate measures to monitor hospitals closely and to ensure that abortions are not illegally carried out. If doctors are found guilty of abortion, appropriate sanctions such as suspension of medical practice license, demotion, etc. must be taken against them. The punishment for abortion must not just remain in the books, the courts must be seen pronouncing such sentences on accused persons and such judgments must be enforced to the letter.

Recommendations

- a) there is need to improve the present law governing the issue of Abortion in Nigeria Abortion should remain a criminal act otherwise, but should be authorized on request of rape victim before pregnancy aged 40 days calculated from the date of the incident. If the victim is a minor, the permission of her guardian should be sorted first. If the pregnant woman is mentally fit, then in such case also the consent of her guardian must be held. For this effect, the

woman that is the rape victim, would require to report the incident to the police station immediately any delay would direct the victim to a forensic doctor for detailed examination. The forensic doctor looks for marks of violence, acquires semen samples from her body. After that the victim would then be produced before the court where the judge looks at the results and either gave his approval for abortion in the event of pregnancy resulting from rape or repudiates it. This law will not open the door for immorality because there there would be a necessity of a medical examiner's statement confirming that the woman was indeed raped. It is mandatory that doctor should consider whether the pregnancy was really a result of rape by demanding a certificate or official letter from the magistrate stating that the victim in fact became pregnant as a result of rape, the doctor would be able to perform an abortion. If the doctor still performs an abortion after the prescribed limit, then he can be convicted. There are two strong opinions under Islamic law regarding the abortion, the one is that abortion is lawful, if done within forty days and the would be a necessity of a medical examiner's statement confirming that the woman was indeed raped. It is mandatory that doctor should consider whether the pregnancy was really as a result of rape by demanding a certificate or official letter from the courts stating that the victim in fact became pregnant as a result of rape, the doctor would be able to perform an abortion. There are two strong opinions under Islamic law regarding the abortion, the one is that abortion is lawful, if done within forty days and the second opinion is within 120 days. So, putting the limit of forty days weeks will not contradict the basic principle of Islamic Law.

- b) If a victim of rape decide to keep her pregnancy and raise her child then she should be supported financially by the government throughout the subsistence of the pregnancy so she can be able to cater for herself with a pregnancy and after the childbirth the child should be entitled to be maintained by the government until he attained the legal age which is eighteen years for his education and upbringing, this is because of the financial burden that will be placed on the mother with the unplanned pregnancy. The economic condition of the rape victim play a vital role in her decision can have an influence on her important decision, subsequently by offering a financial assistance the government can play a part in decreasing the problems of the victims.
- c) in a situation whereby the victim decided to keep the pregnancy but does not want to raise the baby, the government through agency responsible for such program should monitor the pregnancy and when the baby is delivered and handover the baby to an agency created for this purpose where the baby will be catered for and possibly be adopted by some parents .this will cut the raise of infanticide and abortion in Nigeria

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