

## INDUCED ABORTION FROM AN ISLAMIC PERSPECTIVE: IS IT CRIMINAL OR JUST ELECTIVE?

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**خلفية البحث:** هل لا يزال يعتبر الإجهاض المحدث جنائياً أم صار أمراً اختيارياً؟ مع تركيز على النظرة الإسلامية.

ينتشر الإجهاض لأسباب اجتماعية واقتصادية في العالم أجمع. ويقدر أن هناك خمسين مليون حالة إجهاض متعمد سنوياً في العالم، وتؤدي إلى وفاة مائتي ألف امرأة نتيجة لذلك، ومعاناة الملايين منهن. إن مضاعفات الإجهاض الجنائي كثيرة وخطيرة. وللأسف فلا يزال الإجهاض يستعمل كوسيلة من وسائل تحديد النسل.

إن الأسباب الطبية الداعية للإجهاض محدودة ولا تشكل سوى نسبة بسيطة من جملة حالات الإجهاض المتعمد التي تحدث في العالم.

تناقش هذه الورقة مختلف وجهات النظر حول الإجهاض، وكيف تطورت هذه النظرة عبر التاريخ، وما هو الموقف القانوني من الإجهاض المتعمد. وتركز على وجهة النظر الإسلامية ومختلف المواقف الفقهية من هذه القضية.

**الكلمات المرجعية:** الإجهاض المحدث، الإجهاض الجنائي، تحديد النسل، الإسلام.

**Background:** Induced Abortion for social reasons is spreading all over the world. It is estimated that globally 50 million unborn babies are killed annually, resulting in the deaths of 200,000 pregnant women and the suffering of millions. The complications of illegal abortion are very serious. Abortion is still used in many countries as a means of family planning. The medical reasons for abortion are limited and constitute a small proportion of all abortion cases. This paper discusses the different views on abortion, its history, its evolution over time, and the present legal circumstances. The emphasis is on the situation in Islamic countries and the effect of Islamic Fatwas on abortion.

**Key Words:** Induced abortion, illegal abortion, family planning, Islam.

A number of conflicting views on induced abortion from various religious groups, secular humanists, liberals and feminists have created divisions and conflict, culminating in acts of violence and loss of life. Indeed, abortion is the most controversial area of family planning, and the least understood and socially accepted. However, it is the most important method employed by the advocates of fertility regulation and family planning.<sup>1</sup>

### DEFINITION OF ABORTION

There is a surprising diversity of definitions in law in different countries and even in medicine. Sir Stanley Clayton and John Newton in their booklet: A Pocket Obstetrics<sup>2</sup> define abortion as the expulsion of the conceptus before the 28<sup>th</sup> week of pregnancy. This is a view still held by British law.<sup>3</sup> Ralph Benson in a "Handbook of Obstetrics and Gynecology"<sup>4</sup> defines abortion as "the termination of pregnancy

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before the fetus is viable. Technically, viability is reached at 23-24 weeks, when the fetus weighs slightly more than 600 grams.” The law in the United States varies from state to state, in general allowing abortion on demand in the first trimester of pregnancy, with more restrictions on certain medically indicated cases in the second trimester. The World Health Organization (WHO) defines abortion as “the expulsion or extraction of a fetus or embryo weighing 500 grams or less from its mother.”<sup>5</sup>

Medical opinion nowadays defines abortion as the expulsion of conceptus prior to viability, defined as 20 weeks of pregnancy or a fetus weighing 500 grams or more. Recently, some states have lowered the weight of viability to 300 grams.<sup>5</sup>

Such terms as miscarriage are usually used by the public to denote spontaneous abortion, while the term abortion denotes induced abortion, whether legalized or not.<sup>5</sup>

The Encyclopedia Britannica of 1982 defined abortion as the termination of pregnancy before viability, in turn defined as a 1000-gram fetus by weight or more than 20 weeks of pregnancy.<sup>3</sup>

#### **INCIDENCE OF INDUCED ABORTION**

In his book "The Pill", Dr. Guilleboud estimates that the incidence of induced abortion in the early eighties of the twentieth century was 40 million annually, half of which were performed legally, the other half illegally. This resulted in the death of about 200,000 women and affected hundreds of thousands of others with many serious complications, including pelvic inflammatory disease, recurrent abortions and sterility.<sup>6</sup> Hawkins and Elder claim in their book "Human Fertility Control", that induced abortion is the most effective method used for family planning and curbing population growth.<sup>7</sup> Time Magazine of August 6, 1984 puts the number of induced abortions globally at an annual 50 million.<sup>8</sup> Legal and

illegal induced abortions in Japan have stabilized at three million annually and have reduced the annual birth rate to 13.5 per thousand.<sup>9,10</sup> The pill is still not available in Japan.

The incidence of induced abortion is very high in Russia, China and the former East European block countries, mainly because of the absence of the pill, and the use of abortion as a means of birth control. In Belarus, there are 200 abortions for each 100 live births, i.e. two-thirds of all pregnancies end in abortion.<sup>11</sup>

Similarly in the predominantly Roman Catholic Latin American countries, where contraceptive methods, except for “the safe period” are frowned on by the church, the incidence of induced criminal abortion is estimated at three million annually. In the Iberian Peninsula (Spain and Portugal), another Roman Catholic area, the incidence of criminal abortion is the highest in Western Europe, an estimated one million annually, the result of which is the death of 3500 women per year. In Manila, the Philippines, with a population of five million, it is estimated that illegal abortions are provided for 100,000 women annually. This figure is similar to the number of abortions carried out in the whole of Great Britain with a population of 55 million.<sup>1,12</sup>

Since abortion was legalized in 1973, the figures for induced abortion have stabilized at 1.5 to 1.6 million annually in the USA. More than 60% of all induced abortions in the USA, Canada and Europe are carried out on young unmarried girls under the age of 20, one quarter of whom were under the age of 17. The prestigious medical journal *Pediatrics* (supplement 1985) on “Sex, Drugs, Rock ‘N’ Roll, and Understanding Teenagers’ Behavior”<sup>13</sup> stated that annually 1.2 million unmarried teenage girls between 12 and 17 years of age get pregnant in the USA. Forty-nine percent of them carry their pregnancies to term and are dubbed “Virgin

mothers,” 13% have spontaneous abortions and stillbirths, while the remaining 400,000 get aborted. Time Magazine claims that annually half of the one-third of all unmarried high school girls who get pregnant abort the fetuses, while the rest carry them till term.<sup>14</sup>

By 1982, 80% of all pregnancies in girls under 20 in Britain were out of wedlock, and about half of them procured induced abortion.<sup>15</sup>

It is evident that promiscuity and the sexual revolution constitute the major cause of unwanted pregnancies that result in induced legal and illegal abortions. The latter are fraught with serious and sometimes fatal complications. Despite the availability of contraceptive methods for young school girls in the USA, the rate of pregnancy there is very high indeed. Time Magazine (December 9, 1985)<sup>14</sup> gave a figure of 30,000 pregnancies for those under 15. This figure jumped to 1,200,000 (also confirmed by the medical journal, *Pediatrics*) by age 17.<sup>13</sup> By age 20, there are two million pregnancies outside wedlock, a million of which result in abortion annually.

All the studies show that both pregnancies and abortions are higher in Afro-Americans than in Caucasians,<sup>1,12</sup> at the ratio of 2.5 to 1. In the last part of the twentieth century, abortions for teenage girls decreased in the USA, as girls became more adept at using contraceptive methods.<sup>16,17</sup> A new wave of female infanticide is now spreading in many countries, especially China and India, after the spread of ultrasonography. If ultrasound shows that the conceptus is a female, the parents resort to an abortion, which is unfortunately done in the second trimester and often results in serious complications, especially if done illegally.<sup>18</sup>

The medical indications for an abortion are broadened to include not only physical ailments, but also supposed psychological disturbances that may result from the continuation of pregnancy. Similarly, if the

continuation of pregnancy will somehow affect any member of the family, then abortion is resorted to (The British Law of 1967 regarding Abortion).

A new type of indication is called “reduction of pregnancy,” in which the expectant mother treated for infertility with hormones or by in-vitro fertilization gets pregnant with multiple fetuses, when the treating physician had reintroduced more than three fertilized ova (pre embryos) into the uterus. This practice was deprecated by Islamic Jurists in their meeting in Kuwait in 1987<sup>19</sup> and Amman 1986 (Jordan).<sup>20</sup> Later, gynecologists all around the world passed a regulation limiting the reintroduction of fertilized ova to two or a maximum of three in each cycle in the management of fertility by in-vitro fertilization (IVF) methods.

#### **THE HISTORICAL ASPECT OF THE LEGALITY OF INDUCED ABORTION**

The medical profession took a stand many centuries ago against induced abortion. Imhotep of Egypt (3000 B.C; deified as the god of medicine) instituted an oath to be taken by all practicing physicians, which prohibited them from prescribing an abortifacient drug or pessary. Similarly, the well-known Hippocratic oath enjoins doctors not to induce abortion by drugs, pessaries or any other means.<sup>21,22</sup>

The Declaration of Geneva of 1968, as amended in Sydney, reiterated the Hippocratic oath and pledged “to maintain the utmost respect for human life from the time of conception.”<sup>23</sup> However, the Declaration of Oslo, while retaining this moral principle, recognized the different opposing opinions on the question of abortion: “The Diversity of opinion is the result of the varying attitudes towards the life of the unborn child. This is a matter of individual conviction and conscience.”<sup>24</sup> This profound change in attitude is the result of cumulative change in

the fabric of many societies, where mores and lifestyles have completely changed.

Although ancient civilizations prohibited and even harshly punished those who committed abortion, they were lax in some stages of their development and condoned clandestine acts of abortion. Potts and Diggory, in their *Textbook of Contraceptive Practice*, stated that abortion was practised in the Middle Kingdom of Egypt (2133–1786 BC), and the excavations at Pompeii revealed a vaginal speculum suitable for performance of abortion.<sup>1</sup> The Roman Poet Ovid lamented, “There are few women nowadays who bear all the children they conceive.”<sup>1</sup> The same seems equally true of the majority of women in many societies today, which have legalized abortion on demand, or for tenuous social or psychological reasons.

The Bible considered induced abortion a crime but not murder; the husband of the offending wife determined the punishment, which was a compensation to him. The judge could also punish the perpetrator by strapping or imprisonment.<sup>1</sup>

The Catholic church was more stringent, and in the 7<sup>th</sup> century instituted a canon for capital punishment of women who had abortions.<sup>25</sup>

Laws were passed making abortion punishable by death, in England in 1524; in Germany in 1531; in France in 1562; and in Russia in 1649.<sup>25</sup>

With the advent of the industrial revolution and social upheavals in the 18<sup>th</sup> and 19<sup>th</sup> centuries, European countries gradually revoked the previous harsh laws and replaced them with less drastic penalties, e.g. imprisonment, fines and withdrawal of the license to practice medicine.

By 1929, the law in Britain allowed abortion if continuation of pregnancy was expected to endanger the health of the expectant mother. The previous law had allowed abortion only if continuation of

pregnancy endangered her life and not her health.<sup>1,3</sup>

From 1929 to 1967, induced abortion without a clear medical indication was considered a criminal act and was punished by imprisonment, fine and withdrawal of the license to practice medicine. The 1967 amendment issued by the British Parliament authorized physicians to abort a fetus if there was likelihood of: (a) a threat to the life of the mother if pregnancy continued; (b) a threat to her physical or psychological health, or the health of children of the family (whether her own children, her husband’s children or adopted children) if pregnancy continued; (c) the presence of congenital anomalies in the fetus.

The abortion should be performed in an institution recognized by The Ministry of Health, but not necessarily by a specialist.<sup>1,21</sup>

The first country in the world to legalize abortion on demand was communist Russia, which passed a law on 18 November 1920, “permitting abortion to be performed freely without charge in Soviet hospitals.”<sup>1</sup> This resulted in the decline of the family and the population. Stalin saw the dangers clearly and hence passed a new law in 1935, which restricted abortion to medically indicated reasons. Pravda applauded the new law and wrote: “Our Soviet women have been given the bliss of motherhood. We must safeguard our families.” In 1955 however, the 1920 law on abortion was reinstated.<sup>1,25</sup> The East European satellite countries soon followed suit, with minor changes. Several Scandinavian countries liberalized abortion laws in the 1930s. In 1935 Iceland did the same, and then Sweden and Denmark in 1938. Japan allowed abortion on demand and as a means of contraception in 1948, and China followed suit during the cultural revolution of the 1960s. Haiti and Great Britain passed their laws in 1967, India in 1971, and the

USA in 1973. By 1980, over 70% of the world's population lived in countries where abortion was allowed on demand or with minor restrictions.

Countries allowing abortion on demand include: Russia, China, Japan, the Scandinavian countries, Eastern Europe, Vietnam, North Korea, the USA and Tunisia (the only Muslim country).<sup>25</sup>

Countries allowing abortion with some restrictions are: Great Britain, Canada, India, France, Germany, Holland, Italy, Switzerland, Turkey and South Africa.

Countries allowing abortion only for strict medical reasons are: the Catholic countries such as those of Latin America; Ireland, Spain, Portugal, Malta, Belgium, the Philippines, and all Muslim countries except Tunisia and Turkey. The Zaidi School of Jurisprudence (Yemen) is very lenient and allows abortion in the first 120 days of pregnancy (computed from the start of conception and not LMP) for both medical and social reasons.<sup>25</sup>

It is unfortunate that induced abortion is used in many societies as a means of birth control. Many gynecologists, policy makers, Planned Parenthood organizations, and others related to the United Nations advocate the use of induced abortion as a means of birth control. They also indicate that the available methods, including sterilization of both males and females, be used for birth control.

The Encyclopedia Britannica mentions some contemporary views on birth control and the means of controlling populations, including strict government controls such as compulsory sterilization. This was enforced on 40 million people by the Mao Tse Tung regime in China and on 24 million in India by Indira Gandhi.<sup>3,25</sup> As the law in China permitted couples to have only one child,<sup>3</sup> millions in China were also forced to abort.

Potts and Diggory claim in their "Textbook of Contraceptive Practice" that

"Both contraception and abortion are essential for controlling fertility. A society cannot meet its fertility goals purely by the use of contraception. Therefore, the combination of reversible methods of contraception (and sterilization), and induced abortion will remain necessary elements in fertility control. Throughout history, and with increasing force over the past 100 years, societies have used a combination of contraception and abortion to control fertility. The moral and political benefits of abortion services outweigh such factors as proven mortality rates or the evidence indicated in cost benefit studies. Abortion will occur in societies with low fertility, and is likely to be most common in those societies where the birth rate is falling in response to socioeconomic pressures."<sup>1</sup>

The paragraph quoted above contains many contradictory and illogical statements in support of abortion where it is employed despite dangers to the health and life of the expectant mother, and in societies where fertility is low; where instead every effort should be made to improve fertility, prohibiting abortion and encouraging the birth of as many children as possible.

American and European societies encourage third world countries to curb fertility and population increase, even by resorting to methods unacceptable in their own societies. Governments of third world countries are encouraged to implement laws and take certain measures to enforce the policy of birth control, even if it involves compulsory sterilization, the use of unsafe contraceptives or even forced abortion.<sup>1, 3, 25</sup>

The medical reasons for the so-called therapeutic abortion constitute a very small proportion of the number of abortions carried out globally for social reasons. Potts and Diggory claim, "Few abortions are carried out because continuation of pregnancy threatens the woman's life, and a small proportion because of congenital

anomalies of the fetus.”<sup>1</sup> If a woman wishes to carry her pregnancy to term and delivery, almost all obstetricians will try their best to fulfill this desire. They will do this despite the fact that she may be suffering from a disease considered an indication for abortion, e.g. advanced renal, hepatic, cardiac problems, poorly controlled diabetes, hypertension, blood dyscrasia, or the use of immunosuppressive drugs.

Hawkins and Elders, in their book “Human Fertility Control,” emphasize that “Countries with a population problem have found it politically expedient, at least tacitly, to support increased facilities for abortion. The public in general is aware that abortion is either wrong or at least a medically and psychologically unsatisfactory solution to social problems. The church is faced with the difficulty that it cannot enforce its views without losing its adherents... Few doctors are happy with those aspects of society which produce the need for abortions; fewer still are satisfied with an environment which generates defects in motivation to employ effective contraceptive measures.”<sup>7</sup>

The majority of medical practitioners and gynecologists agree that since criminal abortion is fraught with serious complications including loss of life, then for pragmatic reasons, if abortion is to be carried out, it should be done by a licensed professional in a safe environment. The complications of such a procedure are much reduced and the mortality rate in first trimester abortions is very low indeed, especially after the introduction of an anti-progesterone agent, e.g. RU 486 or mifepristone and misoprostol which act successfully (90%) if given to women less than nine weeks pregnant (computed from LMP).<sup>26</sup> The morality rate of illegal abortions is around 50 per 100,000, while that of legal abortions in the first trimester is approximately one or two per 100,000. In the second trimester, the mortality rate

reaches 40 per 100,000.<sup>1,5</sup> It is estimated that globally, 200,000 women die annually as a result of illegal abortions.<sup>6</sup>

Abortions should not be used as a means of birth control. The social causes leading to unwanted pregnancy should be dealt with, and if the need arises, temporary means of contraception should be made available to couples. Abortion should be strictly limited to medically indicated cases, which constitute a small proportion of all abortions carried out on demand and for social reasons.

### Religious Aspects of Abortion

Islam, Christianity and Judaism view procreation as an integral part of marriage. In the book of Genesis, God said to both Adam and Eve, “Be fruitful and increase in numbers, fill the earth and subdue it.”<sup>27</sup>

In Islam, procreation is not only an integral part of matrimony, it is an act of worship. Even the sexual act with one's wife is considered to be an act of charity as proclaimed by the Prophet Mohammed (PbuH).<sup>28</sup> The Holy Quran proclaims: “Oh mankind, be conscious of your Sustainer, who has created you out of one living entity, and out of it created its mate, and of the two spread abroad a multitude of men and women.”<sup>29</sup>

“And God has given you mates of your kind, and has given through your mates children and grand children.”<sup>30</sup> The Prophet Mohammed said to all Muslims: “Get married, beget and multiply because I will be proud of you among nations.”<sup>26</sup> He also said: “Marry the kind and fertile, for I will be proud of your numbers among other nations.”<sup>32</sup>

Though Islamic teachings encourage procreation within matrimony, it does not altogether prohibit the temporary means of contraception. The Prophet himself (PbuH) allowed his companions to practice 'aazel,' i.e. coitus interruptus (Onanism).<sup>33-35</sup>

His teachings stand in stark contrast to what is found in the Old Testament, the Book of Genesis. Onan, the son of Judah and the grandson of Jacob, spilled his seed on the ground to avoid producing offspring for his deceased brother when he married his brother's widow Tamar. (The Jewish teaching then gave the offspring to the deceased husband if he left no children, rather than the actual father.) God was furious and caused the death of Onan.<sup>36</sup>

The Catholic church holds the most conservative and stringent position against any means of contraception except abstinence during and before ovulation, i.e. using the safe period. Similarly, it holds the most conservative point of view against abortion at any stage of pregnancy, since it views human life as beginning at the point of fertilization. The fertilized ovum is given the status of a human being, and hence killing it by any means is tantamount to the crime of manslaughter.

In Islam, temporary means of contraception are allowed, provided they cause no harm, and are done with mutual consent of the partners.<sup>37</sup> Sterilization is not allowed, except for clear medical indications, where pregnancy would seriously endanger the health or life of the expectant mother.<sup>37</sup>

Similarly, abortion is allowed only if continuation of pregnancy would endanger the life or health of the expectant mother; or if there is proven serious congenital anomaly in the embryo or fetus. The performance of abortion should be done prior to elapse of 120 days from the start of conception, which is considered the time of ensoulment according to the Hadith (sayings) of the Prophet. However, if both the life and health of the expectant mother are endangered, abortion or pre-term delivery can be performed at any time of pregnancy. The decision with clear medical indication for abortion should be agreed upon by three specialist physicians.<sup>38-40</sup>

This was the Fatwa (decision) of the Islamic Council of Jurists of Makkah Al-Mukaramah (Islamic World League) held in Makkah from 10 to 17<sup>th</sup> February 1990. The decision was passed by the majority of votes, but with abstentions of the late president Shaikh Abdulaziz Bin Baz, and Shaikh Bakr Abu Zaid.<sup>40</sup>

Many Islamic jurists are more stringent and would allow abortion only in the first 40 days of conception (computed from fertilization and not LMP). In fact, this was the official Fatwa in Saudi Arabia, until the Fatwa of the Council of Islamic Jurists of Makkah in 1990 extended it to 120 days from start of conception.

More conservative jurists like the Maliki School and Imam Al Gazali (from Shafii School of Jurisprudence) do not allow abortion at any time of pregnancy except to save the life of the expectant mother.<sup>41,42</sup>

Nevertheless, there are some jurists who would allow abortion for social reasons, e.g. rape, or where continuation of pregnancy would affect a nursing child, or where a wet nurse was not available or the father was too poor to afford a wet nurse.<sup>25,41</sup> Prominent among those permitting abortion is the Zaidi School of jurisprudence which allows abortion for social and minor medical reasons in the first 120 days of conception.<sup>25</sup> Some jurists of the Hanafi, Hanbali and Shafii Schools also permit abortion with minor restrictions.<sup>25</sup> However, the majority of Islamic jurists throughout history, because of Islam's respect for life, do not allow abortion except for strong medical reasons. There are a lot of Quaranic ayas and Hadiths on the sanctity of life. "We decreed upon the children of Israel that whosoever kills a soul for other than manslaughter or corruption in the land; it shall be as if he killed all mankind, and whosoever saves the life of one, it shall be as if he saved the life of mankind."<sup>43</sup>

The Quran deplores killing children for want, or fear of want, "Kill not your children on a plea of want. We provide sustenance for you and for them. Come not near to shameful deeds whether open or secret. Take not life, which God has made sacred, except by ways of justice and law. Thus does He command, that you may learn wisdom."<sup>44</sup>

"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."<sup>45</sup>

Ibn Massoud (a companion of the Prophet) asked the Prophet: What is the gravest sin? The Prophet (PBUH) answered: "That you associate partners with God who created you." Ibn Massoud asked: What is next to this? And the Prophet answered "That you kill your offspring for fear of them sharing your food with you" (Bukhari and Muslim).<sup>46,47</sup>

Though Muslims generally consider the embryo from its earliest stages as "living," they do not give it the status of full human life except after ensoulment. Ibn Al Qaiyim, in his book *Attibian Fi Aksam Al Quran*, brings up this question by asking: "Does the embryo before ensoulment (breathing of the spirit into it) have a life?" He answers that the embryo has the life of growth and nourishment like a growing plant, but once the spirit is breathed in he acquires perception and volition."<sup>48</sup>

Similarly, Ibn Hajar Al Asqalani, in his voluminous *Fateh ul Bari*, on the first organ to be formed in the embryo says, "The liver is the first organ formed as it is the site of nutrition and growth. Voluntary movement and perception are acquired only after ensoulment."<sup>49</sup>

Ensoulment only occurs after many stages through which the embryo passes. The Holy Quran says: "We created man from the quintessence of mud. Thereafter, we cause him to remain as a drop of fluid (Nutfa) in a

firm lodging (the womb). Thereafter, we fashion the Nutfa into something that clings (Alakah), which we fashion into a chewed lump (Modgha). The chewed-like lump is fashioned into bones, which are then covered with flesh. Then we nurse him into another act of creation. Blessed is God, the best of artisans."<sup>50</sup>

All the ulema and commentators of the Holy Quran agree that the other act of creation mentioned above is the time of ensoulment, where the spirit is inspired into the body of the fetus.

The Hadith (sayings) of the Prophet narrated by Ibn Massoud state: "The creation of each one of you is collected in the womb of his mother in forty days. And something that clings (Alakah) he becomes for forty days, and then he becomes Modgha (a chewed lump) for forty days. The angel is sent to him and the angel writes four things: his provision (sustenance), his life span, his deeds and whether he will be wretched or blessed. Then the spirit is breathed into him" (AlBukhari, Muslim, others).<sup>51,52</sup>

This simply means that ensoulment occurs at 120 days computed from the beginning of conception. However, there is another Hadith narrated by Huzaifa Ibn Aseed which made some ulema (jurists of the Islamic nation) decide that forty days computed from the beginning of conception is the line of demarcation and the beginning of human life.

"When the Nutfa enters the womb and stays there for 42 nights, God sends an angel to give it a form and create its hearing, sight, skin, bone and flesh. Then the angel asks, "O God, is it a boy or a girl ? and God determines whatever He decides. He then asks what is his livelihood and God determines (Muslim).<sup>52</sup>

It is interesting to note that organogenesis (formation of organs in the embryo) takes place between the fourth and eighth week of conception (computed from fertilization)

and reaches its zenith in 42 days. The embryo has an unidentified gonad until that period after which the gonad differentiates into either a testes or an ovary. Similarly, the brain stem forms and starts to function in an embryo of 42 days. However, the higher functions of the brain are still forming and the cerebral cortex does not have synapses with the lower centers before the beginning of the 20<sup>th</sup> week computed from the last menstrual period, which is equivalent to 120 days computed from fertilization (viz. beginning of conception). Dr. Koren J. presented a paper at the Conference on Ethics of Organ Transplantation in Ottawa, Canada August 20 – 24, 1989, in which he proved with dissection of many aborted fetuses that synapses between the higher centers of the cerebrum and the lower centers do not start to work before the beginning of the 20<sup>th</sup> week of pregnancy, computed from the LMP; which is equivalent to 120 days, computed from the moment of conception (fertilization).<sup>53</sup>

It is evident that both sayings of the Prophet Mohammad (PbuH) speak of different times of development of the CNS of the fetus; the Hadith of 42 days refers to the development and functioning of the brain stem, while the Hadith of 120 days speaks about the higher centers and their control over the lower ones in the CNS.

There are a lot of Hadith which assign to the conceptus an important status that gradually increases with the time of pregnancy. If a lady commits a crime punishable by death, the execution of the penalty is postponed until after delivery and until after the baby has been nursed for two years. However, if a wet nurse is available for the mother's nursing period, it is much shorter. This applies even if the pregnancy is illegitimate.<sup>21,25,41,54</sup>

The fetus has the right of the lineage of his father, and if his father dies while he is

in utero, his share of the inheritance will be kept for him/her until delivery.

Killing the fetus, intentionally or unintentionally, is penalized by the payment 1/20 of the diyha (blood fine), which is equivalent to 500 golden dinars. Another penalty is determined by the magistrate for intentionally induced abortion.<sup>25,41,54</sup>

Sheikh Mohmoud Shaltout (Grand Imam of Al Azhar in the 1940s and early 1950s) wrote: "Old scholars are agreed that after quickening takes place (120 days from conception), abortion is prohibited to all Muslims, for it is a crime perpetrated against a living being. Therefore, blood ransom is due if the fetus is delivered alive and then dies immediately after delivery, and ghorra (1/20 of the diyah) if delivered dead." (Shaltout Islam: Creed and Law).<sup>55</sup>

Imam Ghazali (died 505 H = 1122 AD), in his well-known book *Ihya Oloom addin*, considered abortion at all stages of conception as "Haram," with a gradation of the sin according to the length of pregnancy. It is tantamount to manslaughter if the child is delivered alive and then dies because of the abortifacient act or drug. However, the Imam recognized that the gravity of the crime is less if the abortion is of Nutfa (at 40 days) than the abortion of Alakah (40 to 80 days), which is less than the abortion of Modgha (80 to 120 days). It becomes a grave crime after ensoulment, i.e. after 120 days. In his opinion, abortion should be avoided at all stages of pregnancy except if the life of the expectant mother is endangered.<sup>25,41,54</sup>

The Muslim physician Abubaker Al Rhazi (died 313 H/925 AD) mentioned in his book *Al Mansouri* and in his encyclopedic *Al Hawi* many abortifacient drugs and methods to be used if continuation of pregnancy would endanger the health or life of the expectant mother. Similarly, Ibn Sina (Avicenna) wrote in his well-known (*Al Kanoon fi Tibb*) a chapter on medical indi-

cations of abortion and how to perform them.<sup>25</sup>

I think that their recognition of the need for abortion in certain cases where continuation of pregnancy would endanger the health or life of the expectant mother is more realistic and humane than the stance of the church in medieval Europe, and the Catholic church at this moment.

Abortion on demand, as carried out in many countries, with liberal abortion laws, will never be condoned by Shariah (Islamic Law). Unfortunately, Tunisia passed a law 65/24 dated 1<sup>st</sup> July 1965, which allowed abortion for tenuous reasons. The situation became worse when law no. 73-75 dated 19<sup>th</sup> November 1973 came into effect. It allowed abortion on demand in the first trimester of pregnancy, and on flimsy reasons in the second half of pregnancy.<sup>25</sup>

Tunisia is the only Muslim country with a law that defies all the recognized Fatwas from all Islamic Jurists and Islamic conferences and meetings of jurists. Turkey allows abortion with some restrictions based on some medical or social reasons. The remaining Islamic countries allow abortion to safeguard the expectant mother from serious problems in pregnancy that might put her health or life at risk. Many permit abortion when there is a seriously malformed embryo or fetus. The time limit for carrying out such abortions is 120 days computed from fertilization, which is equivalent to 134 days from the LMP.<sup>25,41</sup>

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