



Rulings on an Intended Abortion in accordance with Islamic law

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Abstract

Following a discussion of the various reasons why a fetus may be intentionally aborted, this article seeks to address the following question: What are the Sunni jurists' views on the legality of an intentional abortion of a fetus when the mother's life or health is in danger? The response to the question should be given by dividing the fetus' life span into two phases before and after the soul is breathed in, as well as by dividing Sunni jurists into past and present jurists, as well as according to the four well-known Sunni jurisprudence schools. The fundamental standards on which Sunni jurists have founded their opinions must be met in each of the aforementioned areas. Since determining the standards and foundation of their viewpoint can, at least in part, clarify the outcome of other factors that serve as justification for the purposeful abortion of the unborn. Although they have not said what punishment they want. It appears that all of the jurists of the past agreed that it is unlawful to willfully abort once its soul has been breathed, even if doing so would save the mother's life. The decision to purposefully terminate a baby before the soul is inhaled has been discussed from numerous angles by the four illustrious jurisprudential schools, including the majority of modern Sunni jurists, given that a fetus is a respected object at this stage. As a result, when the life of a being with a soul (such as a mother) and a being without a decent soul are in conflict, the life of the being with a soul is given priority. Because for now, saving the mother's life is the least harm that human civilization endures following the principle (of tolerating the least two harms). Some modern jurists think that it is illegal to have an abortion without a good reason if the fetus is intentionally aborted after the soul has been blown. And other people believe it is acceptable to purposefully abort the fetus without having a valid reason. However, all sides agree that if the mother's life is in danger due to the pregnancy, a purposeful abortion of the unborn will not only be acceptable but also required because this is the most obvious instance of a justifiable rationale.

Keywords: *Abortion; Fetus; Soul-Blowing; Intentionally; Breath*

1. Introduction

Although intentional abortion of fetuses for a variety of reasons has always occurred in human civilizations, religion, and ethical considerations have constantly denounced it as a crime against humanity. Today, purposeful abortion is more common due to improvements in medical sciences, and it is occasionally highlighted due to ethical issues. The topic of abortion has been devoted to the minds of medical professionals and social scientists, just as it was formerly decried and occasionally outright forbidden. The main aim of the present studies is to provide an analytical report on Sunni legal scholars' positions on intentionally aborting embryos, in the hopes that their views can provide a sound and logical foundation for controversial topics.

In this article, the topic of discussion is medical concerns in situations when the mother's continuing pregnancy puts her life in danger, as well as in situations where the mother suffers from serious physical problems as a result of the birth of the fetus, making life difficult for her and others. Medical professionals and human science researchers must decide what to do in these situations. Should such a being be allowed to live on? Some might say that although intentionally aborting a fetus is not acceptable in terms of morality and human emotions, it is more acceptable in terms of rational considerations than the death of the mother or the delivery of an ill child. In contrast, some may argue that human conscience and religious institutions will never accept that a living being who is powerless to defend himself is brought to nothingness. He /She will employ a variety of tools and facilities provided by humans for many years to maintain his life. The researcher was interested in researching the law of abortion. As a result, an attempt has been made in this research to present information from prestigious sources and make it better available to the readers.

2. Research Method

The research is based on the content analysis method (qualitative design). Some available library sources have been used for the data collection and analysis. The sources are Fath al-Qadir, Mughni al-Muthaghat, Bada'i al-Sana'i, Radal al-Mukhtar, Criminal Jurisprudence, Fiqh al-Islami, and Adlata, etc.,

3. Definitional Terms

Abortion means falling to the ground, and with the secondary sense, "abortion" means the falling of the fetus from the mother's womb to the ground (Ibn Manzoor, 1990).

From a different perspective, it entails removing the fetus before the duration of its life in the mother's [0h'], uo-womb has ended (Ibn Manzoor, 1990).

The term abortion is cited in various Sunni legal treatises that are relevant to this literature, and it is frequently used in place of the term (اجهاض), which has the same meaning as the term abortion (Al-Zubaidi, 1994).

The word "fetus" comes from the root "jinn," which also means "to cover" and "a creature that is hidden from people's eyes." On the other hand, the word "fetus" refers to a creature that is hidden and hidden from the mother's eyes while inside the womb (Ibn Manzoor, 1990).

Nafs is Arabic for soul (Al-Zubaidi, 1994). The soul is a human being, as stated by Allah the Almighty (Allah the Almighty takes over the souls at the time of death) (47), and the soul is the combination of the soul and the body (Ibn Manzoor, 1990).

4. Islamic Jurists' Thoughts on Intentionally Aborting a Fetus

Before presenting the views of the four Sunni schools of law about purposeful abortion appropriate to focus on the causes of intentional abortion, which can be broadly categorized into two groups. The second section is based on medical requirements and considerations, which are further broken down into two categories: those about the mother's life, and those pertaining to the fetus's life and health, which can sometimes be related to both the fetus's physical and mental well-being.

Sometimes it's not criminal; the non-criminal considerations themselves are broken down into incidental problems like pregnancies brought on by adultery or rape, economic hardships, social hardships that can be either personal or the result of government population control, and welfare-related considerations.

The mentioned reasons can be seen below:

1- Medicine

- Considerations to preserve the life or health of the mother.
- Considerations that prevent the birth of a sick and incurable person A: Physical B: Mental

2- Non-medical

- Criminal
- Non-criminal

A: cross-cutting issues such as adultery, rape, and: economic hardships: individual and social.

It is still advisable to pay close attention to two issues before presenting the jurisprudential opinions of Sunni schools regarding intentional abortion. This is because the opinions of Sunni schools have been formulated based on these two issues.

- 1- From the perspectives of Sunni jurists, there is no text in the religious texts that states the verdict of intentional abortion, and the only thing that can be cited in this regard under the circumstances is the general verses of the Holy Quran that are related to suicide. Allah Almighty has said (And whoever kills a believer on purpose, his punishment will be hell, while he will remain in it forever, Allah Almighty will be angry and remove him from His mercy, and He has prepared a great punishment for him) An-Nisa 93 (And do not kill those whom Allah has forbidden to kill, except with the right) Al-Isra 33.

As can be seen from the two noble verses above, God Almighty has forbidden the killing of the soul (the living being), according to the second verse, except in the case that the killing of the soul is based on the right. In the Sunnah of the Prophet, may God bless him and grant him peace, from the point of view of Sunni jurists, there is only a part of the narrations in which he ruled that abortion is Gharra (غرة) and there is nothing more than this.

According to Abu Hurairah, may God be pleased with him, two women from the tribe of Hazleel got into an argument, one of them stoned the other and killed the fetus in her stomach, and then they went to the Prophet, peace and blessings of God be upon him. The exchange for her fetus, he remarked, is a slave or a maidservant (Ibn Qudama, 1998).

In other words, from the point of view of Sunni jurists, there are no religious texts on this matter that have a ruling on the issue discussed in this article, and what they have said is taken from the noble verse of the Qur'an and narrated, and the differences of opinions that can be seen in the four schools of

jurisprudence are as follows. It means that there is no specific text about this, so everyone has ruled differently.

- 2- In general, Sunni jurists divide the life period of the fetus into two stages before the soul is breathed in and after, and they have divided the period before the soul is breathed into three stages: *nutfah*, *alqa*, and *mudgha*. And in this regard, they were influenced by the verses of the Qur'an and the same kind of words that were narrated from the Prophet, peace and blessings of God be upon him, and they made their rulings based on this division, that each stage has its own ruling.

And Allah Almighty has said (And We created man from an extract of a flower - then We made him a sperm and placed him in a safe place - then We turned the sperm into blood, and then *mudgha* (something like chewed meat) and then We transformed the chewed meat into bones, and then We covered the bones with flesh, and then We gave them a new creation, so blessed is Allah, the Highest, who is the best of inventors) (Al-Mominun 14-12)

Additionally, it has been reported that the Prophet, may God bless him and grant him peace, said that each of you was created in the womb of your mother for forty days as sperm, followed by another forty days as *alqa*, and then another forty days as chewed meat, before Allah, the Almighty, sent angels to him. It is ordered that the person's action, fate, good luck, and bad luck should be written, and the embryo of the soul should be breathed into it (Ibn Hazm, 1993).

The life of the fetus is generally divided into two parts before the soul is breathed and the life after the soul is breathed, and the life before the soul is breathed into three stages, as can be learned from the study of the noble verse and the Prophet's words, may God bless him and grant him peace. It is divided into sections, the sperm, the first forty days, the second forty days, and the third forty days, based on what was said, the opinions of Sunni jurists are examined in the two parts of the life of the fetus before the soul is breathed in and also after the soul is breathed in. First, the significance of the stage after the breath of the soul is reviewed, and in this regard, the opinions of both traditional and modern Sunni jurists from four illustrious schools of law—Hanafi, Shafi'i, Maliki, and Hanbali—are examined.

5. Ruling on the Intentional Abortion After the Soul Has Been Blown

From the point of view of Sunni jurisprudence, the intentional abortion of a fetus after the soul is blown, which usually lasts 120 days, is forbidden (Ragheb Esfahani, 1424). The quality of the words of the jurists in this regard is absolute, which means that the ruling regarding the sanctity of abortion also includes the case where the mother's pregnancy causes her death. The general consensus is that no married couple may induce an abortion before the spirit's breath; this ruling takes effect once the spirit has been inhaled (Alish, 1978).

Some of the Sunni jurists in this regard, in addition to ruling on sanctity, have also ruled on the obligation of retribution, Ibn Hazm has said the following after a question and answer: If someone says your opinion about someone who killed his fetus on purpose, while the period of life of the fetus is definitely from the past 120, what is the ruling? Our opinion is that retribution is obligatory and there is no escape from it (Ibn Hazm, 1993).

According to the review of Sunni jurisprudential literature, two bases can be found as the reasons for the sanctity of intentional abortion after the soul has been blown, (Al-Ramli, 1995). The first reason is that at this stage, the fetus has been infused with the spirit blown in it and has a respectable soul, because at this time it is both physically perfect and the spirit has been breathed into it, therefore it is subject to the ruling of the verse of homicide.

Therefore, aborting the fetus is killing the soul, and killing the soul is forbidden, and whoever commits it intentionally, He will end up in hell, and he will be subject to the ruling of this holy verse. (Whoever kills a believing person on purpose, his punishment is Hellfire) Nisa (93). In this way, according to some Sunni scholars, the person who aborts a fetus removes it from its mother while she is still alive, and then passes away deserves punishment since he killed a respectable soul (Ibn Hazm, 1993).

3. The issue of (preserving the generation) is another foundation that can be considered as the second reason for the ban on purposeful abortion for the Sunni jurists because it is referenced in several of their writings (Al-Ramli, 1995). The basis that Sunni scholars say about the legitimacy of the rulings in terms of the purposes of the Shariah is this because according to the Sunnis, the rulings of the Sharia have been made legitimate in order to preserve five purposes, which are religion, self, generation, property, and reason. Consequently, it may be claimed that from the perspective of Sunnis, purposeful abortion of the fetus during this period is forbidden. One explanation is based on narration, or a verse from the Qur'an, while the other is logical and derives from the fundamental principles of Islamic law, or Sharia, and is the preservation of the generation. Even though it appears that their fatwa is unwavering and covers situations where the mother's life is in danger, do they actually, despite paying attention to such a matter, apply their words regarding the sanctity of the deliberate abortion of the fetus after the spirit has been blown? Have they given such a fatwa? Are they really aware of the fact that sometimes the birth of the fetus causes the death of the mother, and this can be predicted and prevented in advance, yet they issued a fatwa absolutely? The statements of Allamah Ibn Abedin in this case, who explained the sanctity of intentional abortion, are evidence that, in the author's opinion, it is unlikely that the old Sunni jurists did not pay attention to such a matter because, in the past, the ability to predict the threat to the mother's life was not known by medical knowledge. If the mother's life is threatened, he says that it is not permissible to cut the fetus in order to save the mother's life, because the death of the mother by the fetus is an imaginary matter and it is not permissible for a living person to be killed because of an imaginary matter (Ibn Abedin, 2000). As it can be understood from the mentioned words, from Ibn Abedin's point of view, the death of the mother due to the birth of the fetus was an imaginary matter, and the conclusion from the mentioned words is that at that time such a problem was not predictable, because the interpretation that the death of the mother was imaginary According to Ahl al-Sunnah jurists, the willful termination of a fetus after its soul has been blown is forbidden, and in this context, there is no distinction to be drawn between the threat to the mother's life and other forms of homicidal behavior (Ministry of Awqaf and Islamic affairs, 1997).

However, most of the contemporary Sunni jurists, despite accepting the sanctity of the intentional abortion of the fetus after the soul has been breathed, believe that if it is proven from the point of view of medical knowledge that the birth of the fetus causes the death of the mother, not only is abortion permissible, but according to some of them, abortion is obligatory. (Dar al-Ifta al-Masriyya, 1997).

Yusuf Qardawi has stated "When it is proven with certainty that the survival of the fetus will inevitably cause the death of the mother, then its abortion is determined", (Qaradawi, 1973).

Some modern Sunni jurisprudents have issued a fatwa on the sanctity of the intentional termination of a fetus under these conditions and with the same justification as described in the writings of the old jurisprudents, namely, they do not consider the sanctity of homicide to be a substitute for the intentional ter According to Yusuf Qarzawi, the decision to abort the fetus is made when it can be demonstrated with absolute certainty that its survival will surely result in the mother's death (Qaradawi, 1973).

6. The Justification of Deliberate Abortion in Case of Threat to the Mother's Life from the Point of View of Contemporary Jurists

The standards and foundation of contemporary Sunni jurisprudence in this regard are crucial to understanding and should be given careful consideration. This significance rests on what these standards are. Have past jurists paid attention to this basis or not? Are the contemporary jurists opposed to them despite the opinion of the old jurists, or is this not an opposition in the literal but rather an issue that has not been given the grounds for attention (including medical progress and the possibility of prediction)? The problem is how far is the scope of the criteria for the permission of intentional abortion? Does it include other causes that provide grounds for the intentional abortion of the fetus, such as the birth of the fetus causing an incurable disease of the mother or the fetus itself suffering from such a disease or not? From the perspective of current Ahl al-Sunnah jurists, there are generally three grounds for the legality of purposeful abortion.

6.1. First Justification

Some contemporary Ahl al-Sunnah jurisprudents consider deliberate abortion as permissible in case of threat to the mother's life and have given reasons for it, including saying that the life of the mother is established compared to the life of the fetus, while the life of the fetus is not like that, and it is clear that in the situation of conflict between a creature whose life is established and a creature whose life is not yet established, the mind prefers the life of a creature whose life is established and it is nothing but the life of the mother (- Zarqa, 1975). The mentioned argument has been objected that when is meant to establish the mother's life? Is it meant now or during pregnancy? If it is meant at present, when the life of the fetus is also settled, and it has been fulfilled and is no different from the mother, and if it is meant at the time of delivery, then the life of the fetus is not certain at that time, just as the life of the mother is not certain at this time. Therefore, there is no difference between the life of the mother and the life of the fetus, so the life of the mother cannot be preferred over the life of the fetus (Yassin, 1999). The above forms seem correct to the author, but if instead of the establishment of the mother's life, the independence of the mother's life is replaced, we will be saved from the mentioned objection, because it is certain that the life of the fetus is not independent, but the life of the mother is independent, and often with reason, there is a conflict between preserving the life of independent and non-independent beings, it is preferred to preserve the life of independent beings.

6.2. The Second Justification

Sometimes it is possible to argue like this according to some jurisprudence rulings to justify the superiority of the mother's life compared to the life of the fetus.

First of All, the mother's life is the main compared to the life of the fetus, and the fetus is a subsidiary of the mother, and according to a fatwa from the Sunnis, if the main one **أصل** commits murder and kills the subsidiary (**فرع**), the main one's retribution is not applicable, and in the justification of this fatwa, they have said that because the main one is the reason for the existence of the subsidiary, it is not appropriate that the subsidiary causes the abolition of the main one, (Ibn Qudama 1998).

Second: Most Sunni jurists believe that killing a fetus, even if it is intentional, does not cause retribution, especially if the fetus is dead and aborted (Effendi, 1998).

Third: According to some schools of Sunni jurisprudence, such as Hanafi, the soul of a fetus is not just like a soul of a mother. That which does not exist independently and is considered a part of the mother is not called the soul, unlike the existence of the mother, which is called the soul and there is no reason not to call her the soul (Oudeh, 1994). From the analysis of the mentioned three issues, it can be

concluded that the life of the mother is superior to the life of the fetus because the life of the mother is the original and has independence, and the life of the fetus is subordinate and has no independence, and on the other hand, if someone kills the mother on purpose, he will be punished to death. But if a person kills the fetus on purpose, after the soul is breathed, if it falls lifeless, there is no retribution. In the opinion of some Sunni jurists such as Shafi'i, something like touching matters of taste is considered to express Shariah rulings, and in the opinion of such jurists, it is not acceptable as proof for a Shariah ruling, although it may be considered as a confirmation of the ruling in question. (Al-Ashqar, 1999).

6.3. The Third Justification

The majority of recent jurists' scholarly works have claimed that the mother's life is preferable to the fetus for various reasons, such as having the fewest requirements or being the easiest to attain. This means that the minds of all people accept it unconditionally, if a person is faced with the dilemma of accepting one of the two losses, the person chooses the path that will result in less loss, and there is no criticism about this, for this reason, it is natural, in the sense that it exists in the nature of all human beings, and it does not need a reason or proof. In light of what was said, this group of Sunni jurists believed that there was a conflict between saving the life of the mother and the life of the fetus, despite the equality of the human value of both. As a result, the aforementioned reason is a natural matter, which means that it exists in the nature of all human beings and does not need a reason or proof. Considering the emotional and societal repercussions that the death of the mother brings, reason chooses to save the mother's life over the eventual death of the mother or the fetus. The interpretation of two harms or two evils, which recognizes that scientists who prefer saving the mother's life also consider the destruction of such as ugly and consider her abortion as a loss to human society, is a noteworthy aspect of the argument that has been mentioned. However, what should be done? Both behaviors are wrong and morally repugnant, and saving the mother's life is never a good enough justification to pardon them. However, if only one can be rescued, then the mother should be saved because she causes less harm.

According to the above-mentioned rational principle, it is possible to add the three matters which were mentioned as matters of taste in the second justification, and for this reason, to give more strength to the theory of intentional abortion, now the question may arise about What should be said about the verses of the Qur'an that prohibit suicide? Is the fetus not self-respecting and believing in these conditions? Is it not covered by the verses of the Quran. According to the justifications given by modern Sunni scholars for intentionally aborting a fetus, it can be said that even though the verses of the Holy Qur'an also mention the fetus, they still hold the position that someone could kill another non-human being in the beginning without any conflicting circumstances, out of hatred, selfishness, or other motives, whether it be a fetus or a non-fetus. In other words, it may not be possible to say that the mentioned verse also includes a case where there is a conflict between saving the life of two people, and regardless of whether we want it or not, the death of one will be ahead, and there is no criminal motive, here common-sense rules, despite the rejection of the destruction of the fetus. Humans will intervene and save the life of at least one of them, which leads to more privileges and fewer losses.

Now the question arises, can the permission for intentional abortion of the fetus be extended to a case where the doctors have definitively diagnosed that the birth of the fetus causes the mother to suffer from an incurable disease? In such a way that she is unable to manage her own life and her family's affairs and raise her children, is it possible to end the life of the fetus based on saving the mother's health and not the mother's life?

According to the words of the old Sunni jurists, the answer to the mentioned question is negative, because at this time also, since the fetus has a soul and it is called a respected soul, therefore it is included in the verses on the sanctity of killing the soul, and in the same way, the criterion of preserving the offspring also includes it.

The answer, as some have explained (Yassin,1999), is no from the perspective of modern Sunni jurists since they believe that a fetus may be aborted beyond four months only if the mother's life is in danger.

But ignoring the words of contemporary jurists, what is the basis for bearing the least of two harms, which is the permission to deliberately abort the fetus in case of threat to the mother's life? In this regard, is the intentional abortion of the fetus the least harmful and the easiest evil? The answer to this question is not easy, because aborting a fetus after four months is a waste of life and harmful, and on the other hand, the existence of a human being with an incurable disease that can be prevented is also harmful. Does reason allow another person's life to be taken for a person to be safe and comfortable? Is maintaining the mother's health as the one who is the head of the family and the teacher of other children and everyone looks up to her enough to take another human life?

7. The Order of Abortion Before the Soul Is Breathed

In this first discussion of the theories of the four jurisprudences of the old Sunni scholars, it is noted that there are different views in each jurisprudence, which will also be expressed, and then the views will be analyzed and answers to the discussed issue will be discussed.

A: Hanafi Sect

In the Hanafi religion, there are three theories about the intentional abortion of the fetus before the soul is breathed (Ibn Abedin, 2000).

- 1- The permissibility of intentionally aborting the fetus, this statement is preferred in the Hanafi school of thought, and its argument it is also said that the fetus is not self-respecting at this stage, therefore the title of murder does not apply to it, because as it was said, murder means the removal of the soul and the fetus at this stage lacks the soul, therefore it is not subject to the ruling of the verse on the sanctity of killing, because the criterion of being forbidden is killing the self, and the fetus is not self-respecting at this stage (Ibn Hammam, 1996).
- 2- The permission to abort the fetus, which is abominable from the point of view of Shari'ah, because (semen) will eventually become a human being after being placed in the womb, so wasting it is not permissible (Ibn Hammam, 1996).
- 3- The sanctity of an intentional abortion of a fetus. Just as in (Muharram) and during the Hajj, a hunter breaking the egg of the hunt is a guarantee because it is thought to be the principle and basis of hunting, so too here, the fetus is thought to be the essence of a human being, making its abortion unlawful. This is obvious from this group's point of view. If there is a justification for the abortion, it will be acceptable. For instance, if the woman remains pregnant, her milk for the infant will stop, and the father won't be able to pay a nanny for him (Zidan, 1994).

B: Maliki Sect

There is also a difference in Maliki jurisprudence regarding this, which is divided into three parts.

- 1- Major jurists of the Maliki religion believe that abortion is not permissible after the establishment (semen) in a woman's womb, even if it is before forty days and in the fetal stage (El-Dosoghi, 1992).
- 2- Some other scholars of Maliki believe that there is no obstacle to intentionally aborting the fetus before the soul is breathed, of course, if the fetus is the result of adultery, especially if there is a possibility that the woman will be killed when the pregnancy appears (Alish, 1978).

- 3- Some other Maliki scholars like Lakhmi allow the abortion of the fetus before the soul is born before forty days, but they do not allow it after that (Al-Rahoni, 1978).

C: Hanbali Sect

There are three theories about this in the Hanbali religion.

- 1- What prevails in this jurisprudence is the permissibility of abortion before forty days, but it is not permissible after that, and in this sense, some of them have stated that there is no obstacle to taking medicine to abort the fetus before forty days (Al-Mardawi, 1991).
- 2- Ibn Jawzi, one of the jurists of the Hanbali religion, believes that the deliberate abortion of the fetus before the soul is breathed is generally forbidden (Al-Mardawi, 1991).
- 3- Some other jurists of this religion, such as Ibn Aqeel, generally consider it permissible to abort the fetus before the soul is breathed (Al-Mardawi, 1991).

D: Shafi'i Sect

This jurisprudence is based on three theories.

1. Shafi'i theology holds that it is acceptable to purposefully abort a fetus before the soul is inhaled (Qaliuni, 1998).
- 2- Some other Muslim jurists, such as Ghazali, typically believe that intentionally aborting a fetus before four months of pregnancy is prohibited by Islam. He explains the rationale behind the idea that abortion is an actualized crime (Ghazali, 1993).
- 3- If adultery caused the pregnancy, abortion is permitted before the soul is breathed in because the fetus is not honored in this situation (Al-Ramli, 1995).

8. Findings and Discussions of the Viewpoints

- 1- The sperm stage (the initial 40 days) The majority of jurists from the Hanafi, Shafi'i, and Hanbali schools, as well as some from the Maliki school, believe that abortion is absolutely legal at this stage. In contrast, the majority of Maliki jurists, as well as some from the Hanafi, Shafi'i, and Hanbali schools, as well as Ghazali of the Shafi'i and Ibn Jozi of the Hanbali, hold the opposite opinion (illegal).
- 2- The Alaqah stage (day 42) While the majority of Hanafi and Shafi'i jurists, as well as Ibn Aqeel, a Hanbali jurist, accept abortion in this stage as legal, all Maliki jurists and some Hanafi and Shafi'i jurists believe that this act is prohibited.
- 3- There are differences between the four Ahl al-Sunnah schools of thought jurists during the mudgha (forty-third day) stage.

Ibn Qudama holds that a fetus is like a corpse before the soul is breathed, so in the case of an abortion before four months, neither a bath nor the funeral prayer is required because there is no desire for the soul and no death (Ibn Qudama 1998). However, none of the jurists of the four schools of thought consider the abortion of a fetus before four months to be murder. Ibn Hazm further adds that the killing of a human being is insufficient to constitute the death of the soul in cases when a fetus has been terminated before it has reached the age of four months (Alish, 1978).

Based on what I have mentioned so far, it can be said that according to the above-mentioned jurisprudential schools, the intentional abortion of a fetus before four months and in the case of a threat to

the mother's life is at least permissible, but according to schools such as the opinion of most Hanafis and also jurists such as Ibn Aqeel, abortion before four months is generally permissible. However, according to sects such as Maliki or some scholars such as Ghazali who consider abortion before four months to be haram, such a ruling can also be cited to them, because according to the four jurisprudential schools, aborting a fetus at this stage is not considered. In other words, it can be said that those who view intentional abortion of the fetus at this stage as haram, if it occurs without a justifiable reason, and some schools of thought that forbid abortion, apply abortion due to adultery, especially if there is a fear of killing the mother, which is compatible with the issue of the mother's life being threatened. They know it is permissible, and some have stated that abortion is permissible if the continuation of the pregnancy causes the mother's milk to stop for the infant and the father cannot hire a nanny.

Based on the jurisprudence of the mentioned sects, abortion is not considered homicide at this stage, but only a waste of the object. Not only is abortion permissible, but it is also obligatory in the case of a threat to the mother's life because the importance of prohibiting the loss of the object will never be as respected as the importance of homicide. Therefore, if the doctors diagnose that the mother's life is threatened and can be prevented, the religious texts and teachings that command us to respect self-preservation oblige us to save the mother's life.

Now the question is raised, what is the ruling if other circumstances provide grounds for the intentional abortion of the fetus, such as the continuation of the pregnancy or the birth of the fetus causing the mother to incur incurable diseases? From the point of view of the old jurists, is abortion permissible in this case as well?

It can be claimed that at least abortion is legal under the doctrine of Islamic jurisprudence, such as the dominant viewpoint in the Hanafi school of sect and other scholars like Ibn Aqeel, who believe that abortion before four months is acceptable for any cause and without the necessity for a valid defense. It is considered permissible if there are excuses such as pregnancy due to adultery or fear of weaning because the excuse of threatening physical health is no less than the excuse of adultery or weaning.

9. The Perspective of Modern Sunni Jurists

Many modern Sunni jurists believe that the prohibition of intentional abortion of a fetus before the age of four months is the most important principle. This is because, even though a fetus before the age of four months lacks a soul, it still has life, and intentional abortion would mean taking that life away. It is deemed unattractive and illegal without a valid defense (Zarqa, 1975).

Some other contemporary Sunni jurists consider it permissible to abort a fetus before forty days without a reasonable excuse, and consider it permissible after forty days despite a reasonable excuse, (Ibn Jibrin, 1994).

Abortion is legal if there is a justifiable basis for it, according to all those who accept the notion that purposeful abortion of fetuses before four months is forbidden (Sheltut, 1975).

The threat to the mother's life or health resulting from the pregnancy or birth of the fetus is the clearest illustration of a reasonable excuse (Zarqa, 1975). In other words, if the justification relates to medical considerations for the mother, abortion before four months is unquestionably legal. However, if the justification is unrelated to medical considerations related to the mother, such as if the doctors determine that the fetus will be mentally or physically retarded if it. Even situations that are less significant than this have been cited as justification for abortion, such as when the mother has a trip planned and will find it difficult to manage the pregnancy-related discomforts while traveling, or when the father cannot afford to support the child, (Al-Wozan, 1975), or when the mother's milk for the unborn child stops due to pregnancy, (Oudeh, 1994).

The conclusion that can be drawn from the information provided by modern Sunni jurists in this regard is that even though a fetus does not have a soul until it is four months old, it is not referred to as a human being in that sense. As previously discussed, there are two types of justifications. He ruled that abortion is permissible, but abortion is required because, in the eyes of many modern Sunni jurists, this rule should be applied regardless of the medical or non-medical justification, including the non-medical justification in cases where it is related to saving the mother's life. Although it is more suited before the age of four months, it can be used from that age as well. This is because before that age, there will not be a struggle between two soul-containing beings, but rather between two beings, one of which has a soul and the other does not. In this instance, reason, logic, and feelings all point to the necessity of sustaining a soul-containing entity as being not just acceptable but also required. From the perspective of modern Sunni jurists, it appears that the other justifications and explanations for the purposeful termination of the fetus are connected to protecting the mother's health from illness. The property with the least amount of loss should be taken into consideration. Inevitability can also be thought of on the same basis, and abortion is thought to be acceptable.

Conclusion

Since the fetus at this stage has a soul and is called a spirit and is covered by the verse of the illegality of killing, but about intentional abortion, it appears that all ancient jurists agreed that it is unlawful to intentionally abort the fetus after the soul has been breathed to save the mother's life. However, the intentional termination of the fetus before the soul is breathed is not only permissible but may even be required when the mother's life is in danger because at that point the fetus does not have a soul and is subject to the prohibition of the aforementioned verse, according to the various perspectives that were mentioned from the illustrious Sunni schools of law. In this way, the judgment of reason accords primacy to the life of a being with a soul in the conflict between that existence and the life of a being without a soul.

Most modern Sunni jurists believe that intentional abortion of the fetus before it breathes its last and when the mother's life is in danger is not only permissible but also required because, at that point, saving the mother's life is the least harm that human society will suffer following the principle of bearing the least of two harms. However, some modern Sunni jurists believe that intentional abortion of the fetus after death is permissible. Other modern Sunni jurists, however, believe it is acceptable even without a good justification. The most glaring illustration of a valid excuse, however, is realized, in the opinion of both sides, if the mother's life is in danger if the pregnancy is allowed to continue. Not only is abortion acceptable, but it is also required. According to those who believe abortion is legal without a good cause, there are other justifications for intentionally aborting a fetus. If the justification is good enough, abortion is legal.

References

Holy Quran

Al-Ansari, Zakaria, (1992 AD), Hashiya Suleiman al-Jamal Ali Sharh al-Manhaj Darlfaker, Beirut pp: 199-211.

Al-Ashqar, Omar Suleiman, (1999 AD), Commentaries on the principles of jurisprudence, first edition Dar al-Nafis, Jordan, pp: 243-345.

Al-Bohoti, Mansoor bin Yunus, (1995), Keshaf al-Qanaa. Volume 5. Dar al-Kutb al-Alamiya, Beirut, pp: 190-210.

- Al-Fawzan, Saleh, (1998 AD), al-Fatawi al-Jamaa for Muslim women, Darl Qalam, Riyadh.
- Alish, Muhammad bin, Ahmad (1978 AD), Fath al-Ali al-Malik Al-Malik in al-Fatwa Ali Madhhab al-Imam Malik Egypt, pp: 399-1410.
- Al-Kasani, Aladdin, (1982). Bada'e al-Sana'i in the order of laws. Darul Kitab al-Arabiya, Beirut, pp: 395-398.
- Al-Mardawi, Ali bin Suleiman, (1991 AD), Al-Ansaf, Arab Heritage Revival Center, Beirut, pp:386-390.
- Al-Rahoni, Muhammad bin Ahmad, (1978) Al-Rahoni Ali al-Sharh al-Zarqani, Dar al-Fikr, Beirut, pp: 443-450.
- Al-Ramli, Shams al-Din, (1995 AD), Nahayah al-Muthaghat al-Sharh Minhaj, Vol. 9 Darlfaker, Beirut, pp: 105-1012.
- Al-Ramli, Shams al-Din, (1995 AD), Nahayah al-Muthaghat al-Sharh Minhaj, Vol. 9 Darlfaker, Beirut. pp: 195-198.
- Al-Shatabi, Ebrahim Ibn Musa, (1994 AD), Al-Mawafafat fi Usul al-Sharia, Dar al-Marafe, Beirut.
- Al-Wozan, Amin bin Yahya, (1975 AD), al-Fatawi al-Jamaa for Muslim women, first edition, Dar al-Qasim, Riyadh, pp: 441-454.
- Al-Zahili, Wahba, (1997 AD), al-Fiqh al-Islami wadalteh, Vol. 3 Dar al-Fikr, Damascus, pp: 185-188.
- Al-Zahili, Wahba, (1997 AD), al-Fiqh al-Islami wadalteh, Vol. 3 Dar al-Fikr, Damascus, pp: 295-298.
- Al-Zubaidi, Mohammad Morteza, (1994), Taj al-Aros, Dar al-Fekr, Beirut. PP: 56-65.
- Dar al-Ifta al-Masriyya, (1997 AD), Al-Fatawi al-Islama, Vol. 9 Dar al-Nahda al-Arabiya, Cairo, pp: 309-320.
- Effendi, Shams al-Din Ahmed bin Qodar,(1998 AD), the results of Al-Afkarfi, the discovery of symbols and ideas, Darlfaker, Beirut, pp: 23-30.
- El-Dosoghi, Mohammad Arafa, (1992 AD), Hashia El-Dosoghi. Volume 2 Dar al-Fekr, Beirut.
- Ghazali, Abu Hamid Muhammad, (1993 AD), Revival of Al-Uloom al-Din, Volume 2 Dar al-Kutb al-Alamiya, Beirut, pp: 86-95.
- Ibn Abedin, Mohammad Amin, (2000 AD), Radal al-Mukhtar Ali al-Dar al-Mukhtar, 1st edition, Dar al-Thaqarah waltrath, Damascus, pp: 602-610.
- Ibn Hammam, Kamal al-Din, (1996 AD), Sharh Fath al-Qadir for the poor, Dar al-Kitab al-Alamiya, Beirut, pp: 492-503.
- Ibn Hammam, Kamal al-Din, (1996 AD), Sharh Fath al-Qadir for the poor, vol. 2, Dar al-Kitab al-Alamiya Beirut, pp: 195-198.
- Ibn Hazm, Ali Ibn Ahmad, (1993 AD), Al-Mahli Bala-Athar, Volume-8 Dar al-Fikr, Beirut, pp:238-246.
- Ibn Hazm, Ali Ibn Ahmad, (1993 AD), Al-Mahli Bal-Athar, Vol. 9, Dar al-Fikr, Beirut, pp: 168-176.
- Ibn Jibrin, Abdullah, (1994 AD), al-Fatawi al-Jamaa for Muslim women, Dar al-Fikr, Beirut, p: 1050.

- Ibn Manzoor, Mohammad Bin Makram, (1990), Lasan al-Arab, first edition, Dar al-Fikr, Beirut. Pp.341-345.
- Ibn Najim, Zain al-Din, (1997), Bahr al-Raiq. Volume 4. Dar al-Marafa, Beirut.
- Ibn Qudama al-Maqdisi, Abdullah bin Ahmad, (1998 AD), al-Mughani, vol. 1 Dar al-Kitab al-Arabi, Beirut, pp: 395-399.
- Ibn Qudama al-Maqdisi, Abdullah bin Ahmad, (1998 AD), Al-Mughani, Vol. 5 Dar al-Kitab al-Arabi, Beirut, pp: 359-361.
- Madkour, Mohammad Salam, (1996 AD), Al-Jinin and Al-Ahkam al-Haqam in Islamic Jurisprudence, Dar al-Nahda al-Arabiya, Cairo.
- Ministry of Awqaf and Islamic Affairs, (2001), al-Musu'a al-Fiqhih al-Kuwaitiyyah, vol. 3, fourth edition, Dar Al-Nahda Al-Arabiya, Cairo, pp: 57-62.
- Ministry of Awqaf and Islamic affairs, (2001), al-Kuwaiti Al-Musua'a al-Fiqhiyyah, vol. 2, fourth edition, Dar Al-Nahda Al-Arabiya, Cairo, pp: 46-75.
- Oudeh, Abdul Qadir, (1994 AD), Al-Islamic Criminal Jurisprudence Vol. 1, Al Risala Institute, Beirut, pp: 299-232.
- Qaliuni, Shahab al-Din bin Ahmed, (19989), Sharh al-Mali Ali al-Manhaj al-Talbin, Dar al-Shoroq, Cairo, pp: 570-578.
- Oudeh, Abdul Qadir, (1994 AD), Al-Islamic Criminal Jurisprudence Vol. 1, Al Risala Institute, Beirut, pp: 199-203.
- Qaradawi, Yusuf, (1973 AD), Al-Halal and Haram in Islam, al-Maktab al-Islami, Damascus, pp:195-198.
- Ragheb Esfahani, Hossein bin Mohammad, (1424 AH), Mufardat Fajad al-Qur'an, third edition, Dar al-Qalam, Damascus, pp: 185-199.
- Sheltut, Mahmoud, (1975 AD), Al-Fatawi, Dar al-Shurouq, Cairo, pp: 295-298.
- Yassin, Mohammad Naeem, (1999), Haqam al-Ijahaz, Al-Shari'a and Islamic Studies Journal, Kuwait, pp: 259-300.
- Zarqa, Mustafa, (1975) Al-Fatawi, first edition, Dar al-Qasim, Riyadh, pp: 57-64.
- Zidan, Abdul Kareem, (1994 AD), Al-Mafsal Fi Haqam al-Muratna and Bayt al-Muslim, Vol. 2 Al-Risalah Foundation, Beirut, pp: 115-122.
- Zidan, Abdul Kareem, (1994 AD), Al-Mafsal Fi Haqam al-Muratna and Bayt al-Muslim, Vol. 2 Al-Risalah Foundation, Beirut, pp: 201-210.

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