

Abortion in the views of Contemporary Islamic Jurisprudence

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Abstract

Abortion and its laws in Islamic jurisprudence, is one of the important issues in religious domains and by the evolution and progress of sciences, this issue has entered into the realm of science and medical societies too. Islamic jurisprudence can not be passive in dealing with current demands and exigencies, and also it can not retreat from the progresses of science or does not follow or synchronize itself to science as new scientific findings become available. The emergence of new diseases and dilemmas will affect the comprehension of some essentials of jurisprudential principles, perception of different subjects and concepts and even inferences from religious texts; therefore the researchers of religious seminaries which preserve the Islamic jurisprudence, should more than ever familiarize themselves with different schools of thought and opinions and consider and reconsider important jurisprudential subjects based on new scientific achievements. The subjects which have been addressed in this article are as follow: 1. Defining fetus, 2. Developmental stages of fetus such as zygote, 3. The duration of each fetal stage, 4. The disagreement among Islamic jurists on the application of the term fetus to an entity that has not yet taken the form of a human and whether one can consider the application of abortion laws to it, and 5. The stages of pregnancy in which abortion is permissible. In Imam Mohammad Gazelli's opinion, abortion is strictly prohibited but there is disagreement on this issue among different schools of Islam and contemporary scholars.

a) Hanafite school's point of view on abortion: In the textbooks of Hanafite jurists like "Aldor al-Mokhtar" it has been stated that abortion can be performed before the inspiration of soul, that is before the end of the fourth month of pregnancy; although the jurists of this school have not prohibited abortion before the inspiration of soul into the body. **b) Maliki school's point of view on abortion:** They do not allow the expulsion of zygote even before the fortieth day of pregnancy and even they do not spare any room for exceptions. **c) Shafi'ite school's point of view:** The Shafi'ite jurists have two opinions on this issue: 1. An opinion which prohibits abortion after conception and even before the end of the fortieth day of pregnancy. 2. Some others, among them Abou-Isaac Marvazzi and Shebra Melsi, by referencing to Abou-Hanifa's thesis, have exempted abortion in zygotic and blood-clot stages, have accepted legal pleas and have allowed abortion in both situations, although Imam Mohammad Gazelli even prohibits abortion of zygotes in any stage. **d) Hanbalite school's point of view:** The jurists of this Islamic school do not allow abortion after the fortieth day of pregnancy. **e) Zahirites school's point of view:** The jurists of this school do not allow abortion under any circumstances and do not authorize any excuses or exceptions for abortion. **f) The preponderant view amongst the schools:** The contemporary jurisprudence teachings master, Dr. Abdol-Karim Zeidan in "Al-Mofasal" has stated that if abortion is necessary as a medical treatment or it is a legal problem and the fetal stage is before the inspiration of soul, before the end of the fourth month of pregnancy, abortion is permissible from the Shariah or Islamic law point of view and even some believe abortion as permissible before the end of the fourth month with or without any excuses. Sheik Mohammad Shaltout, the former president of Al-Azhar University says: If it is strongly proven that the survival of the fetus after its coming to existence will face difficulties and even death, the general laws of Shariah, order us to "the least two losses". Nowadays, some of Islamic scholars permit abortion because of the mischief of the contemporary time and social problems. The views of Dr. Josef Gharzavi, the master of contemporary Islamic jurisprudence, depict that fetus is regarded as a complete human after the fourth month of pregnancy and its soul inspiration and any crime committed to it is similar to crime committed to a complete human and even the laws of Shariah allow pregnant women to break their fast in Ramadan to preserve the life of the fetus and even they delay the avenge for blood of a condemned pregnant women to death to a time after delivery or likewise the stoning of a pregnant women. The subject of soul inspiration is different from pure animal life and animal life is antecedent to human life (inspiration of soul). Some contemporary Islamic jurists and contemporary jurisprudence specialists have permitted abortion in situations that are exigent and imperative and they believe that fetus is in the form of pure fluid, a clot of blood or a mixture of meat loaves. Dr. Gharzavi affirms that if it is proven scientifically scientific, that the fetus in its mother's womb has anomaly or has serious malformations and its viability in future will cause torment and problems for himself/ herself and the family, based on the rule of repelling or warding off the loss as much as possible, has permitted abortion.

Key Words: Abortion, Contemporary Islamic Jurisprudence, Soul inspiration.

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