

ABORTION AND ITS PROVISIONS FROM THE POINT OF VIEW OF ISLAMIC JURISPRUDENCE

Mohammad Karim Olughbik

Academic member of Islamic jurisprudence department, Jawzjan University,
Afghanistan

Mohammad Arif Nazari

Academic member of Islamic jurisprudence department, Jawzjan University,
Afghanistan

ABSTRACT

The issue of abortion is a phenomenon that has been considered a very important issue since the advent of Islam. For this reason, the Holy Qur'an implicitly and the Holy Prophet explicitly laid down rules and orders in this matter, so that they do not leave this important issue to their Ummah as a matter of ijtihad and dispute. A hadith narrated by Abu Hurairah, two women from the Huzail tribe threw stones at each other and one of them aborted her fetus. The Messenger of Allah ordered the payment of a bondwoman or a slave for the perpetrator. (Al-Mirghinani, Al-Hidayah, vol. 2, p. 15). Although no information is given in this hadith about the duration of the fetus's survival in the mother's womb, it is clear from this hadith, even if it is not intentional. Causing an abortion is considered a crime. At the same time, according to this hadith, the punishment for causing an abortion "Ghora", which is half a tenth (1/20) of the full death penalty, has been determined as a guaranteed punishment and the order to pay it has been determined. (Orhan Çeker, "Çocuk Düşürme", Diyanet Islam Ansiklopedisi (DİA), İstanbul, 1993, c. VIII, s. 364).

Scholars and different religions based on the principles that have been adopted in their religion as a standard in their inferences, with complete sensitivity, they established laws on this matter and tried with all sincerity to show people the right and reasonable way to solve their problems. To get rid of worldly and hereafter responsibilities. The punishments for the crimes that are committed against the fetus are generally discussed in the sections of crimes, injuries and death under the headings of "death of the fetus" or "Ghora". (Orhan Çeker, 'Çocuk düşürme' DİA. C. VIII.s. 363.)

Keywords: crimes, punishment, abortion, fetus, religion, rulings.

INTRODUCTION

Abortion crimes are variously and implicitly mentioned in prophetic verses and hadiths and jurisprudence books in various forms, such as hitting a pregnant woman or hitting a pregnant woman's abdomen causes abortion, or as a result of the use of various drugs by the pregnant woman. Her pregnancy ends and so on has been discussed. In this article, we will examine the opinions of different religions that crimes cause abortion, and present their rulings in detail. Because the details of this issue from the point of view of Islamic criminal law are much higher than the volume of this article. Therefore, in this research article, keeping in mind our possibilities and understanding, we tried to fulfill our responsibility by offering a clearer way to serve the readers. For this reason, after presenting the position of the Holy Qur'an and the Sunnah of the Messenger of Allah, let us quote the views of different religions and scholars and convey appropriate and reasonable ways to the audience and readers. In addition, during this research, we tried to use reliable and important sources and answer the following questions:

Is abortion permissible? If it is permissible, how long can the fetus be aborted? In case of abortion, what type and amount of penalty is determined for it? What is the theory of different religions about this?

In this research, we will try to find satisfactory answers to the questions.

RESEARCH METHODOLOGY

In this research, the qualitative method and the library method were used, because in the qualitative method and the library method of searching for access to the facts, it reaches the correct results from books and authentic articles and scientific analysis. Later, the topics are summarized.

BACKGROUND RESEARCH

Due to the fact that the protection of life is stated in the Holy Qur'an and prophetic hadiths and carries instructive lessons and messages, Islamic scholars, including commentators, Muhadiths and jurists, have been more careful in relation to the subject, each of these elders according to the principles And the method related to their profession has implicitly analyzed and analyzed this important obligation, which can be used as a source in this research. I wanted to investigate the mentioned issue independently and in a scientific-research way.

ABORTION FROM THE PERSPECTIVE OF QURAN AND SUNNAH

There is no explicit text about the rulings on abortion in the Holy Quran and Prophetic hadiths. It is permissible and impermissible. There are only verses in the Holy Qur'an that state the general and absolute sanctity of wrongful killing. For example: Translation: "Whoever kills a believer on purpose, his punishment is hell, while he will remain in it forever." (AL-Nisa: 93). In addition to this, there are also verses that specify the creation of man, its different stages, that the basis of creation is the soul. It states that by swelling the human soul, it gains its freedom. He has discussed which stages he will spend until the end of his life. (Yasin, Be Ta., vol. 13, p. 245). On the other hand, there are hadiths from the Messenger of Allah that explain the stages that a human goes through in the mother's womb and explain the duration of these stages and at which times the soul fills the human body. These hadiths have been accepted as authentic both in terms of the chain of transmission and in terms of the text. At the head of these hadiths is a hadith which was narrated unanimously by Abdullah bin Masoud: Translation: "The creation of each person in the mother's womb is united in forty days. After this amount of time, it turns into Alaqah (clotted blood), then after this amount of days, it turns into a lump of meat (chewing). Later, Allah sent an angel and ordered him to write down these four words: the deeds he does, his sustenance, his end, his good luck and his bad luck. Then a soul will be breathed into him." (Bukhari, vol. 4, p. 111). On the other hand, some hadiths have been narrated from the Messenger of Allah, in which financial punishments have been determined for the perpetrators of abortion, and it has been determined by them in the amount of "Ghora". (Muslim, "Qadr", 3). One such hadith is narrated by Abu Hurairah, from the tribe of Huzail, there is a fight between two women, one of whom threw a stone at the other and caused a miscarriage. The Messenger of Allah has sentenced that woman as the punishment of a slave or a bondwoman. While in this hadith they did not provide information about the amount of time the fetus spent in the mother's womb, but if this mistake is committed, it is considered a crime.

Scholars have made the above hadiths the basis for rulings on abortion. Because the duration of the stages of sperm formation is explained with these hadiths. The fetus in the mother's womb goes through this period and acquires the attribute of a being called a fetus, and the external actions and intervention directed at it are considered as a crime against it. Also, when the religious jurists specify the rulings on abortion after the stage of "creation" and issue rulings, the criteria for establishing them as a crime is that these narrations are correct. (Mohammad Saeed Ramadan Al-Bouti, The Problem of Procreation, Prevention, and Remedies, p. 72.)

With just this amount of brief information about the rulings on abortion, we can discuss the views of religions on this matter:

A- Hanafi religion

The correct opinion in the Hanafi religion is this; As long as some of its organs are not identified, abortion is considered permissible. According to him, the period of formation of the human body and organs of the fetus also begins after one hundred and twenty days. (Al-Kasani, Be Ta., vol. 7, p. 325).

According to the scholars of this religion, as long as the pregnancy is in the stages of muzhgha and alqa, its body parts have not yet been identified, it is permissible for a woman to use medicine for the purpose of abortion. According to Hanaf scholars, this period has been determined as one hundred and twenty days. Because according to them, after the mentioned period has passed, the fetus will take the form of a human being. (Zainuddin, Be Ta., vol. 1, p. 379).

Kasani also says: "As long as nothing has emerged from his creation, there is no responsibility towards him. Because he is not considered a fetus yet." (Kasani, Be Ta., vol. 7, p. 325).

Imam Sarakhsı says: If the sperm is not destroyed, eventually a person will be prepared to be a human being, and for this reason, he will use his financial rights and take the ruling of soul upon himself. In the same way that a Muharram breaks a hunting egg, even though the egg does not have the characteristics of hunting, by punishing it, he takes the characteristics of the hunting egg. In the same way, the sperm will become soulful in the near future, in cases such as inheritance and will, it has been given the status of a soulful person (Sarakhsı, Al-Mabsut, Vol. 10, pp. 28-30).

But generally, in the Hanafi school of thought, regarding the obligation of ghora in the stages of sperm, alaqah, and mazgha, abortion is permissible and it is not obligatory for him to have an abortion.

B- Shafi'i religion

According to Shafi'i jurists, abortion is permissible as long as the symptoms of creation do not appear in the embryo. If some parts of the fetus become known, then abortion becomes haram. (Al-Mavardi, Al-Hawi al-Kabir, vol. 12, p. 385).

Mughni al-Muhtaj, which is considered one of the reliable sources of the Shafi'i religion, has given place to these ideas in this case: "If a woman, as a result of a crime, has an abortion with a piece of flesh on herself, ghorah is necessary, if one of her organs is revealed. Existence The hidden face of a person can also be revealed by placing it in warm water. The appearance of a finger, or an eye, or a strand of hair, and anything else that evokes

the creation of a human being will be enough..." It continues: "It will be revealed with a piece of cloth. If Alaqah miscarries, nothing will be necessary for sure. Also, the period will not be terminated with the abortion." (Shirbini, Be Ta., vol. 4, p. 104).

Considering the progress and evolution of the creation of the fetus and the approach of the swelling of the soul on it, the sanctity of its abortion will gain more strength. According to the narration of Abdullah bin Masoud, the manifestation and struggle of creation in the fetus also begins after forty days of pregnancy (Al-Bouti, The Problem of Procreation, Prevention and treatment, pp. 73-77).

Imam Ghazali, who is one of Shafi'i's leading scholars, has the following opinion on this matter: aborting a fetus at any stage is considered a crime. Imam Ghazali made a distinction between the different stages of the fetus (Ghazali, Beirut, vol. 2, p. 51).

According to Imam Ghazali, the sanctity of abortion is not the beginning of the creation of the fetus, but the beginning of the preparation of the sperm and its placement and the potential beginning of his formation as a human being. The preparation of the sperm and the acquisition of its capabilities also follow the mentioned steps, starting from the mixing of male and female water, that is, from the beginning of the union of sperms of different sexes, and this is the first step. By doing this, the sperm stage begins. Actually, this is the small fabric of the embryo that has melted and set off to gain life and formation. For this reason, abortion is a violation of the right and a clear intervention against the fetus that has entered the mentioned stage. From Imam Ghazali's point of view, cutting off the way of life of the fetus will be considered as enmity to man and enmity. (Same, 1403, vol. 2, p. 75).

This theory, that is, the theory of crime and being considered haram at the stage of sperm mixing, according to Shafi'i, is the only opinion of Imam Ghazali (Al-Bouti The Problem of Procreation, Prevention and treatment. p. 75).

Considering all the above theories, we can say that abortion in the Shafi'i religion is not forbidden in the initial stages such as spermatozoa, alaqah, but its sanctity starts from the stage of muzgha. Abortion is more forbidden in the stage of swelling of the soul. If the abortion takes place after the soul is inflated, it is considered a crime.

C- Hanbali religion

Scholars of the Hanbali religion agree that after one hundred and twenty days of pregnancy and swelling of the soul, as a result of which the movements of the fetus will begin Abortion is forbidden. (Al-Bouti The Problem of Procreation, Prevention and treatment. p. 78-79).

The majority of Hanbali scholars are of the opinion that abortion is permissible if the fetus is still in the embryo stage in the mother's womb. As already explained, this stage will cover the first forty days of pregnancy. If 40 days of pregnancy have passed, abortion is forbidden after this stage. A number of other Hanbali scholars are of the opinion that it is permissible to abort the fetus as long as there is no movement in the fetus, in other words, during the first four months of pregnancy. (Al-Bouti The Problem of Procreation, Prevention and treatment. p. 79).

Al-Mawardi, who is one of the scholars of the Hanbali religion, says in this case: "It is permissible to use medicine to abort a fetus that is in the fetal stage. Meanwhile, Ibn Al-Jawzi considers this work to be haram. According to Ibn Aqeel, before the swelling "The spirit of abortion is permissible. But there are other different views on this issue." (Al-Mavardi, Darul-Trath al-Arabi, vol. 1, p. 386).

However, according to other jurists such as Ibn Rajab, Ibn Al-Jawzi and Ibn Taymiyyah, if a fetus in the mother's womb has reached the alaqah stage, it is not permissible to abort it. Because in their eyes, the fetus is a child that has started its existence slowly and has started to solidify and harden. (Ibn al-Jawzi, Beirut, vol. 1, p. 157). Ibn Rajab says: "Our Companions (Hanbali scholars) have clearly stated that when the fetus reaches the stage of ovulation, it is not permissible for a woman to abort it, because it is a fetus that has entered the realm of sexual immorality. However, the sperm is still in one place. They have not taken the face of the fetus." (Ibn al-Jawzi, Beirut, vol. 1, p. 157).

In other important sources of the Hanbali religion, the sanctity of abortion is mentioned: "It is permissible for a man to use medicine such as camphor to prevent pregnancy, because this is his right. It is also permissible for a woman to use medicine for abortion. Because the existence of the sperm has not yet been fully formed and they have not become a child, but it is not permissible to abort the fetus because its existence has been formed. This theory is a theory that has been considered as a weak theory in the Hanbali religion by the majority of jurists. (Ghanim, Ahkamul-Janin fi Fiqh al-Islami, p. 161).

As a result, it can be seen that according to the majority of Hanbali jurisprudents, abortion is considered permissible before it is conceived in the fetus, i.e. in the stages of fertilization and fertilization. If obstetricians testify that a human face is hidden in the fetus, "Ghora" is required. Otherwise, if they do not testify, there is no need to complain. The valid theory in Hanbali religion is the permissibility of abortion before the stage of swelling of the soul. (Al-Bouti The Problem of Procreation, Prevention and treatment. p. 80).

As it is understood, the criterion of justification of abortion in the Hanbali religion depends on the formation of the fetus in the form of a human face and its initial symptoms. After the appearance of creation in the womb, this abortion has been considered illegal by Hanbali scholars.

D- Maliki religion

The jurists of the Maliki religion are stricter than the jurists of other religions. In this case, their ideas are parallel to the ideas of the Zahiriya religion and Imam Ghazali's opinion.

According to the majority of scholars of the Maliki religion, abortion before the completion of the first forty days of pregnancy is forbidden and illegal. For the sanctity of this work, only the transfer of the sperm in the mother's womb is enough. That is, according to Maliki jurists, from the beginning of pregnancy, abortion in the mother's womb is impermissible. (Ghanim, Ahkamul-Janin fi Fiqh al-Islami, p. 161-162).

If a pregnant woman intentionally miscarries a placenta, macula, or coagulated blood, "Ghora" is required on top of it. (Adavi, Beirut, vol. 2, p. 285).

As a result, it turns out that in Malikiya's religion, abortion is considered haram, even if it is in the initial stage and before the completion of the first forty days. Only in some of Maliki's works is the theory of the permissibility of abortion before completing the first forty days of transportation. Meanwhile, this theory is not considered valid among Maliki's religion (Ibn al-Jawzi, al-Quwanin al-Fiqhiyyah, p. 217).

The permissibility of abortion in the first 40 days of pregnancy is an accepted theory in the Shafi'i school of thought. At the same time, if these issues are researched, it will be clear that the reliable theory of Hanaf jurists is also the same in this regard. (Al-Bouti The Problem of Procreation, Prevention and treatment. p. 80).

E- Ibn Hazm's theory and Zaheri religion

Ibn Hazm al-Zaheri considered abortion before the soul to be born as haram. For this reason, in his eyes, a woman who causes an abortion by using medicine before the soul is inflated, should be punished for her. (Ibn Hazm, al-Mahalli, vol. 11, p. 31.)

In this case, Ibn Hazm comments as follows: "It is narrated that Ibrahim al-Nakh'i said about a woman who aborts her child by using medicine: By freeing the slave, she gives the father of the fetus a grievous punishment. This theory is infinite. It is correct." (Ibn Hazm, al-Mahalli, vol. 11, p. 31)

CONCLUSION

We have discussed the issue of abortion in detail so far, we can summarize the theory of religions as follows:

It turns out that according to the famous Hanafi jurists, abortion is permissible before some parts of the fetus appear in the mother's womb. Only they, considering the facilities and medical information of their time, had come to the conclusion that the emergence of organs will begin after one hundred and twenty days. However, Ibn Abedin and some other Hanafi scholars are of the opinion that after one hundred and twenty days, the soul fills the fetus and the development of its organs and creation begins before this period.

According to the Shafi'i religion, abortion is not forbidden in the early stages such as sperm and alaqah, but in later stages such as pregnancy, after this stage of human creation, abortion also becomes forbidden.

The jurists of Hanbali also permit the abortion of an embryo whose creation has not yet been revealed and determined. But if the aborted fetus is chewable and the experts testify that the fetus has taken the form of a human being. In that case, "Ghora" is necessary. According to them, abortion is not allowed.

But some jurists of Islam also believe that abortion is not allowed after the fetus has been placed in the mother's womb. It means that abortion is forbidden from the beginning of pregnancy. This theory is also the correct theory in Maliki's religion. According to the majority of Maliki jurists, abortion is forbidden from the beginning of pregnancy. Only some scholars of Malikiyyah say that abortion is permissible before the first forty days of pregnancy have passed. Among the Shafi'i jurists, Imam Ghazali, from Hanbaleya Ibn Taymiyyah, Ibn Rajab, Ibn Al-Jawzi, and Ibn Hazm al-Zahiri are in this theory. Such narrations have also been narrated from the Hanafi. Keeping in mind all these traditions and theories regarding abortion, whether it is in the first stage of pregnancy or in the later stages, one should be careful because in any case there is a possibility of committing a crime in abortion.

If the fetus is accidentally or intentionally aborted as a result of material and spiritual activities, the person who caused this will be punished with a Ghora (which is the amount of five camels). This amount of financial penalty is applied in terms of financial guarantees. If the number of aborted fetuses is more than one, this penalty will be applied separately according to the number of fetuses. If the fetus is healthy during the abortion and dies after the abortion, the penalty is full death.

If the actions that cause abortion also cause the death of the mother, then the subject is obliged to pay the mother's death. If

the fetus is aborted, but not destroyed, then the criminal will be punished.

As we have seen, the religion of Islam attaches great importance to human life and by taking stubborn and preventive measures, it has tried to consider any kind of voluntary intervention for the fetus as a crime from the early stages of life and has asked its associates to respect human life. Otherwise, they will be forced to face punishments such as ghora and death.

Suggestions

In order for Muslims to be informed about the rulings on abortion and its consequences and to increase the level of public awareness in the society, the following are suggested:

1- Muslims should study the verses and hadiths of the Holy Prophet regarding the ruling on abortion and act.

2- For the Muslims of the world, information should be given about the Sharii rulings on abortion through pulpits and Friday sermons, magazines, newspapers, and audio and visual media.

3- Muslims should research and study the harms and dangers of abortion and learn the correct information about the background of this issue.

4- The government of Afghanistan should take all-round measures in such important social and moral issues and prosecute the violators.

5- Abortion rulings with their details are included in the Civil Code of Afghanistan, and the executive branch should take action to implement them properly.

REFERENCES

1. The Holy Quran.
2. Ibn al-Jawzi, Abul Faraj Jamaluddin Abdurrahman bin Ali, Ahkam al-Nisa, Beirut, 1985.
3. Ibn Jozi, Abul-Qasim Muhammad bin Ahmad, Al-Qawanin al-Fiqhiyyah, Al-Darul-Arabiya al-Kitab, Tunis, 1982.
4. Ibn Hazm, Abu Muhammad Ali bin Ahmad bin Saeed, Al-Mahalli Bil-Asar, 1-12, Darul-Fikr, Beirut.
5. Ibn Rajab al-Hanbali, Zaynuddin Abulfaraj Abdurrahman bin Ahmad, Jami-Aluloom AlHukm, 1-2, Beirut, 1999.
6. Ibn Abedin, Muhammad Amin Ibn Umar Ibn Abdul-Aziz al-Damashqi, Hashiyyah Ibn Abedin, Darul-ihyahul-Trath al-Arabi, Beirut.
7. Ibn Qudama, Mowaffaquddin Abdallah bin Ahmad, al-Mughni, 1-14, Beirut, 1972.

8. Ibn Najim, Zaynuddin ibn Ibrahim ibn Muhammad, Al-Bahr al-Raiq, sharh Kanz al-Daqaiq, 1-8, Darul-Marife, Beirut.
9. Bukhari, Muhammad bin Ismail Abu Abdullah, Sahih al-Bukhari, Darutawq al-Najat, Damishq, 1422.
10. Al-Bouti, Mohammad Saeed Ramadan, The Problem of Determining Generations, Prevention and treatment, Damishq, 1976.
11. Rahim, Ibrahim Muhammad Qasim bin Muhammad, Rulings on Abortion in Islamic Jurisprudence, Al-Hikma Publications Series, London, 2002.
12. Ramli, Abu Abbas Muhammad bin Ahmad, Nihayat al-Muhtaj ila Sharh al-Minhaj, 1-8, Beirut, 1404/1984.
13. Sarkhs, Abu Bakr Shams al-Imam Muhammad bin Ahmad bin Sahl, Kitab al-Mabusut, Darul-Kitab al-ilmiya, 1-30, Beirut, 1995.
14. Shirini, Shamsuddin Muhammad bin Muhammad al-Khatib, Mughni al-Mutaj al-Marifa maani alfazul-minhaj, 1-4, Darul-Fikr.
15. Ghazali, Abu Hamid Muhammad bin Muhammad, Revival of Ulum al-Din, Beirut, 1983-1403.
16. Ghanim, Umar bin Muhammad bin Ibrahim, Ahkamul-Janin fil Fiqh al-Islami, Darul-Andalus al-Khadera, Jeddah, 2001.
17. Mawardi, Abu Al-Hasan Ali bin Muhammad bin Habib Al-Basri Al-Baghdadi, Al-Hawi Al-Kabeer, 1-18, Dar Al-Kutub Al-Ilmiyya, Beirut, 1414/1994.
18. Al-Marghinani, Abul-Hasan Ali bin Abi Bakr, Al-Hidayah Sharh Bidayatul-Mubtadi, 1-4, Darul-Arqam, Beirut.
19. Al-Mowsili, Abul-Fazl Mujiddiddin Abdullah bin Muhammad, Al-ikhtiyarul-Talil Al-Mukhtar, 1-5, Beirut, 1998.
20. Yasin, Muhammad Naeem, Jurisprudential Research on Contemporary Medical Issues, Darul-Nafais, Jordan, 1999.
21. Çeker, Orhan, “Çocuk Dürsürme”, Diyanet İslam Ansiklopedisi (DİA), c. VIII, İstanbul, 1993, ss.363-365.