

Chapter 10

Abortion

Definition of Abortion

Abortion is the termination of a pregnancy before the infant can survive outside the uterus [1]. The age at which a fetus is considered viable has not been completely agreed upon. Many obstetricians use either 21 weeks or 400–500 g birth weight as the baseline between abortion and premature delivery. In one effort to resolve the matter, the American College of Obstetricians and Gynecologists has defined abortion as the expulsion or extraction of all (complete) or any part (incomplete) of the placenta or membranes, with or without an abortus, before the 20th week (before 134 days) of gestation. Early abortion is an abortion that occurs before the 12th completed week of gestation (84 days); late abortion is an abortion that occurs after the 12th completed week but before the beginning of the 20th week of gestation (85–134 days) [2]. Pregnancy is usually calculated from the beginning of the last normal menstrual period (LNMP).

An abortion may occur spontaneously, in which case it is also called a miscarriage, or it may be brought on purposefully, in which case it is often called an induced abortion.

Spontaneous abortions, or miscarriages, occur for many reasons, including disease, trauma, genetic defect, or biochemical incompatibility of mother and fetus. Occasionally a fetus dies in the uterus but fails to be expelled, and absorbed by the body of the mother's uterus; a condition termed a missed abortion [3]. It may also get calcified and has to be removed.

Moral Issues Connected with Induced Abortion

Induced 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. 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, unfortunately, the most important method employed by the advocates of fertility regulation and family planning.

The moral, religious, and legal aspects of abortion are subject to intense debate in many parts of the world [4].

Abortion is highly stigmatized in the United States and elsewhere although it has been legalized since 1973. In many regions of the world, stigma is a recognized contributor to maternal morbidity and mortality from unsafe abortion, even when abortion is legal [5]. In USA, physicians who provide abortion care are targets of stigma, harassment, and violence [6].

Abortion Incidence

Approximately 44 million abortions are performed worldwide each year [7]. Of these, 26 million are said to occur in places where abortion is legal; the others happen where the procedure is illegal. The world ratio for induced abortions is 26 per 100 known pregnancies.

Among the 208 million women estimated to become pregnant each year worldwide, 59 % (or 123 million) experience a planned (or intended) pregnancy leading to a birth or miscarriage or a stillbirth. The remaining 41 % (or 85 million) of pregnancies are unintended [8].

According to Ms. Thoraya Obaid, the Executive director of United Nation Population Fund, in every minute in the world:

- 380 women become pregnant
 - 192 or half of them, did not plan or wish the pregnancy.
 - 100 women have an abortion.
 - 40 women have an unsafe abortion [9].

After declining substantially between 1995 and 2003, the worldwide abortion rate stalled between 2003 and 2008.

- Between 1995 and 2003, the abortion rate (the number of abortions per 1,000 women of childbearing age—i.e., those aged 15–44) for the world overall dropped from 35 to 29. It remained virtually unchanged, at 28, in 2008.
- Nearly half of all abortions worldwide are unsafe. In the developing world, 56 % of all abortions are unsafe, compared with just 6 % in the developed world.

Since 2003, the number of abortions fell by 600,000 in the developed world but increased by 2.8 million in the developing world. In 2008, 6 million abortions were performed in developed countries and 38 million in developing countries, a disparity that largely reflects population distribution [10].

Researchers estimate that about 2 million induced abortions occur each year in Indonesia and that deaths from unsafe abortion represent 14–16 % of all maternal deaths in Southeast Asia. It is generally accepted that the law allows abortion only if the woman provides confirmation from a doctor that her pregnancy is life-threatening, a letter of consent from her husband or a family member, a positive pregnancy test result and a statement guaranteeing that she will practice contraception afterwards [11].

Pakistan has an estimated abortion rate of 29 abortions per 1,000 women of reproductive age, and an estimated 890,000 abortions are performed annually in Pakistan [12]. The study found that pregnant women who wish to have an abortion in Pakistan often visit illegal clinics run by midwives. However, 23 % of women who go to an unskilled abortion provider are later hospitalized for complications. Abortion is considered illegal in Pakistan except on medical grounds.

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 [13].

Unsafe Abortion

The World Health Organization defines unsafe abortion as a procedure for terminating a pregnancy that is performed by an individual lacking the necessary skills, or in an environment that does not conform to minimal medical standards, or both [14]. Unsafe abortions result in approximately 70,000 maternal deaths and 5 million disabilities per year globally. Between 1995 and 2008, the rate of unsafe abortion worldwide remained essentially unchanged, at 14 abortions per 1,000 women aged 15–44 [15].

An estimated 21 million unsafe abortions occur each year, an annual rate of 16 for every 1,000 women in the developing world, where the vast majority of unsafe abortions take place [16].

In Africa, where abortion is restricted in most countries, almost all abortions are performed unsafely and the rates of unsafe abortion vary from 18 to 39, being highest in Eastern Africa and lowest in Southern and Northern Africa.

In Latin America and the Caribbean, the vast majority of abortions are, like in Africa, performed unsafely, and the estimated rates of unsafe abortion are 16–33. When focusing on Asia, the estimated rates of unsafe abortion are between 9 and 28 [17].

According to the Egyptian Ministry of Health database on maternal mortality rates, the number of deaths resulting from abortion for the years 1992, 2000, and 2006 were 4.6, 4, and 1.9 %, respectively [18].

Teenage Pregnancies

Pregnancy during adolescence is rarely planned and usually outside wedlock (Unmarried). Moreover, teenage pregnancies resulting in delivery have been associated with poorer health, increased social and economic burdens, and sexually transmitted infections [19].

Teenage pregnancy for married girls (in Saudi Arabia) is quite safe, and is no different from pregnancy at 20 years and over. Akinola et al. [20] concluded that there was no significant difference in the pregnancy outcome of the teenagers (13–19) with the control group (20 and over). In another study published by Johromi and Daneshvar the authors concluded that there was no difference in the obstetric and neonatal outcome of Parturients younger than 16 years compared to Parturients 24–28 years of age [21].

In a third study published on this subject the authors found out that “Teenage Pregnancy is not associated with bad obstetric outcome when adequate antenatal care is received” [22]. Similarly, Mahfouz et al. found that pregnant teenagers are not high risk group if good prenatal care is provided [23].

In a paper presented to Islamic Fiqh council of Islamic World League in December 2012, Dr. Adel Al Abid Al Jabar concluded that teenage marriage in Saudi Arabia is diminishing. Those married at the age 15 years or under constitute one marriage in 10,000 marriages. In other words, it is a disappearing phenomenon [24].

The real problem that will be faced in the near future is the pregnancy outside wedlock which will end in unsafe abortion or trying to get rid of the baby by putting him/her in front of a mosque or other places.

The proportion of teenage pregnancies ending in termination of pregnancy (TOP) varies by country. The incidence of teenage TOP is relatively low in Finland (13/1000 in 2009) [25] compared with Britain (24/1000) and Sweden (24/1000) [26]. In recent years, 61 % of all teenage pregnancies have resulted in termination of pregnancy in Finland, the figures being 80 % in Sweden and 23 % in the USA [27].

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.

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. By age 20, there are 2 million pregnancies outside wedlock, a million of which result in abortion annually.

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 [28]. 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 [29].

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).

Abortion and in Vitro Fertilization

Another type of indication is called “reduction of pregnancy,” in which the expectant mother treated for infertility with hormones or by in vitro fertilization (IVF) 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 [30] and Amman 1986 (Jordan) [31]. Later, gynecologists all around the world passed a regulation limiting the reintroduction of fertilized ova to two in each cycle in the management of fertility by in vitro fertilization methods. Many papers were published claiming that even twin pregnancy increases the complications of pregnancy and are advising replacing one fertilized ova (morulla or blastula stage). Still many gynecologists reintroduce more than 3 fertilized ova, which ends in abortion or fetal reduction.

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 [32].

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 [33].” 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 [34].” 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 practiced in the Middle Kingdom of Egypt (2133–1786 B.C), and the excavations at Pompeii revealed a vaginal

speculum suitable for performance of abortion. The Roman Poet Ovid lamented, "There are few women nowadays who bear all the children they conceive [35]." 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 considers 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 [36].

The Catholic Church was more stringent, and in the seventh century instituted a canon for capital punishment of women who had abortions [37].

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 [38].

With the advent of the industrial revolution and social upheavals in the eighteenth and nineteenth 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 [39].

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 [40].

The first country in the world to legalize abortion on demand was communist Russia, which passed a law on November 18, 1920, "permitting abortion to be performed freely without charge in Soviet hospitals" [41].

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 [42]. 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, about 60 % of the world's population lived in countries where abortion was allowed on demand or with minor restrictions.

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 1973 *Roe v Wade* decision removed many legal obstacles to abortion and was a public health watershed. The *Roe v Wade* decision in USA made safe abortion available but did not change the reality that more than 1 million women face an unwanted pregnancy every year. Forty years after *Roe v Wade*, the procedure is not accessible to many US women. The politics of abortion have led to a plethora of laws that create enormous barriers to abortion access, particularly for young, rural, and low-income women [43].

Forty percent of the world's women are living in countries with restrictive abortion laws, which prohibit abortion or only allow abortion to protect a woman's life or her physical or mental health. In countries where abortion is restricted, women have to resort to clandestine interventions to have an unwanted pregnancy terminated. As a consequence, high rates of unsafe abortion are seen, such as in sub-Saharan Africa where unsafe abortion occurs at rates of 18–39 per 1000 pregnant women [44].

The laws governing the practice of induced abortion in 197 countries were classified into five categories (to save a woman's life or prohibited altogether, to preserve physical health, to preserve mental health, socioeconomic grounds, and no restriction).

In 68 countries, abortion is not legally permitted on any grounds or only to save the woman's life, and 26 % of the world's population are living in countries with such restrictive laws [45] (most of them are Catholic countries). In 36 countries, around 10 % of the world's population, abortion is allowed only to protect a woman's physical health and in another 23 countries, around 4 % of the world's population, also to protect her mental health. Finally, 21 % of the world's population lives in the 14 countries that permit abortion on socioeconomic grounds and another 39 % are living in the remaining 56 countries, where abortion is available without restriction as to indication, albeit not gestational length [46].

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) [47]. This might change after the revolution and reintroduction of Islamic Laws.

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

Countries allowing abortion only to save the life of the mother are: the Catholic countries such as those of Latin America; Ireland, Spain, Portugal, Malta, Belgium, the Philippines [48].

Almost all Muslim countries allow abortion only for strict medical reasons [49].

The Egyptian law criminalizes abortion in the Penal Code, according to articles 260, 261, 262, and 263. Abortions performed by doctors are regulated in article 29 of the physicians' Code of Ethics which states that physicians are allowed to perform the procedure to protect the pregnant woman's health if they obtain written

approval from two other specialists. Egyptian law also finds a woman guilty if she willingly chooses an induced abortion, which carries a prison penalty (6 months to 3 years imprisonment) according to article 262 of the Penal Code [50].

Abortion and Birth Control

From 1970 to 1993, the cover of the “Contraception” journal featured a graph showing global population projections, reminding all readers that the development of new, more effective, acceptable and accessible contraceptives was urgently needed to assist women to voluntarily limit their family size [51].

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 Ghandhi [52]. As the law in China permitted couples to have only one child, 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” [53].

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 encouraged third world countries to curb fertility and population increase, even by resorting to methods unacceptable in their own societies. Governments of third world countries were 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 [54].

The medical reasons for the 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 [55]." 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 Dyscrasias, 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 (Protestant) 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" [56].

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 procedure are much reduced and the mortality rate in first trimester abortions is very low indeed, especially after the introduction of regimens using the lower mifepristone dose, 200 mg, followed by misoprostol in early pregnancy which act successfully (90 %) if given to women less than 8 weeks pregnant. Treatment failure occurred in 4.8 %. Ongoing pregnancy was reported in 1.1 % [57].

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 [58].

Abortions should not be used as a means of birth control. The social causes leading to unwanted pregnancy should be dealt with temporary means of contraception which 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" [59].

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 Prophet Muhammad (PBUH) [60]. The Holy Qur'an 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" [61].

"And God has given you mates of your kind, and has given through your mates children and grand children" [62]. Prophet Muhammad said to all Muslims: "Get married, beget and multiply because I will be proud of you among nations" [63]. He also said: "Marry the kind and fertile, for I will be proud of your numbers among other nations" [64].

Though Islamic teachings encourage procreation within matrimony, it does not prohibit the temporary means of contraception. The Prophet himself (PBUH) allowed his companions to practice "aazel," i.e., coitus interruptus (Onanism) [65].

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 [66].

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.

Abortion in Islam

Allah has made clear that killing people is forbidden, as their lives are made sacred by Allah's having created them. There are a lot of Qur'anic 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 all mankind" [67].

The Qur'an also says: "And do not kill anyone whom Allah has made sacred, except for a just cause..." [68]. This applies to killing anyone; and killing one's children is especially forbidden by Allah. "They are lost indeed who kill their children foolishly without knowledge, and forbid what Allah has given to them, forging a lie against Allah; they have indeed gone astray, and they are not the followers of the right course" [69].

The Qur'an 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” [70].

“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” [71].

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” [72].

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 Qur’an”, 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” [73].

Similarly, Ibn Hajar Al Asqalani, in his voluminous “Fatehul 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” [74].

En soulment only occurs after many stages through which the embryo passes. The Holy Qur’an 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-like 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” [75].

All the ulama (jurists of the Islamic nation) and commentators of the Holy Qur’an 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 Qur’an makes it clear that Allah creates humans in stages and that before the final stage they are not humans [76].

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” [77].

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 says: “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 his livelihood and God determines [78].

It is interesting to note that organogenesis (formation of organs in the embryo) takes place between the 4th and 8th 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 after 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 20th 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 20th week of pregnancy, computed from the LMP; which is equivalent to 120 days, computed from the moment of conception (fertilization) [79].

It is evident that both sayings of Prophet Muhammad (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. It clearly speaks of ensoulment; the spirit entering the body of the fetus.

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 2 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 [80].

In Islam, temporary means of contraception are allowed, provided they cause no harm, and are done with mutual consent of the spouses [81]. Sterilization is not allowed, except for clear medical indications, where pregnancy would seriously endanger the health or life of the expectant mother [82].

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 the life of the expectant mother is 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 [83].

This was the Fatwa (decision) of the Islamic Fiqh council of Islamic World League held in Makkah from 10 to 17th 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 [84].

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 Islamic Fiqh council of Islamic World League; Makkah Al Mukaramah 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 [85]. 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 [86]. 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. Some jurists of the Hanafi, Hanbali, and Shafii Schools also permit abortion with minor restrictions [87]. However, the majority of Islamic jurists throughout history, because of Islam's respect for life; do not allow abortion except for strong medical reasons.

Sheikh Yusuf Al-Qaradawi, states in his well-known book, "The Lawful and the Prohibited in Islam": "While Islam permits preventing pregnancy for valid reasons, it does not allow doing violence to the pregnancy once it occurs. Muslim jurists agree unanimously that after the fetus is completely formed and has been given a soul, aborting it is haram. It is also a crime, the commission of which is prohibited to the Muslim because it constitutes an offense against a complete, live human being" [88].

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. Sheikh Mohmoud Shaltout (Grand Imam of Al Azhar in the 1940s and early 1950s) wrote: "Old scholars have 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" [89].

Imam AlGhazali (died 505 H = 1122 AD), in his well-known book "Ihya Oloomaddin", 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 (40–80 days), which is less than the abortion of Modgha (80–120 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 [90].

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 indications of abortion and how to perform them [91].

We 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 and Population Control

Certainly, no school of Islamic jurisprudence intends to allow abortion as a method of population control. Muslim legal scholars have treated the subject of birth control in great detail, and a consensus has emerged regarding its permissibility if both spouses agree that it is not permanent and it is not harmful [92].

Other Indications

Many Fatwas have been given permitting abortion following rape, e.g., Islamic Fiqh council of Islamic World League, Makkah Al Mukaramah, The International Islamic Fiqh Academy of Organization of Islamic Conferences (OIC-IFA), and Sheikh Qaradawi, etc. [93]. It should be performed as early as possible and in the first 40 days of pregnancy. Abortions to avoid economic hardships are not condoned by Muslim jurists.

Abortion on Demand

Seeking abortion for no “good” reason at all, and indicating that the “mother” or “father” just do not want the baby—is considered to be inhumane and cruel.

Abortion on demand, as carried out in many countries, with liberal abortion laws, will never be condoned by Shari’ah (Islamic Law).

Unfortunately, Tunisia passed a law 65/24 dated July 1, 1965, which allowed abortion for tenuous reasons. The situation became worse when law no. 73–75 dated November 19, 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 [94]. After the toppling of the Secular regime in 2011, it is expected that these laws will be amended to conform to recognized Fatwas from Islamic jurists and Islamic conferences.

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 Last Normal Menstrual Period (LNMP) [95].

Punishment for Causing a Pregnant Woman to Miscarry

If someone causes a pregnant Muslim woman to have a miscarriage, that person must pay an indemnity to the woman's family but will not be submitted to the "hadd" punishment for taking life. The judge may order other punishment (Taazir).

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 [96].

The question of indemnity for carrying abortion differs according to the time of abortion and according to different Islamic jurisprudence schools. If the abortion is carried out early and it is not possible to identify human features in the abortus, then there will be no indemnity according to Shafi, Hanbali, and Hanafi schools of jurisprudence.

The mother who intentionally tries to miscarry a fetus less than 120 days of gestation pays a penance, according to Ibn Hazm, as if she had broken a vow, but not an indemnity. If someone else causes a woman to abort before the fetus has reached 120 days gestation, this person would be liable for an indemnity [97].

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