

With the Name of God, All-Merciful, Most Merciful

ABORTION, STAGES OF THE EMBRYO AND THE BEGINNING OF LIFE

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1 A General Ruling on Abortion

Abortion is, in general, *haram* (morally and legally prohibited and sinful) unless out of necessity due to the mother's life: abortion is allowed if the mother's life is in danger, or if she is in danger of great and severe harm.

This is indicated by all the Qur'anic verses that prohibit transgression on any person's life in any stage of life, e.g. *Whoever kills one person ... it is as though he has killed all people*;¹ *Do not kill your children due to poverty: we sustain you and them*;² *Do not kill your children due to fear of poverty: we sustain them and you*.³

As for abortion being allowed to save the mother's life, this is from the evidence indicating that the foetus owes its existence to the mother so it cannot cause her death; also, her life is real and stable, and is therefore preferred over the foetus' life that is not certain. This falls under repelling a greater harm by tolerating a lesser harm.⁴

2 Specific Rulings on Abortion, related to the Stages of the Embryo

The specific ruling on abortion is connected to the stages of the embryo, from the fertilisation of ovum by sperm to the breathing of the spirit into it and the completion of these stages.

The Qur'an mentions that the human was created from dust that turned to dry clay. Clay includes various minerals such as iron, phosphorus, calcium, copper, etc. It also has subtle plant-like and animal-like structures. God created Adam from this clay, and from Adam He created Eve. Then natural reproduction continued with the mixing of the man's semen and the woman's ovum, each one of them contributing 23 chromosomes to the genetic code. God calls this the "mixed fluid."⁵ This is the basis of the creation of humans, except for the miraculous creation of Jesus, peace be upon him.⁶

The stages of the embryo, [that give rise to] the ruling on abortion at each stage, are as follows:

¹ Q. 5:32

² Q. 6:151

³ Q. 17:31

⁴ Ibn 'Abidin 5/377, *al-Sharh al-Kabir* with commentary by Disuqi 4/268, *Sharh al-Kharshi* 5/274, *al-Iqna'* 4/129, Kuwaiti Encyclopaedia of Jurisprudence 2/59.

⁵ Q. 76:1

⁶ Q. 3:59

2.1 The “mixed fluid” stage (*al-nutfah al-amshaj*)⁷: days 0-8

This is the fertilisation of the ovum by sperm, and may be done artificially outside the womb. The fertilised cell divides, becoming 16 cells after about 4 days. These settle in what the Qur’an calls a “safe place,” i.e. the womb: *Then We made him a drop of fluid in a safe place.*⁸

2.2 The “clinging” stage (*al-‘alaqah*): days 9-22/23

God described this stage with “creation”⁹ whereas the previous stage was described as “making,” indicating that this stage has characteristics and changes that make it deserving of such a label.¹⁰

The *‘alaqah* linguistically relates to “clinging,” i.e. to the womb wall. The group of cells that developed by division from a single one are composed essentially of a nucleus and cytoplasm, having no limbs or other distinguishing structures of a human body, but they suck their necessary sustenance and oxygen inside the womb from the structures and fluids around them.¹¹ This stage lasts 2 weeks.

2.3 The “chewed lump” stage (*al-mudghah*): days 23/24-42, i.e. up to 6 weeks

This stage is so named¹² because the embryo looks like it has been chewed by a human mouth. During this stage, the heart cavity forms, as do the reproductive organs. The small umbilical cord, which grows as the foetus develops, transports the necessary sustenance and oxygen to the foetus from the mother and its waste products in the other direction.

All the stages, up to and including this one, end around 40-42 days, as stated by specialist doctors and embryologists. Around 42 days, a new stage of development begins, when the embryo begins to take the form of a human being with all its apparatus, following which the stage of a new creation begins after the breathing of the spirit: *We clothed the bones with flesh, then We began a new creation – so Blessed is God, the Best of Creators!*¹³

⁷ *al-nutfah*: the ejaculated fluid of the man or woman; *amshaj*: a mixture of the essential parts of a thing. See the lexicons *al-Misbah al-Munir*, *Lisan al-‘Arab* and *al-Qamus al-Muhit*.

⁸ Q. 23:13

⁹ Q. 23:14

¹⁰ Muhammad Salam Madhkur, *al-Jinin [Foetuses]*, 1389, p. 56

¹¹ Dr. Mukhtar al-Mahdi, *The Beginning of Human Life*, Book 2 of the Islamic Organisation for Medical Sciences, Kuwait, pp. 65 onwards.

¹² Q. 23:14 & 22:5

¹³ Q. 23:14

Scientific instruments and investigation, as well as imaging of the foetus inside the womb, have all shown us that the foetus takes the form of a human after the sixth week, i.e. after about 42 days of pregnancy,¹⁴ and this is also indicated by the hadith of *Sahih Muslim* (see below).

2.4 *The stage of the creation of bones, and the clothing of them with flesh*

The skeleton begins to become apparent after 40 days. Its initial centres of development are the jaw and collar-bone, followed by the thigh and shin.

2.5 *When is the spirit breathed in? [ensoulment]*

[Canonical hadiths speak of three stages of creation of the foetus, each lasting 40 days, after which there is ensoulment. However, the hadiths are slightly ambiguous as to whether these three stages are consecutive or parallel. Respectively, these two interpretational possibilities imply ensoulment after 120 days or 40 days, and traditional authorities are indeed divided into two camps about this. Interestingly, Aristotle taught that ensoulment for boys and girls occurred after 40 days and 80 days, respectively. – Translator’s note]

All the stages, up to and including this one, end around 40-42 days, as stated by specialist doctors and embryologists. Around 40-42 days, a new stage of development begins, when the embryo begins to take the form of a human being with all its apparatus, following which the stage of a new creation beings after the breathing of the spirit. The foetus takes the form of a tiny human after the sixth week, i.e. after about 42 days of pregnancy. This is also indicated by the various narrations of *Sahih Muslim* that mention the basic creation of a person in their mother’s womb taking 40, 42 or 45 days and nights. One narration mentions “40 plus a few nights.”¹⁵

Hafiz Ibn Hajar says, “Once the fluid remains in the womb for 40 days or nights, God gives permission for its [full] creation ... this is when the angel descends upon it ... The narrations of the hadith of Ibn Mas’ud agree on 40 days; the hadith of Anas does not mention any timing; the narrations of Hudhayfah’s hadith differ: some of them mention 40, others 42, 43, 45 or ‘40 plus a few’.”¹⁶

The scholars reconcile these narrations by saying that they may differ according to individual embryos; according to Qadi ‘Iyad, the narrations mean that the following stages occur at the beginning of the second period of 40 days, i.e. days 41-80.¹⁷

¹⁴ Papers by Dr. Hassan Hathout, Dr. Mukhtar al-Mahdi, Dr. Ahmad Shawqi, Dr. Muhammad Na’im Yasin & Dr. Abdullah Salamah.

¹⁵ The Arabic for “a few” here is *bid’*, which refers to a single-digit number, i.e. 1-9 maximum. (Translator’s note)

¹⁶ *Fath al-Bari* 11/480-1

¹⁷ *Fath al-Bari* 11/481

2.6 [The view of modern science]

In modern embryology, this period of days 40-49 is when the embryo becomes a foetus, and when ultrasound is able to detect the beating heart. The bone skeleton also begins to appear.¹⁸ Hence, these narrations do not contradict.

Modern science also indicates that the initial creation (Stages 1-3) is completed in the first 40-odd days. However, one hadith in Bukhari and Muslim appears that to say that each of Stages 1-3 takes 40 days, after which the spirit is breathed in, i.e. after four months or 120 days.¹⁹

However, if we analyse this hadith carefully, we find it does not unequivocally indicate the meaning that the previous people of knowledge understood. In fact, its beginning agrees with the others hadiths of Sahih Muslim which say that all three stages are completed within the first 40-odd days. The word *thumma* can mean “then” for consecutive stages or “moreover” for simultaneous stages. “With such interpretations,” says the leading authority Dr. Muhammad Salam Madhkur, “the hadith agrees with modern medicine.”²⁰

2.7 Our view

There are three major stages, based on our understanding of the hadith of Ibn Mas’ud in Bukhari:

1. From the fertilised egg to the beginning of the small human form (0-40 days, roughly)
2. Formation of a small human (40-120 days, roughly)
3. Breathing of the spirit (ensoulment), i.e. 120 days onwards

Any intentional harm to the embryo is *haram* (prohibited) after 40 days.

In terms of life:

1. 0-40 days – there is the lowest level of life, beginning with the developing cell life. Cell division leads to similar living cells that form a structure, but this does not reach the level of human life.

¹⁸ Dr. Mukhtar al-Mahdi’s paper, p. 65

¹⁹ Fath al-Bari 11/481

²⁰ *Al-Jinin* (Foetuses), p. 54

2. Week 6: the foetus begins to take the form of a small human. Ultrasound detects its heart beating. Blood circulation begins to work. Major skeletal nodes appear.
3. Week 7: Thigh and shin bones appear.
4. Week 8: Upper and lower arm bones appear, as do weak, stretching movements. However, this does not represent complex human life.
5. End of Week 11- Week 12: the foetus enters a new, distinctive stage. Its brain is developed, its functions start: the beginning of a human entity emerges clearly, as follows. Movements develop from reflex reactions to complex, compound actions such as bending the back, raising the head, kicking the feet and moving the mouth and lips. Brain stem activity begins, sending electrical signals to the heart. Periods of rest and stillness follow activity and movement: sleep and waking, sensation and shock, jump and play. Electrical signals appear that can be recorded and traced to the foetal brain, indicating surface brain activity.

However, the doctors say that the brain is not fully-formed in terms of its basic structure until the 4-month mark. Dr. Muhammad Ali Albar says, “At the end of the fourth month, the foetus can hear and make movements by its own will. Individual, personalised facial features appear. Do not all these indicate the breathing of the spirit?”

All this is the medical aspect of the issue, revealed by modern medicine and rare, modern instruments that monitor the development and movements of the embryo and foetus; none of these means were available in the past. If we analyse this modern knowledge and the hadiths on the subject, we find that there is no contradiction. In particular, only one hadith seems to mention three periods of 40 days; most of the narrations mention a total of 40, 42, 45 or 40-odd days.

Modern medicine does not speak about the spirit, which is mentioned in the hadith. Only God knows the nature and reality of this spirit.²¹ The Messenger of God, peace be upon him, informed us that this spirit is breathed in after 120 days, so this must be affirmed.

Although bear in mind that only one narrator from Ibn Mas’ud, Zayd b. Wahb, mentioned the breathing of the spirit after 120 days; the rest of the narrators mentioned the writing of sustenance, lifetime and eventual misery or happiness, but did not mention the breathing of the spirit; neither did the other Companions who narrated the hadith: Ibn ‘Abbas mentioned it, but did not attribute it to the Prophet, peace be upon him.²² It is possible to reconcile these two hadiths: the angel visits twice – once after 40 days to arrange the formation of the foetus and again after 120 days to breathe the spirit.²³ God knows best.

²¹ Q. 17:85

²² Fath al-Bari 11/468

²³ Ibn al-Qayyim, *Kitab al-Ruh [The Spirit]*, p. 205

According to the doctors, life begins with a single cell but gradually develops into a full human life. The jurists draw the line (for full human life) at 120 days, which is when the spirit is breathed in. Similarly, all plants and animals enjoy life but do not benefit from the spirit of God that is breathed into humans, and on the basis of which the angels were commanded to prostrate to the human.²⁴

The moment of breathing the spirit at 120 days is a matter of the unseen – humans and our medicine cannot know it, so we must accept it without interpretation or explanation, especially since it does not contradict modern science. After 120 days, the foetus is a complete human, deserving all that a human being enjoys after birth: respect, rights and the prohibition of harm against it.

Plant life has less power than animal life, which has less than human life. Animals may have more or less chromosomes: apes have more than other animals, whilst humans have the most at 46 chromosomes.²⁵

Imam Ibn al-Qayyim mentions two types of embryonic life:

- (i) plant-like life before ensoulment, and
- (ii) complete, human life after ensoulment.²⁶

Foetal life after 40 days is complete in a material sense, just like complete animal life but more respected than the latter since it is in the fundamental human form. However, it lacks the divine breathing that bestows, and God knows best, the special human attributes such as knowledge, logical thinking, deduction and analysis as explained in the verses about the creation of Adam. God created Adam to settle in the world and civilise it and to be its steward, so He breathed His Spirit into him, taught him the Names. He gave him, along with knowledge and logical deduction, the capability to act. Along with intellect, He gave him choice and will. These higher attributes do not appear in the early stages of the foetus, but only after 120 days, e.g. voluntary movement etc.

3 Rulings on Abortion

It is undoubtedly *haram* (prohibited) to harm the embryo that is younger than 40 days. The prohibition becomes more severe after 40 days. The greatest prohibition occurs after 120 days, in which case killing the foetus would be like murdering an independent human being. These levels of prohibition are appropriate in Islam to describe the size of the crime and its effects.

²⁴ Q. 38:71-72

²⁵ This is not true: some apes have 48 chromosomes, with a very clear and close relationship to the 46 human chromosomes. (Translator's note)

²⁶ *Kitab al-Ruh*, p. 38 & *Shifa' al-'Alil*, pp. 38-41

3.1 [Fatwa of the Islamic Fiqh Academy]

The Islamic Fiqh Academy issued a ruling (no. 56-6/7) prohibiting abortion absolutely, and mandating medical techniques to save and protect the lives of embryos and fetuses. Furthermore, Ruling No. 113 (12/7) says in Clause 2 that, “The embryo has a right to life as soon as it is formed. It must not be harmed by abortion, or by any type of damage ...”

3.2 [Resolution of the Islamic Organisation for Medical Sciences]

The Council on Conception, part of the Islamic Organisation for Medical Sciences, issued the following resolution: “The Council has considered contemporary medical, scientific realities explained by modern research and medical technology. It concluded that:

- the foetus is alive from the beginning of pregnancy
- its life is to be respected during all stages, and especially after ensoulment
- transgression against the foetus by abortion is not permissible, except for an extreme medical necessity
- some members disagreed, allowing abortion before 40 days, especially in case of a valid reason”²⁷

3.3 Views of past jurists about abortion

- 1) The schools of jurisprudence in the past agreed that abortion was haram (prohibited) after 120 days.²⁸ Some of them even said that this was so when the mother’s life was in danger, e.g. Ibn ‘Abidin said, “If the foetus is alive, abortion is prohibited, since the mother’s death is hypothetical and it is not permissible to kill a human being on the basis of a whimsical matter.”²⁹

But if her death is certain or very likely, not simply hypothetical, then her life is to be given precedence over the foetus’, which may be aborted.

- 2) As for before ensoulment, most jurists regard abortion as prohibited (*haram*) also, unless it is to safeguard the mother. This is the view of the Malikis and Ibadis, the dominant view of the Hanafis and Shafi’is, one view of the Hanbalis and the apparent view of the Zahiris.³⁰

Some of the Hanafis, Shafi’is, Malikis and Hanbalis allowed abortion before ensoulment³¹, as did the Zaydis on condition that both parents agreed.

²⁷ Book 1, Islamic Organisation for Medical Sciences, p. 351

²⁸ *Fath al-Qadir* 2/495 [Hanafi], *Hashiyah al-Disuqi* 2/267 [Maliki], *Nihayat al-Muhtaj* 8/416, *Al-Majmu’* 5/301 [Shafi’i], *Al-Mughni* 7/815 [Hanbali], *Al-Muhalla* 11/29-31 [Zahiri].

²⁹ Ibn ‘Abidin, *Hashiyah*, 1/602

³⁰ See sources previously cited.

³¹ See sources previously cited; also *al-Furu’* 6/191, *al-Insaf* 1/386

Some jurists, including Lakhmi (Maliki) and Abu Ishaq Marwazi (Shafi'i) allowed abortion before 40 days, but prohibited it thereafter.³²

Some Hanafis allowed abortion before ensoulment for a valid reason, even if it did not reach the level of necessity, whilst others specified the condition of necessity.³³

Some Shafi'is allowed abortion before ensoulment if the conception was via illegal extra-marital sex (*zina*: fornication or adultery).³⁴

3.4 [Discussion]

The majority of jurists held that abortion was prohibited at any stage based on:

- (i) the verses prohibiting the taking of life, e.g. 6:151 and 17:33. A foetus is a life without doubt.
- (ii) God forbade pilgrims from hunting (5:95), and the Prophet forbade the destruction of ostrich eggs by pilgrims, stipulating their value in compensation in cases of violation.³⁵ Malik said, "I have always heard that the compensation due upon a pilgrim for killing an ostrich is a camel. In case of an ostrich egg, my view is that the amount is a tenth of a camel's value, just as the compensation for the foetus of a freewoman is to free a slave, male or female; these are worth 50 dinars, which is a tenth of his mother's blood-money."³⁶ Ibn al-Qasim said, "Malik compared the egg to a foetus," i.e. in essence, like a foetus that is prohibited to harm.

3.4.1 [Abortion is prohibited in general, as per Ghazzali's view]

Thus, the stronger view is that of the majority, i.e. that harming embryos is prohibited, even before ensoulment. One researcher who emphatically supported this position was Imam Ghazzali. In explaining the difference between *coitus interruptus* and abortion before ensoulment, he said: "The child is formed when the sperm enters the womb ... *Coitus interruptus* is not like abortion or burying the infant alive because the latter two are crimes against an existing thing that is of different stages. The first stage is that the sperm enters the womb, mixes with the woman's water and prepares to accept life: spoiling this would be a crime. Once it becomes a chewed lump and a suspended lump,

³² See sources previously cited; also Rahuni's commentary on Zurqani 3/264; Sharawani 6/248; *Nihayat al-Muhtaj* 8/416

³³ Ibn 'Abidin 2/380

³⁴ *Nihayat al-Muhtaj* 8/416

³⁵ Ibn Majah, *Sunan – Manasik* 3077; Ahmad 744-5

³⁶ *Al-Mudawwanah* 2/437

the crime becomes more obscene, and even more so once ensoulment has taken place and the process of creation has levelled out. The extremity of such obscenity is once the foetus has become an independent life [i.e. been born as a baby].” He then mentioned that the beginning of the embryo’s existence is from the entry of semen into the womb.³⁷

3.4.2 [Ibn Taymiyyah’s view]

Shaykh-ul-Islam Ibn Taymiyyah was asked about a man who said to his wife, “Abort your foetus: the sin is upon me.” If she does this, what expiation is due upon them both?

He answered: “They must free a believing slave: if they are unable to, they must both fast two months consecutively. In addition, they must give compensation to the heirs of the foetus who did not kill it: not to the father, for he ordered its killing, and so deserves nothing.”

In answer to another question, he said, “Abortion is prohibited by the consensus of the Muslims: it is like burying children alive or killing them, which God has forbidden (81:8-9 & 17:31).”

He also said about a woman who aborted her foetus by striking her belly or by drinking medicine, “She must give compensation to the heirs of the foetus, other than the mother, by the Sunnah of the Messenger of God and the agreement of the Imams.”³⁸

3.5 Summarised Juristic Rulings Related to Foetuses

1. Blood-money and expiation if prohibited abortion is carried out: the perpetrator, whether father, mother or someone else, must pay the blood-money, which is a tenth of that of the mother according to the Malikis and Shafi’is; others distinguish between a male and female foetus.³⁹ According to the Shafi’is and Hanbalis, expiation is also due, being the freeing of a slave if possible, otherwise fasting for two consecutive months.⁴⁰
2. The waiting-period (*‘iddah*) of a widow or divorced woman ends by [termination of the pregnancy:] delivery of the child or abortion of the foetus.
3. The father of the child must pay maintenance for the pregnant mother in case of divorce.⁴¹

³⁷ Ghazzali, *Ihya’ ‘Ulum al-Din [Revival of the Religious Sciences]*, 2/53

³⁸ Ibn Taymiyyah, *Majmu’ Fatawa [Collected Fatwas]*, 34/159-161

³⁹ Meaning that the blood-money for a male is double that of a female. (Translator’s note)

⁴⁰ See sources previously cited; also *Bidayat al-Mujtahid* 2/656

⁴¹ This implies that this payment comes to an end upon abortion. (Translator’s note)

4. A pregnant woman may break her fast during Ramadan if she fears harm.⁴²
5. Delay of the punishment for extra-marital sex [i.e. flogging and/or stoning to death] whilst the woman is pregnant.⁴³
6. The foetus has incomplete personhood, so it has rights of inheritance etc.⁴⁴

3.6 *The Ruling on Abortion due to Deformities*

The following declaration was issued by the Islamic Fiqh Academy of the Muslim World League:

The Academy analysed this matter during its twelfth meeting held in Mecca 15-22 Rajab 1410 H / 10-17 February 1990 CE. The council of religious scholars, after consultation with specialist medical experts who attended for this purpose, declares the following:

1. *Once pregnancy reaches 120 days, abortion is not permissible, even if medical analysis shows that the foetus is deformed. The only exception is if it is established, by a medical panel consisting of reliable, specialist experts, that the continuation of pregnancy comprises a confirmed danger to the life of the mother, in which case abortion is allowed, whether or not the foetus is deformed, in order to repel the greater of two evils.*
2. *Before 120 days of pregnancy, if it is established and confirmed, by a medical panel consisting of reliable, specialist experts, using instrument-based monitoring, that the foetus is dangerously and incurably deformed, and that if it remains and is born to term, it will have a bad life, with both it and its family suffering much pain, then in that case: abortion is permissible if the parents request it. The academy, whilst making this declaration, advises the doctors and parents in such cases to save themselves from God, and to take every caution in this matter.*

⁴² This implies that this concession comes to an end upon abortion. (Translator's note)

⁴³ This implies that this punishment is due upon abortion. (Translator's note)

⁴⁴ See the brilliant book by our teacher, Muhammad Salam Madhkur: *Al-Jinin [Foetuses]*, where he has explained this in detail.