

**ABORTION OF JANĪN (EMBRYO+FOETUS)
DUE TO HUMAN BIRTH DEFECTS
(ANOMALIES) -AN ISLAMIC VIEW WITH
SPECIAL REFERENCE TO SHARĪ'AH MAXIMS
(QAWĀ'ID AL FIQHIYYAH)**

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Abstract

The issue of aborting the embryos and foetus having anomalies is different from that of without anomalies. As the issue is new, so naturally the opinions of scholars differ from each other in *sharī'ah* status of aborting such a foetus. This article attempts to search out the better opinion in the light of the primary sources of *sharī'ah* and the research of the earlier scholars with special reference to *Sharī'ah* Maxims (*Qawā'id al Fiqhiyyah*). Most of the scholars agree that the life begins after the spirit is blown in the developing human and this time is believed to be after the hundred and twenty days of fetal life. Aborting the foetus having congenital anomalies before this time will therefore have a different status from the abortion after this time. But, still the developing embryo or foetus possesses the dignity and respect as it is going to become a full-term human being. The opinion of allowing the abortion of a *janīn* (foetus/embryo) in case of severe anomalies only, before the spirit is blown, is preferable.

Sharī'ah Maxims (*Qawā'id al Fiqhiyyah*) are an important tool for deriving the religious rulings for the issue of abortion of malformed foetus. These maxims were discussed under the theme of article and their applications on the issue being discussed. This study will help in understanding the role of *Sharī'ah* Maxims in establishing the religious rulings of aborting the embryos and foetus having anomalies.

Keywords: Abortion, Congenital Anomalies, *Sharī'ah* Maxims, Harm, Embryo, Foetus.

1. Introduction

Human birth defect or more technically the congenital anomaly is a structural abnormality of any type at birth, as a consequence of abnormal embryonic fetal development. It may be macroscopic or microscopic, on the surface or within the body of the developing human. The four clinically significant types of anomalies are:

- Malformation
- Disruption
- Deformation
- Dysplasia¹

This article will deal with the issue of aborting the embryo due to any type of abnormality in the light of *al Qawā'id al Fiqhiyyah*. *'Ilm al Qawā'id al Fiqhiyyah* (*Sharī'ah* Maxims) is a distinctive branch of *Uṣūl al Fiqh* which represents a general trend of Islamic legal thought. It aids us in understanding the methodology of jurists in deriving the religious rulings. *Al Qawā'id al Fiqhiyyah* can be defined as follows:

“General Fiqh principles which are presented in a precise format, consisting of general shariah rulings of the particulars related to it.”²

2. Literature Review

Imam al Dabbūsi (died 430 Hijrī) wrote *Tāsīs al Naẓar* which contains *Qawā'id al Fiqhiyyah* as the principles on the basis of which jurists especially ḥanafī jurists differ in opinion.³

There are many books in *'Ilm al Qawā'id al Fiqhiyyah* which were written with the name of *Al Ashbāh wal Nazā'ir*. The two most renowned are written by Imām Jalal al-Din Suyūṭī Shāfi'ī⁴ and famous scholar of Ḥanafī fiqh Ibrāhīm bin Nujaim al-Misrī⁵. The most prominent work in the field of *al Qawā'id al Fiqhiyyah* in late centuries is *Majallah al Aḥkām al 'Adaliyyah*⁶ compiled by a team of scholars under the direction of Ottoman Empire.

In recent past Sheikh Muṣṭafā Aḥmad al Zarqā has paid special attention on *Qawā'id al Fiqhiyyah* in his book *Al Madkhal al Fiqhī al 'Am*⁷

Al Qawā'id al-Fiqhiyyah: Maḥmuhā, Nashatuhā, Taṭawwuruhā, Darāsatu Muallafātihā, Adillatuhā Muhimmatuha, Taṭbīqātuhā by Dr. 'Alī Aḥmad al Nadavī⁸ and *Al Qawā'id al Fiqhiyyah: Al Mabādī al Muqawwimāt al Maṣādir al Dalīliyyah al Taṭawwur* by Sheikh Ya'qūb al Bāḥusayn⁹ are also among the prominent studies by the contemporary scholars in the field of *Qawā'id*.

A valuable article with the title *Al Qawā'id al Fiqhiyyah wal Uṣūliyyahwa Maqāsid al Sharī'ah Zāt al Silah bi Buhūth al Khalāya al Jizriyyah* by Shaikh Sa'd bin Nāsir al Shathrī¹⁰ in Majallh Majma al Fiqh al Islāmi discusses *Qawā'id al Fiqhiyyah* related to stem cell research (SCR).

*Al Qawā'id al Fiqhiyyah (Islamic Legal Maxims): Concept, Functions, History, Classifications and Application to Contemporary Medical Issues*¹¹ is a PhD thesis submitted to University of Exeter in Feb 2012. It is a valuable work written by Fawzy Sha'bān Elgeriānī. The author has selected six contemporary medical issues to find out the legal status of *Qawā'id al Fiqhiyyah* for the novel issues.

3. Research Methodology

It is an applied research which will focus on the application of the *sharī'ah* maxims in contemporary medical issues. The opinion of jurists regarding the modern medical issues will be analysed in detail. The *sharī'ah* maxims related to human life will be discussed along with their application in current medical issues.

4. Discussion

4.1 Congenital Anomalies

Congenital anomalies may be induced by genetic factors or by environmental factors that cause derangements during prenatal period. Most common congenital anomalies, however show the family patterns expected of multifactorial inheritance with a threshold and are determined by a combination of genetic and environmental factors. These birth defects may be single or multiple and of minor or major clinical significance.

The minor anomalies are those anomalies which have no serious medical consequence but may be an indicative of an associated major anomaly. Major anomalies are changes in structure that may result in serious medical illnesses. Approximately 3% of the newborns are born with severe congenital anomalies.¹² Most severely malformed embryos are usually spontaneously aborted during the first 6 to 8 weeks. Some congenital anomalies are caused by genetic factors i.e. chromosome abnormalities and mutant genes.

A few congenital abnormalities are caused by environmental factors i.e. infectious agents, drugs and environmental chemicals. However, most common anomalies result from a complex interaction between genetic and environmental factors.¹³

The human developmental anomalies during the prenatal stage vary from moderate to severe. A large number of these anomalies are because of the genetic and chromosomal factors transferred from the parents.¹⁴

Numerically genetic factors are the most important causes of the congenital anomalies. About one third of all birth defects are due to the genetic factors. Chromosomal aberrations are common and are present in 6 to 7 % of zygote. Two kinds of changes occur in chromosome complements; numerical and structural. The changes may affect the sex chromosomes and/or the autosomes (chromosomes other than sex chromosomes). In some instances both kinds of chromosomes are affected. Chromosomal abnormalities depict as abnormal physical appearance. Some of the examples are as follows:

- Trisomy 21 or Down's syndrome manifest clinically as mental deficiency, flat nasal bridge, protruding tongue, congenital heart defects.
- Trisomy 18 syndrome manifest as mental deficiency, growth retardation, low set malformed ears etc.
- Trisomy 13 syndrome manifest as mental deficiency, sloping forehead, posterior prominence of heels, malformed ears etc.

Beside the genetic and chromosomal factors causing the fetal anomalies, other factors like drugs, poisons, chemicals and environmental factors also cause the fetal anomalies. Look for example:

- Alcohol causes intrauterine growth retardation, mental retardation, joint abnormalities.
- Tetracycline causes stained, hypoplasia of enamel.
- Methotrexate causes multiple anomalies especially bony.
- Cytomegalovirus causes microcephaly, eye-defects, liver enlargement.
- Herpes simplex virus causes skin vesicles and scarring.
- Rubella virus causes intrauterine growth retardation, cardiac abnormalities etc.¹⁵

4.2 Opinions of the Contemporary Muslim scholars regarding the Status of the Embryonic Cells

In order to detect the genetic (paternal) factors of fetal anomalies, the embryonic and fetal cells have to be studied. The scholars differ in the status of the embryonic cells whether being the embryo or not.

According to first opinion, the embryonic cells resulting from the in vitro fertilization between the sperm of a man and his wife will be considered an embryo, even if not transferred to the uterus. This is the opinion of Shaikh Muḥammad Mukhtār Al Salāmī and this is what is implied by the words of Dr. Ḥasan ‘Alī Al Shāzili.¹⁶

The scholars who keep the second opinion believe that the cells resulting from the in vitro fertilization will not be labeled as embryo. This is what is said by Doctor Omar al-ashqar, Shaikh Az al-Dīn al-Khaṭīb, Shaikh Badral-Mutawallī Abd al-Bāsīt, Doctor Māmūn al-Hāj, Doctor Taufīq Al-Wāī and many participants of the society of Beginning and End of Life (*Nadwah Bidāya al Hayāt al Insāniyyah wa Nihāyatuhā*) in Kuwait. According to Shaikh Badral-Mutawallī:

The participants of the society of beginning and end of life, agreed that the human life is from the fertilization of the egg with the sperm when it takes place inside the womb. The fertilization of egg with the sperm outside the uterus is of no value forever, and needs not to be given any weightage and any status from the religious point of view.¹⁷

The first opinion is based on the following:

- 1- The embryonic cells are the first step in the creation of a human being. Any injury or insult to them occurring during the experiments is against the dignity of the human being.
- 2- The analogy (*qiyās*) of the fertilized egg in vitro upon the fertilized egg inside the uterus also implies that both have the same legal status.

The scholars who keep the second opinion believe that the embryonic cells will not be considered an embryo before they are transferred into the uterus keeps the following arguments:

1. These cells which are produced from the in vitro fertilization cannot be called an ‘embryo’ because the embryo (*janīn*) is the one which is concealed. Therefore, only the fertilized egg inside the uterus will be embryo.
2. The pregnancy starts only after the implantation of the egg (fertilized) in the uterus. All the other stages before it are not termed pregnancy and life is not present at these stages.

Looking upon the arguments, the first opinion seems stronger because of the following reasons:

1. This opinion prevents any injury or insult to the *janīn* which finally has to become a full human-being
2. The developing human has respect and dignity at every stage ranging from the clot to the full-term baby.
3. The *janīn* is called *janīn* because of its concealment in the maternal uterus. But it does not necessarily imply that the one which is formed by artificial fertilization of sperm and egg is not a *janīn*. The Arabic word *janīn* is derived from *ijtinān* which is concealment. The *janīn* (embryo or foetus) develops in the maternal uterus, therefore, the word *janīn* is used to describe the real status of embryo. But as the embryo or *janīn* is the product of the fertilization of male and female eggs, therefore, even the fertilized eggs outside the uterus will be termed as *janīn*.
4. The opinion of the second group of scholars that the pregnancy occurs after the implantation of egg in the uterine wall weakens by the words of many scholars in past and present. For example Imām al-Ghazālī in *Ihyā* says:

“The drop of semen is the first most step of being, from its presence in when it reaches the womb of mother, as the child is not born from the sperm of man only but of the couple... the child is not born from the drop semen, until and unless mixed with water and blood of woman.”¹⁸

What Imām Ghazālī has said implied that the simple mixing sperm and egg is the beginning of child, whether the fertilized egg is implanted in the uterus or not.

These quotations from the past and present scholars show that the creation of a human being starts after the fertilization and the implantation of fertilized egg in the uterus has no role in determining the status of fertilized egg being embryo or not.

The above comparison implies that the preferred opinion is that the embryonic cells produced as a result of in vitro fertilization outside the uterus are same as the embryo inside the uterus. These cells are the precursors of *janīn*. Like the *janīn*, any harm to its precursor will be impermissible. Any laboratory tests or experimentation done on this primordial condition will be actually on embryo because it is capable of growing into further stages if proper temperature and food is provided. Because these fertilized cells are the same as embryo, therefore, the abortion of embryos with anomalies or hereditary diseases, or ending

their life with any other method, include these embryonic cells too, if these are removed or destroyed for this purpose.

There are some laboratory investigations for the detection of any genetic anomaly in the embryo inside the womb of mother. Many of them are not applicable before the sixteen weeks of pregnancy pass. Once the anomaly is detected, the test is re-performed after two weeks. It means that the fetal anomalies cannot be established before the inbreathing of spirit.

4.3 The Contemporary View of the Muslim Scholars about the Abortion of *Janīn* with Anomalies

The issue of aborting the embryos and foetus having anomalies is different from the abortion of the embryos and foetus without anomalies. The issue is unique in the sense that the scholars in the past did not discuss it from this angle. They discussed the abortion of *janīn* because of an illness in mother or due to other reason. They were not able to discuss the issue of a developing human with birth defects because sources were not enough at that time for investigation purposes. As the issue is new, so naturally the opinions of scholars differ from each other in aborting such a foetus. In the following pages we shall try to search out the answer in the light of the basic sources of *sharī'ah* and the opinions of the earlier scholars. We shall split the discussion in the abortion of malformed *janīn* before the inbreathing of spirit and after the inbreathing of spirit.

4.3.1 The Abortion of the Malformed Foetus after the Inbreathing of Spirit

The contemporary scholars agree that the abortion of a foetus or ending his life by any means is impermissible after the spirit has been blown, no matter the anomaly is big (intense) or small (mild), curable or not and whether the person can live along with it or not. They consider the abortion or ending the life of such a foetus as a sin on the part of the doer and his co-person. It is deemed as a murder imposing the *qiṣāṣ* (retaliation) or *diyah* (blood-money) or *Kaffārāh* (penance) according to the kind of penalty done.

The Council of Islamic Fiqh Academy while discussing the use of foetus as a source of transplant recommended the following:

“The operation should be restricted to a case of natural abortion or an abortion for a lawful purpose and no surgical

operation should be resorted to in order to remove the foetus unless it is essential to save the mother's life".¹⁹

The Permanent Committee for the Discussion and Issuing of Fatwā, Saudia (*al-Lajnah al-dā'imah*) issued a Fatwā according to which aborting a foetus after hundred and twenty days is not permissible until and unless the life of the mother is endangered.

The Fatwā States:

"After the third stage of development and after the completion of four months (one hundred and twenty days) abortion of *janīn* is not permissible until and unless the expert and reliable doctors report that the presence of *janīn* in the womb of mother will cause her death. This will be done after all the possible sources have been attempted to save the life of *janīn*. The abortion is allowed with these conditions to get rid of greater harm and to acquire the greater benefit."²⁰

The scholars infer upon the impressibility of the abortion of the foetus with anomaly after the blowing of spirit from the following:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

"And do not kill a person whom Allah has given sanctity, except rightfully²¹."

In this verse Allah Almighty has forbidden to kill a human-being without any true reason. The abortion of a foetus with anomaly or ending his life after the blowing of spirit is one kind of such a killing, therefore, forbidden. Because the forbid (*nahī*) in this *āyah* is without any condition, therefore this *āyah* guides upon the impressibility of aborting the foetus with anomalies after the spirit has been blown in it.

'Abd Allāh (*Raḍī Allāh 'anhu*) narrates that the messenger of Allah said: "The blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am His Apostle, cannot be shed except in three cases: In *Qīṣās* for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam (apostate) and leaves the Muslims²²."

The reason for taking evidence from this tradition is that it shows the impressibility of killing a person without any valid reason and this act will be deemed as a big sin. The abortion of a malformed foetus and ending his life by any mean is a kind of killing a person without any right reason and therefore, it is impressible.

The scholars in the present era agree that any attempt on the malformed foetus to end his life after the inbreathing of spirit is a sin and this act impose retaliation or blood-money or also it is not allowed for the guardians to get rid of them rather they should take care of them and struggle for their treatment in the hope of cure and decrease in illness and pain. They should be patient and hopeful for the reward from Allah Almighty.

4.3.2 The Abortion of the Malformed Foetus before the Inbreathing of Spirit

We have discussed in detail that most of the scholars agree that the life begins after the spirit is blown in the developing human and this time is believed to be after the hundred and twenty days of fetal life.²³ Aborting the foetus having congenital anomalies before this time will therefore have a different status from the abortion after this time. But, still the developing embryo or foetus possesses the dignity and respect as it is going to become a full-term human being. The contemporary scholars differ in the abortion of a malformed foetus (*janīn*) before the spirit is blown as will be seen in the following lines:

One group of the scholars allow the abortion of a foetus/embryo having severe malformation or genetic anomalies up to the extent that these can neither be treated nor a person is able to fight with them. In such a case, if a committee of the experts with the help of available diagnostic tests recommends, the abortion can be done.

This opinion has been adopted by many renowned scholars like Shaikh Yousuf al-Qarḍāwī, Sheikh Ḥabib bin al-Khaujah²⁴ and this is what was established by the International Islamic Fiqh Academy of Jeddah in its twelfth session held at Makkah al-Mukarramah in February 1990 according to which, the abortion of a malformed foetus is permissible upon the request of the patients before the passage of one hundred and twenty days when it has been established by the report of an expert committee, based on technical discussion along with the diagnostic tests that the *janīn* is suffering from severe malformation which is not curable. And if he is left to be born, his life will be painful for him and his family²⁵.

This group of scholars which keep the opinion of permissibility infer from the following:

1. The foetus before the spirit is blown is not a human being, and he has not attained the characteristic of a human. Therefore, he is not having the personhood and if he is aborted for the valid reasons, there will be no sin.
2. The abortion of a foetus with severe incurable anomalies is a considerable problem that affects the life of an individual and the family. It raises a real need that should be fulfilled within the permissible limits.
3. Sometimes, the foetus with malformation can endanger the life of the mother or at least creates a lot of problems in routine life activities; therefore, the relaxation should be given while the foetus is still not a human being.

The second group of the scholars believe in absolute impressibility of the abortion of a malformed foetus/embryo before the inbreathing of spirit. They allow it only when the life of the mother is endangered due to the developing baby,

This is the opinion of some of the contemporary scholars like Dr. Sa'īd Ramaḍān al Būtī, Dr. Miṣbāḥ al Mutawallī, Dr. 'Abd al Fattāḥ Idrīs etc.²⁶

This opinion is based upon following reasons:

1. The following verse of Holy Qur'ān declares it impermissible: "And do not kill a person whom Allah has given sanctity, except rightfully."²⁷
2. The abortion of a *janīn* is killing of an innocent entity which cannot be permitted. There is no detail of abortion before or after the inbreathing of spirit.
3. The abortion of a malformed foetus is a kind of burying alive (al-wa'd al-jāhilī) which was done to remove the burden of having a female child. This was strictly banned and its severity is described in this verse: "And when the girl-child that was buried alive will be asked for what sin she was killed."²⁸
4. The abortion of a malformed foetus does not comply with the principles of *sharī'ah* which include the protection of progeny.
5. The Holy Prophet (*Ṣal Allāh-u- 'alaihe wa sallam*) expressed interest in having the child and inspired his companions too. Ma'qil bin Yasār (*Raḍi Allāh 'anhu*) narrates from him. "Marry a fertile and loving woman, as I shall be proud of your great numbers on the Day of Judgment."²⁹

6. There is no need to abort the foetus as the medical equipment do not give us the definitive diagnosis of the anomaly. The abortion is not a matter that can be terminated by mere probability.
7. Research has shown that the embryos and foetus suffering from severe anomalies abort spontaneously. Genetic defects, especially chromosomal abnormalities, are the most common cause of spontaneous abortion during the first three months of pregnancy. In fact, in 60% of three cases chromosomal abnormalities are present.³⁰ Therefore there is no need to abort the foetus with anomalies as they abort spontaneously in early period of pregnancy.
8. The laboratory tests for the detection of the anomalies are not able to detect them before the sixteenth week of pregnancy. This is the time when the spirit is blown in the foetus. Thus, it is not possible to abort the foetus before the blowing of spirit which is impressible even in the opinion of those who allow the abortion of malformed foetus before the spirit is blown.
9. Allowing the abortion of malformed foetus will open the door of practicing the abortion for the mere reason of earning money.

After the two opinions along with arguments have come before us, the first opinion seems the more reasonable. The second opinion is also based upon solid reasons but the first opinion is stronger due to the following reasons:

1. The inbreathing of spirit is the point where the human life starts in foetus. The human-being is made up of body and soul. Before hundred and twenty days the foetus does not possess the status of a human being. Therefore this developing structure is not a human being. If for the valid reasons like severe anomalies in the foetus, it is aborted, it will neither be a murder of a human nor will be a burying alive done in pre Islamic era.
2. The famous maxim 'harm is to be removed' will apply here as the baby born with severe congenital malformations will be in great trouble. Also, the family will be suffering from lot of problems. This may affect the parents up to the extent that they will not be able to look after the other children.
3. The foetus before one hundred and twenty days is not a human being but a cluster of cells, therefore, definitive and accurate diagnosis with eye-witness would not be a necessary condition to get rid of it. Rather if an expert committee on the basis of their knowledge, experience and the available scientific technology decides that the baby born will most probably be having the congenital anomalies, the abortion should then be allowed. Likewise many other affairs around us are carried out on the basis of knowledge, experience and the opinions of the experts.

4. There are few tests like chorionic villus sampling (CVS) which can be performed at earlier stages. Similarly, there are chances that the growing scientific technology in nearby future will provide us with the earlier information of the anomalies.
5. Although, majority of the pregnancies with anomalies terminate automatically by spontaneous abortions in early period and many around the delivery, but some do not discontinue and therefore it seems reasonable to give relaxation to a person who intends to terminate such a pregnancy.

On the basis of the above mentioned reasons, the opinion of allowing the abortion of a *janīn* (foetus/embryo) in case of severe anomalies (like heart defects, Down syndrome, Neural Tube defects etc.) before the spirit is blown, is preferable. Severe anomalies are such kind of severe malformations which are not curable, and if the baby is left to be born, his life will be painful for him and his family. However, because this will end the developing process and cut-off a structure which eventually would otherwise be a full human, and because some scholars consider it impermissible, one benefitting from the relaxation must do *istighfār* also. It should also be kept in mind that the dignity and privacy of the pregnant lady should be observed as much as possible.

4.4 *Qawā'id al Fiqhiyyah (Sharī'ah Maxims) and Abortion of Janīn due to Congenital anomalies*

Now, we shall see how *Qawā'id al Fiqhiyyah* help us in the determination of the religious rulings about the issue of abortion.

Maxim 1

الامور بمقاصدها³¹

“Matters are judged in the light of intention”

Application:

A lady can abort her foetus with right or wrong intention. The wrong intention can be to avoid the economic burden. On the other hand, induced abortion may be for the right reasons which are following:

- i- When the breast-milk of a lady finishes after the pregnancy and the father of the child is unable to hire a lady for feeding the child. Consequently, there is a fear of death of the child who was on breast-feeding in the absence of alternate basic sources.
- ii- When pregnancy has started but the lady is unable to bear it because of the other illnesses.

iii- When there is a strong probability of the child with incomplete structure.³²

According to this *qā'idah*, abortion is impermissible if it is induced for the bad reasons and it will be permissible if induced for the right reasons.

Maxim 2

الضرر يزال³³

“Harm is to be removed”

Application:

If the continuation of the pregnancy becomes harmful to the lady like if the embryo dies or the pregnancy severely affects the health of the lady or endangers the life of the pregnant lady then abortion is allowed to remove the harm.³⁴

Maxim 3

ما جاز لعذر بطل بزواله³⁵

“What is permissible because of a reason, becomes impermissible when the reason is lost”

Application:

Induction of abortion is permissible for a lady suffering with a serious illness or having a severely deformed foetus. But if somehow she gets rid of the illness or the defective growth of the baby corrects then the induction of the abortion will become impermissible

Maxim 4

ما حرم فعله حرم طلبه³⁶

“When it is forbidden to perform an act it is forbidden to request for it”

Application:

The scholars agree that abortion of a baby after 120 days of pregnancy is strictly impermissible. The only exception to this ruling is when the pregnancy is threatening the life of the mother.³⁷ Both the induction of labor and request to induce it is not allowed in a pregnant lady whose pregnancy has exceeded 120 days.

Maxim 5

الجواز الشرعى ينافى الضمان³⁸

“Legal permission is incompatible with liability”

Application:

When it is allowed to induce the labour (as is the case when the pregnancy is threatening the life of a lady) no penalty will be imposed to the person who induces it.

Maxim 6

لا يجوز لاحد ان يتصرف فى ملك الغير بلا اذنه³⁹

“It is not allowed for anyone to intervene in the property of another person without his consent”

Application:

The embryo once it has attained the status of a human being after 120 days, has its own dignity like a human. Nobody can intervene in its property. Because, embryo is not able to give the consent, nothing can be performed with it. The consent of the parents regarding the use of embryo or its part or its abortion is insufficient.

Maxim 7

المسلم مأمور بان يدفع سبب الهلاك عن نفسه⁴⁰

“A Muslim is obliged to remove the cause of death from him”

Application:

According to this *qā'idah*, abortion is permissible if the life of the mother is being endangered because of the presence of malformed developing baby.

Maxim 8

اذا تعارض مفسدان روعى اعظمهما بارتكاب اخفهما⁴¹

“When the two evils conflict, the greater is avoided by the commission of the lesser one”

Application:

According to this *qā'idah*, abortion is permissible to save the life of lady who is suffering from a life-threatening condition in the presence of an abnormal pregnancy.

One is the danger to her own life and the other is danger to the life of the developing baby inside the uterus. She has to choose one of them. If the baby is aborted, the mother is having the chance to get another baby. But if the mother is left as such and let to die, the baby will have no mother and also there is strong possibility that baby also dies. The death of the mother is a greater evil and it is preferred to avoid it by proceeding towards the abortion of the baby.

5. Conclusion

Induced abortion is strictly discouraged in Islam. However, for the valid reasons as in the case when the developing foetus is endangering the life of mother, abortion is permitted. Most of the embryos with congenital anomalies are aborted by themselves. However if not aborted and also the life of mother is not in danger then it is impermissible to induce abortion after one hundred and twenty days of fetal life in order to avoid a defective child.

Qawā'id al Fiqhiyyah are an important tool in deriving the religious status of abortion of a malformed foetus. The first most comprehensive *qā'idah* states that the abortion in the case of malformed foetus will be judged in the light of intention. If the continuation of the pregnancy becomes harmful to the lady then abortion is allowed to remove the harm. If somehow she gets rid of the illness or the defective growth of the baby corrects then the induction of the abortion will become impermissible.

When the two evils conflict, as in the case when the life of mother is being endangered by the presence of a foetus with congenital anomalies, the greater is avoided by the commission of the lesser one. Under these circumstances, no penalty will be imposed to the medical professional who induces it as legal permission is incompatible with liability.

Notes and References

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⁷ Cevdet Pasha, *Al-Majallah Al-Ahkām Al-Adaliyah*, (Beirut: al-Maṭba‘a al Adabiya, 1885).

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³⁵ Al Zarqā, *Sharḥ al Qawā'id al Fiqhiyyah*, 189 .

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