

Abortion and Islam: Legal Implications, Policies and Practices in Pakistan

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Abstract

Abortion has always been an issue under heated discussion. In this article, Islamic approach on the subject of abortion and the implications regarding legal provisions in Islamic communities are discussed in detail. For this purpose the juristic views on the interpretation of Islamic laws and a reference to Islamic evidences are used to support this research. There are some ethical predicaments that proximate the issue of abortion in jurisprudential sphere. Islamic jurists from all sects are agreed upon the status of abortion being *Harām* (forbidden), though it is permitted under specific circumstances when the life of mother is in serious danger, or ensoulment or organogenesis has taken place; after which abortion is same like killing a human. In South Asia, especially Pakistan, the rate of abortion had invariably increased though abortion is not legally and socially accepted phenomenon. The law provisions on abortion are inaccurately interpreted leading to many repercussions like poor medical health care facilities for women undergoing this trauma, social injustice and the refutation of rights of women. The information and understanding of present laws must be publicized in connection with Islamic principles to make the access of women possible for abortion or related medical care. The amendments in law is not possible without the support of Ulema and legal community and politician trio, who must join hands for liberalization of laws, keeping in consideration the gravity of situation. The viewpoint of Islam on the issue of abortion is very important as Islamic dogmas govern the lives of 1.2 million Muslims around the globe, living in Muslim countries as well as in European countries and USA. The approach of Islam in this context would thus be instrumental in governing the relations of Muslim citizens with their states. In the modern world, the states show considerable importance to the beliefs of its citizens, and approach of Islam being the nucleus for influencing the Muslims, on this issue would thus be an academic assistance and an alternative *modus operandi* to conserve life.

Keywords: *Abortion; Islam; Fiqh; Islamic Jurisprudence.*

Introduction and Background

Abortion has always been a controversial issue on account of different socio-cultural reasons. This issue has attracted a wide range of public attention owing to different cultural taboos, social values and moral ambiguities. For this reason, abortion is masked with secrecy in most parts of south Asia, specifically Pakistan. Nevertheless, it has been statistically proved that it is a measure commonly resorted to, on account of different reasons despite personal dangers, legal implications and religious sanctions associated with it.

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History teaches us that religion plays a major role in society worldwide. All religions have clearly defined regulations on abortive measures. Factors like serious concerns to life, relationships, nature of society and the concept of right and wrong contemplate that ethical conscience and religious recourse are workable approaches to the issue.

Abortion in normal situation is forbidden in almost all major religions in the world. Islamic law has always shown flexibility and adaptability to public interest and removal of hardship. It has prescribed certain conditions to permit abortion implying social and medical reasons; *istislah* and *istihsan* are invoked for public health ramifications and social and medical health affairs.

In South Asian region, specifically Pakistan, there have been high maternal death rates and reproductive health issues are scantily addressed. The number of unsafe abortions is increasing across Pakistan, whilst permission for abortion is granted only under certain conditions. The law provisions regarding abortion are imprecisely elaborated by law community.¹ Majority of health care providers (67.3%) had an unfavorable attitude to induced abortion.² Due to factors like sexual violence, rape, women health issues or unwanted pregnancies, abortion are induced whose unsafe conditions led to disabilities. A critical examination of this situation also shows women lack of access to resources like health services is another reason to aggravate of plight of women. There has always been a hot debate on the controversial issue of abortion on religious grounds. Islam being one of the major religions in the world has some specific conditions to address the issue. There can be three approaches for legalizing abortion, not contradicting Islamic principles; a conventional, moderate and liberal approach approaches--all within Islamic nation state.³

Religion and Abortion

Abortion is a debated issue that owns lots of controversies especially on religious grounds. There are variant opinions from different religions and schools on this issue and it is contended that there are two realms in the world, one supporting abortion as legal and other in which it is not.⁴ As abortion affects emotionally as well as spiritually, so it is not just a mere issue of humanitarian values and morals rather more than ethical reflection.⁵ Stanly Hauer was states that abortion issue need to be handled not only on intellectual grounds, but a blend of ethical reflections and reality will help understanding in a responsible manner.⁶

According to early Christian traditions, human life is sacred and evidences are quoted from Luke's Gospel⁷, Psalms and the *Didache* or the Teaching of the Twelve Apostles condemning abortion and sanctity of life of an unborn infant.⁸ The Catholic Church also expresses disapproval of abortive measures insisting on sacred value of human life.⁹ After conception it is not allowed to abort at any phase, verdicts the Roman Catholic Church.¹⁰ The Orthodox Churches denounce abortion being against Ten Commandments, agreed upon by Russian Orthodox Church as well.¹¹ Protestant and Evangelical Christians unanimously despise abortion thought there are some denominations that are pro-abortion in certain circumstances.¹² The Jewish Law (Torah) deprecates the killing of innocent life in mother's womb¹³ except when to save mother's life.¹⁴

Abortion and Islam

Islam significantly values the sanctity of human life. There are moral and legal grounds

on which issue of abortion is socially debated arguing that killing a fetus is morally wrong while others contend that fetus has the status of human being not human person having a right to life.¹⁵ According to Islam, the life begins with ensoulment and the unborn child owes the right to protection of life and care. As it comes in the *Qur'an*, in *Sūrah al-Mā'idah* that saving a life is worth saving humanity and killing one human being is like killing all mankind.¹⁶ Though there is no direct provision in the *Qur'an* mentioning abortion, but the stages of intra-uterine life and creation of human being are discussed in detail.¹⁷

Abortion is strictly forbidden in Islam. Jurists have given different interpretations based on evidences from *Qur'an* and Sunnah, that life being a trust from Allah Almighty, no one else has the right to kill it unless there is a danger to mother's life; in that case mother's life is to be given preference according to Islamic Law.¹⁸ All Islamic jurists denounce abortion as illegal and sinful but they regard it permissible even after fourth month of gestation, if necessary to save life of the mother. This has been approved in classical and contemporary jurisprudence; the differences of opinions are on the developmental stage of fetus on which it is aborted.¹⁹ The only case to allow abortion after 120 days pregnancy, as mentioned earlier is if it is to save mother's life.²⁰

Islamic Ethical Perspective of Abortion

There are different ways of handling a problem in different nations, cultures and background. An intense debate on the controversy of abortion prevail the world in modern times. The arguments range broadly into pro-life and pro-choice approaches. Proponents of pro-life approach contend that fetus has the right to live and give evidences from religious texts. While pro-choice advocates emphasize on individual's right to choose and free-will of parents. This contradiction calls attention to the importance of this problem being a subject of science, ethics and religion. Although no specific time has been agreed upon on when exactly ensoulment takes place, by contemporary or classical jurists, yet they all are in agreement that after ensoulment, fetus has right to life. That is the reason it is construed that induced abortion is equal to killing a life.²¹

Since law and ethics have a close link, former deciding dos and don'ts, while latter describing the reasons and justifications behind the laws; the issue needs to be resolved by referring to religion. Islam governs the lives of 1.2 billion Muslims around the globe. Muslims' approach to abortion influence not only Muslim countries but also those Muslims residing in Europe and USA. In the globalized world the rights of citizens are respected keeping in consideration their right to belief. Thus Islamic approach to abortion is crucial for the non-Muslim world as well as Muslim states to deal with the issue of abortion with an interactive approach.

Legal Implications of Abortion in Pakistan

The statistics of abortion cases in Pakistan are scattered and not managed properly, so from the hospital based data in a research report by WHO it is shown that between 1961-1983, 2-12 % women deaths are due to complications in abortion and the results were consistent in another study in 1991.²² This data does not reveal the true picture being only hospital based record, but another longitudinal research showed the spontaneous abortion as 13.3% while induced abortions as 4.2 %.²³ Abortion is associated with many connotations regarding maternal health that may lead to serious

impact.²⁴ In another research conducted in 2002, from the women who are hospitalized, 23% are brought for abortion complications²⁵ while 6% deaths are due to abortion complications.²⁶ The penal Code 1860 prevalent in Pakistan was changed in 1990 under which certain conditions are prescribed keeping in view Islamic rulings for the permission of abortion i.e. till pregnancy is of four months²⁷ The punishment prescribed for illegal abortions depend on the time of abortion, i.e. if it is done before the formation of organs of fetus, then the punishment is 8-10 years under Civil Law (*tazir*); while the abortion after formation of organogenesis is monetary compensation (*diyat*).²⁸ All the above provisions were implemented through presidential order 1996 in which an amendment was made in 1997 to incorporate in it the Islamic injunctions, making it legal to abort the child if it is direly needed.²⁹

Policies & Practices in Pakistan

Even though a woman's life is to be protected as per law provisions, but it does not stipulate any proviso in case of rape, incest or fetal abnormalities, and disallow abortion if a woman request so.³⁰ Cultural and legal norms also play their part in women's submissive role to decide about abortions. Such restrictions led to unsafe abortions resulting in considerable health risks for women.³¹ Another ambiguity in policies and practices is that although it is permissible to save a mother's life in case there is a risk, no record is available on induced therapeutic abortion which shows restraining construal of law by medical physicians, as some physicians show restrictive behavior due to religious beliefs or personal concepts.³²

Since, abortion is not a widely accepted practice, and trained medical officers are not providing the service much willingly, so unsafe and low-cost medical centers are opted; who provide a treatment under fear of persecution, thus causing complications.³³ Abortion is related to public health and social justice being a woman's right; yet it has been ignored by the medico-legal professionals. The amendment in law in 1997 is not noticed and publicized but safeguarding woman's social status must be considered in cases of rape and incest and more amendments needed to make for it.³⁴

Triangle of Law, Religion and healthcare in Pakistan

Pakistan Penal code 1860 prevalent since colonial era was revised by the Pakistani government in 1990 that had provisions regarding abortion. The revised addition reiterated to prefer Islamic injunctions regarding bodily offences. Likewise, some specifications were set for 'legal' abortion depending on the length of pregnancy period and formation of fetus organs.³⁵

Islamic jurists connote the development of fetus takes the shape of organ formation in the fourth month of gestation, thus it is permitted to abort the child at this stage only if it is to save mother's life, while 'necessary treatment' may be given if need be, before the formation of organs at any stage. It can thus be construed that penalties too vary depending on growth phase of fetus, when aborted. The penalty for abortion is imprisonment of 3 years to 10 years under civil law (*ta'zir*), if the organogenesis has not started. Once organ formation starts, the penalty of financial compensation (*Diyat*) is enforced, and if the consequences of abortion require so, imprisonment may also be inflicted.³⁶

A research conducted in 2002 showed that 8, 90,000 induced abortions were inflicted in one year, making the ratio of 29: 1,000 women of reproductive age. The data also

demonstrate that there were 14 induced abortions out of every 100 pregnancies. The provincial figures give detail that in urban provinces where contraceptive measures are much in usage. These data were retrieved using indirect method of medical care and hospitals records where women get treatment for post-abortive complications. The direct method technique for data collection was not used as women in Pakistan are not willing to own up induced abortions.³⁷

The *Hanafi* school of thought permits abortion till fourth month of gestation. The *Hanafis* also opined that a woman has the right to abort the child without the consent of her husband provided she had a valid reason. This is significantly liberal view but needs appraisal by *Ulema* else it would be considered a sinful act. That religious factor is one of the determinants for unfavorable stance towards abortion.

Conclusion

It is imperative to deal with the issue of inadequate realization about abortion in Pakistan. Legal community should be linked recurrently to bring awareness by generating discussions on Islamic principles regarding abortion and law provisions supporting the rights of women. In order to ameliorate the empowerment and access of women to health care facilities related to abortion, awareness must be brought in by spreading the knowledge related to abortion provisions to the gross root level. The existing law provisions should be publicized to get social acceptance. There must be public awareness regarding implications of abortion on woman health and its consequences. Islamic principles on this issue should be widely discussed and a collaborative effort of legal community along with *Ulema* can bring a significant social change in attitudes vis-à-vis abortions. The liberalization of Islamic laws is not possible unless *Ulema*, legal community and politicians understand the gravity of situation and make serious efforts for ramification.

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⁷ Verse 41 of the first chapter says: "It happened, when Elizabeth heard Mary's greeting, the baby leaped in her womb, and Elizabeth was filled with the Holy Spirit."

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⁹ In 1995, Pope John Paul II wrote an encyclical letter called *Evangelium Vitae* (the Gospel of Life)

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