

Protection of a Deformed Foetus before the Soul Is Breathed into It in Islamic Jurisprudence.

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Abstract:

This study aimed to reveal the fact of protecting a deformed foetus before the soul is breathed into it. The foetus is naturally created through the insemination process between a male sperm and a female egg cell. Since that moment, it undergoes four stages, including the sperm, clot, lump, and bones. The study also showed that its protection is before the deformities as the prevention of prohibited sexual practices, spouses' selection, pre-marital health check-up, rescission of the marriage contract, and baby gender determination in case one of the spouses suffers from a disease, as well as it is after the deformities like the foetus protection in natural growth, its treatment during pregnancy, and its preservation from abortion crime.

Keywords: Foetus protection; deformity; breathe in the soul; jurisprudence.

INTRODUCTION

Praise to Allah, Lord of the worlds, who created man from clay. Then, He made him progeny out of the extract of a liquid disdained. Subsequently, He proportioned him and breathed into him from His soul. He gave him hearing and sight and developed him into another creation. Thus, blessed is Allah, the best of creators. Allah Almighty says: "Who perfected everything which He created and began the creation of man from clay (7) Then He made his posterity out of the extract of a liquid disdained (8) Then He proportioned him and breathed into him from His soul and made for you hearing and vision and hearts; little are you grateful." (Sajdah: 7-9) Allah's blessings and peace be upon the noblest of messengers, the prophet Mohammed « the honest, the trustworthy », all his family and his companions, and whoever follows them until the Day of Judgment. Then:

Allah who is blessed and exalted created man, and breathed into him from His soul. He commanded the angles to prostrate to him, and they prostrated. Then, He made the wombs a dwelling and the belly a home for Him, where no vision can grasp Him. God's glory was evident in His creation. He says: "So blessed be Allah, the best of creators." (Al-Muminoon: 14). He has protected man, ordained his respect, and forbidden attack on him. In this context, He states: "And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful." (An-Nisaa: 29) It is the right for everyone to live and be protected from any attack which is considered a crime even if in its first stage. As one of the principles of Islam is human life continuity, it may not be disrupted by allowing abortion unless it is legally obliged like in case of high-risk pregnancy.

In addition, our Lord provided many rulings for the foetus protection to guarantee its growth and maintain its dignity. He also made the methods and tools that prevent or relieve the deformities risk as much as possible until the natural birth occurs. Among these rulings is to protect the foetus, inside its mother's womb, from the deformities before and after they are discovered.

Research Method

In this study, we used two research methods:

The deductive method: It was used to study the topic and investigate its details from different books of Islamic jurisprudence and some theses and articles.

The analytical method: It was adopted to define the research concepts and obtain scientific data related to the deformed foetus protection.

Research Problem

As there were many complicated problems related to the deformed foetus protection, the present research work demonstrated some of its rulings. Therefore, it addressed the protection of the

Protection of a Deformed Foetus before the Soul Is Breathed into It in Islamic Jurisprudence.

deformed foetus before the soul is breathed into it from the dangerous deformities, before and after they occurred. In light of this, we ask the following questions:

What is the deformed foetus protection? What are its stages before the soul is breathed into it? How is it protected from the deformities? Is the protection occurred before and after the deformities?

To answer these questions, we will tackle the following outlines:

1. Definition of the Deformed Foetus Protection

1.1. Definition of Protection

1.2. Definition of the Foetus

1.3. Definition of Deformity (Deformed)

2. Stages of the Foetus before the Soul Is Breathed into It

2.1. The Sperm

2.2. The Clot

2.3. The Lump

2.4. The Bones

3. The Deformed Foetus Protection before and after Discovering the Deformities

3.1. The Deformed Foetus Protection before Discovering the Deformities

3.1.1. Prevention of the Prohibited Sexual Practices

3.1.2. The Spouses' Selection

3.1.3. The Pre-marital Health Check-up

3.1.4. Rescission of the Marriage Contract

3.1.5. Baby Gender Determination

3.2. The Deformed Foetus Protection after Discovering the Deformities

3.2.1. The Foetus Protection in Natural Growth

3.2.2. Treatment of Deformities during Pregnancy

3.2.3. The Foetus Protection from Abortion Crime

Conclusion

1. Definition of the Deformed Foetus Protection

To define the concept of deformed foetus protection, we need to define the research title's terms both linguistically and contextually.

1.1. Definition of Protection

Firstly: Definition of protection linguistically

In language, protection is a noun of the verb to protect. It is said: protect (present simple), protected (past simple/ past participle), and protection (noun). (**Ahmed Mokhtar, p 568**) It has various meanings:

1-Forbiddance: It is said: I protect the patient with diet. It means I prevent him from eating what is harmful to him. (**Al-Farahidi, p. 362**). In the narration of Al-Ifk:” Protect my hearing and seeing”. (**Al-Bukhari, n: 2661**). Ibn Katheer said: “That is, I prevent them from attributing to them what they did not realize”. (**Majd Al-Din Abu Al-Saadat, 1979, p. 448**).

2-Defense of something: It is said: I protect something, so I defend it. (**Al-Djawhari, p. 2319**). Everything I defend it, so I protect it. (**Al-Farahidi, p. 361**). Allah Almighty states: “Indeed, Allah defends those who have believed.” (**Al-Hajj: 38**)

3-Prevention: It is said: Protection of the environment: it means it is protected from pollution. (**Ahmed Mokhtar, p 569**).

In the sentence where protection is used in different terms with similar meanings, who protects from something, he prevents it and preventing it means forbidding from it. (**Al-Haouli, 2018, p. 6**).

Secondly: Definition of protection contextually

Terminologically, protection has the same meaning of the linguistic one, but it differs relying on what is added to it. For example, protection of the patient means to prevent him from food, drink, or others that hurts him. (**Al-Haouli, 2018, p. 6**). Protection of the

Protection of a Deformed Foetus before the Soul Is Breathed into It in Islamic Jurisprudence.

environment is to preserve it from pollution. The foetus protection from the deformity signifies its conservation from the diseases leading to this deformity.

1.2. Definition of the Foetus

Firstly: Definition of the Foetus linguistically

In language, the foetus is taken from the verb to fertilize (fertilized: past simple/ past participle-fertilely: adverb) which means to cover something. The jinn are called so because of being hidden from sights and the foetus as it is covered in its' mother's belly. (**Ibn Manzur, 1414, p. 92**). The plural of foetus is foetuses or foeti. It is the boy as long as it is in the belly. (**Al-Hanafi, 1999, p. 62**). Allah Almighty says: "And when you were foetuses in the wombs of your mothers." (**Al-Najm: 32**)

Based on this linguistic definition, the foetus means whatever covered and not viewed like the jinn who are hidden from people's sights, and the foetus in its mother's belly.

Secondly: Definition of the Foetus contextually

The contextual definition of foetus is similar to the linguistic one. However, it has many definitions:

According to Ibn Abidin (from Hanafi doctrine), "It is the boy as long as it is in the womb." (**Ibn Abidin, p. 158**).

In Al-Maliki doctrine, Al-Sheikh Zarrouq defined it as: "The foetus means what was known that it was a pregnancy, even if it was a lump or a clot or a formed foetus." (**Shahab Al-Din Abu Al-Abbas, 2006, p. 870**).

Toufik Khir Al-Din said: "It is a woman's fertilized egg cell by a man's sperm from the insemination to the natural birth. (**Toufik Khayr Al-Din, 2011, p.41**).

Through these definitions, we can say that the foetus is created

from the first moment of the insemination process between a man's sperm and a woman's egg cell until the natural birth occurs.

1.3. Definition of Deformity (Deformed)

Firstly: Definition of deformity (deformed) linguistically

In language, it is derived from the verb to deform, deformed (past simple/ past participle), deformedly (adverb). (**Majd Al-Din Ibn Al-Atheer, 1979, p. 511**). It shows the ugly creation. Ibn Fares said: "The Sheen, wow, and ha are two origins: One of which refers to an ugly creation." (Ahmed **Ben Fares, 1979, p. 231**). It is said a deformed man and woman. It implies they have an ugly face and appearance. The prophet, peace be upon him, said: «May these faces be deformed. » (Muslim, N: 1777). It signifies they were disgusting.

Secondly: Definition of deformity (deformed) contextually

The contextual definition of deformity is similar to the linguistic one. However, it has many definitions:

According to Mohammed Anis Al-Agha, it is the ugliness, imperfections, and defects in the creation that man was born with, unlike the common proper creation. (Mohammed **Anis, 2012, p. 3**).

Kamel Abd El-Aziz is defined it as: the deficiencies, defects, or ugliness in the common creation. (Kamel **Abd Al-Aziz, 2020, p. 993**).

Sheikha Salem Al-Orrayed stated: It is the change in foetus form or any of its organs that can affect him in the future either in the form or his organs' functions. The deformities can be simple or dangerous and it appears just after birth or in childhood. (Sheikha **Salem, 2003, p. 107**).

Following Samir Kari, it is an abnormal creation in an organ or a part of it that leads to its dysfunction. (**Samir Ben Hassan, 2010, p. 342**).

Protection of a Deformed Foetus before the Soul Is Breathed into It in Islamic Jurisprudence.

Through these definitions, one could say that the deformity is the deficiencies or defects in the foetus form or any of its organs. This deformity can be simple or hazardous.

2. Stages of the Foetus before the Soul Is Breathed into It

The foetus is created through the insemination between a male sperm and a female egg cell. It grows inside the womb phase after phase, where it starts with the sperm, clot, lump, and ends with bones. These phases were described by Allah Almighty: “And certainly did We create man from an extract of clay. Then We placed him as a sperm-drop in a firm lodging. Then We made the sperm-drop into a clinging clot, and We made the clot into a lump, and We made the lump, bones, and We covered the bones with flesh; then We developed him into another creation. So blessed is Allah, the best creators.” (Al-Muminoon: 12-14)

Based on these Qur’anic verses, the foetus before the soul is breathed into it goes through four stages:

2.1. The Sperm

In language, the sperm is used for man and woman’s water. Its plural is sperm or sperms. It is also used for the pure water, either little or many. (Ali Al-Fayoumi, p. 611). Contextually, it has three types. (Mohammed Ali Al-Bar, 1985, p. 11).

Firstly: The male sperm: are the sperms that existed in the semen. Allah Almighty says: “Had he not been a sperm from semen emitted”. (Al-Qiyamah: 37)

Secondly: The female sperm: is the ova that released by the ovary once a month.

Thirdly: The sperm-drop mixture: It is the sperm mixed from the sperm and the ova when the insemination occurred. The gamete means every two mixed things. (Ibn Manzur, 1414 AH, p. 367).

The sperm is the first stage of pregnancy. It is the mixing of both man and woman's water inside the womb. Allah Almighty states: "Indeed, we created man from a sperm-drop mixture that We may try him; and We made him hearing and seeing." (Al-Insan: 02) Ibn Abbas said: "Man's water which is white and thick mixes with woman's water which is yellow and thin, and create from them the boy. (Abu Abdallah Mohammed Al-Qurtubi, 1964, p. 121).

2.2. The Clot

In language, it is a thick frozen piece of blood. (Al-Zabidi, p. 181). However, it contextually has similar definition of the linguistic one. Therefore, most jurists are interpreted it as the frozen blood sperm. El-Imam Al-Qurtubi said: "It is the frozen blood, the fresh blood. It was said: It is extremely red." (Al-Qurtubi, 1964, p. 6). According to the doctors, the clot means the period when the foetus stick to the uterine wall, so it gets stuck in it. (Mohammed Ali Al-Bar, 1985, p. 32).

2.3. The Lump

In language, the lump is a piece of meat as much as it is chewed. Its plural form is lumps. (Ibn Al-Atheer, p. 339). It is named a lump because it is as much as it is chewed. However, the contextual meaning for this term is similar to the linguistic one. Al-Imam Al-Qurtubi said: "It is a little meat as much as it is chewed." (Al-Qurtubi, 1964, p. 6). The lump is either formed or unformed. Allah Almighty states: "from a little lump of flesh, some formed and some unformed." (Al-Hajj: 5). The formed lump is perfectly created while the unformed one is imperfect in its creation. (Ibrahim Ben Ismail, 1405 AH, p. 342). The formed lump is a chunk of meat made in such perfection that it has no deficiency and defect in the beginning of its creation. The imperfect lump of flesh includes a deficiency. This disparity in creation what makes some people better than others in terms of the face, form, length, and shortness. (Al-Maraghy, 1946, p. 89). Dr.

Protection of a Deformed Foetus before the Soul Is Breathed into It in Islamic Jurisprudence.

Wahba Ben Mustafa Al-Zuhaili said: “The conclusion is that the formed lump is the perfect one which has neither deficiency nor defect. Thus, it is ideally made. The unformed one is the chunk that is not perfectly created as it includes a defect.” (Al-Zuhaili, 1418 AH, p. 158). The latter refers to the deformed foetus as it fits the definition of congenital deformities. (Mohammed Anis, 2012, p. 20).

2.4. The Bones

Bones are the plural form of bone. In language, they represent the structure of human and animal’s body which are covered with meat. (Ibn Manzur, 1414 AH, p. 410). The contextual meaning of this concept is alike to the linguistic one. In this stage, the foetus is taken a specialized form where it changes from a lump to bones and skeletal. (Aisha Ahmed Salem, 2008, p. 46). Then, it is clothed by meat. Allah Almighty states: “then We clothed the bones with flesh, and then We brought it forth as another creation.” (Al-Muminoon: 14)

3. The Deformed Foetus Protection before and after Discovering the Deformities

3.1. The Deformed Foetus Protection before Discovering the Deformities

Before the deformities are discovered, the foetus should be protected from the diseases leading to these deformities. This is achieved by the use of several preventive methods, including:

3.1.1. Prevention of the Prohibited Sexual Practices

Among the preventive methods used for protecting the foetus from the deformity is to ban the prohibited sexual practices. The laws of Allah prohibited the adultery and everything that leads to it. Allah Almighty says: “And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way.” (Al-Isra: 32) This is for the sake of preserving offspring because doctors confirmed that those acts cause the foetus deformities. Consequently, the laws of Allah protected the foetus from these deformities that may affect him and his parents. (Mohammed Anis, 2012, p. 20).

3.1.2. The Spouses' Selection

This preventive method was urged by the prophet, peace be upon him, who advised us to select the good husband and the good wife. Aisha, May Allah be pleased with her, reported that the prophet, may Allah bless him and grant him peace, said: "May you select the best for your sperm, and marry compatible women and propose marriage to them." (Ibn Majah, N: 1968).

The meaning that one can deduce from this Tradition is that goodness is not only limited to creation and religion but also included goodness of children regarding their health and protection from the infectious diseases that can be transmitted from the wife and husband to children. (Raid Mahmoud, 2016, p. 12).

3.1.3. The Pre-marital Health Check-up

To protect the foetus from the congenital diseases that are widespread in our society, it is necessary for both spouses to do pre-marital health check-up. (Saad Ben Abd Al-Aziz, 2007, p. 91). This is especially in families that suffer from some hereditary diseases. Hence, the disease is expected, whether certain or presumed. Based on Jurisprudence rule, "The expectation is like the reality." (Hassan Ben Mohammed, p. 447). The religious law urged us to take precautions concerning what occurs frequently. The pre-marital health check-up ensures that the foetus is protected from the dangerous deformities. (Raid Mahmoud, 2016, p. 13). These medical tests continue even after marriage and pregnancy to check that the foetus is safe and not affected by any deformity. (Mohammed Anis, 2012, p. 20).

3.1.4. Rescission of the Marriage Contract

This preventive method is permissible in case one of the spouses is affected by a disease that bans the marital life continuity or impacts children's structure. (Mohammed Othman, 2001, p. 338). Ibn Qudama said: "The choice of rescission proves for each spouse the defect existed in his/her partner such as leprosy and albinism. These cause the psyche to be alienated and prevented approaching him/her.

Protection of a Deformed Foetus before the Soul Is Breathed into It in Islamic Jurisprudence.

In addition, it is afraid of being transmitted to the person and his/her offspring.” (Ben Qudama Al-Maqdissi, 1968, p. 185).

3.1.5. Baby Gender Determination

If it shows after the medical examination by embryo tests that the pregnant woman has a hereditary disease affecting males, not females or vice versa, with deformities, it is permissible to determine the foetus gender using the medical tools. (Mohammed Othman, 2001, p. 787). to protect it from the deformities that may affect it.

3.2. The Deformed Foetus Protection after Discovering the Deformities

After having discovered the deformities, the foetus should be protected by maintaining its growth, using therapeutic methods to relieve these deformities, and preserving it from the crime of miscarriage.

3.2.1. The Foetus Protection in Natural Growth

It is the right for everyone to live and it is a duty to be saved from all attack. This protection starts from the insemination between man’s semen and female’s egg cell in his mother’s womb until the natural birth happens because it is a crime even if it is in the first stage. As human life continuity is one of the Islam objectives, it is not permissible to be disrupted by allowing abortion and attack. For this reason, Islam permits the delay of the prescribed punishment for adultery and Al-Qisas (the law of equality in punishment) on the pregnant woman until she will cast her burden. In Ghamid discourse, she came to Allah’s Messenger, peace be upon him, and said: I have committed adultery, so you should purify me. He turned her away. On the following day, she said: O Allah’ Messenger, why do you turn me away? You may turn me away as you turned away Ma’iz. By Allah, I have become pregnant. He said: «Well, if you insist upon it, then go away until you give birth to the child». When she was delivered she came with the adulterine child in a rag. She stated: This is the child whom I have delivered. He said: «Go away and suckle him until you

weaned him». When she had weaned him, she came to him with the child who was holding bread in his hand. She stated: Allah's Apostle, this is he as I have weaned him and he eats food. He entrusted the child to one of the Muslims. Then, he pronounced punishment, so she was put in a ditch up to her chest, and he commanded people and they stone her. (**Muslim, N: 1695**).

The meaning that one can understand from this discourse is to save the foetus on its' mother's womb by not applying the prescribed punishment on her until she will cast her burden.

3.2.2. Treatment of Deformities during Pregnancy

When the foetus is influenced by a deformity, it is necessary to be exposed to the suitable treatment, or to reduce this deformity effects. Indeed, the treatment is considered a right for the foetus, parents, and protection to it. (**Kamel Abd Al-Aziz, 2020, p. 1029**). Like the other creatures, the foetus may be affected by some diseases in its mother's belly. These diseases can lead to deformities that impact the foetus form. However, some deformities can be treated. (**Kamel Abd Al-Aziz, 2020, p. 1029**). In the common law, it is permissible to remove the harm. According to the jurisprudence rule, "The harm is disappeared." (**Tee Al-Din Al-Subki, 1991, p. 41**). In the same context, the prophet, peace be upon him, said: « No harm, no foul». (by **Malik in Al-Muwatta, N: 31**).

3.2.3. The Foetus Protection from Abortion Crime

There have been different opinions among the Jurists about the ruling on abortion before the soul is breathed into the foetus. Some of them have prohibited it, whereas others have permitted it. Thus, their views were as follow:

The first opinion: It is absolutely forbidden to abort the deformed foetus whatever the deformities degree and type were, from the insemination of the egg cell starts until it ends. It is also prohibited to get abortion when water is established inside the womb even before

Protection of a Deformed Foetus before the Soul Is Breathed into It in Islamic Jurisprudence.

forty days. Al-Imam Elderdir fi Asharh Al-Kabiyar said: “It is not permissible to get out the semen formed in the womb even before forty days.” (**Al-Dasuqi Al-Maliki, p. 266**). Al-Sheikh Alish stated: “If the womb keeps the semen, it is not allowed for spouses, either of them, or the master to get abortion before the common creation and no agreement after it.” (**Alish, Abu Abdallah Al-Maliki, p. 399**). This is applied in Maliki doctrine. (**Al-Dasuqi Al-Maliki, p. 266**). and it is the opinion of Ibn Jawzi from Hanbali School. (**Al-Mardawi Al-Demashki, p. 386**).

Among the modern scholars who agreed with this opinion, Dr Mohammed Said Ramadan Al-Bouti. He regarded that the deformity existed in the foetus is not necessarily be aborted because it is just the doctors’ suspicion and they could not confirm it. (**Amer Al-Darchaoui, 2022, p. 31**). This aligns with the viewpoint of Dr Misbah Al-Metwalli Hammad, Dr Mohammed Al-Nujaimi, and Dr Abd El-Fattah Idriss. (**Faiza Zerria, 2022, p. 496**). due to the lack of legal necessity pillars for abortion. Despite modern medicine advancement, it does not reach the level of certainty. (**Aisha Ahmed, 2008, p. 394**).

The second opinion: It is legal to abort the malformed foetus before the soul is breathed into it if the medical examination proved that the distortion causes its death. Nevertheless, it is not permitted to abort it provided that the deformity does not lead to its death and does not harm its mother. This is the view of both the Medical Jurisprudential Committee for Islamic Medical Sciences Association in Jordan about abortion (1994). (**Raid Mahmoud, 2016, p. 24**). and the Islamic Jurisprudence Council for the Muslim World League in its 12th session held in Makkah from 15 to 22 Rajab, 1410 AH/ February 17th, 1990. (**Faiza Zerria, 2022, p. 494**).

In conclusion, it is not permitted to abort the distorted foetus if doctors have confirmed that he will live even if with a malformation in his body. However, it is allowed for abortion as long as it is proved that the deformities cause the foetus and mother’s death.

CONCLUSION

Based on what has already been discussed, we concluded that the foetus must be protected before and after the deformity risk to ensure it is growing in a good health. After having finished this research with the help and luck of Allah Almighty, the major results are as follow:

-The foetus is created from the first moment of the insemination between a male sperm and a female egg cell to the natural birth.

- The deformity refers to the change occurs in the foetus form or in one of its organs. It can be simple or complex and it might appear just after the birth or during the childhood.

-Before the soul is breathed into the foetus, it goes through four stages: the sperm, clot, lump, and bones.

-Before the deformities are discovered, preventive methods should be used to protect the foetus from the diseases leading to them.

-After having discovered the deformities, the foetus should be protected using therapeutic tools that remove or relieve these deformities as much as possible.

Allah's blessings are upon our Master Mohammed and all his family and his companions.

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