

ABORTION REVISITED

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In his article on abortion (The Minaret, January/February, 1994), Br. Dr. Hassan Hathout was smart enough in closing the door in front of any opinion that differs with him on this issue. He stated that "some Muslim scientists and scholars are recruited to play the role of a fifth column". But in any scientific debate this accusation does not deter scientists from freely expressing their opinion and I will take this challenge to show that Islam taught us moderation and established the Islamic position as the one in the middle with full balance and complete justice amongst all views, opinions and stands, in a manner that gives every right, the due consideration it deserves.

I do not, however, have a basic difference with Br. Dr. Hathout whose knowledge I respect and whom I take as a friend, although we only met once, because we have many things in common and I know about him perhaps as much as he knows about me.

My difference with him is more in degree than in substance, and I think that much difference is what makes the distance between the balanced stance, which is in the middle, and taking skewed opinion at the edge. First of all, I wish he did not take the introduction to the issue of abortion from the mouth of a disobedient teenager. The fact that parents have had several abortions does not mean that their children may disobey them or be disgraceful to the uncountable favours parents have given them. Parents' care for children, goes far beyond the nine months of the mother's pregnancy, although this, in itself, is very important. The Islamic manners address children, not fetus, and a child cannot be equated with an aborted fetus.

To come to the issue of abortion, I believe that Br. Dr. Hathout did not give fair representation to the other views nor to its argument.

Muslim scholars who consider abortion permissible before 120 days (or before 40 days for some) depend basically on a distinction between soul (*ruh*) and life (*hayat*). No person disagrees that the fetus is alive. In fact even sperms and ovums are also living substances. Therefore, what matters is not the existence of life, which is unanimously recognized; but the existence of soul, which can only be known through revelation, as the Quran says "they ask Thee concerning the soul, say; the soul belongs to my Lord. Of knowledge, it is only a little that is

given to you" [17:85]. The Prophet (Pbuh) in a correct saying mentioned that the soul is breathed in the fetus at the end of 120 days [the saying is reported by al Bukhari and Muslim].

Consequently, there is no Muslim scholar, who believes, as thought by Br. Dr. Hathout, that "it was all right to abort the **lifeless** pregnancy", rather those who consider abortion permissible before 120 days (or 40 days) take it as all right to abort the **soulless** (not **lifeless**) pregnancy and the breathing of soul in the lump (*mudghah*) is not synonymous to the beginning of life; rather it tells about something which cannot be known except by revelation, something that represents a new stage in the growth of fetus, whereby an early form of human being begins in which the sustenance (*rizk*), the life span (*ajal*), the deed and creed (*amal*) and the destination of misery or happiness (*shaqqi* or *sa'id*) are determined; and this is a new stage which represents more than life. That is why those Muslim scholars take this point as a landmark that distinguishes between permissibility and non-permissibility of abortion.¹

What do we mean by permissibility of abortion :

In order not to be misquoted or misunderstood, it is useful at this stage to elaborate on the meaning of the permissibility of abortion as being the view of a large section of Muslim scholars :

(1) Talking about permissibility of abortion before 120 days (or before 40 days) relates only to married couples or cases of rape (extraordinary exception). Therefore, when we talk about permissibility of abortion, the argument may not be carried over to mean making it easy to have pre or extra marital relations by making ridding oneself of its result accessible. The Islamic view of adultery and fornication is very strong and permissibility of abortion is not available as a way out of the results of such prohibited practices.

(2) Some Muslim scholars, namely, Zaidis and some Hanafis argue that before 120 days abortion is unconditionally permissible; even some Hanafis do not require the consent of the husband. This means that according to this view, abortion is full right of the woman.

¹Whereas living substances (sperms and ovums) are wasted at no harm at all, as known in real life, and *shari'ah* does not consider their wasting prohibited, (except by masturbation which is disputed).

(3) Majority of Hanafis and many Shafis, Malikis and Hanbalis are of the view that within the limit of the 120 days (40 days for some of them), abortion is permissible under certain circumstances and conditions, i.e., if the parents, especially the mother, have valid reasons such as fear of hardship, whether it is in health, psychological agony, nursing other babies, ability to provide sufficient care (including education, upbringing and even economic hardship).² Those who believe in this opinion do not consider mere dislike of having an additional child or preservation of the beauty of the mother as sufficient justification for abortion.

Additional supportive arguments :

Br. Dr. Hathout mentioned certain supportive evidence for the case of prohibition of abortion. However, if we take the complete story of this "supportive evidence", we find them in favour the case of permissibility of abortion rather than against it :

(1) Inheritance of a fetus : it is true that Islam gives special treatment for the inheritance of the fetus, but this treatment itself indicates that it is not given the right of a human being; it goes as follows :

If a person dies and there is an alive fetus in the womb of a woman that if born alive it may inherit from that person then; either the whole estate may not be distributed among the heirs until the fetus is **born alive** or the share of a male heir (if more than the female's) should be set aside until birth. However, if for any reason the fetus dies before birth, then no share in the estate can ever be assigned to it, and whatever was set aside shall be distributed as if the fetus did not exist, to start with.

This means that only the **potentiality of being born alive** is what is recognized not merely the fact that the fetus is living inside the body of its mother. Otherwise, if 'being alive in the womb' is what matters, a share would be assigned to the fetus, and the

²Mere poverty is not considered a good reason for abortion or for family planning; since Allah takes care of sustenance to every born person, but *fuqaha* mention economic reasons such as hardship in earning livelihood and in nursing the baby. (See Hasan Shazili in *OIC Fiqh Academy Journal*, year 5, Vi, p.141).

condition of being born alive must not be needed, and if the fetus dies before birth, its own heirs would inherit it not the heirs of the first person.

In brief, the issue of inheritance means that there is a recognition of a potential human life not an actual one.

(2) In inheritance again, if the fetus is born alive, i.e., it shows the signs of life (such as at least moving, crying, etc.), then a human being exists and he/she has the full right and responsibility of a human being (keeping in mind that he/she is still minor), including the right to inherit or to be inherited; but if it dies before birth, then a human being did not exist and pregnancy is considered as if not existing, at all, since its beginning with regard to inheritance.

(3) The case of a criminal woman who is sentenced to death and whose execution is delayed until the birth and weaning of the child indicates that the life of the fetus is recognized and that it has the right to continue this life because it is a potential human soul.³ It does not refer to conflict of rights between the fetus and its parents. Rather, the preservation of the fetus's right benefits the mother. In abortion, we deal with a conflict of rights between fetus and its parents, and those who permit it, within its conditions, argue for the right of the parents.

(4) The case of the ransom money, if abortion is caused by an act of aggression or neglect, also shows the big difference between wasting a fetus' life and wasting a human life. The ransom money for abortion inflicted by others on the mother is liberating a Muslim slave or the equivalent of the value of five camels. This is one twentieth of the ransom money for inadvertently wasting the life of a human being. The implication is that, although the fetus's life is recognized, it is not considered a human being's life.

³This point of (potential human soul) is clear in the case of endangering life of the mother. The life of the fetus is then sacrificed because a human soul has more respect than a potential human soul, not because mother is source and "fetus is offshoot" as mentioned by Br. Dr. Hathout. Since if being offshoot is the reason, the life of a child (not fetus) may also be sacrificed to save the mother, and no one accepts sacrificing one human being to save another in Islam as well as in all other religions and moral systems.

(5)The Quranic verse [60:12] which includes the oath of faith of a Muslim woman to the Prophet (pbuh) mentions a pledge "that they will not kill their children". The majority of Muslim commentators on the Quran interpret this verse as a prohibition of killing of children (fully born) as some Arabs used to do before Islam. Historically, there is no evidence that killing children among those Arabs was the action of man alone; mothers used also to contribute in that. Consequently, there is no support to stating that "the obvious explanation of this pledge is abortion". The saying mentioned by Al Tabari gives a clear explanation of what is meant by the word 'kill' in this verse. The story goes that Hind, wife of Abu Sufian, who had a son killed by the Muslims in the battle of Badr (he was then disbeliever) was among those women who gave the pledge mentioned above. When the Prophet (pbuh) read the verse 'that they will not kill their children', Hind said you killed them on the day of Badr so you know better. This means she understood the meaning of the verse as "killing children, born, or even grown up" not aborting a fetus. Moreover, the word "*awlad*" which means children does not include fetus in Arabic language, because the word is a derivative of "*walada*" which means to give birth. Furthermore, one might interpret the opinion of those commentators who include abortion in the meaning of this pledge as a reference to cases of abortion where necessary conditions for permissibility are not fulfilled, such as abortion after 120 days.

Conclusion

In concluding these remarks on abortion, it is worthwhile to recall the distinction between an individual stand and a societal position, i.e., between the macro and the micro positions.

1)On the macro level, we do have in the Sunnah of Prophet Muhammad (pbuh) abundant evidence that indicates that the Muslim ummah (nation) is better off with large number of Muslims than small. Also having more children and larger families is, in general, considered in the Sunnah better than otherwise. From this point of view, I can justify the statement of Br. Dr. Hathout about a conspiracy against Islam and a fifth column in the Muslim countries, because to adopt a pro-abortion stand, a policy of limiting the number of children and other measures of family planning on the macro level, i.e., on the level of the Muslim countries and Governments is, no doubt, unacceptable; as it weakens the

whole ummah.⁴ From this point of view, contemporary Muslim scholars consider it unacceptable in *shari'ah*, for Muslim Governments to adopt any of these kinds of procedures.

- 2) However, on the micro level, the personal choice is left to individuals within the first 120 days (40 for some), and the Islamic Government needs not to restrict the freedom of women and men with regard to abortion and measures of family planning if they are done within the framework drawn in *shari'ah*. This must also be understood within the macro-level position, i.e., individuals are encouraged to behave in a way that sustains the macro objectives, and discouraged, but not forbidden to do otherwise.
- 3) The previous discussion in this reply shows that the Islamic position on abortion and (family planning as well) is unique in its nature, it is based on understanding the texts of the Quran and Sunnah. It differs basically from the Catholic stand that is based on the mere medical definition of life. **Ours is more flexible.** It recognizes the right of wives and husbands and that of raped women and their families to remove the cause of stress, hardship and agony in case of conflict of the rights of the woman and the right of the soulless fetus.
- 4) According to *shari'ah* although a fetus has the right to continue living until it becomes a human being, it is not treated like a baby or a child. An unborn fetus is not yet a baby. It only becomes a baby after its birth. But while it is still in the womb, it has the right to continue its life provided that this right does not contradict the right of the woman and her husband or family (in case of rape). Although it recognizes the right of the fetus to continue its life, *shari'ah* does not equate it with babies/children.⁵

⁴In fact, if we talk about economic reasons for family planning, if we may observe, that if any, the world needs a reduction in population, limitation of number of children and family planning in the western hemisphere essentially the big seven giants and the rest of western Europe, whereby a child in those countries costs more than 10 times as much as a child in Pakistan or Bangladesh. In the United State for example, a child costs about 13 times as much as a child in Asia and Africa.

⁵As for the view adopted by majority of attendants in the Kuwait seminar 1993 organized by the Islamic organization of medical sciences, the meeting was attended by only a few *shari'ah* scholars and a majority of medical professionals. With all respect to the knowledge and integrity of non *shari'ah* professionals, they do not make up a majority when it comes to discussing a *shari'ah* point, because the tools of analysis they have can make them only reach the point of laying the information under the noses of the *shari'ah* experts who are the ones, not the medical professionals, who dwell on finding the *shari'ah* position.

- 5) Consequently, when there is a conflict between the life of a human being (the mother) and the life of a potential human being (the fetus), the latter may be sacrificed if this is the only way to save the former, regardless of the number of days of the fetus's life span. In other words, it applies after and before the limit of 120 or 40 days.
- 6) It is not a waste to reiterate the point that permissibility of abortion before the fetus is 120 days in the womb (40 days for some scholars) is not a back door open for adultery/fornication.
- 7) The case of rape, and here comes the example of Muslim women raped en masse in Bosnia-Herzegovina, poses a good example of the attitude of *shari'ah*. Although patience, perseverance, tolerance of pain and agony are good morals that are rewarded in the life after, not everybody can be asked to bear with them, and people differ in the degree they can afford of them. It is thus the full right of a raped woman to get rid of undesired fetus, if she is not able or does not desire, to bear that much psychological, spiritual and social hardship. This is in spite of the fact that if pregnancy is carried over until birth, the woman is rewarded for the amount of tolerance and difficulties she has gone through and the child is innocent.

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