

Aborting a malformed fetus in Islamic law

Hamza Fortas¹, Djaber Attia², Djalal Ailane³, Amamra Abdelkader⁴

¹University of Batna 1 (Algeria), hamza-fortas@hotmail.com

²University of Batna 1 (Algeria), a.djyacine@gmail.com

³University of Oran 1 Ahmed Ben Bella (Algeria), djalaltamim@gmail.com

⁴University of Batna 1 (Algeria), amkader00@gmail.com

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Abstract:

This research deals with the issue of aborting a deformed fetus in Islamic law, in terms of defining abortion in language and terminology, as well as defining the fetus and deformity in language and clarifying the idiomatic meaning of the deformed fetus, then mentioning the causes and types of deformities that affect fetuses, then explaining the sayings of Islamic jurists regarding abortion in general, then the sayings of the jurists of Islamic law regarding the abortion of the deformed fetus in particular, with an indication of the conditions and controls set by those who authorized it.

The research concluded a lot of results, perhaps the most prominent of which is that the issue of aborting the deformed fetus is one of the contemporary jurisprudential issues, but it is based on the issue of aborting the fetus according to the ancient jurists, and one should not rush to abort the fetus by simply saying that the fetus is sick or deformed, but rather a specialized medical committee must report And this is after all the necessary modern laboratory tests, and all of this is under the supervision of a Sharia board that decides the appropriate ruling.

Keywords: abortion, fetus, deformed, law, Islamic.

In the name of God the most Merciful, the most Compassionate

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Introduction:

Praise be to Allah, Lord of the Worlds, and prayers and peace be upon our Prophet Muhammad and his family and companions, and after:

There is no doubt that scientific development in general, especially in the means and tools of medicine, surgery, and medical imaging, has created a cure for many diseases that were incurable in the past, and uncovered many mysteries.

It is known that Islamic jurisprudence keeps pace with developments that arise at all times, to provide society with solutions to all developments that open the door to questions, our contemporary jurisprudence has addressed the jurisprudential issues raised by medical development, and these issues include the findings of doctors from monitoring the condition of the fetus while it is still in the mother's womb, and determining whether it is normal or defective in which there are abnormalities, and determining the type of malformations suffered by the fetus, the degree of seriousness and the reasons that led to it, which made the nation Turning to its scientists, asking the following question: If doctors find out according to their means and devices that the fetus in the mother's womb has suffered a malformation in its creation, is it permissible to abort it? Thus, relieving his family and community of the burdens that this fetus will carry.

Therefore, it was necessary to study this issue thoroughly, starting with taking note of the medical aspect, and then presenting the issue, including the new scientific data, on the legal ruling of abortion to see the extent of its impact on it.

Importance of research:

The importance of this research appears in the following points:

- Protecting the human spirit and preserving the sanctity that has been entrusted to it since the beginning of creation, considering it an inviolable freedom, whether it belongs to a child or an elderly, a sane or a madman, a true person, a sick person, or others.
- The relevance of the subject to reality, and the questions it raises about cases of deformity and ways to deal with them, following the increase in the percentage of deformed fetuses as a result of environmental pollution and the large number of harmful radiation that has begun to spread in the atmosphere and which were not known before.
- Putting an end to the tangible leniency in some fatwas and the denials of the law of God Almighty by permitting abortion in many cases without piety or consideration of the consequences.

Research Methodology:

In our research, we have taken the inductive approach to extrapolate the statements of jurists on the issue and their evidence for it, in addition to the comparative analytical method, which is based on the study, analysis, discussion, and then statement of the most correct ones.

We have relied on the books of the jurists of the schools of thought concerning their statements and evidence in the ruling on abortion in general, and we were keen to transfer the words of each school from its approved references, and as for the information related to the medical aspect, we have resorted to a number of theses and university research related to the subject, so that the scientific material is derived from its sources.

What distinguished the research?

However, most of these writings dealt with the subject in general, whether from a legal, legal, or medical point of view, although few of them have a chapter mentioning the provisions of the deformed fetus in terms of the ruling on its abortion and the consequences of that, and our research is characterized by the following:

First: Combining medical and forensic sayings, by presenting everything related to the issue from a medical point of view, referring directly to specialized medical sources - scientific theses, field studies, published medical research -, and then mentioning the legal ruling based on the previously presented medical data and facts.

Second: Presenting the statements of contemporary scientists on the issue and discussing them, where modern medical disclosures - such as early detection of fetal abnormalities and determining their seriousness - called for reconsidering the ruling on aborting the fetus by those who are qualified for it from the nation's contemporary scholars, and we have quoted in this research the statements of a group of these scientists with discussion and analysis, to reach the weighting of the right ones.

Third: Clarifying the issue of aborting the deformed fetus from the perspective of the purposes of the total Sharia, to reach what is consistent with the purposes of Sharia and the interests of creation.

Research Plan: The research plan consisted of the following units:

Introduction: It contains a definition of the subject, its importance, and the objectives behind it.

The first requirement: a conceptual introduction.

The second requirement: the types of malformations in the fetuses.

The third requirement: is the provision for aborting the deformed fetus in Islamic law.

Conclusion: It presents the most important results of this research and its recommendations.

The first requirement: a conceptual introduction.

Before addressing any issue, it is necessary to pass on the definitions, to take a comprehensive perception of the issue, because judging something is a branch of its perception, the more accurate the perception, the closer the judgment to the right.

Subchapter I: Definition of abortion.

First: Abortion is defined as a language.

It says in Lisan al-Arab in the article of abortion: The camel aborted an abortion while she was aborted: If she threw the child incompletely, and it is said that the child is aborted if his creation

is not established, and it was said that the fallen abort that was created and breathed into the soul without living and his plural is abortions. ⁽¹⁾

In the surrounding dictionary, it says that abortion and abortion are fallen children, or what was created and breathed into the soul without living. ⁽²⁾

The dictionaries state, "It comes – i.e. abortion – in the sense of stillbirth, i.e. loosening, and in the sense of slippage, i.e. the instability of pregnancy in the womb, and it is called spoliation, meaning dropping and casting". ⁽³⁾

The linguistic meaning of abortion, then, is the fall of the fetus from its mother's womb, whether it falls alive or dead.

Second: Definition of abortion idiomatically.

Islamic jurists did not come out in their definition of abortion from what was stated in the words of the language, and they called it several words, such as projection, stillbirth, subtraction, ejaculation, etc., and if the predominance in their words is the word projection, as this word abounds when most of the Maliki jurists say: "The surprise must be in the fetus that falls from the womb of its mother dead and is alive while falling" ⁽⁴⁾, while the Shafi'is use the word abortion, the word ejaculation came in the clear sea explaining the treasure of minutes: "It is the ejaculation of the fetus before the completion of the period of pregnancy" ⁽⁵⁾, and the word subtraction is mentioned at the tap by saying, "If she drinks free medicine or treats her vagina to subtract her fetus until she has thrown it" ⁽⁶⁾.

It can be said in general that all jurisprudential definitions are in the general meaning of abortion, as it is the dumping of a fetus in a woman's womb, dead or alive before the completion of pregnancy, whether it was aborted by her or by others.

Among the definitions of contemporary jurisprudence, we refer to the definition of Dr. Muhammad Salim Abu Jeriban, which states: "A woman deliberately throws her fetus before it completes the period of pregnancy, using medicine or otherwise, whether the fetus comes out alive or dead". ^{(7) (8)}

Subchapter II: Definition of the fetus.

First: the definition of the fetus in the language.

The meaning of the word fetus in the language goes back to the meaning of concealment and invisibility, as it came in the Holy Qur'an as saying: ﴿He creates you in the wombs of your mothers, in successive formations, in a triple darkness﴾. ⁽⁹⁾

And the fetus is from the verb of jinn: cover-up, and it is the child as long as it is in the womb, and it was mentioned in the al-Qamos al-Muheet: make it insane and impure, meaning conceal

⁽¹⁰⁾and in the basis of eloquence by al-Zamakhshari: jinn, meaning cover it up, and implore it in Paradise: conceal it, and conceive the child in the womb, and his fetus The pregnant woman, and he was covered by the night's heavens: that is, his darkness⁽¹¹⁾, and it says in the tongue of the Arabs: Jinn: the thing made it hidden. For their concealment and their disappearance, and from him the fetus was named for its concealment in its mother's womb ⁽¹²⁾, and it came in the illuminating lamp: "The fetus is described to him as long as it is in the womb of his mother, and the plural embryos, it was said that it was named so because of its concealment, and if it is born, it is forgotten. ⁽¹³⁾

Al-Ragheb al-Isfahani said: "The fetus: the child as long as he is in his mother's womb and collected embryos".⁽¹⁴⁾

Al-Qurtubi said in the interpretation of the Almighty's saying: ﴿and ever since you were embryos in your mothers﴾⁽¹⁵⁾, embryos collect an embryo and it is the child as long as it is in the womb, it is called a fetus because of its concealment and concealment. ⁽¹⁶⁾

From it, it is clear that what is meant by the fetus is the language of the child in the mother's womb, to achieve its concealment in it, so it includes all its stages from the time of its formation to the time of its birth. ⁽¹⁷⁾

Second: Definition of distortion in language.

Deformity in language is a title for ugliness, and the origin of the word distortion from the verb distortion, and distraction are two origins: one indicates the ugliness of creation, and the second is a kind of eye gaze.

The first distorted: the ugliness of creation: it is said that the faces were distorted, and God distorted it, and in the hadith that the Prophet (peace and blessings of Allah be upon him) threw the polytheists with dirt and said: "Shaht faces", and the mare disfigured in her head length and her nostrils capacity, and the other origin they said: a man who has bad sight if he is iron sight. ⁽¹⁸⁾

Deformities: The plural of deformity, which is the name of the source of the deformity of the distortion, which indicates the ugliness of the face and creation; the deformed man and the deformed woman are ugly in face and creation, and everything of creation that does not agree with each other is distorted. ⁽¹⁹⁾

And the fetus has congenitally deformed which the deformities are characteristic of creation, and the ancient jurists did not use this term only a little, and it was mentioned in the words of Judge Abdul Wahhab al-Baghdadi while talking about the atonement of the back: "Do not divide the ears, unlike the owners of Shafi'i, because they are members of which the benefit of which is the monsters of the sound to hear and pay the damage to him, and because in their going a kind of distortion in creation".⁽²⁰⁾

Third: Definition of identification of the embryo malformed idiomatically.

If the people of the language - as previously explained - agree that the deformity is the ugliness of creation, the jurists and doctors go in the definition of the deformed fetus to what is even further, as they consider the apparent internal deformities, which leads us to determine the meaning of the fetus deformed idiomatically.

Before that, it should be said that doctors and jurists differed in naming the malformations that affect the fetus, some of them call fetal malformations birth defects, and some of them call them congenital malformations, but they are all names for one name. ⁽²¹⁾

Dr. Raed Mahmoud Al-Shawabkeh defines a deformed fetus as: "It has suffered deformities that have changed its shape, shape, or any of its organs so that it can affect it in the future". ⁽²²⁾

It is noted in this definition that it focuses in the definition of the deformed fetus on the characteristic of malformations, as the deformed fetus is the object and subject of them, and then adds the effect of malformations on the possible future life of the fetus.

Medical experts define a deformed fetus "as a living fetus in which there are some minor or severe congenital malformations, whether these abnormalities are external or internal not visible, and these abnormalities may not be compatible with uterine life, and life after birth" ⁽²³⁾.

"Birth defects are a variety of disorders that arise in pregnancy, which may result from defects at the level of a single gene, chromosomal disorders, multifactorial inheritance and environmental distortions, and deficiencies of micronutrients, such as congenital metabolic errors and blood disorders arising in pregnancy," the WHO secretariat report said.

The report added: "Birth defects can be defined as structural and functional abnormalities, including metabolic disorders present from birth, and the term congenital disorder implies the same definition, and each of these two terms is used to refer to the other term without distinction between them. ^{(24) (25)}

Subchapter III: Definition of Islamic Law:

First: Sharia: Sharia in the words of the Arabs legislator water is the resource of the drinker that people legislate and drink from it and draw, and idiomatically Sharia is what God enacted from religion and ordered it such as fasting, prayer, pilgrimage, zakat and other acts of righteousness, said fur in the words of the Almighty: ((Then we made you on the law)) on religion, sect, and platform and all that is said. ⁽²⁶⁾

Second: Islamic: relative to Islam, which is in the language of docility, and in the terminology is surrender to God by monotheism, and docility to him by obedience, and freedom from polytheism, which is the religion of all prophets, but what is meant here is the religion of our

Prophet Muhammad, may God bless him and grant him peace, which is the last of the heavenly religions. ⁽²⁷⁾

The second requirement: the causes and types of malformations in embryos.

Subchapter I: Causes of malformation in the fetus.

Many reasons lead to malformations in fetuses and modern science has revealed some of them, while the rest of them are still unknown, and among the reasons that doctors have reached:

First: The defect that affects chromosomes: It is one of the most important causes of deformity that leads to spontaneous projection.

Second: Genetic diseases, the most important of which are: tuberous sclerosis, fatty adenoma, hypercholesterolemia, and others.

Third: Infections and infectious diseases: pregnant women, like others, are exposed to microbial and parasitic invasion, if a virus can penetrate the resistance of the mother's body, and penetrate the fetus, it will cause defects and deformities in the fetus, and the most important of these viruses: rubella virus, cell enlargement virus, and AIDS virus.

Fourth: Radiation: When exposed to pregnant women in the first months of pregnancy, especially the rays that shed on the abdomen and pelvis, scientists have found that they lead to microencephaly, cleft palate, and lead to bone deformities, mental retardation, and may have led to the exposure of pregnant women in the middle of pregnancy or its end to the fetus in childhood leucemia (leucemia). ⁽²⁸⁾

Fifth: Drugs and chemicals: The number of drugs and chemicals accused of causing birth defects in the fetus is increasing every day, and unfortunately some of these substances are taken by humans in a mood, and the most famous and most common of these substances: tobacco, alcohol, hashish, opium, heroin, and others, as well as a group of painkillers such as aspirin and also diabetes treatment drugs such as insulin.

There is a range of factors that may have something to do with abnormalities such as kinship between spouses, age of parents, underweight, or obesity. ⁽²⁹⁾

Subchapter II: Types of malformations affecting fetuses.

The malformations and defects that the fetus suffers in the mother's womb vary according to the severity of the effect that caused them, some of which are serious, and some of them are not, and they can be divided from the least dangerous to the most dangerous according to the following:

First: Minor congenital malformations.

They are the malformations, impairments, or congenital deficiencies that the fetus is born infected with, and it can adapt and live with them, especially in light of the modern medical capabilities that treat a large part of them, or at least alleviate their impact.

Among the most important of these abnormalities are: immune dysfunction within the body, blood clotting defect, color blindness, or the child is born with a hole in his heart, or a lack of brain development, which leads in the latter to a failure in thinking or mental retardation. ⁽³⁰⁾

Second: Serious deformities that can be treated with difficulty.

They are large congenital malformations that affect the nervous system and its tributaries, the heart, blood vessels, the abdominal wall, the urinary system, or other organs, and cause a serious malfunction.

Most of these abnormalities can be monitored by doctors with devices and the child is still a fetus in the mother's womb, and these abnormalities are classified as a family of defects that the child can continue to live with, but with great care, and make his life a disabled life dependent on others and in need of permanent care, and it is the grace of God Almighty that most fetuses with these abnormalities fall, and do not come to life, this type is the least type of abnormalities present and occurring. ⁽³¹⁾

Third: Serious and irreversible deformities.

They are congenital malformations and deficiencies that the fetus cannot live with, and they usually destroy the life of the child, while he is still a fetus in his mother's womb, and early in pregnancy, leading to spontaneous abortion of the deformed fetus⁽³²⁾, such as the absence of a skull, punctured spines, lymphocytic and hydrocephalus. ^{(33) (34)}

The third requirement: is the provisions for aborting the deformed fetus in Islamic law.

Subchapter I: General Ruling on Abortion According to Jurists.

Among the jurists who differentiate between the ruling on abortion after the breathing of the soul and its ruling before that, and after the formation in the womb and stability, and since the ruling on abortion after the breathing of the soul is subject to agreement, it was more appropriate to start with it and then comment on its ruling before the breathing of the soul, with a statement of the opinions of the jurists and their trends in it.

First: jurists' opinions about abortion after breathing the soul.

The breathing of the soul will be after one hundred and twenty days, as proven in the authentic hadith narrated by Ibn Mas'ud raised: "One of you gathers his creation in his mother's womb forty days sperm, then be a lump-like that, then be clot like that, then send the king and breathe the soul into it"⁽³⁵⁾, and does not know a dispute between the jurists in the prohibition of

abortion after the breathing of the soul, they have stipulated that if the fetus breathed the soul forbidden abortion unanimously, and they said that he killed him, without dispute. ⁽³⁶⁾

This is taken from the launch of jurists' prohibition of abortion after the breathing of the soul that it includes what if the survival of the danger to the life of the mother, and what is not, and Ibn Abdeen stated that said: "If the fetus is alive and fears for the life of the mother of its survival, it is not permissible to cut it, because the death of the mother by delusional, it is not permissible to kill a human being for a delusional matter". ⁽³⁷⁾

They inferred from this in general verses and hadiths that forbid the taking of the soul without justification or justification for legitimacy that allows it, and these verses are the saying: ﴿And do not kill the soul which God has made sacred﴾ ⁽³⁸⁾, and the face of the indication that killing the soul is forbidden by Sharia, and pregnancy after breathing the soul in it is infallible soul is forbidden to assault it as the young soul, and the Almighty says: ﴿And do not kill your children for fear of poverty. We provide for them, and for you. Killing them is a grave sin﴾ ⁽³⁹⁾ The significance is that the verse forbids killing a child, and pregnancy in the rule of a child, considering what leads to him, because his fate is to birth, and many other verses.

As for the hadiths that indicate this, some of them are narrated by Abu Hurayrah: "Two women from Hadhil threw each other and threw her fetus, and the Prophet (peace and blessings of Allaah be upon him) spent it with the raid of a slave or a nation"⁽⁴⁰⁾, and the face of the indication: that killing the fetus, if it were not a forbidden crime and punishable for it, the Prophet (peace and blessings of Allaah be upon him) would not have imposed a fine on it, which is the surprise.

Second: jurists' opinion about abortion before breathing the soul.

The jurists differed regarding abortion before the breathing of the soul in different directions and multiple sayings, even in the same school of thought, which are as follows:

1- Permissibility at all: which was mentioned by some Hanafis; they mentioned that it is permissible to drop after pregnancy unless something is created from it, and what is meant by creation in their phrase is to breathe the soul⁽⁴¹⁾, which is unique to him from the Malikis Lakhmi before forty days⁽⁴²⁾, and Abu Ishaq Al-Marwazi of the Shafi'is said before forty as well, and Al-Ramli said: "If the sperm is from adultery, he may imagine the permissibility before blowing the soul"⁽⁴³⁾, and permissibility saying when the Hanbalis in the early stages of pregnancy, as they allowed women to drink permissible medicine to shed sperm, not leech, and Ibn Aqil that what was not solved by the soul is not resurrected, it is taken from him that it is not forbidden to drop it, and the owner of the branches said: "And the words of Ibn Aqil face"⁽⁴⁴⁾.

2 - permissibility of an excuse only: It is the fact of the Hanafi school, Ibn Abdeen has quoted the hatred of the Khanate not to solve without an excuse, as it is forbidden if the eggs of hunting

broke within because it is the origin of hunting, so what was taken with the penalty is not less than to inflict it - aborted itself - sin here if dropped without excuse, and quoted from Ibn Wahban that one of the excuses to cut off her milk after the appearance of pregnancy, and not for the boy's father what rents by the back (lactating) and fears his destruction, Ibn Wahban said: "The permissibility of dropping is carried on the state of necessity"⁽⁴⁵⁾, and whoever said from the Malikis, Shafi'is, and Hanbalis permissibility without the restriction of excuse, it is permissible here in the former, and Al-Khatib Al-Sherbini quoted Al-Zarkashi: "If a woman calls her the necessity to drink a permissible medicine that entails abortion, she should not be guaranteed because of it".⁽⁴⁶⁾

3- Hatred absolutely: This is what Ali bin Musa of the Hanafi jurists said, Ibn Abdeen quoted him: "He hates throwing before the passage of time in which the soul is breathed because water after it fell into the womb, is destined for life, so it has the rule of life, as in the egg hunting the sanctuary⁽⁴⁷⁾, which is an opinion when the Malikis before forty days⁽⁴⁸⁾ And a possible saying according to the Shafi'is, Ramli says: "It is not said in abortion before the breathing of the soul that it is different from the first, but it is possible for purification and prohibition, and the prohibition is strengthened near the time of blowing because it is a crime."⁽⁴⁹⁾

4 - prohibition: this is adopted when the Malikis, says al-Darder: "It is not permissible to take out the semen formed in the womb even before forty days, and commented Desouki on that by saying: "This is approved", and said hated, which indicates that what is meant by impermissibility in the phrase El-Dardeer prohibition⁽⁵⁰⁾, as quoted Ibn Rushd that the owner said: "All that put forward by the woman felony, from lump or clot, which knows that he was born, it is ghara"⁽⁵¹⁾ And he said: "And it is advisable for the owner of the expiation with the ghara."

The statement of prohibition is the aspect of the Shafi'is, because the sperm after settling tends to be created and is prepared to breathe the soul⁽⁵²⁾, which is the Hanbali school of thought, as mentioned by Ibn al-Jawzi, which is apparent in the words of Ibn Aqeel, and what is felt by the words of Ibn Qudamah and others after the stage of sperm, as they arranged penance and surprise for those who hit the belly of a woman and threw a fetus, and for pregnant women if she drank the medicine and threw a fetus.^{(53) (54)}

5- Weighting:

It is likely from these statements to say that abortion is prohibited except for an excuse, for the following:

The news narrated from the Prophet (may Allah's peace and blessings be upon him) about the obligation to pay a surprise when a woman is aborted without elaborating on the age of the fall, and from these reports is what was narrated: "Two women from Hadeel threw one another and

threw her fetus, and the Messenger of Allah (may Allah's peace and blessings be upon him) decreed the raid of a slave or a nation..."⁽⁵⁵⁾

The news narrated from the Prophet (may Allah's peace and blessings be upon him) about the necessity of postponing the establishment of the hadd punishment on a pregnant woman without detailing the stages of pregnancy, which benefits the comprehensive launch of any of its phases, and if we know that the hudud is not tolerated and may not be postponed, we know the importance of the sanctity of aborting pregnancy, even if it is sperm, and the need to preserve it from damage, and that is only because it is forbidden to abort it, and one of this news that is positive for postponing the establishment of the hadd punishment on a pregnant woman is his saying (may Allah's peace and blessings be upon him) Loli is a woman from Juhayna: "Do good to her, and if she gives birth, I will take care of her"⁽⁵⁶⁾

- The statement of the prohibition of abortion – if no special textual evidence to prove it is in accordance with the precaution, and it is necessarily known that Islamic law ordered precaution in blood and chickens, and here, although not dropping sperm shedding blood for a respectable soul with certainty, it is the destruction of the same is the principle of the emergence of a human soul, the Almighty says: ﴿But if anyone is compelled, without desiring or exceeding, he does not sin. God is Forgiving and Merciful﴾⁽⁵⁷⁾ The jurisprudential rule says: "Necessities permit prohibitions", this text and the rule indicate that a person who is obliged to take from the mahram what pays his harm and need, and applies to the pregnant woman whose life depended on the abortion of her fetus, but within the controls and conditions of which:
 - a. The necessity must be present and established, even if it is predominantly suspected, not probable, i.e. if the mother is thought to have perished unless she aborts her pregnancy, she may do so.
 - b. The necessity must be a refuge such as self-damage.
 - c. The payment of damage should not have another possible means other than abortion.⁽⁵⁸⁾

It can be said: One of the most important purposes brought by Sharia is to preserve the soul, so it is forbidden to abort it, if it is said: that the fetus has not yet been created and the soul has not been breathed into it, it is not a soul to be preserved, it can be answered that sperm is destined to create and breathe the soul into it, and therefore it is given to the introductions of the provisions of what is given to the results, so abortion is prohibited, and God knows best. ⁽⁵⁹⁾

Subchapter II: The Ruling of Aborting a Deformed fetus according to Jurists.

First: Dropping the deformed fetus after breathing the soul into it.

There is no dispute among jurists⁽⁶⁰⁾ regarding the sanctity of aborting a deformed fetus or causing it to abort by any means whatsoever.

In the case of breathing the soul - except for necessity - until the woman gives birth to her pregnancy by birth, which is forty days since one said, or one hundred and twenty days after the other saying from the beginning of pregnancy, and that aborting it, in this case, is considered killing the soul unanimously, so it must be taken by surprise.

These jurists have inferred the sanctity of aborting the fetus after breathing the soul into it by evidence that prohibits killing it:

1- From the Qur'an:

a. **The Almighty says:** ﴿And do not kill the soul which God has made sacred﴾ ⁽⁶¹⁾

b. **The Almighty says:** ﴿that whoever kills a person—unless it is for murder or corruption on earth—it is as if he killed the whole of mankind﴾. ⁽⁶²⁾

* Indication: These verses showed that assault on the soul is forbidden except against her, and pregnancy after breathing the soul in it is an assault on the soul forbidden, so it is forbidden to assault her like the young soul.

c. **the Almighty's saying:** ﴿Say, “Come, let me tell you what your Lord has forbidden you: that you associate nothing with Him; that you honor your parents; that you do not kill your children because of poverty—We provide for you and for them; that you do not come near indecencies, whether outward or inward; and that you do not kill the soul which God has sanctified—except in the course of justice. All this He has enjoined upon you, so that you may understand﴾ ⁽⁶³⁾

* The face of the indication: Al-Qurtubi said: This may be inferred from preventing isolation, because infanticide raises the existing offspring, and isolation prevented the origin of offspring so they are similar, but the killing of the soul is the greatest and ugliest act. ⁽⁶⁴⁾

2- From the Sunnah:

a. What was narrated from 'Umar ibn al-Khattab A man said: O Messenger of Allah, which sin is greater with Allah? He said: To pray to Allah as a peer and He created you, he said: Then which? He said: Then to kill your child lest he feeds with you, he said: Then which? He then said that you should commit adultery with your neighbor's daughter, and Allah revealed her belief, ﴿And those who do not implore besides God any other god, and do not kill the soul which God has made sacred—except in the pursuit of justice—and do not commit adultery. Whoever does that will face penalties﴾. ^{(65) (66)}

b. It was narrated from Abu Hurayrah that he said: "Two women from Hadhil threw one another away, and she threw her fetus, and the Messenger of Allah (may Allah's peace and blessings be upon him) spent time in it with the raid of a slave or ummah"⁽⁶⁷⁾

* Indication: The two hadiths indicate the prohibition of killing the fetus, if killing it was not forbidden, Sharia would not have imposed a fine on the offender.

3- Consensus: The jurists⁽⁶⁸⁾ of the Ummah from after the death of the Prophet (may Allah's peace and blessings be upon him) to the present day unanimously agreed on the prohibition of abortion after the breathing of the soul, as it stipulated that if the fetus is breathed into the soul, abortion is forbidden, and it is considered a killing without dispute.

Therefore, it is not permissible to abort a deformed fetus if the soul is breathed into it unless the survival of the pregnancy is a real danger to the life of the mother. The fetus after breathing of the soul has become a soul, which must be preserved and preserved, whether it is intact from pests and diseases, or if it is infected with any of that, and whether it is hoped to be cured, or not, because God Almighty has in all that He has created a judgment that many people do not know, and He **knows what** is suitable for His creation, believing His saying. Almighty: ﴿Would He not know, He Who created? He is the Refined, the Expert﴾. ⁽⁶⁹⁾

Second: Dropping the deformed fetus before breathing the soul into it.

Contemporary jurists also divided the malformations that affect the fetus into simple congenital malformations, serious but treatable abnormalities, and malformations that are impossible to treat, and they agreed that the first and second types are not suitable to be an excuse to abort the fetus with them, because they can be removed, or mitigate their effects on the fetus, at least, especially with scientific progress, either by medical treatment during pregnancy, or by postpartum surgery, or by compensatory means for the disabled. ⁽⁷⁰⁾

Dr. Yusuf al-Qaradawi says: "However, it is not a significant deformity that the fetus is infected after birth such as blindness, deafness or dumbness, as these are disabilities that people have known throughout the life of humanity, and they lived by them and did not prevent them from participating in bearing its burdens, and people have known geniuses with disabilities whose names are still present in the memory of history".⁽⁷¹⁾

Sheikh Ali Jad al-Haq says: "As for defective fetuses with defects that can be treated medically or surgically, or can be treated currently, and defects that can fit into normal life, these cases do not consider defects as a legitimate excuse for abortion, because it is clear from the imposition of this image that there is no danger to the fetus and its normal life, as well as the possibility of the emergence of a treatment for it according to scientific development. ⁽⁷²⁾

As for the third type: which is serious malformations and defects that cannot be treated, contemporary jurists have differed in the ruling on aborting the fetus, which doctors revealed this type of abnormalities in it before the soul is breathed, that is, 120 days before two sayings:

1- Those who say that it is forbidden to abort a deformed fetus before breathing the soul into it.

This team believes that the prohibition of abortion of the deformed fetus is not limited to the stage after the breathing of the soul, which knows a consensus on the prohibition, and even in the stage before the breathing of the soul, it cannot be said that abortion is permissible because of the presence of birth defects in the fetus, as these defects cannot constitute a reason or excuse to remove the prohibition ruling and contemporary jurists and researchers who said this opinion are Dr. Muhammad Saeed Ramadan Al-Bouti⁽⁷³⁾, and Dr. Mesbah Al-Metwally Hammad⁽⁷⁴⁾, the Kuwaiti Sharia Iftaa Department⁽⁷⁵⁾, Dr. Abdullah al-Bassam⁽⁷⁶⁾, and other jurists and researchers who said that it is not permissible to abort a deformed fetus.

2- Evidence of those who say that it is forbidden to abort a deformed fetus before breathing the soul into it.

The second team cited a set of evidence, including:

- a. The general prohibition in the Book of Allah and the Sunnah of His Messenger (peace and blessings of Allaah be upon him) from killing the soul that Allah has forbidden except by the truth, such as the Almighty saying: ﴿And do not kill the soul which God has made sacred, except in the course of justice﴾.⁽⁷⁷⁾
- b. The Prophet (peace and blessings of Allaah be upon him) said: "Do not wish any of you to die because of harm inflicted on him, and if it is necessary, let him say: O Allah, revive me, if life is good for me, and death is not good for me".⁽⁷⁸⁾

The inference from this hadith is that it is not for a person to wish for himself death as a relief from an illness or calamity that befell him, this is against himself and he is its owner, so how can someone take the life of another under the pretext of relieving him of the pain or defect that appeared in him.

- c. The fetus, by entering the stage of development and creation, has become a human being with the right to live, and no one has the right to take away this right, and if God Almighty has forbidden us to take and destroy the money of the weak and ordered us to be kind to them, how can he imagine us eliminating them, and the fetus is in the rule of the weak who is unable to pay what threatens him.
- d. The presence of the disabled in society sermon and lesson for the healthy reminds them of the blessings of God Almighty on them, and urges them to thank him and gratitude to him, has

taught us peace be upon him to thank God Almighty when seeing the disabled or afflicted by calamity and to say: "Praise be to God who healed me from what afflicted him, and preferred me to many of those who created a preference".⁽⁷⁹⁾

e. The creation of deformed fetuses by God Almighty is proof of His power, as He says: ﴿It is He who forms you in the wombs as He wills﴾⁽⁸⁰⁾, and therefore the overthrow of this fetus is a challenge to the will of God Almighty and His wisdom.⁽⁸¹⁾

f. The presence of man in this life is to achieve the goal for which he was created and has a pain, which is the worship of God Almighty, believing in the Almighty's saying: ﴿I did not create the jinn and the humans except to worship Me﴾⁽⁸²⁾ and aborting the deformed fetus tampered with this end and depriving him of its practice, and thus winning the favor of God Almighty in the hereafter, especially since the disabled and people with disabilities are the most thankful and patient people, and more worthy of bearing this responsibility.⁽⁸³⁾

3- Those who say that it is permissible to abort the deformed fetus before breathing the soul into it.

Many scholars of the Islamic world and modern researchers suggested that it is permissible to abort the deformed fetus seriously and is not treatable in the stage before the breathing of the soul, if a pregnant woman is afflicted with a fetus in which there is a serious deformity, and this deformity is untreatable and hinders the normal life of the fetus, or the fetus is infected with serious genetic diseases, and doctors discovered this before the stage of breathing the soul, that is, one hundred and twenty days before the day of insemination, it is permissible and licensed for this pregnant woman - according to these Jurists - by aborting her fetus.

However, the permissibility is required to prove the serious deformity or genetic disease by the report of a medical committee that bases its diagnosis of the case on real data not imagined and concludes that if the fetus remains and is born on time, his life will be bad, and pain for him and his family, and this passport has enshrined the decision of the Islamic Fiqh Academy in Makkah Al-Mukarramah issued on 15 Rajab 1410 AH - 1990 AD, which stated that "the Academy decided by majority the following:

- If the fetus has reached one hundred and twenty days, it is not permissible to abort it, even if the medical diagnosis indicates that it is a congenital malformation unless it is proven by the report of a medical committee of trusted and competent doctors that the survival of the pregnancy is a definite danger to the life of the mother, then it may be aborted, whether it is deformed or not, to pay for the greatest of the two harms.
- Before the passage of one hundred and twenty days of pregnancy, if it is proven and confirmed by the report of a medical committee of trusted specialized doctors and based on technical examinations, devices, and laboratory means that the fetus is seriously deformed, not treatable and that if he remains and is born on time, his life will be bad, and pain for

him and his family, then it is permissible to abort him at the request of the parents, and the Council, while deciding that, recommends doctors and parents to fear God".⁽⁸⁴⁾

The extrapolation of the aforementioned decision makes us say that the Islamic Fiqh Council permitted the abortion of a deformed fetus before the soul is breathed under three conditions:

- The consent of the spouses, because the spouses have rights and duties related to abortion and because medical permission is the basis for the leave contract between the doctor and the patient.
- Not to expose the pregnant woman to greater risk, under the rule of preventing the most severe harm by committing the least harmful harm.
- The testimony of two forensic doctors who agree that abortion is necessary and that the pregnant woman does not have a greater risk than that of abortion.⁽⁸⁵⁾

There are some scientific bodies, such as the Permanent Committee for Scholarly Research and Issuing Fatwas in Saudi Arabia, which authorized the abortion of a deformed fetus before breathing the soul.⁽⁸⁶⁾

And carefully the statements of many contemporary jurists, we find that their words almost agree on the permissibility of abortion before blowing the soul, because of deformities intractable treatment and these jurists Dr. Yusuf al-Qaradawi in his book contemporary fatwas, has allowed the projection of the fetus deformed which did not blow the soul, provided that the deformity is proven scientifically confirmed and that the deformity is serious, and what makes his life torment him and his family, and that a medical team of specialists decide not one doctor.⁽⁸⁷⁾

And other jurists and researchers said that it is permissible to abort a deformed fetus.

4- Evidence of those who say that it is permissible to abort a deformed fetus before breathing the soul into it.

The first group of scientists cited evidence, the most important of which are:

a. The view of some Hanafis and Abu Ishaq al-Marwazi of the Shafi'is and Lakhmi of the Malikis that it is permissible to abort the fetus before breathing the soul into it, or that it is permissible when there is an excuse for what some jurists such as al-Zarkashi from the Shafi'is said.

The proponents of this statement adhered to this fatwa and considered the malformation of the fetus as an excuse that rises to the level of necessity for which abortion is permissible, because this excuse is based on scientific evidence, disclosures, and proven analyses, and the rule says "necessities permit prohibitions".⁽⁸⁸⁾

b. The survival of the fetus and its descent from its mother's womb burdened with these defects, deformities and serious impairments of hardship, unhappiness, and embarrassment is

indescribable for him, his family, and his society, as he will become a burden that burdens society with more burdens and costs, while abortion is a comfort for him. ⁽⁸⁹⁾

5- Discussion of evidence and preponderance:

The evidence of the second group can be discussed as follows: The adoption of the fatwa of some scholars of the schools of thought that it is permissible to abort the fetus 120 days before absolute or for an excuse that is not taken for granted, is echoed by the statements of other scholars and jurists of the same schools of thought who prohibit the abortion of the fetus at all, even before breathing the soul into it, as is approved by the Maliki masters, and as is the aspects of the Shafi'is, and others, so it is not possible to rely on your first evidence because it is not agreed upon.

As for their other evidence, it can be discussed as follows: It is reprehensible that the human hand interferes with its deficient vision and insight into what does not concern it, which is the specialty of God Almighty, as he alone is the disposer in the affairs of creation and the universe, revives whoever he wants and kills whoever he wants, and it is not for man to set himself up as a commissioner of God Almighty, and he cannot receive the keys to life, so whoever he wants falls from the embryos and leaves whoever he wants under the pretext of hiding the face of wisdom he has, from the survival or creation of imperfect creation, And Allah Almighty says: ﴿Would He not know, He Who created He is the Refined, the Expert﴾. ⁽⁹⁰⁾

As for making the malformation in the fetus an excuse that rises to the degree of necessity with which it is permissible to sentence the fetus to death and their reasoning by the rule of "necessities permit prohibitions", Dr. Muhammad Saeed Ramadan Al-Bouti discussed that the rule is not at all, but rather has controls and conditions that should be interpreted in the light of them, and these pillars include: That the reasons for necessity exist rather than expected, that is, that fears are based on factual evidence that is not expected and that the results of this already existing evidence are certain. or predominantly suspected according to scientific evidence and not based on illusions and conjecture. ⁽⁹¹⁾

Accordingly, if we come and present these elements to the case of the fetus, which the specialist doctor thought would be born deformed and deficient in congenital defects that appeared to him from the diagnosis of pregnancy, we found that the aforementioned elements of necessity are missing in this case, because the reasons that may lead to fetal malformation are nothing more than medicines taken by the pregnant woman during the first months of pregnancy, or x-rays exposed to them so that the doctor fears the reflection of their negative effects on the fetus, and this cause is no more than a possibility that warns Dr. Al-Bouti conveys the doctors' firmness and consensus that it is impossible for the doctor – according to the available capabilities and devices – to judge with certainty the occurrence of the deformity before four months. ⁽⁹²⁾

Therefore, judging the fetus as deformed or defective is nothing more than an expectation, and the expectation cannot be included in case of necessity because there is no certain document for the occurrence of the prohibition.

Since the evidence of the second opinion was not delivered and did not withstand the discussion, the most correct that we tend to is what the authors of the first opinion went to, that it is not permissible to abort the deformed fetus at all following the general texts that are forbidden to take lives, and because in God's creation blessed and exalted for these defective fetuses wisdom and purpose, and as much as God Almighty wanted for some of His servants, and perhaps there should be an affliction and a test for them and their families and the extent of their patience, and their satisfaction with the judgment of God who says in the arbitrator of the download: ﴿We will certainly test you with some fear and hunger, and some loss of possessions and lives and crops. But give good news to the steadfast Those who, when a calamity afflicts them, say, "To God we belong, and to Him we will return﴾. ^{(93) (94)}

Conclusion:

In the end, the research concluded with a set of results and recommendations as follows:

➤ Results:

1. **Abortion:** A woman deliberately ejects her fetus before the pregnancy is completed, using medicine or otherwise, whether the fetus is born alive or dead.
2. **Deformed fetus:** It is a living fetus in which there are some minor or severe congenital malformations, whether these abnormalities are externally visible, or internally invisible, and these abnormalities may not be compatible with uterine life, and life after birth.
3. **The causes of malformation of the fetus are many:** including defect that affects chromosomes, genetic diseases, infections and infectious diseases, radiation, drugs, and chemicals, and there is also a range of factors that may have a relationship with malformations such as kinship between spouses and the age of the parents, and the lack of weight of the pregnant woman or obesity.
4. **The types of malformations affecting fetuses are divided into three sections:** simple congenital malformations, serious abnormalities that can be treated with difficulty, and serious and intractable malformations.
5. There is no dispute among the jurists regarding the prohibition of abortion after the soul is breathed, even if it is deformed, they have stipulated that if the fetus is breathed into the soul, abortion is forbidden unanimously, and they said that it was killed for him, without dispute.

6. The jurists differed in abortion before the breathing of the soul in different directions and multiple sayings, even in the same school and the rest of it is to say that abortion is prohibited except for an excuse.

7. Many scholars of the Islamic world and modern researchers suggested that it is permissible to abort a seriously deformed and untreatable fetus in the stage before the soul is breathed, and others prevent it to preserve the soul, and it is more likely to say that it is forbidden because medical hypotheses do not rise to the level of permissible necessity for abortion.

➤ **Recommendations:**

The research came out with a set of recommendations, summarized as follows:

1. The need to study the causes that may lead to an increase in the phenomenon of congenital malformations and genetic diseases, try to find the necessary solutions and take the necessary measures and preventive measures that reduce the occurrence of genetic malformations and diseases.
2. Not to rush to abort the fetus by simply saying that the fetus is sick or deformed, but it is necessary to report a specialized medical committee after all the necessary modern laboratory tests.
3. The necessity of presenting the medical report to the competent people of Sharia to estimate the appropriate Sharia ruling for the case presented.
4. Ensuring the choice of husband and wife based on goodness in terms of morality and congeniality, and the research also recommends the need to strengthen preventive medical examinations to ensure that there are no diseases that may be transmitted to offspring, to contribute to the protection of offspring.
5. It is desirable to westernize marriage, because consanguineous marriage may cause the emergence of some genetic diseases, as it has been shown that kinship has a great role in the transmission of genetic traits through genes from spouses to children, and from grandparents to grandchildren.
6. Calling for the establishment of specialized health institutions concerned with everything related to genetic malformations and diseases, and providing guidance to society and couples in a way that contributes to the preservation of the family and offspring and helps in making reproduction take place on a healthy side, provided that these institutions can follow up if a problem occurs due to fetal malformations or the occurrence of genetic diseases.

May Allah bless our Prophet Muhammad and all his family and companions, and our last prayer is that praise be to Allah, Lord of the Worlds.

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