



Commandments of Fetus

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Abstract: The term "fetus" originates from fairies; meaning everything is hidden. As long as the baby is in the womb, it is called a fetus. Fetal period is the start point of human rights; hence, this period has been the focus of attention. Many verses of the Holy Quran speak about fetal development. Shiite jurists also have considered some rights for fetus.

Bequest, devotion, and inheritance belong to the fetus; providing that it is alive. Also, due to the existence of unborn child in wife's womb, alimony is awarded. The most significant achievement of the present study is to understand the importance of fetus, its rights, and the commandments associated with this course of human life. The discussion has highlighted that some questions regarding inheritance and bequest, etc. at this period in human life is introduced and the mind is looking for answer to them.

Keywords: Fetus, rights of the fetus, development of fetus.

INTRODUCTION

The sixth verse of Surah Az-Zumar has spoken about the gradual evolution of man, creation after creation, in a threefold gloom. Here, "gloom" means abdomen, amnion, and womb. About sixty verses of the Holy Quran talked about fetus.

Upon the establishment of fetus in the womb, it is entitled certain rights (even if this conception is the result of illegitimate marriage). After soul insufflation, related rights go further.

Definitions

Fetus: dead in the grave, everything covered, baby involved in the womb. Literally, the term "fetus" means everything which is covered. So, pregnancy product whose starting point is in the womb and whose final point is the moment before birth is called fetus, because it is covered by mother's "womb" (Jafari Langroodi, 2005, 745).

Clot (Alaq): it means closed blood; Black leech in the pond that sticks to the animal's body and sucks blood.

Gushing fluid (Dafaq): literally means pouring with intensity, such that resulting ejection of it can be understood. In fact, severe shedding away accompanied with ejection is called "gushing fluid".

A drop (of seed): originally, it meant little water or clear water. Then, it referred to the water droplets from the conception which forms man's origin. In fact, this interpretation will portray the greatness of God's power.

Examples of the verses that refer to the fetus have been mentioned below:

- Al-Mu'minun/Verse no. 12: "Verily we created man from a product of wet earth."
- Al-Mu'minun/Verse no. 13: "Then, placed him as a drop (of seed) in a safe abode."
- Al-Mu'minun/Verse no. 14: "Then fashioned We the drop a clot, then fashioned We the clot a little lump, then fashioned We the little lump bones, then clothed the bones with flesh, and then produced it another creation. So, blessed be Allah, the Best of Creators!"
- Al-Mala'ikah/Verse no.11: "Allah created you from dust, then from a little fluid; then, he made you pairs (the male and female). No female breathe forth save with his knowledge. And no one groweth old who groweth old, nor is aught lessened of his life, but it is recorded in a book. Lo! That is easy for Allah."
- Al-Alaq/Verse no. 2: "Createth man from a clot."
- Al-Qiyamah/Verse no. 37: "Was he not a drop of fluid which gushed forth?"
- Al-Insan/Verse no. 1: "Hath there come upon man (ever) any period of time in which he was a thing unremembered?"
- Al-Insan/Verse no.2: "Lo! We create man from a drop of thickened fluid to test him; so we make him hearing, knowing."
- Al-Hajj/Verse no. 5: "O mankind! If ye are in doubt concerning the Resurrection, then lo! We have created you from dust, then from a drop of seed, then from a clot, then from a little lump of flesh shapely and shapeless, that we may make (it) clean for you. And we cause what we will to remain in the wombs for an appointed time, and afterward we bring you forth as infants, then (give you growth) that ye attain your full strength."
- Al-Mursalat/Verse no. 20-23: "did we not create you from a base fluid, which we laid up in a safe abode for a known term?"
- Ghafir/Verse no. 67: "He it is who created you from dust, then from a drop (of seed) then from a clot, then brought you forth as a child....."

Safe abode (Qarar-e Makin)

The Holy Quran considers the womb an ideal place for the establishment of fetus. The words "abode" and "safe" are comprehensive enough to contain all known points about the womb.

The Holy Quran says: "The placed him as a drop (of seed) in a safe abode" (Al-Mu'minun/Verse no. 13).

In another verse, it says: "Did we not create you from a base fluid, which we laid up in a safe abode" (Al-Mursalat/verses no. 20 & 21).

Safe abode means a perfect and safe place to perch and deployment, or a place with special characteristics.

About safe abode, Allameh Tabatabai writes "it is woman's womb where a drop (of seed) is placed there.

The development of fetus in threefold gloom

One of things that the Holy Quran and hadiths pointed to about the creation of man is the growing fetus in three gloom spaces.

The sixth verse of Surah Az-Zumar ("He created you in the wombs of your mothers, creation after creation, in a threefold gloom".) points to gradual growth and evolution of man in the mother's womb in three gloom spaces which today is a miracle example of the Quran in the science of embryology.

Imam Sadiq also said Mufaddal bin Omar: O' Mufaddal remember the creation of man. The beginning of it is establishment of fetus in womb while it is placed in a threefold gloom veil including abdomen, womb, and amnion, where the fetus has no choice to bounce feed, no way to get around the hurts, no ability to provide a benefit, and no capability to remove losses.

Stages of fetus development from the perspective of Quran

– Surah Al-Hajj/Verse no. 5 says: "O mankind! If ye are in doubt concerning the Resurrection, then lo! We have created you from dust, then from a drop of seed, then from a clot, then from a little lump of flesh shapely and shapeless, that we may make (it) clean for you. And we cause what we will to remain in the wombs for an appointed time, and afterward we bring you forth as infants, then (give you growth) that ye attain your full strength."

– Surah Al-Mu'minin, Verse no. 14 says: "...then fashioned we the clot a little lump". Lump is animal or leech that sucks the blood. Lump is the best description that can be applied to the human fetus at 7-24 days after fertilization, because in these days, the fetus exactly like a leech sticks to the host's body, sucks blood, attaches to the uterine endometrium, tears endometrial vessels, and uses leaked blood to feed.

In rest of the verse, it says: "...then fashioned we the little lump bones, then clothed the bones with flesh,....". This is exactly consistent with the evolution of fetus according to which firstly bones and secondly, muscles (flesh) is created.

– Surah As-Sajdah, Verse no. 9 says: "... And appointed for you hearing and sight and hearts...". This verse points to the order of creating special senses of hearing, seeing, touch. In terms of calendar of fetus development, this order is correct totally. At first, early inner ear, secondly, eye, and finally, brain is appeared.

In the Holy Quran, fetal development is divided into three main groups:

- 1) The early stage includes fetus development and fusion of male and female excretion until seed formation in the womb.
- 2) The second stage includes fetal growth and development of members which is started at the third week and finished at the eighth week of pregnancy. And it comprises faster cell division to sub-categories such as lump, flesh, and bones.
- 3) The third stage includes faster cell division, differentiation, more growth, and ultimately complete formation of fetus (Shahabian, 2005, p. 152).

The pregnancy period

Various verses of the Holy Quran have pointed to the lowest period of pregnancy (that is, six months). For example, Surah Al-Ahqaf, verse no. 15 says: "... And the bearing of him and the weaning of him is thirty months....".

Citing to verse 15 of Surah Al-Ahqaf, Qarquz and Diab write: new medicine has come to the same conclusion; that is, if the fetus is placed in the womb for six months, it will survive after birth. (Razavi, Amin Naji, & Kamkar, 2011, p. 33).

Abortion in terms of Islamic law

In terms of Shi'ite jurists, the life of fetus has two basic steps: 1) from conception until soul insufflation; 2) from soul insufflation to birth.

In the first stage and before soul insufflation, abortion is not considered a murder because it is not actually a human. But in the second stage, fetus is a human like others; so, killing it is prohibited. Evidence of this fact is Surah Al-Isra, the verse no. 33 which says "And slay not the life which Allah hath forbidden save with right,....". This verse is a reason for prohibition of abortion after soul insufflation.

The time of soul insufflation in the fetus

In the books of Fiqh and hadith, at the month of four and half or five when movements of the fetus are tangible for mother, soul insufflation occurs.

In a hadith from Imam Sadiq, it is quoted: After five months of life, soul insufflation occurs (Ahooran, 2007, p. 4).

The Holy Quran says: "Slay not your children, fearing a fall to poverty, we shall provide for them and for you. Lo! The slaying of them is great sin" (Surah Al-Isra, verse no. 31).

Again, the Holy Quran says: "... And that ye slay not your children because of penury. We provide for you and for them..." (Surah Al-An'am, verse no. 151).

The prohibition of abortion cannot be documented from the verses, as theme of the verses is "prohibition of killing child" not "abortion". It is necessary to say "killing child" is something other than "abortion". While man is in the womb and truly not born, in fact isn't named child. Life deprivation of fetus when it is in womb is abortion, not murder.

Successive traditions indicate the necessity of blood money for abortion. In this regard, Koleini quoted from Abdullah bin from Imam Sadiq that said: the blood money for the fetus that soul insufflation has not occurred in it is a hundred dinars ... the reason for it is the consensus between Shiite jurists and narrations.

From the perspective of jurisprudence, from the time of conception, abortion is mainly prohibited. However, before soul insufflation, just in case of serious conditions, including saving mother's life, abortion is permitted. After soul insufflation, abortion is not absolutely allowed according to Shiite jurists.

From the perspective of jurisprudence, abortion to save the mother's life can be studied in two periods of before soul insufflation and after soul insufflation.

A) Before soul insufflation: If mother fears that continuing the pregnancy would cause her death, interference is caused between the necessity of self-preservation and prohibition of abortion. In such cases because of the importance of saving mother's life other than fetus, the mother is preferred to fetus and abortion would be permissible.

The different views of jurisprudence about the blood money of abortion prior to soul insufflation have been presented in different books including Alqaniyah, Almabsoot, Alentesar, Altahrir, Alborhan, and Alrohze.

Blood money before soul insufflation

(A drop) of seed: the blood money for period of conception and establishment of sperm into the womb, which takes approximately twenty days, is 20 dinars¹.

Clot: in this stage, the blood money for the fetus which is transformed to solid and thick blood and is in the fourth week of its life is equivalent to 40 dinars.

Flesh: in this stage, the blood money for the fetus which is transformed to flesh and is in the eighth week of its life is equivalent to 60 dinars.

Bone: in this stage, the blood money for the fetus which is transformed to knot-like bones in cartilage shape and is in the twelfth week of life is equivalent to 80 dinars.

The blood money for the fetus which has flesh and bone, but soul insufflation has not occurred in it and is in the sixtieth week of its life is equivalent to 100 dinars.

B) After soul insufflation: According to Islamic law, the blood money after soul insufflation is complete. Interestingly, when a crime against the fetus is spoken in Islamic texts, mainly blood money is introduced; however, Muslim jurists are silent about retaliation as a result of intentional abortion.

Fetus rights

1. Fetus alimony: The woman whose divorce is irrevocable is not entitled to alimony from her husband, unless she would be pregnant. In this case, she will be entitled to alimony from divorce date to birth date. There is some debate in that whether the alimony is in support to the fetus or mother.

About this matter that whether the pregnant woman whose husband has been dead is entitled to alimony, there are two opinions.

Imam Jafar Sadiq said that: "the pregnant woman whose husband has been dead is not entitled to alimony".

Sheikh and his followers consider pregnant woman entitled to alimony. This is nearer to justice.

The Holy Quran says: "If you see a pregnant woman, spend on them until they give birth" (Surah Al-Talaq, verse no. 4).

Therefore, pregnant woman is entitled to alimony in her period.

2. Bequest for the fetus: The fetus has a legal personality; so, it can enjoy its rights; that is, it has the capacity of entitlement. Devotion and bequest for fetus are possible.

Shiite jurists will consider bequest for fetus possible; provided that it is born alive although he will die immediately after birth.

Imam Khomeini says: the condition is that the legatee would exist in time of bequest although it would be fetus and soul insufflation has not been occurred in it. So, bequest for the dead or for the fetus that woman

¹ - According to the current practice of courts in the Islamic Republic of Iran, each dinar is equivalent to 2/31 grams silver.

may have in the future is not realized. In addition, if the fetus comes to birth dead, the bequest would be void and the property returns to testator as inheritance (Imam Khomeini, p. 169).

3. Fetus inheritance: fetus is of inheritance barriers. The fetus inherits property if it is born alive or is born alive while moves like a living being and then dies; here, gestures such as shaking and vibration is not the criterion for its movement (Masjed Saraie, 2008, 414).

Shahid Sani says: "fetus is of inheritance barriers".

If fetus comes to birth alive, it is entitled inheritance, although it dies a few minutes after birth. In this regard, crying is not necessary; just to the extent that it is known the child is alive would be adequate.

It should be mentioned this requirement is not valid that the moment when child's father dies, the soul of him must has been blown on his body, but the same extent that at the moment, conception has been occurred, would be adequate; so, if someone dies and after his death, it is known that his wife was pregnant, while the fetus was his own, when the fetus comes to birth, inherits his father unless he is born dead (Mousavi Bojnoordi, 2013, 490).

4. Devotion to the fetus: devotion belongs to the living being. Devotion to someone who may come to birth in future is not possible. In this regard, Sahib Javaher says: unlike inheritance and bequest, devotion does not belong to the fetus. Similarly, Sheikh states: devotion is not allowed for the fetus which has not been come to birth.

Allameh makes some differences between bequest and devotion and says: devotion does not belong to the fetus, while bequest belongs to it; because the former is subject to current property, while the latter is subject to future property.

Conclusion

The period between conception and birth is named as "fetal period". The fetus has some legal rights that sometimes it does not have a direct relationship with the fetus, but is in relation to him; such as alimony in irrevocable divorce, that does not belong directly to it, but is awarded to its mother. Fetus has precarious capacity which is fixed after its birth. Fetus rights is realized through two conditions including being exist and being alive. Bequest, devotion, and inheritance are possible for fetus; however, it does not have an independent character of its mother, but as soon as it comes to born (although dies immediately after birth), it is considered owner and if it dies, its inheritors become owner.

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