

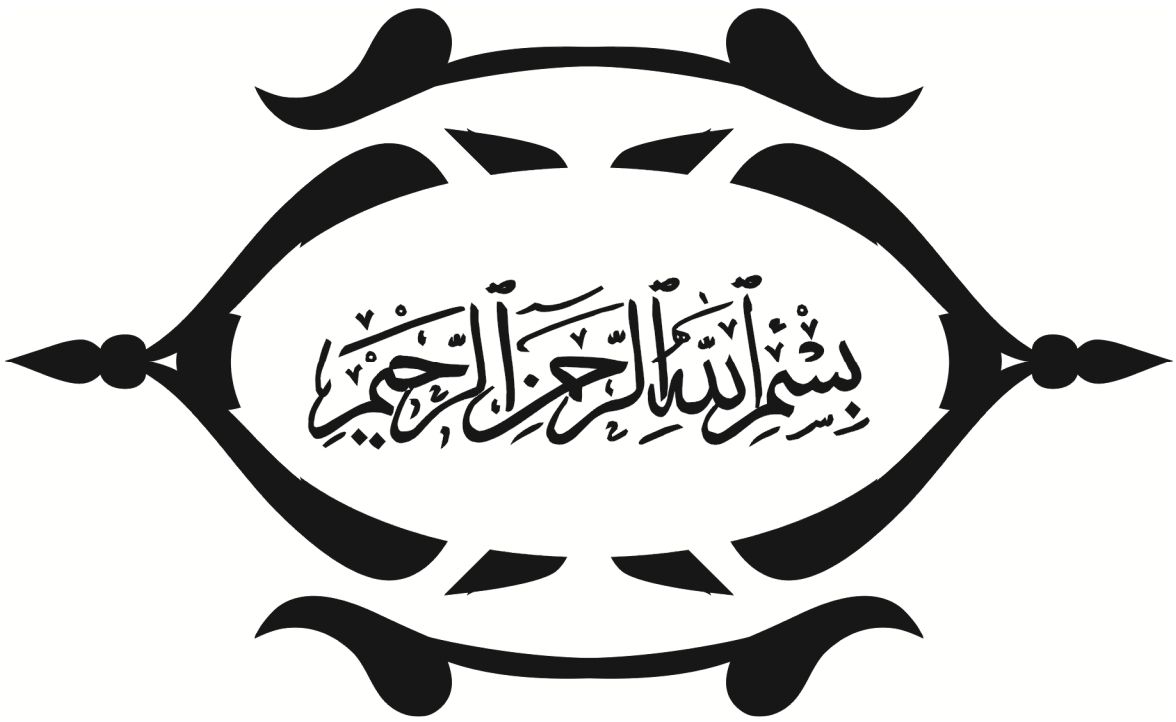


A Clear Explanation Regarding Abortion

by

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Note: This document represents the first draft of this research paper. Not all facts and statements have been attributed their references.



I. Introduction

By living in a world plagued with an economic recession, we are bound to face challenges. At the same time, technology and science allow us to explore situations that our predecessors could not have foreseen, such as modern abortion and its associated issues. While reviewing earlier views on abortion which circulates around the permissibility of it even being allowed or until which stage of pregnancy does the child become eligible of life and his/her death other pertinent issues arise if we side with the opinion of permissibility. Although some jurists do allow that at some time an abortion may be permissible, the matter of discussion lies on who can enforce the abortion to the pregnancy and how much are they eligible if the other spouse were to disagree. A key point of discussion also remains that the power of decision to abort a child lands in the hands of humans or is the pure decree of the creator.

Even the thought of a potential abortion and the abortion itself can have a profound emotional effect on both spouses and their respective families. A number of factors can influence the decision to terminate a pregnancy. The physical and mental status of a pregnant woman plays a role in her survival and future parenting ability. A woman could also simply not want to suffer through the ordeal of childbirth. Aesthetic concerns may be important to a husband who worries over his wife's potential weight gain. A young couple may desire leisure for some duration before undertaking the responsibility of raising a child. Another issue could arise wherein a terminally ill parent would be absent from the child rearing process, and does not want his or her spouse to raise a child alone. A woman with several children may not be able to handle the responsibility of an additional child. Her perceived lack of ability to provide adequate love and attention may cause her to worry about her children being led astray by negative influences. Another, more sobering example regards married women in war torn locales, where rape can lead to unwanted pregnancies. Do the previous situations, which only partly represent the scope of this topic, have any merit in Islamic Jurisprudence?

Jurists need the capability to determine who has the ultimate decision of abortion. They must provide clear avenues and boundaries for various courses of actions and their

limitations. This research aims to clarify, analyze, and potentially resolve some of the aforementioned issues. This analysis will attempt to assess the issue from various angles using texts from Quran, Hadith, Fiqh, and History that provide accurate and relevant guidance.

II. Forbidding the Killing of Any Living Being in Islam

Allah (SWT) made his creation for a purpose, and that is to worship him. Jinns preceded the arrival of mankind into the world. They created bloodshed and corruption. When the inception of mankind was about to take place Allah (SWT) put his decision in front of the Angels. Fearing the events of history would repeat and the anger of Allah would be churned, the Angels put their concerns forward. When going through the different passages of the maliciousness of murder cannot be neglected.

*And when thy Lord said unto the angels: Lo! I am about to place a viceroy in the earth, they said: Wilt thou place therein one who will do harm therein and will **shed blood**, while we, we hymn Thy praise and sanctify Thee? He said: Surely I know that which ye know not. (Quran 2:30)*

*O ye who believe! Squander not your wealth among yourselves in vanity, except it be a trade by mutual consent, **and kill not one another**. Lo! Allah is ever Merciful unto you (Quran 4:29)*

***Whoso slayeth a believer** of set purpose, his reward is Hell for ever. Allah is wroth against him and He hath cursed him and prepared for him an awful doom (4:93)*

*His self, however, prompted him to **kill his brother**, so he **killed** him and became one of the losers (Quran 5:30)*

*Because of that, We ordained for the children of Israel that **if anyone killed a person not in retaliation for murder** or for spreading mischief on earth, it would be as if he killed all mankind. And who saved a life, it would be as if he saved all mankind." (Quran 5:32)*

For what sin was she killed? (Quran 81:9)

And do not kill anyone whose killing Allâh has forbidden, except for a just cause. And whoever is killed wrongfully (Mazhunan intentionally with hostility and oppression and not by mistake), We have given his heir the authority [(to demand Qisâs, Law of Equality in punishment— or to forgive, or to take Diya (blood - money)]. But let him not exceed limits in the matter of taking life (i.e he should not kill except the killer). Verily, he is helped (by the Islâmic law)(Quran 17:23)

Say: Flight will not avail you if ye flee from death or **killing**, and then ye dwell in comfort but a little while. (Quran 33:16)

Abdullah bin Amr (R) narrates from Rasul Allah (SAW) that the Major sins are, associating partners with Allah, disobeying parents and **killing a soul** and a false oath (Sahih Bukhari)

Through the multitude of these passages, no doubt can remain that Islam does not take the matter of murder lightly. This is contrary to the allegations against Islam that it is a ruthless religion, wanting to propagate murder amongst its adherents.

III. Ensoulment

What is considered killing? Once the soul enters the body, the exiting of the soul again is the phenomenon we call death. Humans have been granted a great honor by Allah (SWT) as He mentions in the Holy Quran:

And indeed We have honoured the children of Adam, carried them on land and sea, gave them lawful, pure provisions, and greatly preferred them above many of those We have created.” (Quran 17:70)

The point of discussion here is in regards to the time ensoulment occurs. The Quran does not clearly state when the soul enters the body, the two passages that do describe the process are as follows:

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) clear 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. And among you there is he who dieth (young), and among you there is he who is brought back to the most abject time of life, so that, after knowledge, he knoweth naught. And thou (Muhammad) seest the earth barren, but when We send down water thereon, it doth thrill and swell and put forth every lovely kind (of growth) (22:5)

Verily We created man from a product of wet earth; (12) Then placed him as a drop (of seed) in a safe lodging; (13) 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 as another creation. So blessed be Allah, the Best of creators (23:12-14)

As you can see no detail of ensoulment is mentioned, the information on ensoulment is gathered from the following Ahaadeeth:

حَدَّثَنَا عُمَرُ بْنُ حَفْصٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا الْأَعْمَشُ، حَدَّثَنَا زَيْدُ بْنُ وَهَبٍ، حَدَّثَنَا عَبْدُ اللَّهِ، حَدَّثَنَا رَسُولُ اللَّهِ ﷺ وَهُوَ الصَّادِقُ الْمُصَدَّقُ إِنَّ أَحَدَكُمْ يُجْمَعُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا ثُمَّ يَكُونُ عَلَقَةً مِثْلَ ذَلِكَ ثُمَّ يَكُونُ مُضْغَةً مِثْلَ ذَلِكَ ثُمَّ يَبْعَثُ اللَّهُ إِلَيْهِ مَلَكًا بِأَرْبَعِ كَلِمَاتٍ فَيَكْتُبُ عَمَلَهُ وَأَجَلَهُ وَرِزْقَهُ وَشَقِيًّا، أَوْ سَعِيدًا ثُمَّ يَنْفَخُ فِيهِ الرُّوحَ.

“Each of you is gathered in his mother’s womb for forty days; then he becomes a clot of blood (‘alaqah) for the same period; then he becomes a clump of flesh (mudghah) for the same period. Then the angel will be sent to him, and will be commanded regarding four things, he will write his livelihood, his span of life, and his felicity or damnation [in the afterlife]. Then he will breathe the spirit into it ...” (Sahih Bukhari)

In the the narration in Sahih Bukhari, Sahih Muslim and in many other of the below mentioned books there is this difference “then he becomes a clot in this for an equal period.” The added phrase “in this” should refer here to the forty day period itself, because it was the last mention before the article “this”. This leads to the understanding that all of the three stages of: a drop (nutfah), clot of blood (‘alaqah), and clump of flesh (mudghah) do occur in that very period of forty days.

The madaar of the sanad is Sulaiman bin Mahraan Al A’mash from Zaib bin Wahb from Abdullah bin Masood (r) from Rasul Allah (SAW), only one place did I come across where the sanad was other then this. In Sharh Mushkilul Aathar by Tahawi he mentions Sulaiman bin Kuhail from Zaib bin Wahab, Sulaiman bin Kuhail passed away in 258 Hijri and Zaid bin Wahab passed away in 81 Hijri. In my humble opinion it should be Sulaiman bin Mahraan instead.

Similar narrations are found in:

1. Musnad Ahmed.
2. Sunan Abi Dawood Sijistaani.
3. Sunan Abi Dawood Tiyaalisee.
4. Sunan Al Kubraa lil Bayhaqi.
5. Mu’jm Shyookh Ibn Asaakir.
6. Musnad Ashaashi.
7. Musnad Al Humaidi.
8. Sharh Mushkilul Aathaar.
9. Tirmidhi.

While Dr. Serdar Demirel disagrees with the point that in the Hadeeth the mention of “in this for an equal period” does not mean 40 days as he states in his Abortion from an Islamic Ethical Point of View:

“The misunderstanding that concerned the three stages of the foetus said to consist of forty days each, equaling to a total of 120 days for the stages to complete came from the expression “*Fī dhalika*” “similar (period)”. For them it means each stage takes 40 days to complete. However, looking at the other narrations given earlier, we understand that “a similar period” refers to the gathering of the components of creation, which includes the three stages mentioned in the hadith. This means the collection of components (*Jam’al-Khalq*) or the components of human creation are collected together in the first 40 days. The expression “*Fī dhalika*” mentioned in the hadith and translated as ‘in it’ can also be read as “*Fī dhalika al-waqt*” (in that time). The word ‘time’ refers to the first forty days and nothing else.”

His statement goes against the literal meaning of the Hadith “mithl” which means equally, and from the apparent of the Hadith we understand that each cycle will be 40 days. Since the soul is from those matters in which Allah All Mighty has stated that we have not been given enough knowledge, we need to work with the little information we do have. Even though he argues that scientifically it is incorrect that ensoulment takes place exactly on the 120th day, we need to a lot a certain period of time which will be used as a maximum for the abortion and by using 120 days it goes along side with what the jurist have stated.

IV. Abortion in the Light of the Quran and Sunnah

The following verses are predominantly used to prove the impermissibility of abortion. Whilst some scholars argue that this is attributed to burying the children alive, nevertheless the Ayats are general.

*O Prophet! If believing women come unto thee, taking oath of allegiance unto thee that they will ascribe nothing as partner unto Allah, and will neither steal nor commit adultery **nor kill their children**, nor produce any lie that they have devised between their hands and feet, nor disobey thee in what is right, then accept their allegiance and ask Allah to forgive them. Lo! Allah is Forgiving, Merciful. (60:12)*

Say: Come, I will recite unto you that which your Lord hath made a Scared duty for you: that ye ascribe no thing as partner unto Him and that ye do good

*to parents, **and that ye slay not your children because of penury** - We provide for you and for them - and that ye draw not nigh to lewd things whether open or concealed. And that ye slay not the life which Allah hath made sacred, save in the course of justice. This He hath command you, in order that ye may discern. (QURAN 6:151)*

***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 (17:31)*

There are generally five views on abortion:

1) Impermissible - Sheikh Mohammed Ahmed Aleesh Maliki in Fath Al Ali Al Maalik "The usage of a medication that prevents pregnancy is not permissible. Once the sperm has entered the womb, it is not permissible for the husband and the wife or either of them to use such a medicine"

Allamah Shaami quotes Ali bin Musa "This action (of abortion once the sperm has entered the womb) is Makrooh (Tahreemi). Because once a sperm enters the womb of the women it will end up becoming a life form. So we will consider this sperm a living thing. The same manner if a person breaks the egg of a bird then he has to give recompensation of a bird" (Raddul Muhtar v.2 pg.412)

The same opinion is carried by Izzuddeen bin Salaam Ash Shaafee and Imam Ghazali and Ibnal Arabi al Maliki they tend to lean towards abortion being impermissible

2) Permissible until 40 days - Some Maalikiyyah and Hanaabilah go alongside this opinion.

3) Permissible until 120 days - Mufti Mahmood Hasan Gangohi in Fataawaa Mahmoodiyyah , Mufti Abdur Raheem Lajpuri in Fataawaa Rahimiyyah , Fataawaa Siraajiyah, Jaamiul Fataawa, Al Muhiitul Burhaani, Mufti Taqi Usmani in Contemporary Fataawaa, Sheikh Yusuf Qardhaawi (until the soul enters, interpreting that is 120 days) Shams ad Din Al Ramali in Nihaayah predominantly the Hanafi Jurists and those who chose to give fatwaa in this madhab chose this opinion

4) Permissible until the formation of hair and nails, impermissible afterwards - Mufti Ridhaa ul Haq, Opinions mentioned in Shaami, Hindiyyah, Muheet ul

Burhaani, this opinion is mentioned alongside the 120 opinion in most Hanafi texts, but its implication is alot earlier then 120 days.

5) Completely permissible -

Hindiyyah on the authority of Al Jawaahirul Ikhlai "Abortion is not permissible when the body parts appear, like the hair and nails and things of that sort, and if its body parts have not become clear then it is permissible. In our time, it is permissible in every situation and the fatwaa is on this as mentioned in Jawaahirul Ikhlai".

العلاج لإسقاط الولد إذا استبان خلقه كالشعر والظفر ونحوهما لا يجوز وإن كان غير
مستبين الخلق يجوز وأما في زماننا يجوز على كل حال وعليه الفتوى كذا في جواهر الأخطائي.

In my opinion the first view is incorrect because the Ayats in the Quran that mention the womb use the word "ما في الأرحام" which is used for things that do not have life. This is also one of the answers we give when people say that the Ayat that refers to the five things only Allah has knowledge of. The womb in present day can be identified through sonograms. So we say that the word "ما" is used, meaning the condition of the sperms gender and viability is unknown to us. Therefore, if the sperm is not living then it is permissible to perform an abortion for a valid reason. Additionally, if the sperm was living it would be impermissible to perform "Azl" because it would be equivalent to killing living things, which Shariah does not regard as living.

The second opinion that some Maalikiyyah and Hanaabilah say that up to 40 days is acceptable and from there onwards he basically says once the nutfah (sperm) does istiqaar in the womb it is not permissible. The same argument that was posed previously is presented here which will refute their claim, because the sperm does not become living until then. As far as the Shaafii opinion on abortion the fatwa is not given on his opinion of Ibn Hajr Haythami that when the nutfah does istiqaar you can not do abortion but rather Shabramallisi writes in Hasshiyah of Nihaayah that Ramali's opinion is predominant which is of 120 days.

The third opinion cannot be used completely because 120 days is not a set date where the soul is breathed inside but rather by then there is guarantee that the soul has been breathed. It can happen weeks before that as mentioned by Dr. Serdar Demiral. Basing it on the 120 hallmark can mean that we might be killing the child whilst the soul has already been put in.

As far as Hindiyyah mentioning the fatwa is on Al Jawaahirul Ikhlaati's ibaraat, that is incorrect, and the Hanafi fuqahaa do not agree with him.

The stance of Mufti Ridhaa ul Haq and Sheikh Mustafa Zarqaa makes the most sense. They state that as the time period comes closer to 120 days, the karaahiyyat increases. Also Mufti Ridhaa ul Haq states that once we realize the child has movement or some creation of his limbs has taken place then one should not do abortion unless the mother's life is in danger. Scientifically, the child gaining movement can happen as early as from the 12th week, but at times the mother does not feel it until the 20th week. Since Islam advocates us to increase our children.

V. Reasons for Abortion

Sheikh ul Islam Ibn Tayyimiyyah states in his Fataawaa:

“Abortion is impermissible through the consensus of the Muslims, and it is from that murder that Allah has stated in the Quran”

It is for this reason that the matter of abortion should not be taken lightly. Allamah Shaami mentions in his book Raddul Muhtar that Ibn Wahbaan says that from the valid reasons of abortion is that the mother's milk will discontinue if she gets pregnant and the father does not have money for a wet nurse. Others have said that if the woman is of bad character that is a valid reason for abortion, whilst others have said if a divorce is going to take place then it is also a valid reason for abortion. Cosmetic justifications and spacing the children are not acceptable reasons for abortion. Allamah Shaami writes:

مطلب في حكم إسقاط الحمل قوله (وقالوا الخ) قال في النهر بقي هل يباح الإسقاط بعد الحمل نعم يباح ما لم يتخلق منه شيء ولن يكون ذلك إلا بعد مائة وعشرين يوما وهذا يقتضي أنهم أرادوا بالتخليق نفخ الروح وإلا فهو غلط لأن التخليق يتحقق بالمشاهدة قبل هذه المدة كذا في الفتح وإطلاقهم يفيد عدم توقف جواز إسقاطها قبل المدة المذكورة على إذن الزوج. وفي كراهة الخانية ولا أقول بالحل إذ المحرم لو كسر بيض الصيد ضمنه لأنه أصل الصيد فلما كان يؤخذ بالجزء فلا أقل من أن يلحقها إثم هنا إذا أسقطت بغير عذر اه. قال ابن وهبان ومن الأعذار أن ينقطع لبنها بعد ظهور الحمل وليس لأبي الصبي ما يستأجر به الظئر ويخاف هلاكه.

ونقل عن الذخيرة لو أرادت الإلقاء قبل مضي زمن ينفخ فيه الروح هل يباح لها ذلك أم لا اختلفوا فيه وكان الفقيه علي بن موسى يقول إنه يكره فإن الماء بعد ما وقع في الرحم مآله الحياة فيكون له حكم الحياة كما في بيضة صيد الحرم ونحوه في الظهيرية.

قال ابن وهبان فإباحة الإسقاط محمولة على حالة العذر أو أنها لا تأثم إثم القتل اه. وبما في الذخيرة تبين أنهم ما أرادوا بالتحقيق إلا نفخ الروح وأن قاضيخان مسبوق بما مر من التفقه والله تعالى الموفق اه كلام النهر ح.

تنبيه أخذ في النهر من هذا وإنما قدمه الشارح عن الخانية والكمال أنه يجوز لها سد رحمها كما تفعله النساء مخالفا لما بحثه في البحر من أنه ينبغي أن يكون حراما بغير إذن الزوج قياسا على عزله بغير إذنها.

قلت لكن في البزازية أن له منع امرأته عن العزل اه.

نعم النظر إلى فساد الزمان يفيد الجواز من الجانبين فما في البحر مبني على ما هو أصل المذهب وما في النهر على ما قاله المشايخ والله الموفق.

Sheikh Mustafaa Zarqaa writes in his Fataawaa that as the time gets closer to the 120th day more serious excuses are needed to do an abortion. He says that until the 40th day minor excuses such as the family not having enough wealth, the spouses need to go on a journey for

work, or lack knowledge and will be unable to cope with children are valid. When the pregnancy starts approaching the 80th day and even closer to the 120th day, then only excuses such as the mothers health deteriorating are valid. After the 120th day the jurists have ruled that only the risk of death for the mother is a valid excuse. Their justification is that the mother is already living and has dependents so it does not make sense to sacrifice a living person who already has dependents with a person who is yet to still come in to the world. The lesser of the two evils will be chosen. Another valid reason is that if a child will carry a genetic disease then the abortion can take place before 120 days. Also scholars have stated that if a woman did zinaa she can do an abortion until the 120th day as stated in Jaamiul Fataawaa.

A more pertinent issue is that of rape such of which had taken place in recent history, based on these dire scenarios the scholars of that area give the fatwa of permissibility to do abortion. The following is an excerpt from a BBC article:

Rape, incest and adultery

Some scholars state that abortion where the mother is the victim of a rape or of incest is permissible in the first 120 days of the pregnancy.

Others say abortion for such reasons is never permitted.

It is reported that Bosnian women raped by the Serbian army were issued a fatwa allowing them to abort, but were urged to complete the abortion before the 120 day mark. A similar fatwa was issued in Algeria.

This demonstrates that Islamic law has the flexibility to be compassionate in appropriate circumstances.

In Egypt (where abortion is illegal) in June 2004, Muhammad Sayed Tantawi, the Grand Sheikh of Al Azhar, approved a draft law allowing women to abort a pregnancy that is the result of rape. The law would also make it legal for women to undergo an abortion more than four months after conception.

His decision caused controversy among other Muslim scholars: The mufti of Egypt, Ali Gomaa, said Tantawi's decision was wrong and violated the Qur'an's injunction that "forbids killing innocent souls." He said, "It is haram

[forbidden] to abort the fetus after life is breathed into it, in other words after 120 days." However, he added that a woman could terminate a pregnancy if she was in immediate danger.

(http://www.bbc.co.uk/religion/religions/islam/islamethics/abortion_1.shtml)

In these situations abortion will be permissible due to the delicateness of the circumstances.

VI. Contraception a Solution?

A solution to this problem is contraception. I will not go into detail rather I will just generally mention the opinions. Al Muheet ul Burhaane states:

اختلف أصحاب رسول الله ﷺ في العزل، فعلي ﷺ يكره ذلك، وابن عباس وابن عمر وابن مسعود رضي الله عنهم كانوا لا يكرهون ذلك، إلا أن علماءنا رحمهم الله قالوا في المرأة المنكوحه: يشترط رضا المولى عند أبي حنيفة ﷺ، وعندهما يشترط رضا الأمة، وفي الأمة المملوكة لا يشترط رضاها بلا خلاف، والمسألة على هذا الوجه مذكورة في «الجامع الصغير»، وفي «فتاوى أهل سمرقند»: أنه إذا عزل خوفاً من الولد السوء لفساد هذا الزمان فهو جائز من غير رضا المرأة.

- 1- Azl – This was practiced in the life of Rasul Allah (SAW) and is permissible with the permission of the women, because while doing so her sexual satisfaction is not fulfilled. Same rulings would apply to condoms, birth control pills, and twisting the tubes. Basically if some thing is done temporarily and it prevents the sperm from reaching the uterus then it is permissible.
- 2- Using permanent methods or using medicine of abortion, this will entail the rulings of abortion and will only be permissible in dire situations.

VI. Conclusion

As we can see, life is a sacred entity according to Islam. In this regard following the opinion of 120 days would be the limit of when the soul would enter the body, but from the

40th day only dire situations such as the mother's health should be considered. Once the mother feels movement in her womb or limbs begin to form then abortion should not take place, unless there is risk of death for the mother. Islam advocates us to increase our children, the Prophet (SAW) said, "Marry a woman who can give ample children, I will boast about the number of my Ummah." Ahaadeeth of this sort show that we should have numerous children. Abortion should be a last resort and only in dire situations should we allow it. Allah (SWT) knows best.

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Table of Contents

II. Forbidding the Killing of Any Living Being in Islam	4
III. Ensoulment	5
IV. Abortion in the Light of the Quran and Sunnah	8
V. Reasons for Abortion	11
Rape, incest and adultery	13
VI. Contraception a Solution?.....	14
VI. Conclusion	14
Bibliography	16