

The perception of Muslim motifs and juridical authorities of the concept of health and its function in issuing fatwas on abortion

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Abstract

Muslim jurisprudents and muftis issue fatwas on abortion based on *Ijtihad*. Three fundamental principles of *Ijtihad* indicate that jurisprudence has to consider the changes of the time and place, the public interest, and the least harm in issuing fatwas. However, many ignore these principles since they stick to the traditional concept of health which is their basis to issue fatwas. In this paper, we analyze how Islamic jurisprudence, through using these principles in perception of the concept of health, can help to solve the illegal abortion crisis in Muslim countries.

1. Introduction

Abortion is a global health issue and illegal and unsafe abortions lead to the deaths of an estimated 68,000 women every year. Many of these deaths occur in countries with a large Muslim population, and in some of these countries the laws are based on Islamic law. A summary of the legal provisions is presented later in this paper in Table 1.

Since two main sources of the polices for legislation about abortion are the political policies and religious transitions, in Islamic countries which follow the Islamic law (*shari'a*) the guidance on the act of abortion originates from religious decrees which jurisprudents extract from the sources of religion, *Qur'an* and tradition.

The jurisprudents extract some decrees based on dignity of human life and *hadith* (narrations from the prophet's life and decisions) in which the prophet and other religious leaders made decisions based on the concepts of human life. The key point here is that these decrees normally originated from the jurisprudents' interpretations of the *hadith* and also the main doctrine of the dignity of human life. These interpretations reflect the historical, cultural, social, political, economic, ethical, and scientific realities of the era. In other words, the jurisprudents issue the decree based on their knowledge of their time and concepts which they have, for example, the concept of human life and

human health. According to Muslim juridical attitudes, healthy life is identified as physical health although some of jurisprudents recently also consider mental health in issuing fatwas. Based on this approach, juridical authorities issue fatwas on abortion in the cases in which mother's life is endangered.

According to the holistic concept of health defined by the World Health Organization (WHO), health includes physical, mental, and social well-being and not merely the absence of disease.¹ Therefore, healthy life is considered as a complicated, integrated, intertwined, and multidimensional net which is related to all aspects of human life, such as physical, mental, social, and spiritual aspects. The elimination of any aspects of this multi-faceted phenomenon may lead to making harmful decisions on human life.

In this paper, we argue that the reductionist ideas of some Muslim juridical authorities on the concept of health follows on the traditional concept of health according to which the concept of health was limited to physical health. We will discuss that the adherence to the traditional concept of health causes us to ignore the fundamental principles of *ijtihad* (making effort to extract the rules form the *Qur'an* and *Sunnah*). These principles are:

- 1- Laws change with changes in time and place
- 2- Choosing the lesser of two harms
- 3- Preserving public interest²

The importance of discussing the subject is that not only we can see the effects of the religious ideas and decrees about the concept of the health on reproductive behavior in Muslim countries, even those such as Turkey with a secular parliament, but also they are seen among the Muslim migrants in the secular countries (Arousell & Carlbom, 2016).

2. Methods

This study is qualitative using published data and analyses, and academic papers on a variety of topics about abortion, and uses philosophical and theological analysis. This research looks at the issue through the lens of Islamic jurisprudence.

¹ Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

² Subhi Mahmassani, *Falsafat al- Tashri' fi al-Islam, Dar al-'Ilm lil-Malayin*, Beirut, 1961, pp. 200-207, 408; Azizah Y. al-Hibri, "Islamic constitutionalism and the concept of democracy." *Case western reserve journal of International law*. 24, 1 (1992): 3-10.

3. The traditional vs. the modern concept of health

The traditional notion of health was considered as being in a disease-free state. While this concept is silent about the mental and social aspects, the World Health Organization (WHO) refers to three aspects of health, physical, mental, and social well-being. According to Balgo (1978), health is defined as, “*a state of body and mind functioning well which affords man the ability to strive towards his both functional objectives and culturally desired goals.*”

In the past, healthy life was limited to physical life since human knowledge was limited to simple rules of the physical body. Although Plato, Aristotle and other philosophers dealt with the non-physical part of the human being as the *soul*³, their explanations were connected to moral rules. Therefore, their attitudes refer to the responsibility of the human being to improve her/his soul. However, psychology as a scientific field began around 200 years ago with Fechner’s critique of Kant’s stricture against quantitative study of mind.⁴ Then, many schools and fields developed in psychology. These developments in psychology clarified the effects of the physical body on the mental aspect, and vice versa.

On the other hand, new findings threw light on the dependence of the social and environmental factors on the physical and mental part of human beings. In fact, human life was considered as a system in three dimensions, physical, mental, and socio-environmental. Hence, the healthy life also depends on the three mentioned parts. As a result, in 1946, WHO declared that health includes physical, mental, and social well-being and not only physical health. Therefore, the policy of health in many countries changed. For example, the UK government published a document as a policy for health in 2010. This document states that, “*mental health and well-being are also critical dimensions of health. We know that mental ill health is responsible for a high proportion of the overall burden of ill health and prevalence has been rising. We also know that mental health and well being are important factors for physical health*” (Our Health and Well Being Today, 2010).⁵ Islamic countries, especially the countries mentioned in this research are member countries of WHO. Therefore, since the definitions, rules, and principles of WHO include the members, Islamic countries are also expected to follow its rules.

³ Aristotle's Psychology. *Stanford Encyclopedia of Philosophy*.

⁴ Thomas H. Leahey, *A History of Modern Psychology*, 3rd Edition, Pearson, 2001.

⁵ *Our Health and Well Being Today*, Department of Health, Wellington House, 2010, p. 3. www.dh.gov.uk.

In fact, by adding the social and psychological aspects, WHO (and thus all member states officially) acknowledge that the concept of health and illness are multi-causal, and the focus shifted from a strictly medical perspective in the absence of illness to evaluation of a person’s status (Boruchovitch & Mednick 2002). Over history we can see cycles of over-emphasis on law and over-emphasis on love as the guidance of religions and practice, but the abortion laws need to consider more of the love of life for all moral agents, not just for the fetus (Macer 1998).

4. The traditional concept of health in contrast to the fundamental principles of *ijtihad*

4.1. The first principle: Laws change with changes in time and place

As mentioned above, in the past, healthy life was considered as life without physical illness. Therefore, two other aspects of health, mental and social well-being were generally not considered among the authorities in health and among law makers. Muslim jurists were not exceptional. In issuing the fatwas, they considered the traditional concept of health, as they do today. However, based on the fundamental principle of *ijtihad*, laws change with changes in time and place.

In Islam, God has the supreme legislative power; however, God changed His commands which He sent to people through prophets. God said in Qur’ān, “*None of Our revelations do We abrogate or cause to be forgotten, but We substitute something better or similar: Knowest thou not that Allah Hath power over all things?*”⁶ We can find many examples on the issue.

Changing the divine rules and command (abrogation) does happen within a religion or between religions. For example, the Torah allowed the believers to divorce;⁷ however, Christ rejected it for his followers.⁸ Another example is about the abrogation of a divine law within Islam; God at first commanded to strict punishment for women who committed adultery; then God changed the punishment into the milder law.⁹ The reason behind these changes, in general, is that changes happened in the human cultural, social, historical, political, individual, and even physiological circumstances.

Therefore, the fundamental principle of changing the laws based on the time and place originate from God Himself. In many cases, the

⁶ 2: 106.

⁷ Book of Deuteronomy, chapter 2.

⁸ The New Testament, Gospel Matthew: 19; Gospel Luke: 16.

⁹ Qur’ān, 4: 15 and 16; 24: 2

juridical muftis changed their fatwas. For example, to have more than one wife for men in Islamic realm was accepted; however, in some Islamic countries such as Iran, it has caused many problems for families, children and women. Finally, some jurisprudents reformed their fatwas; in this case, they argue that if a woman considers this Islamic rule as an insulting law to herself as a human being, it should be prohibited in that society.¹⁰

4.2. The second principle: Choosing the lesser of two harms

One of the most important reasons for changing the laws (the first Principle) is to reduce harms in human life. For example, before Islam, marriage to two sisters at the same time for a man was allowed in some Abrahamic traditions¹¹ but Islam forbade it¹² since it was harmful to the sibling relationship. The clearest example of this principle is the prohibition of drinking wine in the Qur'ān. "They ask thee concerning wine and gambling. Say: 'in them is great sin, and some profit, for men; but the sin is greater than the profit'."¹³ God explained to people about the advantages and disadvantages of drinking wine, however, since its disadvantages are greater, Muslims were not allowed to drink although it was not forbidden in previous religions (e.g. Judaism and Christianity).

Therefore, the supreme lawmaker, God, enacts based on the less harmful side. Some jurisprudents also followed this principle in social cases; for example, marriage to non-Muslims often was forbidden but recently some Islamic scholars or jurisprudents rejected that and allow all people to marry to people in other religions.¹⁴

4.3. The third principle: Preserving public interest

The third principle highlights the public interest. In Islamic jurisprudence, there are many cases in which muftis issued or changed the fatwas because of public interest. For instance, in 1892, Ayatullah Shirazi, one of the muftis in Iran, issued a fatwa according to which using tobacco was forbidden (*ḥarām*) for Iranian Muslims; then, people broke all hookahs, so the king was forced to cancel the treaty with a tobacco company in UK. In another example, in 1808, Russia attacked Iran and the government needed to ask people to fight. Then, the king asked

the *mofties* to issue a *fatwa* for encouraging people to fight with enemy. They also allowed the government to take religious payments such as *zakāt* to provide the needs of the soldiers.¹⁵ These jurisprudents issued the *fatwa* based on a well-known principle in Islamic tradition; the profit of Muslim community must be kept, therefore, everything which is harmful or has disadvantage for Muslims should be avoided.

5. The concept of health on abortion according to principles of *Ijtihad*

The current *fatwas* on abortion indicate that abortion is generally forbidden except in serious conditions in which mother's life is endangered. Table 1 shows the abortion laws in various Islamic countries. The base of these laws are *fatwas* which are issued by religious authorities.

The first principle of *Ijtihad* refers to changes in terms of time and place. The concepts of time and place, indicate the social, cultural, economic, and political conditions. Jurisprudents issue *fatwas* according to the need of people for a better life. Also, they issue fatwas in conditions in which society faces a problem. Based on these facts, abortion is a crisis in most of the Islamic countries, such as Iran, Indonesia, Bangladesh, and Pakistan.¹⁶ To solve the problem, lawmakers need new *fatwas* in Islamic countries.

The crisis is not limited to individuals or families, but it affects all the society of a country and even the global society. The high rate of unsafe abortions, of unhealthy children, of maternal mortality, and of economic crises clearly demonstrates a need to revise the rules and fatwas.

According to the second principle of *ijtihad*, the juridical circles must issue a *fatwa* with less harm. We argue that legal abortion has some disadvantages such as physical and mental problems after the abortion; however, illegal abortions and unwanted children impose a huge cost on society. In legal abortion, mother and family will get over the physical and mental problems after a few weeks or a few months, but in the case of unsafe abortion, it may lead to the death of mother or serious infections or disabilities. Beside this, in the case of unwanted children, mother, the unwanted child, the existing children, family, and

¹⁵ Shykh Jafar Kāshif al-Ghetā, *kashf al-ghitā*, n.d., Qum, daftar tablghat islami.

¹⁶ "New project to help reduce unsafe abortion death rates in disaster zones" University of Leicester-led research aimed to implement intervention measures for reproductive health issues in disaster-prone countries. <http://www2.le.ac.uk/offices/press/press-releases/2015/november/new-project-to-help-reduce-unsafe-abortion-death-rates>.

¹⁰ <http://fararu.com/fa/news/10568>. 30 April 2008.

¹¹ Such as the marriage of Jacob to Shuaib's daughters.

¹² Qur'ān, 4: 23.

¹³ Qur'ān, 2: 129.

¹⁴ Ahmad, Ghabel. 2013. jurisprudence, functions and capabilities. SHariate Aqlani publisher, www. Ghabel. Net.

Table 1 The number of reasons (1, 2, ...) justifying legal abortions in Muslim-majority countries (2011)

1	2	3	4	5	6	7
Afghanistan L	Comoros L.PH	Algeria L.PH.MH	Burkina Faso L.PH.F.I/R			Albania
Bangladesh L	Iran L.F	Chad L.PH.F	Guinea L.PH.F.I/R			Azerbaijan
Brunei L	Jordan L.PH	Gambia L.PH.MH				Bahrain
Djibouti L	Mali L.I/R	Kuwait L.PH.F				Kazakhstan
Egypt L	Maldives L.PH	Malaysia L.PH.MH				Kyrgyzstan
Guinea-Bissau L	Morocco L.PH	Niger L.PH.F				Tajikistan
Indonesia L	Pakistan L.PH	Qatar L.PH.F				Tunisia
Iraq L	Saudi Arabia L.PH	Sierra Leone L.PH.MH				Turkey
Lebanon L	Sudan L.R					Turkmenistan
Libya L						Uzbekistan
Mauritania L						
Nigeria L						
Oman L						
Senegal L						
Somalia L						
Syria L						
United Arab Emirates L						
Yemen L						
18 (38.30%)	9 (19.15%)	8 (17.02%)	2 (4.26%)	0	0	10 (21.28%)

Grounds: L: Abortion allowed to save the life of the woman; PH: Abortion allowed in cases where the pregnancy threatens a woman's physical health; MH: Abortion allowed in cases where pregnancy threatens the woman's mental health; F: Abortion allowed in cases of fetal impairment; I/R: Abortion is allowed in cases of incest or rape; SER: Abortion allowed on additional enumerated grounds relating to such factors as a woman's age or capacity to care for a child.

Source: Gilla K Shapiro, "Abortion law in Muslim-majority countries: an overview of the Islamic discourse with policy implications," *Health policy and planning*, 2014: 29, 483-494.

the society will be influenced by physical, mental, and social health problems.

Finally, regarding the third fundamental principle of *ijtihad*, juridical authorities should consider the public interest which is not limited to just one society but relates to the whole of human society. For example, according to the Center for Biological Diversity, "A 2009 study of the relationship between population growth and global warming determined that the "carbon legacy" of just one child can produce 20 times more greenhouse gas than a person will save by driving a high-mileage car, recycling, using energy-efficient appliances and light bulbs, etc. Each child born in the United States will add about 9,441 metric tons of carbon dioxide to the carbon legacy of an average parent. The study concludes, "Clearly, the potential savings from reduced reproduction are huge compared to the savings that can be achieved by changes in lifestyle."¹⁷

¹⁷ "Human population growth and climate change". Center for biological diversity. <http://www.biologicaldiversity.org>.

According to the United Nations Population Fund, "human population grew from 1.6 billion to 6.1 billion people during the course of the 20th century. During that time emissions of CO₂, the leading greenhouse gas, grew 12-fold. And with worldwide population expected to surpass nine billion over the next 50 years, environmentalists and others are worried about the ability of the planet to withstand the added load of greenhouse gases entering the atmosphere and wreaking havoc on ecosystems."¹⁸

6. Conclusion

Ijtihad relies on three fundamental principles which indicate the flexibility of shari'a's laws in terms of the changes in the human societies. The concept of health on which jurisprudents issue their fatwas changed in the new world. In the past, this concept referred to merely the absence of illness. However, now, this concept includes physical, mental, and social well-being. Juridical authorities issue fatwas about abortion based on the previous concept of health. This fatwas ignore the fundamental

¹⁸ "Does population growth impact climate change?" Scientific American. <https://www.scientificamerican.com>.

principles of the *ijtihad* from which these fatwas originated.

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The Ethical Dilemma of Human Germline Editing

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1. Introduction

Gene editing provides us with the ability to design and edit genomes of biological entities giving them new properties. A new technology named the CRISPR/Cas9 system allows for fast and inexpensive gene editing (1). A piece of RNA, called guide RNA, contains a set of bases which are complementary to the target sequence on the DNA. The Cas 9 enzyme will follow the guide and will make a cut across both DNA strands. The affected cell then recognizes the DNA damage and tries to repair it; this is the point where scientists can use DNA repair methods to introduce a genetic mutation (2).

Deliberately manipulating the human germline for the avoidance of severe inherited diseases has generally been viewed as acceptable, whereas for 'enhancement' of human capabilities in some cases it has been deemed ethical, but in others not. A disease is any disturbance to the structure or function of the body. There are various types of diseases, ranging from metabolic to inflammatory, from neoplastic to degenerative, and of course,

there are also genetic diseases (3). If there was a way to prevent one of these diseases, should further exploration be encouraged? Assuming a solution is found, would it be acceptable to use the technology for human enhancement? Or are the ethical differences too great to overcome?

Should a temporary or permanent global ban on human germline editing be introduced and, if so, on what basis? Is there an ethical difference between using gene editing for the avoidance of severe inherited diseases or for 'enhancement' of human capabilities? Since the genetic changes made in the DNA of gametes and embryos will impact and will be inherited through the generations, a broad range of discussions on the prospect of enforcing a global ban due to the implications of this technology has begun (4).

2. Offside effects

Regarding the CRISPR/Cas9 technology, one of the concerns that have developed is regarding its accuracy. In theory, it will bind to the target sequence and no other region. However, when working with enzymes that cleave the chains of nucleotides, such as CRISPR/Cas9, there are off-target effects towards other locations in the genome that share similar arrangements with the destination (5). Since the side effects will be an issue, there have been cultural strategies (6) and chemical molecules (7) that have been reported to increase the efficiency of genome editing. Further examination is required to test the possible detrimental effects on cells or embryos exposed to such conditions.

However, in the meantime, bioinformatics has developed a predictive scoring system that identifies determinants that influence Cas9 efficiency towards targets, which should improve outcomes by decreasing the mosaicism rate (when the genetic makeup of some cells varies from others)(8).

3. Human embryos, a requirement for the development of research in the field

The concern regarding the inability to predict the consequences of such a procedure highlights the need for more data on the safety of such interventions, and techniques that could increase the efficiency (9). The preferred solution to discarding affected embryos would be using non-viable embryos. These embryos may result from In Vitro Fertilization, but consent from the donor couple must first be obtained.

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Post or send an E-mail with your address* (or include current address label)

To: E-mail: asianbioethics@yahoo.co.nz

Please charge my VISA / MASTERCARD card (circle) for NZ\$_____

Account # _____ **Expiry Date** _____

Signature _____ **Name:** _____

***Mailing address:** _____

E-mail: _____

Web site: <<http://eubios.info/ABA.htm>>