Abortion in the *Hanbali* School of Jurisprudence: A Systematic Ethical Approach

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1 Introduction: *Hanbali* School of Jurisprudence

The *Hanbali* School of Jurisprudence is attributed to Ahmad Ibn Hanbal (Imam Ahmad, d. 855 AD). It is the school adopted in Saudi Arabia, Qatar, Sharjah, and some limited parts of Oman, Egypt, and Syria. His jurisprudence comes close to the jurisprudence of the adherents to the early Muslim prophetical traditions (*ahl al-athar*). As a *Hadith* scholar, he paid due attention to *Hadith* narrations and critique and their hidden deficiencies (*ilal*). He composed the most voluminous collection of prophetic traditions. His legal reasoning draws apart from virtual questions and rational opinions that have no text to support.

Followers of Ahmad Ibn Hanbal recorded his statements and legal judgments and opinions issued in response to questions (*fatwa*) in the areas of *Hadith*, jurisprudence, creed, and others paying due attention to his statements and practices. He has written about thirty books, and his followers wrote *masâ'il* from him in about two hundred volumes, of which he reviewed and approved or amended only some parts. Followers of Ahmad Ibn Hanbal narrated his *fiqh* notes until Ahmad Ibn Muhammad al-Khallâl (d. 923 AD) wrote a book called *The Complete Collection of Ahmad's Scholarly Views* (*Al-Jâmi' li-'Ulūm al-Imām Ahmad*). His scholastic principles, terminology, and works were adopted and became a theme for study, teaching, and writing. However, the narrations reported from the founding Imam varied, because he used to follow the prophetic traditions and reports and changed his legal conclusion in line with the narrated texts that reached him and in conformity with the variable conditions of requesters of *fatwas*. Likewise, the adherents of the Imam deduced some statements and rules based on Imam Ahmad's *masâ'il* and

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statements, which were later called *wujūh* (viewpoints). Sometimes, the process of transmission from the Imam differed, and each chain of transmission came to be known as *ṭarīq* (a way of narration). Imam Ahmad followed an approach clearly distinguished from the other schools. His principles can be summarized as follows:

1. Following the texts: When a text existed, he issued a *fatwa* accordingly. He was keen on following the minor texts without any further interpretations.
2. Tracing the *fatwa* of the Prophet's Companions: Whenever a Companion's *fatwa* existed over which no other Companion disputed, he abided by it exactly. However, when the statements of the Prophet's Companions varied, he chose from them the nearest to the Qur'an and *Sunna*.
3. Depending on weak traditions: When no other text contradicted the weak tradition, he depended on the weak tradition and gave it precedence over rational *qiyâs* (analogical deduction).
4. *Qiyâs*: When he found no evidence in the previous sources, he resorted to *qiyâs* and used it when necessary in isolation from dependence on mere opinions as much as he could.

Exploring the issue of abortion from the *Hanbali* perspective is somewhat difficult, and therefore, some recent researches lacked accuracy in identifying the *Hanbali* view in this issue (e.g., Yâsîn 2008, p. 204–206; *al-Mawsū'ah* 1983, p. 58–59), for two reasons: First, the existence of several narrations reported from the founding Imam and the varieties of *wujūh* (viewpoints) deduced by the *Hanbali* jurists, let alone the multitude of ways of transmitting the statements of the Imam or the school.

Second, many juridical rulings are related to abortion, and they occur in a number of *fiqh* chapters. As per the classification of jurists, abortion is mentioned in chapters of *al-Tahârah* (purification), *al-Janâ'iz* (funerals), *al-Zakâh* (obligatory charity), *al-Itq* (emancipation), *al-'Idad* (waiting periods), and *al-Jinâyât* (criminal laws). In *al-Tahârah* issues, the *Hanbali* scholars discuss the time when a woman who has recently given birth becomes pure and the ruling on the permissibility of aborting the *nutfa* among other issues. In *al-Janâ'iz* issues, they study, for instance, the case when a pregnant mother dies while her fetus is moving inside her or when a pregnant Christian woman dies with her Muslim fetus, where to bury her? In *al-Zakâh*, they elaborate on the obligatory charity at the end of Ramadan incumbent on the fetus, whereas in *al-'Itq*, they explore the rulings of the *Umm al-Walad*, who is a female slave that becomes pregnant from her master, and the emancipation of the fetus among other issues. In the book *al-'Idad*, they discuss the time when the waiting period of a pregnant woman terminates, and in *al-Jinâyât*, they discuss the rules for crimes committed against the fetus.

Considering these two reasons, we relied in identifying the *Hanbali* view on two methodological bases: First, a systematic review of the fetal rulings in the various chapters in an interrelated manner with focus on careful examination into the underlying reasons of the *Hanbali* scholars that differ from one case to another in order to

grasp the system of juridical thought about abortion in the *Hanbali* School and, second, a comprehensive review of the *Hanbali* literature in its four forms:

(i) The books that state the generally accepted views of the *Hanbali* School, such as *al-Muntahâ* by Ibn al-Najjâr and *al-Iqnâ'* by al-Ḥijjâwî.
(ii) The books that survey the numerous narrations within the school, such as *al-Inṣâf* by al-Mirdâwî and *al-Furū'* by Ibn Mufliḥ.
(iii) The books that focus on citing the arguments of the *Hanbali* School in support of its rulings, such as *al-Mughni* by Ibn Qudamah and *al-Mubdi'* by Ibn Mufliḥ.
(iv) The books that discuss the *Hanbali* maxims of *fiqh*, such as *al-Qawâ'id* by Ibn Rajab.

2 The *Hanbali* View of Abortion

For jurists in general, the fetus goes through four stages of developments: *nutfa* (mixed of male and female gametes), *alaqa* (a clot of blood), *mudgha* (chewed piece of meat), and ensoulment. The majority of Qur'anic exegetes and jurists maintain that the *nutfa* refers to the sperm of man and ovum of woman and the *alaqa* refers to the semisolid clot of blood whereas the *mudgha* signifies a piece of flesh. The jurists deduced these stages from the text of the Qur'an as God says: "And indeed We already created man of an extraction of clay. Thereafter, We made him a sperm-drop, in an established residence. Thereafter We created the sperm-drop into a clot, (or: embryo) then We created the clot into a chewed up morsel, then We created the chewed up morsel into bones, then We dressed the bones (in) flesh; thereafter We brought him into being as another creation. So supremely blessed be Allah, The Fairest of creators" (23: 12–14).

The period of each stage is forty days, which the jurists generally determined in pursuant to the tradition reported on the authority of Abd Allâh Ibn Masûd who said, the Messenger of Allah said, "Verily the creation of each one of you is brought together in his mother's womb for forty days in the form of a *nutfa*, then he becomes an *'alaqa* for a like period, then a *mudgha* for a like period, then there is sent to him the angel who blows his soul into him and who is commanded with four matters: to write down his *rizq* (sustenance), his life span, his actions" (al-Bukhârî 1998, *Hadith* No. 3208; Muslim 1998, *Hadith* No. 2643).

In order to determine the beginning of pregnancy, the *Hanbali* scholars consider the stop of menstruation as an indicative in the issue of waiting periods (see Ibn Qudâmah 1968, 7:455). It indicates pregnancy, but it is not a proof for its occurrence. After surveying the issues in various chapters of *Hanbali* jurisprudence, it seems that the *Hanbali* scholars and others make a number of legal rulings dependent on the "beginning of pregnancy" on the first day the sperm holds on to the uterus, a fact indicated in some *fatwa* issued by the Permanent Committee for Scholarly Researches and *Iftâ* in Saudi Arabia (see Al-Bahûtî 1993, 1/646, 2/619; *al-Mawsû'ah* 1983, 30/295; the Permanent Committee's *fatwa*, number: 17576).

Islamic jurists are unanimously in agreement that abortion is forbidden after ensoulment. However, they differed as regards the abortion during the three stages before ensoulment. For the *Maliki* school, abortion is absolutely forbidden even at the earliest stage of *nutfa*. The *Hanafi* and *Shâfi'i* schools maintained that abortion is absolutely permissible before ensoulment. The *Hanbali* adopted a middle stance between impermissibility and permissibility; they permitted abortion when it is only a *nutfa* and forbade it when it becomes *alaqa* or *mudgha*. Other opinions within each school also exist and overlap. However, for the *Hanbali*, the ruling on abortion varies in accordance with the development stages of fetal life and in line with different conditions, whether ordinary or exceptional. More details are to follow based on these considerations.

3 Legal Descriptions Upon Which the Ruling Draws

The *Hanbali* rulings on the fetus draw on three main concepts:

1. **Coagulation (al-Iniqâd)**: In this process, the *nutfa* is transforming into an *alaqa*, which is the semen transforming after its development into a thick solid blood attached to the uterus. Reviewing the *Hanbali* texts and rulings shows that they permit aborting the sole *nutfa* based on their argument that it is soulless, so no legal ruling is drawn on it because the *nutfa* has not been coagulated yet and, hence, may not be a "child coagulated." This is different from the *alaqa* that marks the first state of pregnancy, in which case they saw it forbidden to abort the *alaqa*, since it had coagulated, marking the beginning of the life of the fetus (Ibn Mufliḥ 1997, 7/74; Ibn Rajab 2004, 1/161; Al-Bahâtî 1993, 3/193; Ruḥaybânî 1994, 5/561, 1/267).
2. **Formation and proportion (al-Takhlîq wa-al-Taṣwîr)**: It is in this stage that a fetus begins to take the human shape in his/her creation and form appears and fetus starts having some human organs. The jurists made many rulings conditional upon this description or consideration, such as the postnatal bleeding, the waiting period that a woman observes following the divorce or husband's death, and the blood money, which is a sort of compensation paid by the offender to the family of the fetus among other issues (Ibn Rajab 1996, 1/488; Ibn Qudâmah 1968, 10/477; al-Zarkashî 1993, 2/335, 5/555; al-Mirdâwî 1956, 7/490). The formation or proportion may be apparent or hidden, and the testimony of midwives can clarify the facts (al-Zarkashî 1993, 7/544; Ibn Qudâmah 1968, 8/120; al-Mirdâwî 1956, 7/492; Ibn Rajab 1996, 1/487). The question then arises about the exact time of formation. Indeed, this is a very controversial issue in the *Hanbali* School on which three main views exist:

First: The formation takes place during the third forty-day stage, which is the generally accepted *Hanbali* view based on the above-quoted *Hadith* of Abd Allâh Ibn Masûd. For them, the minimum period in which the formation of a fetus becomes apparent is eighty-one days, and most often, the fetal form occurs within ninety days.

Second: The formation occurs early in the second forty-day period. A group of jurists narrated from Imam Ahmad Ibn Hanbal that if a bondwoman miscarries a child-shaped *alaqa*, she becomes *Umm al-Walad* and has the right to emancipation. This is the view of Ibrâhîm al-Nakha'i, who belonged to the generation of the Successors of the Prophet's Companions, and a statement attributed to *al-Shâfi'i* built on the consideration that the formation can take place in the *alaqa*. In their argument for this opinion, they cited the report of Ḥudhayfah Ibn Usayd that the Prophet said, "When forty-two nights pass after the *nutfa* gets into the womb, God sends an angel to it and gives it formation. Then He creates its sense of hearing, sense of sight, its skin, flesh, and bones..." (Muslim, *Saḥîḥ* Collection). A report from Abd Allâh Ibn Masûd also indicates that formation may occur before the third forty-day period as well. Ibn Rajab stated that physicians say that the *alaqa* may have formation and "lining" and the midwives testify to this fact (Ibn Rajab 2004, 1/162–166).

Third: The shaping of the *nutfa* (the outset of its formation) begins in the seventh day as implied in the report of Mâlik Ibn al-Ḥuwayrith that the Prophet said, "When God wills to create a human, and a man has an intimate relationship with his woman, his semen permeates all of her veins and organs until it is the seventh day when God Most High gathers it and brings it towards every vein of it (viz. of the semen now in the process of coagulation), with the exception of Adam" (Ṭabarânî, *al-Mu'jam al-Kabîr*, 19/290; *al-Mu'jam al-Ṣaghîr*, 1/82). In the Qur'an, God said, "Verily We created Man from *a drop of* mingled sperm *(amshâj*), in order to try him" (76: 2). A group of early exegetes interpreted *amshâj* to mean the *nutfa* with the veins intermingled therewith. Ibn Rajab said, "Scholars of medicine mentioned some information in line with this," i.e., the *nutfa* may be transformed in this period before being provisioned by the womb and later it may be nourished from it. Lining and dotting begin three days after this stage. After six days, namely, on the fifteenth day after the semen became attached to the uterus, the blood permeates all parts of the *nutfa* when it becomes *alaqa*. Later, the organs appear distinctively. After nine days, the head appears somewhat distinguished from the shoulders and the limbs from the fingers, but ambiguity is not entirely excluded. For them, the minimum period in which a male fetus is fashioned is thirty days (Ibn Rajab 2004, 1/163, 166).

However, the *Hanbali* jurists did not approve of this narration or statement and built no legal ruling or new legal case based on that. Imam Hanbali's famous opinion was built on the apparent meaning of Ibn Masûd's abovementioned report. Some *Hanbali* jurists availed themselves for this view of physicians in the context of their attempt to harmonize between the narrations and the physicians' statements as seen in the discussions of Ibn al-Qayyim and Ibn Rajab, whereas some commentators, e.g., Ibn Ḥajar al-ʿAsqalânî al-Shâfi'i, denied this view (Ibn al-Qayyim, 505,507; Ibn Rajab 2004, 1/163; Ibn Ḥajar 2001, 11/490–493).

In his attempt to synthesize the creation of a fetus within the first forty days with the report of Ibn Masûd that divides the stages into *nutfa*, *alaqa*, and *mudgha*, Ibn al-Qayyim said that the creation begins as hidden and then gradually appears. "The *takhlîq* gradually increases until it tangibly appears without the least hiddenness" (Ibn al-Qayyim, 507). Consequently, the *takhlîq* mentioned in the prophetic reports

has two meanings: the inception of creation following the first forty-day period as in Ḥudhayfah's report and the complete formation following the second forty-day period (Ibn al-Qayyim 1988, 173–174).

The same sort of differentiation is also found in the *Hanbali* texts, as they distinguish between the "beginning of the formation" or the "genesis of formation" and the existence of its form (*takhlîq*), apparent or hidden. They built several juridical rulings on these two images in their discussion of issues concerning the *Umm al-Walad*, the waiting periods, and the postnatal bleeding. Whenever a *mudgha* included the beginning of formation, it would take the rulings of the *alaqa* (Ibn Qudâmah 1968, 8/406). However, the major texts of the *Hanbali* School mention this differentiation in respect of *mudgha*, whereas some other texts of the School speak of "a body with no lining, such as the *muḍgha* and its like" which Qâḍî Abû Ya'lâ equally applied to *alaqa* and *mudgha* in which the beginning of human creation is not manifested (al-Mirdâwî 1956, 9/273; Ibn Mufliḥ 1997, 6/72; al-Kalwadhânî 2004, 1/379).

3. **Ensoulment:** Ensoulment is a description upon which many fetal legal rulings draw. For the majority of jurists, a fetus is legally a living human since the soul has been breathed into her. Some early scholars cited the Qur'anic verse "then We developed out of it another creature" (23: 14), in support of this fact. They argued that the soul is breathed into it after it was an inanimate substance (al-Qurṭubî 1964, 12/109). The soul thus transforms it from the inanimate status to the state in which it is named a person. That is why they unanimously agreed that it is impermissible to abort a fetus after ensoulment. It is also reported from Ibn Masûd that he interpreted God's statement about the unformed *mudgha*, "other than shapely created," saying "It would not be a living being and the uterus would eject it" (Ibn Qudâmah 1968, 2/398; Ibn Rajab 1996, 1/484–486). It is upon this description that the *Hanbali* scholars said that no funeral prayer is offered for the aborted fetus before ensoulment, since it is not legally dead unless the soul has left it; before the ensoulment, it is similar to inanimate matters and blood. This is the widely known view of Ahmad Ibn Hanbal. It is also the opinion of the Successor Sa'īd Ibn al-Musayyib and one of the statements ascribed to *al-Shâfi'i* (Ibn Rajab 1996, 1/487). For the *Hanbali* jurists, soul and life are not concomitant. Like plants, a fetus has a sort of growth and nourishment before ensoulment, but it has no motion of sense or will. When the soul is breathed into the fetus, her motion of sense or will joins her growth and nourishment; the fetus has two sorts of motion: willing self-motion initiated by ensoulment and accidental motion caused by membranes and humors (Ibn al-Qayyim, 509). That is why they based several legal rulings on the different description between the motion of soul and the body. The motion of the soul is known by the indication of the religious text, but such presence is uncertain, since the fetus is hidden in the mother's womb, and even if the fetus comes out, its life is only proved by its own crying as per the famous view of Ahmad Ibn Hanbal. In other words, "the mere motion or contractions are not a sign of life, because a fetus may issue such motions in her coming out from a narrow canal while its life is not assured." The

legal rulings thus vary depending on the various descriptions. For example, the funeral prayers are performed for the fetus after ensoulment, after the fetus has entered the fourth forty-day period when calculated in days. This is a sheer religious viewpoint. As to the worldly rulings, its crying after leaving the womb is the yardstick for receiving any worldly right (al-Zarkashî 1993, 6/148–149; Ibn Qudâmah 1968, 6/385). "The soul" is here a sheer religious concept based on the religious text to which science has no access. No difference is there among the scholars that the ensoulment of a fetus takes place after the third forty-day period of its age. Many scholars related the agreement on this issue, such as Qâḍî 'Iyâḍ al-Mâlikî, Badr al-Dîn al-ʿAyni al-Hanafi, and Ibn Ḥajar al-Shâfi'i. In affirmation of this view, Ibn al-Qayyim said, "We certainly believe that ensoulment of a fetus only takes place after the third forty-day period." Furthermore, Ibn Rajab asserted that "according to the narrations from the Prophet's Companions, ensoulment only takes place after four months as evidently declared in the report of Ibn Masûd" (ʿIyâḍ 1998, 8/123–124; al-ʿAynî 2001, 3/435; Ibn Rajab 2004, 167). In this regard, the narrations from Ahmad Ibn Hanbal varied; some related from him that "if the fetus' age is four months and ten days, so during these ten days ensoulment occurs and thus funeral prayers should be offered for it." However, another narration tells that "after completing four months and ten days, ensoulment occurs." According to the first narration, ensoulment takes place during the ten days after completing four months, which is Ahmad Ibn Hanbal's well-known view, whereas the second narration states that ensoulment occurs after completing four months and ten days as reported from Ibn Abbas.

4 The *Hanbali* Approach in Deciding the Ruling on Abortion

According to the *Hanbali* jurists, the rulings on abortion draw first of all on the textual approach whose landmarks can be summarized in the following:

1. They first follow the texts of the Qur'an and the *Sunna*. In fact, there are several statements issued by the Imam of the School as well as several numbers of prophetic traditions and their many different chains of transmission and detailed reports on the fetal life and related rulings. Therefore, like other schools of jurisprudence, the *Hanbali* jurists considered the above-quoted report of Ibn Masûd as central to the issue of fetal life developments and stages.
2. In their text-based approach, they follow the apparent meaning of texts, but when the narrations vary, they attempt to synthesize and reconcile them to apply them all.
3. The *Hanbali fiqh*, as evident in this issue and others, attaches great importance to the statements of the Companions of the Prophet, especially when there are many who merely give their opinion.
4. The discussion on the fetus and the rulings related to fetus are a religious issue connected to the issue of human creation and its phases upon which some

religious doctrinal and juridical rulings are built, such as the waiting period, offering the funeral prayers for the fetus, burial of the fetus, ensoulment, and the angel's writing of the fetus' fate, including its sustenance, actions, and its reward/punishment. That is why Ibn al-Qayyim explored the states and rulings of *nutfa* since its very beginning up to the ultimate end. In his conclusion, he said, "This is the last of the conditions of the *nutfa*, which is the first origin of a human being. There are many phases and conditions between this beginning and this end in which a human being is transformed from one state to another until s/he reaches the ultimate end of happiness or distress as preordained by the Almighty God" (Ibn al-Qayyim 1988, 205). The *Hanbali* legal views on the issue of fetus are established upon that methodology in isolation from the discussions of physicians, but some late jurists cited and discussed the statements of physicians in the context of addressing the fetal laws and commenting on their relevant prophetic traditions. Such discussions can clarify the methodology of jurists in elaborating on this sort of legal rulings. Ibn al-Qayyim al-Hanbali was one of the most important of those jurists, who cited the texts of Hippocrates and commented on them with focus on their conflict with the texts of revelation and the related juristic understanding (Ibn al-Qayyim 1988, 171–176). Ibn al-Qayyim was very sharp in his replies to Hippocrates' arguments about the fetal life phases arguing that they were in conflict with the wordings of the revelation. He even went on to criticize in length the approach of Hippocrates and other physicians who followed his example regarding the recognition of the fetal life phases with focus on differentiating between their methodology and the methodology of *fiqh* based on revelation.

The central methodological point stated by Ibn al-Qayyim is that the *nutfa* transformations through different phases can only be known through revelation or actual observation. The revelation divides the developments of the fetus into three phases, each of which lasts for forty days as if "you observe it in kind." Therefore, the medicine of Hippocrates that differs from this meaning lacks observation. All what Hippocrates has is "an invalid analogy and anatomy based on no empirical observation." The knowledge of physicians is based on anatomy that is unable to perceive what are beyond it, namely, the outset of pregnancy and the changes of the *nutfa* phases. The issue only draws on speculative human knowledge versus the impeccable divine revelation. Their human knowledge is of several sources; some are natural gathering of truth and falsehood, some are mathematics of little benefits, and some are based on astronomy whose errors are much greater than their right conclusions. In all of their knowledge, they depend on some universal rules, analogies, anatomy, and inductive reasoning. Their knowledge is not empirical in the sense that they do not observe each phase since the beginning of fertilization until the end of pregnancy (Ibn al-Qayyim 1988, 175–176).

This kind of imagination about the erroneous medical methodology against the impeccable revelation is reiterated centuries later in the writings of Ibn Uthaymîn, a senior Saudi scholar of *Wahhabism*, despite the huge developments in the area of medicine and its methodologies. In his argument, Ibn Uthaymîn states that the views

of the physicians are not an impeccable revelation and, therefore, their findings may prove untrue. Then, the *Shari'a* rulings must take precedence over their views in case of a contradiction, regardless of the consequences. Any consequence that results from following the *Shari'a* is godly made, not human made. Evidently, there is a big difference between "God's actions and human actions," and the human rational judgment of things as good (*taḥsîn*) is denied, because each action that goes against the *Shari'a* is not good (Ibn Uthaymîn 2007, 13/344–345).

5 Abortion in Ordinary Conditions

Nutfa **Stage** The *Hanbali* jurists expressed three different legal views on this case:

First: Permissibility, which is the main *Hanbali* viewpoint. The *Hanbali* jurists stated that it is permissible to use lawful medication to remove the *nutfa* before the passage of forty days (Ibn Mufliḥ 2003, 1:393; al-Mirdâwî 1956, 1:386; al-Ḥijjâwî, 1:72; Al-Bahûtî 1993, 1:121).

Second: Prohibition, ***which is the opinion of Ibn al-Jawzî and Ibn Uthaymîn; a contemporary scholar preferred it saying it is either disliked or forbidden unless under urgent necessity (Ibn al-Jawzî 1981, 376; al-Mirdâwî 1956, 1:386; Ibn Uthaymîn 2007, 13:342). It is also the view of the Permanent Committee for Scholarly Researches and Iftâ, Saudi Arabia, and the Council of Senior Scholars. They restricted permissibility of removal of the*** *nutfa* ***to the case of fending off some pending harms or securing some legally considered interests. Each case of aborting the*** *nutfa* ***should be carefully assessed by medical and legal experts. Legal excuses for spontaneous abortion do not include the following:*** The expected tiring burdens of rearing and educating the child

- The financial disabilities, as one may fear lest she/he should fail to afford the costs of rearing and education
- Birth control, as one may think that she/he has enough children (Permanent Committee's *fatwas*, No. 17576; the resolution No. (140) by the Council of Senior Scholars dated 20/6/1986).

Third: Choosing the safe side ***(less encouraged), which is the opinion of Ibn Taymiyyah, in which a woman is advised not to use medication that hinders the sperm from proceeding to the uterus (Ibn Taymiyyah 1987, 1/299). It is equally applicable to*** *coitus interruptus* ***and abortion of the*** *nutfa. Alaqa and Mudgha* Stages There are two views in this case:

First: Impermissibility of abortion, which is a generally accepted view in the *Hanbali* School (Ibn Rajab 2004, 1/161; Ruḥaybânî 1994, 1/267). Ibn Taymiyyah said, "If abortion was purposefully committed, a strict punishment should be enforced to deter people from this act. Indeed, it is an action that discredits one's religion and personal integrity" (Ibn Taymiyyah 2005, 34/102).

Second: Permissibility ***of abortion before ensoulment without any restriction by the various stages, which is the apparent view of Ibn ʿAqîl. In this regard, Ibn Muflih said, "It has some justification" (Ibn Muflih 2003, 1/393; al-Mirdâwî 1956, 1/386; Al-Bahûtî undated, 1/220).*** Abortion After Ensoulment Jurists are unanimously in agreement that abortion is forbidden after ensoulment, because it is a form of homicide. Well-known narrations from Ahmad Ibn Hanbal indicate that the soul is breathed within ten days after the passage of four months (Ibn Rajab 2004, 1/169; Ibn al-Qayyim, undated, p. 509).

6 Abortion in Exceptional Circumstances

The previous rulings are applicable to natural or ordinary circumstances in a general sense, but some exceptional circumstances or special situations may impose new exact rulings as should be later explained in the *post-nutfa* stages when abortion is permissibly tolerated in the *Hanbali* School. These exceptional circumstances include the following:

Abortion When the Mother's Life Is at Risk Abortion is permissible in stages of *alaqa* and *mudgha* when necessary, e.g., if the mother's life is at certain risk were the pregnancy to continue (the *fatwa* of the Permanent Committee, No. 17576; the resolution No. (140) by the Council of Senior Scholars dated 20/6/1986).

Abortion After Ensoulment if the Mother's Life Is in Danger Texts of early jurists indicate that it is absolutely forbidden, which is generally applied to cases when the mother's life is at risk or not (see *al-Mawsûʿah* 1983, *2/57*). However, contemporary jurists disputed over this issue; for Ibn Uthaymîn, abortion after ensoulment is forbidden even if necessary, because it is a form of killing a human being and it is not permissible to save a life by killing another person. Furthermore, the human dignity must be preserved and exempted from interventions similar to those applied to animals. Evidently, the death expected to follow the pregnancy is a divine action, not human. The Permanent Committee for Scholarly Research and *Iftâ* and the Council of Senior Scholars in Saudi Arabia maintained that after the third stage and with the completion of the fourth month of pregnancy, it is not lawful to perform an abortion unless a group of reliable and specialized physicians determine that the fetus may cause the death of the mother if pregnancy continues. This decision must also be taken after sparing no effort to save the life of the fetus. In fact, abortion is allowed according to the legal principles to prevent the worst of two bad alternatives and to realize the greater of two benefits (see the *fatwa* of the Permanent Committee, No. 17576; the resolution of the Council of the Senior Scholars, No. 140, dated 20/6/1986).

Abortion in Case of Adultery (Zinâ) The jurists used the term *zinâ* to express the illicit complete sexual union between a man and a woman outside the marriage

contract whether by mutual consent or by force (rape) (al-Dardîr, 2/218; al-Bujayramî 1995, 3/418; al-Jamâl, 4/177).

The old jurists did not explicitly discuss abortion in case of *zinâ*. It seems that abortion in case of *zinâ* subjects to the same general rulings of abortion without any difference, especially because the *Hanbali* jurists believe that abortion during the first forty days is permissible even if no necessity calls for it.

Abortion of a Deformed Fetus the knowledge of the detailed developments of a fetus and whether she/he is natural or deformed is a modern-day issue, and to the best of my knowledge, the traditional jurists left no text or judgment in this respect. The *Hanbali* jurists of Saudi Arabia have been in agreement that it is impermissible to abort the deformed fetus for several reasons: the conjecture or knowledge of doctors is not decisive, and God may change the fetus to come out healthy and natural. Fetal deformation is not a legal excuse for abortion (see the *fatwa* of the former grand mufti of Saudi Arabia Sheikh Ibn Bâz, *al-Fatâwâ* 2004, p. 275; the repeated *fatwa* of the Permanent Committee numbers 18309, 17073, 15961, 15963, 12946; Ibn Uthaymîn 2007, 13/343).

Abortion Without the Husband's Permission The *Hanbali* jurists clearly state that a woman may take any permissible medical dosage with the aim to miscarry the *nutfa* or terminate the menstruation, whether her husband permits it or not. In disagreement to this, Qâḍî Abû Ya'lâ said, "Like coitus interruptus, it is only permissible when the husband permits it." In his comment on this statement, al-Mirdâwî said, "It is the right view and they narrated from the founding Father of the school that a wife should have her husband's permission." For them, the controversy draws on whether the procreation of a child is a sole right to the husband or to both spouses. For that reason, they gave the same ruling to the abortion of the *nutfa* after having settled in the uterus as to coitus interruptus. For the *Hanbali* School, the procreation of new child is a right shared by both spouses; a husband is not permitted to make coitus interruptus without his wife's permission, "because she has an (equal) right to the child and may suffer due to coitus interruptus." Likewise, a husband or anyone else is forbidden to give her any medication, without her knowledge, that terminates menstruation or removes the *nutfa*, "because thereby he violates her right to attain the desired child." It should be understood from their discussion that they only permit women to drink a medical dosage for the sake of aborting the *nutfa* or terminating the menstruation "when the husband has not disapproved of that; if he debars her from that, she must not drink it because he has an (equal) right to the child." In conclusion, reviewing these questions and legal grounds shows that the *Hanbali* School draws on the shared right; like a husband, a wife has an equal right to the child (Al-Bahûtî 1993, 1/122, 3/44; al-Mirdâwî 1956, 1/383; Ruḥaybânî 1994, 1/268). Therefore, abortion, if to be done, should be by their mutual consent; otherwise, the one who does it alone is religiously sinful.

Birth Control Pills Taking birth control pills is different from abortion, because the former takes place before pregnancy while abortion only occurs after pregnancy.

However, they are similar because both prevent procreation. Here, we explore this question in supplement of the various sides of the research. Birth control may be temporary or permanent. The temporary birth control is permissible, since the *Hanbali* School – as mentioned above – permits a woman to take any permissible safe medication to terminate her periods or miscarry. Evidently, terminating her periods prevents pregnancy. This permissibility is apparently absolute, whether it is necessary or not (Ruḥaybânî 1994, 1/268; Ibn Mufliḥ 2003, 1/392; al-Mirdâwî 1956, 1/393). For Ibn Taymiyyah, as mentioned before, it is safer not to do it (Ibn Taymiyyah 1987, 1/299). Sheikh Muḥammad Ibn Ibrâhîm, an eminent Sheikh of the Najdi *Da'wah*, confined permissibility to the state of necessity, such as birth planning under some family or health conditions, e.g., the weakness of the woman, expectation of harm due to pregnancy, and similar excuses (*al-Fatâwâ* 2004, p. 307). As to the permanent control of birth which the jurists call "prevention of pregnancy," it is forbidden in the *Hanbali* School (Ruḥaybânî 1994, 1/268).

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