

The Jurisprudential Principles Affecting the Ruling on Therapeutic Abortion: A Comparative Analytical Study

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ABSTRACT

This study analyzes the jurisprudential principles that form the foundation of the ruling on therapeutic abortion in Islamic jurisprudence, with a focus on contemporary applications in light of medical challenges. The research employs an analytical methodology to examine Islamic legal texts and a comparative approach to evaluate them against modern medical legislation. The study concludes that therapeutic abortion is permitted under Islamic law when the mother's life is at imminent risk, based on principles such as "Averting harm takes precedence over procuring benefits" and "Necessities permit prohibitions." The study also highlights the scholarly disagreement concerning the stage of ensoulment (*nafkḥ al-rūḥ*), where some jurists prohibit abortion outright, while others allow it to save the mother's life.

Keywords: *Therapeutic abortion, jurisprudential principles, necessity, nafkḥ al-rūḥ, balancing harms.*

1. INTRODUCTION

With the rapid advancements in medical science, jurisprudential issues related to medicine have become central to scholarly and legal debates, particularly those concerning surgical interventions that impact human life at its most sacred stages, such as pregnancy. Therapeutic abortion is among the most controversial topics, as it lies at the intersection of conflicting interests: the protection of the mother's life and the preservation of the fetus, which is a living entity entitled to certain legal and religious rights.

Islamic jurisprudence has long relied on a comprehensive set of legal maxims that guide rulings on emerging issues, such as "*Averting harm takes precedence over procuring benefits*" and "*Necessities permit prohibitions*." Today, these principles are applied to complex medical dilemmas, including therapeutic abortion. However, the challenge lies in how to apply these maxims in light of modern medical technologies capable of diagnosing risks with unprecedented precision. This raises fundamental questions: What are the limits of *Shari'ah*-based necessity (*ḍarūra*)? And how can a balance be struck between two equally sacred rights?

This study aims to shed light on the jurisprudential framework governing therapeutic abortion, drawing upon the rich and flexible principles of Islamic legal tradition while linking them to contemporary medical applications. The objective is to present a balanced perspective that adheres to Islamic legal foundations without overlooking the complexities of modern medical practice.

2. RESEARCH PROBLEM

The permissibility of therapeutic abortion raises significant jurisprudential and legal questions, especially given modern medical advancements that allow precise diagnoses of risks affecting both the mother and fetus. There remains ambiguity in the practical application of Islamic jurisprudential principles to emergency cases, particularly regarding the permissibility of abortion after *nafkḥ al-rūḥ* (120 days of gestation). Additionally, questions arise regarding the extent to which contemporary medical laws align with Islamic legal principles.

3. RESEARCH OBJECTIVES

This study aims to:

1. To analyze the jurisprudential principles affecting the ruling on therapeutic abortion.
2. To define the Islamic legal framework governing abortion at different stages of pregnancy.
3. To compare classical and contemporary scholarly views in light of modern medical developments.
4. To propose a legislative framework that reconciles Islamic principles with current medical realities.

4. LITERATURE REVIEW

- **Maḥmūd Shaltūt (1963)** argued that preserving the mother's life takes precedence over the fetus's, as her life is already established with full legal rights.
- **Egypt's *Dār al-Ifṭā'* (1968)** conditioned abortion's permissibility on the approval of two specialized physicians, emphasizing the need to exhaust all options to save the fetus.
- **Alī Jum'ah (2007)** ruled that abortion after *naḥkh al-rūḥ* is permissible only to save the mother's life, provided there is conclusive medical evidence from trustworthy doctors.

5. RESEARCH METHODOLOGY

The study employs four main methodologies:

- **Analytical Method:** Examines jurisprudential texts from the four Sunni schools, with a focus on sources such as *Al-Mughnī* by Ibn Qudāmah and *Al-Ashbāh wa al-Nazā'ir*.
- **Comparative Method:** Compares juristic rulings with contemporary medical laws, such as the French Health Law and Egypt's Medical Liability Law.
- **Inductive Method:** Extracts general principles from prophetic traditions, such as the hadith: "*Seek treatment, for Allah has not made a disease without a cure.*"
- **Descriptive Method:** Analyzes real-world cases, such as abortion for severe fetal deformities that endanger the mother's life.

6. RESULTS AND DISCUSSION

1. Key Jurisprudential Principles Affecting the Ruling on Therapeutic Abortion:

Principle of Averting Harm (*Dar' al-Mafāsīd*):

- Justifies abortion when the mother's life is at risk, as losing the mother is deemed a greater harm than losing the fetus (Ibn Nujaym, 970 AH).
- Modern Application: This principle is reflected in abortion laws in Kuwait and Saudi Arabia that permit abortion in life-threatening cases.

Principle of Necessity (*Ḍarūra*):

- Permits abortion as an exceptional measure, provided the danger to the mother is real and not speculative (Al-Suyūṭī, 911 AH).
- **Criticism:** Some scholars, like Ibn 'Ābidīn, reject abortion after *naḥkh al-rūḥ*, arguing that the fetus is considered a protected soul (*nafs muḥarrama*) (Ibn 'Ābidīn, 1992, vol. 2, p. 258).
- **Principle of Balancing Harms (*Muwāzanat al-Maḍārr*)**
- Applied when the mother's and fetus's lives are at risk, prioritizing the mother as her rights are already established (Shaltūt, 1963).

2. Scholarly Disagreement on Abortion After *Naḥkh al-Rūḥ*

Prohibitionist View:

- Scholars such as Ibn 'Ābidīn categorically prohibit abortion after *naḥkh al-rūḥ* (120 days), citing the hadith: "It has been decreed for the son of Adam his share of fornication, which he will inevitably commit." (Ṣaḥīḥ al-Bukhārī).

Permissive View:

- Contemporary scholars, including 'Alī Jum'ah and Maḥmūd Shaltūt, allow abortion after *naḥkh al-rūḥ* if medically

necessary, based on expert testimony (Dār al-Iftā', 1968).

3. Contemporary Applications and Challenges

Fetal Deformities:

- Jurists differ on whether fetal deformities justify abortion. Egypt's Dār al-Iftā' permits it if the mother's life is endangered, while Saudi Arabia's Senior Scholars Authority only allows it when there is a direct threat to the mother's life.

7. MODERN MEDICAL TECHNOLOGIES

- Raises questions about physician liability in unsuccessful surgical interventions, especially with robotic-assisted procedures.

8. CONCLUSIONS

- Therapeutic abortion is permitted in Islamic law when the mother's life is at imminent risk, based on the principles of necessity and balancing harms.
- The main jurisprudential debate centers on abortion after *nafkh al-rūḥ*, with some scholars strictly prohibiting it, while others allow it under stringent conditions.
- Medical laws should integrate Islamic principles, such as requiring expert medical testimony and the approval of a specialized committee.

9. FINDINGS AND RECOMMENDATIONS

1. Findings:

1. Islamic jurisprudence permits abortion before ensoulment under specific circumstances.
2. Modern medicine supports early diagnosis for informed decision-making.
3. A unified legal-medical framework is required to address the complexities of fetal termination.

2. Recommendations:

1. Issuing standardized fatwas by major Islamic legal councils on fetal termination.
2. Enhancing collaboration between Islamic scholars and medical experts to define clear ethical and legal guidelines.
3. Raising awareness on the importance of early medical screenings for fetal anomalies.

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