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Rights Of Unborn in Perspective of Islamic Law and International Human Rights Law: A Comparative Analysis

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ABSTRACT

The right to life is guaranteed specifically under every legal framework as well as generally supported in all religions in the world. Islam is the religion of humanity. The right to life has precedence over all rights except when it is taken away by the principles of Shariah. Under Islamic law, the unborn child holds an extraordinary status, and the rights of the fetus are outlined as an entity. The unborn acquires the status of individuality under Islamic Shariah. There are certain protections and rights granted to the fetus, and the violation of such rights leads to punishment. Different Muslims Scholars prohibit the subject of abortion and permit abortion to be carried out in certain circumstances. In contrast, International Human Rights Law promotes Abortion and demands that abortion be legalized to carry out safe abortions. Shariah extends its wings and provides some exceptions to the prohibition of abortion which includes if there are certain risks or fetal anomalies. On the other hand, IHRL completely favors the protection of women's dignity and ensures the right of women to their bodies. This study has firstly analyzed whether the unborn is granted the status of a person. This paper discusses the interpretation of Abortion; and its definitions from the view of different scholars. Secondly, it has argued about the subject of Abortion in the view of Muslim Scholars and Jurists. Thirdly it has investigated the penalties imposed in violation of such protections, and finally, the comparison on the rights of the unborn by analyzing human rights in Islamic law and IHRL. The researcher has employed the use of the doctrinal methodology. The researcher has gathered the relevant data through primary and secondary sources of the Shariah, articles, case laws, conventions, journals, and treaties on the subject of IHRL.

Keywords: *Right to life, Abortion, Fetal anomalies, Fetus, Unborn, Shariah, IHRL*

INTRODUCTION

Every human being is accorded with right to life, regardless of ethnicity, color, gender, sex, or any other discrimination. Thus, such right is protected in every manner (United Nations). The right to life is a fundamental right that is conceded in Islamic Shariah as well as International Human Rights Law. The deprivation of life exercised in a tyrannical manner is strictly prohibited. Abortion is widely common and practiced around the world. However, it is still the matter that raises queries, as when life came into existence, the rights of a woman, the existence of an unborn baby, the controversial indifference between religious and liberal schools of individuals, and the contradictory rights between the conceiving mother and the fetus inside her womb.

The right to life is guaranteed by Shariah and International Human Rights Law to all individuals and shall only be deprived of such right in certain circumstances. As it is stated in the Sacred book, the Holy Quran,

"Do not take a human life made sacred by Allah except with through the due procedure of law" (Al Quran 17:33).

Islam and various other religions protect the right to life of an unborn and its deprivation is strictly prohibited. Certain risks are connected to it as it may cause harm to the conceiving mother and can result

in fetal abnormalities. Abortion is a controversial subject debatable in different cultures, legal frameworks, religions, and societies. Shariah does not allow termination of pregnancy and contemplates it as forbidden and restricted unless such pregnancy would risk the life of the mother or such fetus would be born with a deformity. However, the concept of Abortion is debatable in IHRL which shall be discussed later in the paper.

Between 2010 and 2014, approximately 56 million prompted abortions occurred every year around the world making this number increase from 50 million annually during 1990–1994, primarily because of population growth. The global annual rate of abortion for all women aged (15–44) is estimated to be 35 per 1,000 during 2010–2014, which is a decreased rate of 40 per 1,000 in the year 1990–1994 (Guttmacher Institute). The estimated global abortion rate is 35 per 1,000 for married women and 26 per 1,000 for unmarried women during the year 2010–2014 (Rahajeng 2020). The World Health Organization gauges that approximately 19 million unsafe abortions happen worldwide each year, of which 68,000 women lose their lives due to such consequences. This accentuates how humanity is facing serious challenges due to abortion (Demirel 2011).

Interpretation of the words Embryo, Fetus, and Unborn

The word *Janin* is used in the Pakistan Penal Code for Fetus and Embryo. It is an Arabic word. The literal meaning of the word *Janin* is interpreted as a hidden entity that cannot be seen with the naked eye. The same expression is used for the entity of the Fetus and Embryo which are hidden in the womb of the mother (Amin 2022). The word (*Tifal*) is an Arabic word used for small entities. The word *Tifal* is also widely used in the Holy Quran which is used in the context of children. It is also applied to the Fetus and embryo (Ul-Haq 2004). The difference between the words Embryo and Fetus is in terms of duration of development. The unborn embryo develops after the zygote stage and further develops into a fetus. It is the first eight weeks of creating a child in the womb, and the fetus is a developing entity from the ninth week till birth (Marcin 2023). On the other hand "The Philippines Protection of Unborn Child Act 2010" defines the Unborn as a "child at any stage of existence and development beginning from the association of the sperm and the ovum until the birth stage" (PUCA, 4a, 2010).

The phases of fetal development

The phases of the development of a fetus from the formation of cells (zygote) to the birth of a physical child after birth are mentioned in primary and secondary sources of Shariah; i-e Holy Quran and Hadiths. Allah Almighty clearly states in the sacred book Holy Quran about the development (Moore 1986).

"O mankind! If you are in doubt about the Resurrection, then verily! We have created you from dust, then from a *Nutfah* (mixed drops of male and female sexual discharge), then from a clot (a piece of thick coagulated blood) then from a little lump of flesh, some formed and some unformed (miscarriage) to demonstrate "Our power to you." (Quran 22:5)

In another verse Allah Almighty mentions;

"*And indeed,We created humankind from an extract of clay, then placed each human as a sperm-drop in a secure place, then We developed the drop into a clinging clot of blood, then developed the clot into a lump of flesh, then developed the lump into bones, then clothed the bones with flesh, then We brought it into being as a new creation. So Blessed is Allah, the Best of Creators" (Quran 23:12-14).*

Abdullah ibn Mas 'ud narrated that the Messenger of Allah Almighty said in the book of Hadith; i-e (Sahih Muslim 3036)

"Each of you is constituted in the womb of the mother for forty days, and then he becomes a clot of thick blood for a similar period, and then a piece of flesh for a similar period. Then God sends an angel who is ordered to write four things. He is ordered to write down his deeds, his livelihood, the date of his death, and whether he will be blessed or wretched. Then the soul is breathed into him (Bill of Health, 2017)".

From the above verses from the Holy Quran and Hadith from Sahih Muslim, the development of a fetus consists of the following phases;

The phase of *Nutfah*

The phase of *Nutfah* is the initiation of fetus development where the sperm of a male and the ovum of a female combine to form an embryo. The embryo at this stage is referred to as a drop (*Nutfah*). The *Nutfah* gradually develops into a fetus (Sahih Muslim, 1998, Book 4, Hadith 614). The period of *Nutfah* initiates with the inception of pregnancy and concludes after 40 days of implantation of the embryo in the uterus (Hedayat 2006).

The phase of *Alqah*

The phase of *Alqah* is when further development starts after the initiation of *Nutfah*. The *Alqah* is defined as a thick coagulated blood clot with a leech-like structure (Saadat, 2009).

Dr. Muhammad Ali Baar says: "Doctors have some opinion about *Alaqah* that in this stage of 'Nutfah Amshaj' (mixture), the *Alaqah* sticks to the wall of the mother's womb (Baar n.d)."

The phase of *Mudqah*

The phase of *Mudqah* refers to the stage where a lump of flesh is formed. *Mudqah* initiates after the stage of *Alqah* which takes place after 20 days of conception. Allah Almighty in Surah Al-hajj defined *Mudqah* in two categories *Mudqah gair mukhlaqa* and *Mudqah mukhlaqa*,

Muzgah gair mukhlaqa is the stage where the embryo is amorphous. *Muzgah mukhlaqa* is the stage where the embryo starts acquiring human features and physical features are formed (Quran 22:05, 23:12-14, 32:7-9).

The phase of *Izam*

The phase of *Izam* begins when the lump is converted into bones, which are then covered by the flesh. In this phase, the physical features start to form. It is narrated in a Hadith (Goeringer 1983);

"When forty nights pass after the semen gets into the womb, Allah Almighty sends the angel and gives him the shape. Then he creates his sense of hearing, sense of sight, his skin, his flesh, his bones (Mahdi 2012)."

Phase of ensoulment

Imam ibn Kathir describes the phase of ensoulment in the right of following Hadith.

Prophet Muhammad says which is narrated in the book of Hadith;

"When there passes four months on *Nutfah* then Allah sends an angel to who the fetus and breathe life into fetus behind three layers of womb (Tafseer Al Quran, v: 5)." Imam Qurtabi has also described the period of ensoulment as approximately in 4th month of pregnancy (Mahdi 2012).

The Status of Individuality of Unborn

Islam has briefly answered the questions regarding the individuality of the unborn. In Islam, the concept of individuality is the cornerstone of ensoulment. The legal status of the unborn is determined based on ensoulment. Shariah stretches its wings and gives an unborn the status of a person. The unborn child has immense importance in Shariah and is protected by every means. According to Islamic beliefs, the unborn acquires the status of individuality when the soul is conferred on him (Al-, Matary, 2014). The process of ensoulment occurs after 120 days of fertilization of sperm and ovum (Gatrad 2001). Some Religious schools of thought believe that the unborn acquires the status of a living human being at the time of conception.

The International Human Rights Law does not explicitly confront the status of personhood of a fetus. The question of the beginning of human life is still uncertain and doubted by various religions, cultures, and societies when life begins either at conception or after birth. IHRL is intended to be a comprehensive framework that follows and which is followed respectively by various cultures and societies. IHRL respects various religious beliefs and traditions. However, the individuality of the unborn is still a dubious subject area that is debatable based on various cultural, religious, and social matters.

The Rights of an Unborn in Shariah

Islamic law has granted certain rights to the unborn fetus including the right to life, property, will, and inheritance. Before analyzing the concept of the right to life of an unborn, it is appropriate to examine the definitions of Abortion in the light of different scholars and writers.

Definition of Abortion:

The term Abortion is derived from the Latin term "*Aboriri*" which is interpreted as "unable to be born (Coopens 1907)." Abortion is defined as the eradication and killing of the unborn before birth. In the Book

Abortion by Malcom Potts, Peter Diggory, and John Peel, Abortion is defined as the deprivation of pregnancy before the unborn is born and is considered an individual, out of the mother's womb (Potts 1977). Sir Stanley Clayton and John Newton in their booklet: A Pocket Obstetrics defined Abortion as the termination of the fetus at the 28th week of Conception (Albar 2001). It refers to the method to abort the birth of an unborn. In other words, Abortion is clearly defined as disruption of the process of Gestation before the unborn fetus is feasible and ready to be born.

The difference between Abortion and Feticide is based on intention. Abortion is a narrow term as it consists of the killing of an embryo, fetus, or unborn consciously by medical, and legal methods. Through these procedures, the fetus is intentionally removed from the uterus of the mother. Feticide is a wide-ranging term that contains both intentional and unintentional killing of the unborn inside the mother's womb. Feticide is a comprehensive term that includes Abortion itself (Ray 2023).

The Right to Life

Shariah administrates the issue of family in most of the countries practicing Islam. Shariah criminalizes the offense of Abortion as the Unborn in Quranic Law is granted the status of a living and born human. The Arabic word *Al-Ijhadh* is used in the context of abortion; defined as the removal of the unborn from the mother's body before 120 days. The term *Al-Ijhadh* is derived from the word *Ijhadh* means the expulsion of a fetus from the womb of the conceiving mother before the period of birth (Salleh n.d). *Al-Ijhadh* is of five types; *Ijhadh Ijrammy* known as criminal abortion, *Ijhadh Tlqaiyy* known as spontaneous abortion, *Ijhadh Zatty* known as self-induced abortion, *Ijhadh Lajyy* known as therapeutic abortion, *Ijhadh Motta'mmd* known as intentional abortion Rahajeng, 2020). According to Zakariyau Idrees-Oboh Oseni, abortion is not only "feticide" but also a war against unborn humanity (Guirguis, 2021).

Feticide or Abortion is taken as an intervention in the divine ordinances of the Supreme Authority Allah Almighty, as he is the one having ascendancy on life and death. Almighty alone holds absolute dominion as he is responsible when the fetus is formed at conception and afterward ensoulment occurs.

Allah Almighty in his Divine revelation asserted that;

"*O Allah alone belongs the kingdom of the heavens and the earth. He creates whatever He wills. He blesses whoever He wills with daughters, and blesses whoever He wills with sons (Quran 42:49).*"

Abortion in the light of the Sacred Text of Allah

The supreme authority, Allah Almighty, says in the Holy Quran that he is the one who is a provider and sustainer. He further states not to kill the child either born or unborn out of fear of not having to provide financially for him. Allah Almighty says in the final revelation that the one who kills his child, either born or a fetus, is described as disoriented, erroneous, and a murderer (Santoso 2016).

Numerous Quranic scriptures illegalize abortion, which occurs without a justifiable and rational cause. Allah Almighty condemns the killing of a child for fear of providing sustenance.

"Do not kill your children for fear of poverty. We provide subsistence for them and you. Veritably induced feticide is a heinous sin (Quran 17:31)."

Almighty has interdicted in the Holy Quran the killing of innocent humans. As stated in the Holy Scriptures;

"Therefore, We commanded for the Children of Israel that he who kills a soul unless it is (in punishment) for murder or for spreading mischief on earth shall be as if he had killed all humanity, and he who saves a life shall be as if he had given life to all humanity (Quran 05:32)."

Allah Almighty further affirmed that;

"Those people are disoriented who slay their children in folly without any knowledge and prohibit what Allah has given to them, forging a lie against Allah; they have indeed gone off track, and they are not believers in the righteous journey (Quran 06:140)."

Abdullah Ibn Masood reported that Messenger Muhammad said, which is narrated in the Hadith book (Sahih Al Bukhari:

"Abdullah Ibn Masood asked the Messenger of Allah, what is the greatest sin committed? Prophet Muhammad replied that the greatest sin is to commit shirk though He is the sustainer. Then I asked what

was next. He said to slay your children out of concern that he would share food with you (Sahih Al Bukhari 04)."

Four Sunni Schools of Thought

A significant majority of Muslim Scholars and Jurists consider Abortion as haram and prohibited as it is considered sinful and forbidden. Before discussing the views of different Scholars and Jurists, it is appropriate to analyze the underlying reasons behind the execution of Abortion. The reasons shall be categorized based on medical and non-medical reasons.

Medical

Abortion is carried out medically to preserve the life of the conceiving mother if there is any risk to the health or life of the mother or there are any fetal anomalies in the fetus, either bodily deformity or cerebral deformity.

Non-medical

Non-medical Abortions are either criminal or non-criminal. Criminal Element include either pregnancy is caused by adultery or rape. THNon-criminal element is abortion caused due to economic hardships (Abed 2023).

The abortion is permissible in case of adultery, and rape only within 120 days of conception (BBC).

The abortion is likely to occur in two scenarios: either before the process of ensoulment (before 120 days) or after the process of ensoulment (after 120 days). There are four Sunni Schools of thought, namely Hanafi, Shafi, Maliki, and Hanbali. These four Schools of Interpretation have different opinions on the subject of Abortion.

Hanafi School of Interpretation

In the Hanafi School of Islamic Interpretation, certain terms are employed to convey the meaning of Abortion. The most common terms that the Hanafi jurists used are *"Isqat"* which means to drop, *"Ilqa"* which means to throw, and *Itlaf al-Janin* means termination of the fetus. One of the prominent Hanafi jurists Qadi Khan, writes in his fatwa collection, Fatwa Qadi Khan as follows;

"If a woman intentionally executes abortion through a procedure, some Hanafī jurists argue that if the features of the embryo are not visible, the woman has not committed any sin. I disagree with this opinion. If a person is in the state of iḥrām, it is prohibited to hunt any prey and break the eggs of a prey, and in doing so, they incur a penalty as it pertains to the origin of the prey. Since he is penalized with a penalty there, at least sin is attached to her here if she drops the child without a legally valid excuse. However, she does not sin by killing. Suppose she drops the child after his creation becomes manifest. Such is considered a heavier sin than before (Al-Misriyyah, 2004).

There are two opinions of Hanafi jurist Qadi Khan that are related to the Abortion that happens before the appearance of physical features and organs. Pursuant to the first opinion, Abortion is not permissible and is sinful when it is carried out before the features of the embryo become evident. As per the second opinion, Abortion is permissible and not sinful when it is carried out before the features of the embryo become evident. From the above-reported Fatwa, Qadi Khan means to state that;

In the sacred state of Ihram, which is essential for Umrah and Hajj to Makkah, there is a prohibition of hunting and breaking the egg of prey. Such a prohibition is based on narrations from the Prophet and 'Ali and Ibn-Abbas, who were the conversant companions of the Messenger of Almighty. The prohibition of the breaking of the egg of prey even though the egg is not the actual animal or prey in its physical state demonstrates that Shariah prohibits the killing of both the animal and its eggs (Kiran 2022). Consequently, Qadi Khan contends that the restriction of killing a human being extends to the embryo even before it is recognizable as a human form because the embryo is considered the origin of human existence. Thence according to him, Abortion which occurs before the features of the embryo become visible is permissible when there are valid reasons for such termination (Stodolsky 2021).

The Hanafi School of Islamic Jurisprudence authorizes the execution of abortion before the duration of 120 days. Hanafi jurists affirm that the Holy Scriptures permit the pregnant woman to terminate the pregnancy

or undergo abortion if she has some justifiable reasons for such an act or if she is still breastfeeding the first child as the living child has precedence over the fetus (Aramesh 2007).

Shafi'i School of Interpretation

Imam Muhammad Ibn Idris al-Shafi'i is the founder of the Shafi'i school of Islamic Jurisprudence. The Shafi'i School of Interpretation has various perspectives on the permissibility of termination of pregnancy before 120 days of pregnancy. Imam Al-Shafi'i, in his fatwa collection book *"Al Om,"* stated that abortion is considered admissible before the features of the fetus become evident as there is a sign of organogenesis (Iqbal 2019).

Iman Al Ghazali, one of the prominent jurists of the Shafi'i school, asserts a rigorous perspective that it is not permissible to terminate a fetus from the earliest stage of pregnancy. He contends that the seriousness of abortion as a sin increases as the fetus gradually develops inside the womb, culminating in its severity when the child is killed after birth (Albar 2001).

Iman Ramli, another prominent jurist, permits the termination of the embryo before the ensoulment period, explicitly within the first 4 months of conception. Contemporary jurists including Sheikh Al-Bouti, Sheikh Al-Qaradawi, and Sheikh Qaradaghi permit the termination of pregnancy caused due to rape at the earliest point. Most of the Islamic jurists of all Schools permit abortion in the first 40 days of conception at the *Nutfah* stage (Albar 2021).

Maliki School of Interpretation

Malik Bin Anas is the founder of the Maliki School of Islamic Jurisprudence. The Maliki School of Interpretation permits the termination of the pregnancy within 40 days with the approval of both husband and wife or permits it to be executed within the period when the process of ensoulment has not taken place, the process of ensoulment takes place at the beginning of the fifth month. Whereas the majority of Maliki Jurists consider termination prohibited. The jurists believe that when sperm enters a woman's uterus and fuses with the ovum to form an embryo from which later a human is formed (Sulaiman 2024). It is not acceptable to destroy such an entity even if it is before 40 days (Alkali 2015).

Hanbali School of Interpretation

Imam Ahmad bin Hanbal is one the prominent Islamic jurists of the Hanbal School of Jurisprudence. As per the Scriptures of the Holy Quran, four phases of fetus development (i.e. *Nutfah, Alqah, Mudgah,* and Ensoulment) are affirmed by most jurists. The jurists believe that *Nutfah* occurs when sperm fuses with the ovum to form a zygote, *Alqah* refers to thick coagulated blood clots, *and Mudgah* refers to the lump of flesh. The Hanbali School of Interpretation takes a middle ground on the admissibility of abortion. Termination of pregnancy is permissible when the fetus is in the stage of *Nutfah* and there is prohibition, once the fetus reaches the stage of *Alqah* or *Muzgah* (Al-Khatib 2021).

Penal Implications of Abortion

All Schools of Islamic Jurisprudence consensually accord that Abortion after the features of the fetus become evident is forbidden and Haram. If the mother of the fetus without the father's consent terminates the pregnancy, compensation shall be paid to the father and legal heirs of the unborn (Stodolsky, 2021). The penalty shall be in the form of "*Ghurra"* which amounts to 5 camels or an amount equivalent to 50 dinar 500 dirhams in silver coins, comprising one-twentieth of *Diyat* which is to be paid on the unintentional killing. This rule originated from a historical event, the incident involved an assault on a pregnant woman which resulted in the death of both the mother and the fetus. The Messenger of Almighty passed the judgment that the person liable for such assault is directed to pay *Ghurra* for the loss of the fetus and *Diyat* of 100 Camels for the act of homicide (Alkali, 2015).

To consider the consequences resulting from the offense of abortion, several situations are discussed when analyzing the penalties incurred on the offender.

When the fetus is already dead, removed from the womb of the mother:

The penalty in this scenario is to be paid in the form of *Ghurra.* According to the Maliki School of Interpretation, the penalty of *Ghurra* is to be paid even if the features of the fetus are not formed. According to the Hanafi and Shafi'i Schools of Interpretation, a penalty of *Ghurra* is only to be paid when the fetus is

expelled in the form of a human. According to the Hanbali School of Interpretation, there is no need for a penalty of Ghurra if the termination of pregnancy occurred within 40 days of pregnancy (Alkali 2015).

Most Muslim jurists assert that the process of ensoulment occurred after 120 days. If the termination of pregnancy took place after 120 days, the offender shall be liable to full *Diyat*, as the fetus is granted the status of human after ensoulment. Meanwhile according to the Hanbali School of Interpretation, when the termination of pregnancy takes place at the sixth month of conception, the offender shall be liable to full *Diyat.* If the child dies after being aborted alive, then full *Diyat* shall be payable (Sabreen 2020). If the fetus is aborted after the ensoulment phase, then the full *Diyat* shall be liable (Hussain 2005).

When the fetus is born alive and removed from the womb of the mother but later dies of the result of abortion

According to Maliki School, when the termination of pregnancy occurs and the fetus is born alive but later dies of such an act, the offender shall be liable to *Qisas* but if such an act is done unintentionally due to a mistake the offender shall be liable *Diyyat* not *Ghurra*. If aggression is caused by a person on the pregnant mother and by such an act both the mother and the fetus die. The offender shall be liable to pay two *Diyats* i-e one of the mothers and one of the foetus (Samori, 2009).

Other Rights Guaranteed to Unborn in Shariah:

Apart from the Right to life, certain other rights are granted to the fetus. These rights include Economic rights, the right to will, and the right to Inheritance.

Financial rights of the fetus

Shariah affirms the financial rights of the fetus which includes the right to alimony. To ensure the safety and well-being of the unborn, alimony is provided to the pregnant woman by the father of the fetus. As the fetus is dependent on the mother for nourishment, the mother shall be provided alimony for the safety of the fetus. If the pregnant woman is divorced by the father then he shall be liable to pay alimony till the birth of the unborn (Quran, 65:06).

The right of Will

As per the opinions of different Muslim Scholars, it is permissible to draft a will in favor of the fetus, provided that two conditions must be fulfilled. The first condition is the fetus must be born alive and born within six months or two years. The second condition is that it must be present in the womb of the mother at the time of drafting of the will (Rizwan 2022).

The right of inheritance

The unborn has the right to inheritance, he shall not be deprived of his share of inheritance. If the ancestor of the fetus passes away before the fetus is born, the share of the fetus must be declared and preserved. Muslim jurists argue that without determining the share of the fetus, the process of inheritance cannot take place. Most jurists assert that till birth the procedure of the inheritance shall be delayed as the gender of the fetus is not known (Mariam 2018).

The Rights of an Unborn in IHRL

The right to life

The right to life of the unborn in IHRL is a complex and intricate subject that is continuously evolving. The right to life is one of the primary interests of the fetus as compared to the other rights which have less importance. The unborn possess legal protection within the frameworks of different legal systems worldwide. The fetus possesses varying status and security in different countries and their legal frameworks. Some countries explicitly recognize and protect the rights of an unborn, meanwhile, others do not recognize the status and do not provide protection.

Three instruments are to be considered to address this subject of the right to the unborn: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) (United Nations, 1966), and the Convention on the Rights of the Child (CRC) (United Nations, 1989).

Article 1 of UDHR

The Universal Declaration of Human Rights address in Article 1 states that;

"*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (UDHR, Article 01).*"

This article states that every person is born with freedom and equality and possesses rights. Each human being should act towards the other in the sense of brotherhood.

Within the provision of this Declaration, the term "everyone" suggests that it is implied to all human beings. Article 1 provides that all human beings are born free and equal. It construes that the Article only protects the human beings that are born. The Universal Declaration of Human Rights doesn't extend its protection towards the right to life of an unborn (Persson 2020).

Article 3 of UDHR

Article 3 of the Universal Declaration of Human Rights states that;

"Everyone has the right to life irrespective of ethnicity, sex, color, language, culture, and religion. There shall be no distinction based on the political and international status of the country to which such human belongs (UDHR, Article 03)."

Within the scope of UDHR, the term "everyone" proposes that it is implied to all human beings either born or unborn irrespective of any discrimination. It construes that UDHR in this Article extends its legal protection and right to life in some sense to the unborn.

From the above-mentioned provisions, there is no explicit mention of the unborn, fetus, or embryo but to some extent, interpretation of the provision indicates the right of the unborn by the word "everyone." The Universal Declaration of Human Rights neither confers the right to life and legal protection to the unborn under its provisions nor does it explicitly deny it (Copelon 2005).

Article 6 of ICCPR

Article 6, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) states that;

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (ICCPR, Article 03)."

Under the terms of ICCPR, the term every human being refers to all human beings and extends to the unborn fetus. It states that the right to life shall be protected by the legal systems, and this protection of such right is also granted to the unborn human.

Article 6, paragraph 5 of the International Covenant on Civil and Political Rights (ICCPR) states that;

"Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."

Pursuant to the provisions of this Covenant, it is stated that capital punishment or the sentence of death shall be carried on adult men and women, but it shall not be executed on the conceiving woman carrying a foetus who has the right to life (Pavlović 2022).

Article 1 of CRC

The Convention on the Rights of Child in Article 3 states that,

"A child means every human being below the age of eighteen years unless under the law applicable to the child, the majority is attained earlier (CRC, Article 03)."

Within the context of the provision of this Convention, the phrase, "a child means every human being below the age of 18 years" states that a human being who is not of the age of 18 years. It does not explicitly state the concept of the unborn but CRC recognizes the unborn child and extends the legal protection and right to life to the fetus (Tozzi, 2010).

Abortion in the light of IHRL

The World Health Organization (WHO) defines Abortion as the extirpation and removal of a fetus or embryo from the womb of the mother weighing less than 500 grams (Shakhatreh, 2022). Abortion is defined as a medical procedure to abort the unborn in the womb of the mother. Approximately 1 in 4 pregnancies result in an abortion annually worldwide (Amnesty International). The IHRL recognizes the right to life in the context of a woman's right to their body and the permissibility of intended Abortion as the right of choice. It does not explicitly recognize the right to life of the unborn, instead, it demands abortion to be legalized (WHO, 2019). An unsafe abortion is defined as the removal of a fetus from the

womb of the mother either by individuals who lack medical skills or in conditions that are not according to the International standards of Medical Science, or both (Haddad, 2009). When there is no proper access to safe and legal termination of pregnancy, numerous human rights may be compromised. These rights include the right to life, healthcare facility, equality, privacy, impartiality, liberty, and parenting (Human Rights Watch, 2022). Various Countries worldwide think that prohibition on the permissibility of abortion is an infringement of the rights and dignity of women (Human Rights Research and Education Center). The unborn fetus does not have the state of a person and is not protected. The following case law shall prove this scenario.

Case Law

VO vs. France

Facts

Mrs. VO was a Vietnamese lady, residing in France, with no skill to speak French. He was six months pregnant and went for a medical checkup and was mistaken for some other lady with a similar surname. The doctor ruptured her amniotic sac. The abortion occurred due to a heavy loss of amniotic fluid. Mrs. VO sued the doctor under former Article 319 of the French Criminal Code for medical negligence and alleged that she was involved in the homicide of her child (Global Health & Human Rights Database).

Decision

It was held by the competent Court that, the fetus is not considered a human in the French penal code, the doctor was acquitted on the ground that the fetus did not acquire the status of human and does not have any right within the provisions laid down in the French Code (VO vs. France).

The case was further brought by Mrs. VO to the European Court of Human Rights, alleging that the negligence of the French Government to provide legal consequences for negligently killing a fetus was inconsistent with the duty of the state to safeguard the rights of an unborn under Article 2 of European Convention on Human Rights. The grand chamber of Strasbourg court heard this case.

The European Court held that it is widely acknowledged that the fetus is a part of the human race. It has the potential to develop into a full human and enjoy protection. However, it is not considered a "person" possessing a "right to life" within the context of Article 2 of the European Convention on Human Rights (Center for Reproductive Rights).

Penal liabilities incurred on the offender by Pakistani Law

Pakistan Penal Code has provided two categories of offences of abortion i-e *Isqat-i-Haml* (Section 338) and *Isqat-i-Janin* (338-B). *Isqat-i-Haml* refers to the termination of pregnancy at the early stages of conception when the features of the fetus are not apparent. The punishment for such abortion is provided under Section 338-A, a sentence of 3 years with the consent of the woman, and a sentence of 10 years without the consent of the woman. *Isqat-i-Janin* refers to the abortion that takes place at the later stages of the pregnancy when the physical features of the fetus are apparent. The punishment for such abortion is provided under Section 338-C, a penalty of one-twentieth of the *Diyat*, if the child is born dead, a penalty of full *Diyat*, if the child is born alive and dies afterward due to such an act. And imprisonment of 7 years as Tazir can also be prescribed (Riaz, 2020).

Case Law

Zaman Shah vs. The State

Facts

Zaman Shah along with other individuals murdered his wife who was 28 weeks pregnant at that time. He was implicated with FIR no 03 of 2009 for killing his wife and his unborn child. The court convicted him and sentenced him to the death penalty as Tazir under section 302-B of the Pakistan Penal Code. Additionally, he was sentenced to rigorous imprisonment of 7 years under section 338-C of P.P.C. The accused filed a criminal appeal to challenge his conviction.

Decision

During the hearing of the case, it came to the knowledge of a two-member bench of the High Court that the deceased lady, Noor Bibi at the time of the murder was pregnant with 7 7-month-old male children in her

womb which passed away before birth. The question was whether the unborn came within the provision of Section 338-B of P.P.C.

It was held by the competent court that the facts of the case do not meet the criteria mentioned in Section 338-B. According to Islamic Jurisprudence, the process of ensoulment takes place after 120 days and the unborn is considered a mature human being at the period of six months. Additionally, it was affirmed that a woman can give birth to a child normally after 6 months, hence keeping given the facts of the aforementioned case, the unborn in the womb of the mother is 7 months and the fetus is considered a child. Protection shall be granted and the punishment be more rigorous than before (Riaz 2020).

Comparative Analysis of Islamic Law and IHRL

There are contradictions and disparities between the Islamic Shariah and International Human Rights Law concerning the rights of the unborn. The unborn fetus possesses the status of personhood under the Islam Shariah. The permissibility of Abortion is forbidden and prohibited in Islamic Law. The Holy Quran and Hadith forbid the killing of an innocent unborn, as it is explicitly mentioned in the Holy Quran, "Do not kill your child the fear of providing for them (Quran 17:31)." The Shariah affirms that the unborn acquires the status of individuality after the ensoulment. Various Islamic Scholars debate on this subject as to when life begins and when the process of ensoulment occurs. Islam does not allow abortion without a reasonable cause and such an act is prohibitory and haram, it can only be carried out in case the life of the mother is in danger, or there is a risk of abnormality and disability in the fetus (Australian National Imam Council). Shariah acknowledges women's rights including the right to life and health. Shariah enforces its laws in the light of the Quran and Sunnah and based on the opinion of Different Muslim Jurists.

The International Human Rights Law does not explicitly address when life begins or when the process of Ensoulment occurs. The right to life is recognized by the IHRL but the right to life of an unborn is still a controversial subject in the view of IHRL. Some countries prohibit it while other promotes the permissibility of safe abortion (OHCHR). Abortion is not prohibited by IHRL it promotes the admissibility of safe abortion. It acknowledges the rights of women including the right to life, the right to her body, and the right to continue the pregnancy or undergo an abortion. IHRL aims to protect the rights of individuals irrespective of any discrimination. It derives its rules from UDHR, ICCPR, CRC, and others.

CONCLUSION

The right to life is the fundamental human right while the right to life of an unborn is somehow considered different. The rights of an unborn in Shariah and IHRL somewhat have complex contradictions between legal frameworks, and religious, and social values. Abortion is a controversial matter within different Religions and Legal frameworks which sparks debate over social, religious, and legal issues by the individuals in favor or against the issue of abortion. Islam guarantees the protection of the unborn, these rules are derived from the Holy Quran and Sunnah which emphasizes the sanctity of life from the phase of development. While the International Human Rights Law does not recognize it. IHRL promotes the rights of pregnant women, preserving their rights to privacy and dignity. It is silent on the subject of whether the fetus is a person or not and it presents abortion to be legalized and to be considered a human right. Thus for such reasons, it is necessary to examine when the fetus attains the status of a person and when the right to life is granted. The dynamic difference between Islamic Law and IHRL is a complex subject. There shall be harmony between both to protect the unborn as it is a part of the human race.

The dynamic difference between Islamic Law and IHRL is a complex subject. In this paper, the researcher attempted to ascertain the meaning and concept of the rights of an unborn within the context of Shariah and International human rights law and has also drawn a comparative analysis between both, and aimed to identify the legal status granted to an unborn in realm of Shariah and IHRL. Finally, the paper puts forward the penal liabilities incurred on the offender, in case of admissibility of Abortion in Shariah and Pakistani Law.

Pursuant to the findings of this study, Shariah forbids the permissibility of Abortion to protect an unborn entity. This prohibition is rooted in the fundamental principle of preservation of life, avoiding haram, and

ethical and moral responsibilities. On the other hand, IHRL promotes the permissibility of Abortion, as it considers it to be legalized and supports it to be put into the realm of human rights.

Lastly, the researcher will conclude by stating that the rights of an unborn be given under both Shariah and IHRL by creating harmony between both to provide protection which is beneficial for both the mother and her foetus as it is a part of the human race.

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