
Feticide and Its Impact on Society***Dr. Mufti Muhammad Anas Rizwan****Assistant Professor, Faculty of Shariah and Law,
International Islamic University, Islamabad**Email: anas.rizwan@iiu.edu.pk ORCID: <https://orcid.org/>***ABSTRACT:**

One of the main objectives of Shari'ah is protection of life and its sanctity. Because of this reason fetus has right to life and removing a fetus from mother's womb is a big sin. So abortion i.e. removing of fetus that is without intention for is known as miscarriage, spontaneous abortion or feticide. There can be many reasons for Feticide like as genetic deficiency, trauma, or biochemical incompatibility of woman and fetus.

Therefore, this study focuses on the Position of Feticide in Islam, Position of Feticide in Law, Rights of Fetus, Situations in which Feticide is permissible and the Impact of Feticide on Society. In this regard, Rights of Fetus includes Right of Inheritance, Right to Will, Right to Hiba, Right not to harm and Economic Rights of Fetus has been discussed in the light of Shariah and Law. Additionally, the Situations in which Feticide is permissible such as protect the Life of Mother, Rape and Fetal Deformities has been discussed in detail. Finally, the Impact of Feticide on Society including Financially, Psychologically and morally has been discussed.

Key words: Life, Permissible, Shariah, Law, Feticide, Impact.

Introduction:

Feticide is a great social ill will that can ruin every society no matter how much that society is civilized. The Muslim jurists have different of opinions about removing of fetus in which removing is permissible before four months of gestation. According to Imam Ghazali killing of fetus is a sin after conception. Fetus can be removed in some situations that fall into three general categories like as to protect the mother's life or physical or mental well-being, to prevent the completion of a pregnancy caused by rape or incest, and to avoid the birth of a child with a major deformity, mental deficiency, or genetic anomaly.

According to Muslim scholars depriving fetus from right to life is an act interfering with God's role as God is the creature of everything and particularly author of life and death. Power to create human belongs to Allah Almighty not to woman kind, thus because of this reason woman has no right of abortion because that is Allah almighty who create fetus in the womb of woman. But woman can remove fetus from her womb in some conditions and for that there are different periods in which fetus can be removed. Famous scholar the author of Fiqh al Sunnah, Sayyid al Sabiq gave a brief statement of the views of classical scholars in this regard in the following words:

“Removing of fetus i.e. abortion is not allowed after four months have passed since conception because at that time it is akin to taking a life, an act that entails penalty in this world and I the hereafter. However, in the absence of a reasonable excuse it is detestable”.¹

Many Muslim scholars consider a child of rape as a legitimate child so according to them it is a sin to kill that fetus but according to other scholars' it's removing from womb of mother is permissible if the fetus is less than four months old or if there is endanger the life of mother.

The permissibility and prohibition for killing of fetus derives from the interpretation of Holly Quran and interpretation of Hadiths especially the Hadiths applied to Quranic verses particularly the ones forbidding from killing humans. There are two verses in Holly Quran:

﴿وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةً إِمَّا يَكُنْ نُرُثُكُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ كَانَ خِطْئًا كَبِيرًا﴾²

“Do not kill your children for fear of poverty. We provide sustenance to them and to you too. Killing them is a great sin indeed.”³

﴿وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِنْ إِمْلَاقٍ﴾⁴

“Do not kill your children for fear of poverty.”⁵

These verses clearly define the right of fetus to live. Scholars rely upon these verses and consider killing of fetus prohibited because whatever

situation is, the fetus has right to life. Many scholars consider killing of fetus a sin rely upon three basic reasons i.e. legal status of fetus, respect of life and right to born.⁶

The situation of feticide varies from country to country. More than 61 countries including much of Europe permit removing of fetus without any restrictions. Similarly, 26 countries do not permit it except with some restrictions, such as to save the mother's life or protect her health.⁷ Legality of abortion in United State is classified in different trimester. In first two trimesters abortion is legal and mostly abortions are done in first trimester i.e. in 12 weeks of pregnancy. Some states allow abortion until second trimester i.e. 24 weeks of pregnancy. In usual abortion is not permitted in third trimester but it can only be permissible if the life of child or mother is in danger. The first American law regarding abortion was enacted in Connecticut State. This statute prohibited an attempt to abort by drugs after quickening and prescribe a penalty of life imprisonment against the death penalty authorized by British statute. In 1830, the penalty of this statute was reduced to seven to ten years and law was extended to include attempts to abort by means other than medication. Again in 1860 the sentence was reduced from ten years to one to five years.⁸

Definition of Feticide

"Feticide derives from two constituent Latin roots. *Foetus*, meaning child, is an alternate form of *fetus* coming from the writings of Isidorus, who preferred *oe* due to its association with *foveo* "I cherish" as opposed to *feo* "I beget".⁹ *Foetus* is compounded with the suffix *-cide*, from *caedere*, "to cut down, to kill."

Many other definitions of feticide are given in many others sources all such definitions are approximately same. Some are given below:

"The act of causing the death of a fetus."¹⁰

"The act of destroying a fetus or causing an abortion."¹¹

"The destruction of a fetus in the uterus; aborticide."¹²

Position of Feticide in Islam

Preservation of life is one of basis purpose of Islam. Roots of feticide or killing of fetus can also be seen in Islamic history. Depriving of fetus from his life was also practicable in the beginning of Islam but Holly Prophet (ﷺ) prohibit its practice and gave a verdict regarding an fetus of a woman who belongs from *Liyah* tribe, the verdict was that there is *Diyat* on the killer of fetus and *Diyat* is male or female slave but the woman who was required to give the slave, died. So Holly Prophet (ﷺ) gave decision that

her inheritance is given to her spouse and children and the *Diyat* be paid by her *Asaba*.

Similarly, there is a *Hadith* narrated by *Mughira bin Shobah* (R.A) in the Era of *Umar ibn al-Khaṭṭāb* (R.A). *Umar ibn al-Khaṭṭāb* (R.A) asked the people about the *Imlas* of a woman. *Al Mughira* (R.A) said that the Holly Prophet (ﷺ) gave a decision that a male or female slave should be given as a *Diyat* for fetus then *Muhammad bin Aslamah* (R.A) testify that Holly Prophet (ﷺ) gave a decision of such nature.

حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ، حَدَّثَنَا وَهَيْبٌ، حَدَّثَنَا هِشَامٌ، عَنْ أَبِيهِ، عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ، عَنْ عُمَرَ، رَضِيَ اللَّهُ عَنْهُ، أَنَّهُ اسْتَشَارَهُمْ فِي إِفْلَاصِ الْمَرْأَةِ فَقَالَ الْمُغِيرَةُ قَضَى النَّبِيُّ ﷺ بِالْعُرَّةِ عَبْدٍ أَوْ أَمَةٍ، فَقَالَ أَتَيْتُ مَنْ يَشْهَدُ مَعَكَ، فَشَهِدَ مُحَمَّدُ بْنُ مَسْلَمَةَ أَنَّهُ شَهِدَ النَّبِيَّ ﷺ قَضَى بِهِ.¹³

“Narrated Hisham's (R.A) father from Al-Mughira bin Shu'ba (R.A):

'Umar (R.A) consulted the companions about the case of a woman's abortion (caused by somebody else). Al-Mughirasaid: The Prophet (ﷺ) gave the verdict that a male or female slave should be given (as a). Then Muhammad bin Maslama (R.A) testified that he had witnessed the Prophet (ﷺ) giving such a verdict.”

Similarly there is another verdict of Ibn e Abbas (R.A) in Sunan Abi Dawud that once Hazrat Umar (R.A) questioned about the verdict of Holly Prophet (ﷺ) which was given for fetus. Hamal bin Malik Al Nabhigah (R.A) said:

“I was between two women. One of them struck another with a rolling-pin killing both her and what was in her womb. So the Messenger of Allah (ﷺ) gave judgment that the blood wit for the unborn child should be a male or a female slave of the best quality and the she should be killed”.

حَدَّثَنَا مُحَمَّدُ بْنُ مَسْعُودٍ الْمِصْبِصِيُّ، حَدَّثَنَا أَبُو عَاصِمٍ، عَنِ ابْنِ جُرَيْجٍ، قَالَ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ، أَنَّهُ سَمِعَ طَاوُسًا، عَنِ ابْنِ عَبَّاسٍ، عَنْ عُمَرَ، أَنَّهُ سَأَلَ عَنْ قَضِيَّةِ النَّبِيِّ ﷺ فِي ذَلِكَ فَقَامَ إِلَيْهِ حَمَلٌ بِنْتُ مَالِكِ بْنِ النَّابِغَةِ فَقَالَ كُنْتُ بَيْنَ امْرَأَتَيْنِ فَضَرَبَتْ إِحْدَاهُمَا الْأُخْرَى بِمِسْطَحٍ فَقَتَلَتْهَا وَجَنِينَهَا فَقَضَى رَسُولُ اللَّهِ ﷺ فِي جَنِينِهَا بِعُرَّةٍ وَأَنْ تُقْتَلَ. قَالَ أَبُو دَاوُدَ قَالَ النَّضَرُ بْنُ شَمِيلٍ الْمِسْطَحُ هُوَ الصَّوْبُجُ. قَالَ أَبُو دَاوُدَ وَقَالَ أَبُو عُبَيْدٍ الْمِسْطَحُ عُودٌ مِنْ أَعْوَادِ الْحَبَاءِ.¹⁴

“Narrated Ibn 'Abbas (R.A):

'Umar (R.A) asked about the decision of the Prophet (ﷺ) about that (i.e. abortion). Haml b. Malik b. Al-Nabhigah (R.A) got up and said: I was between two women. One of them struck another with a rolling-pin killing both her and what was in her womb. So the Messenger of Allah (ﷺ) gave judgment that the blood wit for the unborn child should be a male or a female slave of the best quality and the she should be killed.

Abu Dawud said: Al-Nadr b. Shumail said: Mistah means a rolling-pin. Abu Dawud said: Abu 'Ubaid said: Mistah means a pole from the tent-poles.”

The great debate scholars starts from these two incidents, there is brief debate among scholars about fetus. Scholars have different opinions about different times but Islam prohibits the practice of depriving fetus from his life. Holly Quran gives sanctity to human life killing of any innocent person irrespective of age, sex and religion is discouraged in Quran in the language:

﴿وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ﴾¹⁵

“And they do not kill someone, which Allah has forbidden except for just cause.”¹⁶

Similarly the Holly Prophet (ﷺ) said that: “The very first matter to be decided between people on the Day of Judgment will be the cases of bloodshed.”

عَنْ عَبْدِ اللَّهِ قَالَ قَالَ النَّبِيُّ ﷺ: أَوَّلُ مَا يُقْضَى بَيْنَ النَّاسِ فِي الدِّمَاءِ.¹⁷

There is same Hadith is with different words: “Shedding sacred blood without just cause.”

وفي رواية أخرى قال: سَفَكَ الدَّمَ الْحَرَامَ بِغَيْرِ حِلِّهِ.

The permissibility and prohibition of removing fetus derives from the interpretation of Holly Quran and interpretation and analogies of *Hadiths* applied to *Quranic* verses particularly the ones prohibiting killing humans. There are two verses in Holly Quran:

﴿وَلَا تَقْتُلُوا أَوْلَادَكُمْ حَشِيَّةً إِلَيْنِ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنْ قَتَلْتُمْ كَانََ خَطِيئَةً كَبِيرًا﴾¹⁸

“Do not kill your children for fear of poverty. We provide sustenance to them and to you too. Killing them is a great sin indeed.”¹⁹

﴿وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِنْ إِمْلَاقٍ﴾²⁰

“Do not kill your children for fear of poverty.”²¹

These verses clearly define the right to fetus of life. Scholars rely upon these verses and consider elimination of fetus prohibited because whatever situation is, the fetus has right to live. Many scholars consider it prohibited rely upon three basic reasons i.e. legal status of fetus, respect of life and right to born. Islamic ethics demand a balance between these two concepts, without giving priority to any of them. Hence, Muslims consider respect for life as basic of religion, but not superlative to all other concepts with ethical value, such as society welfare. So history of right to fetus of life in Islam begins from Holly Quran and from the verdicts of Holly Prophet (ﷺ) that he gave upon different occasions.

Position of Feticide in Law

Protection of status of every person is the duty of Pakistani law. Fetus has a status in Islamic law then it means it also has the status in Pakistani law because Pakistani law follows the Islamic law and cannot be repugnant to injunction of Quran and *Sunnah* as provided in Article 227 of Constitution of Pakistan;

“All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and *Sunnah*, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.”²²

Fetus has a legal status in Pakistani law and Pakistani law not only recognizes its status but also protects it. In Pakistan Penal Code punishment against miscarry has been defined in two types. In first type the punishment is for *Isqat-e-Haml* in simple it is said that this punishment is for killing the embryo that is beginning stage of fetus. It means that not only fetus but embryo also has a status and value in Pakistani law then how it could miss the status of fetus, as sections of 338, 338-A, 338-B and 338-C Pakistan Penal Code elaborate:

“Whoever causes woman with child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, or providing necessary treatment to her, is said to cause *isqat-i-hamal*.

Explanation: A woman who causes herself to miscarry is within the meaning of this section.”

“Whoever cause *isqat-i-haml* shall be liable to punishment as *ta'zir*-

- (a) With imprisonment of either description for a term which may extend to three years, if *isqat-i-haml* is caused with the consent of the woman; or
- (b) With imprisonment of either description for a term which may extend to ten years, if *isqat-i-haml* is caused without the consent of the woman:

Provided that, if as a result of *isqat-i-haml*, any hurt is caused to woman or she dies, the convict shall also be liable to the punishment provided for such hurt or death as the case may be.”²³

The second type of punishment is for *Isqat-e-Janin* i.e. for killing the fetus or depriving it from the right of life, and this punishment is more than punishment of *Isqat-e-Haml*, it means status of fetus is most valuable in the light of Pakistani law then embryo as section 338-C of Pakistan Penal Code states:

“Whoever causes *Isqat-I-Janin* shall be liable to:-

- (a) one-twentieth of the *diyat* if the child is born dead;
- (b) Full *diyat* if the child is born alive but dies as a result of any act of the offender; and
- (c) Imprisonment of either description for a term which may extend to seven years as *ta'zir*:

Provided that, if there are more than one child in the womb of the woman, the offender shall be liable to separate *diyat* or *ta'zir*, as the case may be/for every such child:

Provided further that if, as a result of *Isqat-i-Janin*, any hurt is caused to the woman or she dies, the offender shall also be liable to the punishment provided for such hurt or death, as the case may be.”²⁴

In beginning Pakistan followed the English abortion law in which abortion was permissible that was against the injunction of Holy Quran and *Sunnah*. So in 1989 Supreme court of Pakistan said that the provisions regarding abortion and miscarry (S-312 _ S-316 PPC) are against the injunctions of Islam. Because in Islamic law abortion is prohibited but only some valid exception there are; and that provision are replaced by present law i.e. S-338, S-338A, S-338B, and S-338C.²⁵ The case in which English abortion law was struck down by Supreme Court of Pakistani law was titled by Federation of Pakistan v. *Gul Hasan Khan*. Pakistani law protects the fetus from every kind of harm just because of its status and value. In Pakistani law every person or human being has right not to harm and according to Islamic law as discussed fetus is also "*Nafs*" and legal personality so consequently it is a legal person in Pakistani law and has the same right not to harm as others have. Pakistani law preserves the fetus from every kind of harm because its status is like others irrespective of the fact that it is still in the womb of the mother. Pakistani law describes that if a pregnant woman commits any offence that is punishable with *qisas*, *rajm* or death or any rigorous punishment then execution of that punishment is not possible and that must be postponed because due to offence of mother fetus is not liable to any harm.²⁶ If the execution of punishment takes place then there is possibility that this punishment may cause harm to fetus that is not liable for any act and its status is different from the status of mother and it is not liable for the offence that its mother committed. Due to legal status of fetus Islam provides it many economic rights like as right to *hiba*, right to inheritance, and right to will. Similarly Pakistani law also provides economic rights to fetus due to its status that it has in Pakistani law, among those rights one is Property right that fetus acquires from Pakistani law as Section 13 of Transfer of Property act states:

“Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.”²⁷

If fetus would have no legal status in Pakistani law then how it could acquire property right, this thing clarifies that the fetus has legal status and value in Pakistani law. Pakistani law cannot deny the status of fetus because fetus possess status in *Shari'ah* and Pakistani law cannot be repugnant to *Shari'ah*, so any thing that has status and value in *Shari'ah*, Pakistani cannot deprive it and similar cannot deny it. Same situation is with inheritance that a fetus acquires due to its status. Pakistan rectified the convention on the Right of Child (CRC) which is based on Declaration of the Rights of Child 1959; paragraph 9 of preamble of convention states that:

"The child needs appropriate legal protection before as well as after birth.”²⁸

These words indicate that status of child after birth and before birth is equal only rights before birth are less as compare to after birth. After rectification of any international treaty it becomes binding on states which rectified it. So according to this rule convention on the rights of child is binding on Pakistan, and if that convention is giving legal status then it means fetus has status in Pakistani law as well as in those states which rectified this convention. Due to this legal status of fetus not only Islamic law but also Pakistani law disallows feticide that vanished the status of fetus. Pakistani law admits the legal status of fetus and preserves it, as there is a famous case in Pakistani law that is decided by *Sindh* High Court in which a woman was killed with her 7 or 8 months old fetus. Trial court punished the offender for committing the murder of that woman but High court said that it is not only murder of woman but also murder of 7 months old fetus that woman had in her womb. So High court said that it is not single murder and consider it the double murder i.e. murder of woman and murder of her 7 months old fetus.

Keeping in view the legal status of fetus, Pakistani law provides it some rights that are right to life, right to property, right not to harm, right to inheritance and right to gift.

Rights of Fetus

Allah Almighty creates human being as a superior over all living creatures and gives knowledge to every human being to respect each other, and provides a balanced mind and body. Islam gives the sanctity to every

human being and provides protection to every life of human being, because of this life of human being is totally sacred in the light of *Shari'ah*. Due to this respect and sanctity Allah Almighty says in Holly Quran:

﴿وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ﴾²⁹

“And do not slay the soul sanctified by Allah except in just cause.”³⁰

Another verse says:

﴿وَلَا تَقْتُلُوا أَنْفُسَكُمْ﴾³¹

“And do not kill one another.”³²

Again there is another verse in Quran:

﴿مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا﴾³³

“He who slays a soul unless it is (in punishment) for murder or for spreading mischief on earth shall be as if he had slain all mankind; and he who saves a life shall be as if he had given life to all mankind.”³⁴

In the light of these verses it is clear that sanctity of life is ordered by God on all human beings and right to life is necessary to be protected. Because of sanctity of human being suicide is prohibited in Islam, and it is necessary to protect the life of others.³⁵

1. Right to Life

Islam not only gives respect and sanctity to born baby but also gives this respect and sanctity to every unborn baby who is still in the womb of mother and ensures its safety. Basis sources of Islam that are Quran and *Sunnah* has declared steps for safety of child who is inside womb of mother as in Holly Quran:

﴿وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ﴾³⁶

“Do not kill your children for fear of poverty.”³⁷

﴿وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِنْ إِمْلَاقٍ﴾³⁸

“Do not kill your children for fear of poverty.”³⁹

Shari'ah advices to mother of fetus to take care of childhood before birth and protect her fetus and must take necessary steps to prevent the termination of pregnancy. Life of fetus has importance in the light of *Shari'ah*, this importance can be seen in Islamic Jurisprudence. If a pregnant woman dies and fetus is alive in her womb then life of fetus should be saved.⁴⁰

Importance of life of fetus can be considered from this, that if a fetus has been buried along with pregnant woman and after burial there is possibility of its survival then unbury the body of mother and remove fetus from her womb and if for survival of fetus postponement in burial of pregnant woman is necessary then it is recommended that woman should not be buried until the survival of fetus is confirmed.⁴¹ Many jurists like as *Imam Shafi* and *Imam Novi* also with jurists of *Hanfi* school of thought are agree on autopsy of died mother's abdomen if pregnancy age is more than six months and baby is in condition of survival outside womb.⁴²

Even in Quran it is mentioned that if any one protects or survives the life of other it means he survive the whole humanity. Right to life is given by God and it's a great gift for all human being, so its protection is very necessary in Islam, because of sanctity of life, suicide is prohibited. Fetus has right to life in Islam, it can be derived by the *Hadith* of Holly Prophet in which if someone kills fetus then that person is liable to *ghurra* or *diyat*:

حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ، حَدَّثَنَا وَهَيْبٌ، حَدَّثَنَا هِشَامٌ، عَنْ أَبِيهِ، عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ، عَنْ عُمَرَ، رَضِيَ اللَّهُ عَنْهُ، أَنَّهُ اسْتَشَارَهُمْ فِي إِفْلَاصِ الْمَرْأَةِ فَقَالَ الْمُغِيرَةُ قَضَى النَّبِيُّ ﷺ بِالْعُرَّةِ عَبْدٌ أَوْ أَمَةٌ، فَقَالَ أَنْتَ مَنْ يَشْهَدُ مَعَكَ، فَشَهِدَ مُحَمَّدٌ بْنُ مَسْلَمَةَ أَنَّهُ شَهِدَ النَّبِيُّ ﷺ قَضَى بِهِ.⁴³

“Narrated Hisham's (R.A) father from Al-Mughira bin Shu'ba (R.A):

'Umar (R.A) consulted the companions about the case of a woman's abortion (caused by somebody else). Al-Mughira (R.A) said: The Prophet (ﷺ) gave the verdict that a male or female slave should be given (as a *Diyat*). Then Muhammad bin Maslama (R.A) testified that he had witnessed the Prophet (ﷺ) giving such a verdict.”

According to Islam every life is believed to be awarded with a reason and fetus has a solid position in Islam, so if it is believed that every life is awarded for a reason then every life has a right to born. Islam provides respect not only to persons who are alive but it also protects the potential life in mother's womb. Deprive of fetus from life is considered as to destroy the will of God for that soul to be born even in the case of adultery if woman is pregnant then in this situation, abortion i.e. deprive the fetus from right to life is not permissible, scholars consider it legitimate child, from this it is clear that fetus has right to life in every situation whatever that is, because in Holly Quran there is described:

﴿وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى﴾⁴⁴

“No bearer of burdens can bear the burden of another.”⁴⁵

Life of fetus has very importance in light of *Shari'ah*. It is evident from many sources that fetus's rights are totally protected in Islam like as some religion's obligations have been removed from pregnant woman if there is

danger of harm to fetus. For instance pregnant women are exempted from fasting if there is danger of harm to fetus. Similarly if pregnant woman violate any law then her punishment shall be executed after her pregnancy, it is only for the life of fetus because it is in Holly Quran:

﴿وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ وَإِنْ تَدْعُ مُثْقَلَةٌ إِلَىٰ جَمْلِهَا لَا يَجْمَلُ مِنْهُ شَيْءٌ وَلَوْ كَانَ ذَا قُرْبَىٰ﴾⁴⁶

“No one can bear another's burden. If a heavily laden one should call another to carry his load, none of it shall be carried by the other, even though he be a near of kin.”

From all the material it is clear that every fetus has right to life and right to born and in Islamic law depriving the fetus from right to life is not permissible.

2. Right of Inheritance

Human beings rights are admitted even when in the womb of mother, but here “*ahleyat e naqisah*” is implemented. So according to this the life that is in the womb of mother is exempted from every duty, but that life can enjoy some rights like as inheritance, gift, bequest, freedom from slaver, and right of parentage.⁴⁷ Inheritance is essential matter in *Shari'ah* for fetus, because fetus can change the shares of other heirs, because fetus is also heir like other heirs. In Islamic law if it is confirmed the existence of fetus in the womb of woman at the time when husband of woman dies, and after that child born alive within six months from the death of father, then child will get share in inheritance. But here is a condition that marriage of that woman must be subsisted till the death of her husband. Similarly if woman is in the waiting period at the time of death of her husband then also fetus is legal heir, there is no difference whether he born in six months or after six months, but fetus must be born within two years from the time of divorce, otherwise it is not entitle to inheritance.

A share that is equal to share of one son shall be withheld and shall not be distribute till the birth of that child.⁴⁸ *Hanfi* scholars observe that the share equal to share of one son shall be kept aside for child who is in mother's womb.⁴⁹ For instance if a man dies leaving behind pregnant wife, three sisters, mother and paternal grandmother, and we assume the child to be male in womb of mother, and applying the rule of “*hujubhirmaan*” then according to this rule paternal grandmother as well as three sisters are excluded. Then remaining heirs are pregnant wife, mother, and baby in the womb of mother. According to Islamic law of inheritance pregnant wife share is 1/8, sharer of mother is 1/6 and residue will be for baby who is in the womb of mother. If the total share is 24, then three shares are for wife and four shares are for mother and remaining seventeen shares will go in favor of child. Existence of fetus in the womb of mother can affect the

total amount and also can reduce the amount of inheritance of the depending heirs.⁵⁰

Islamic law protects the right of inheritance for a person even in the womb of mother; fetus cannot be deprived from the right of inheritance in *Shari'ah*. According to some scholars gender of fetus in the womb of mother is not known, so the amount of its inherited portion cannot be define exactly. So according to these scholars the distribution of inheritance is not, and then it should be delayed till delivery. If there is any property of fetus the guardian can be appointed to confirm its safety, and authority of that caretaker is limited.⁵¹

3. Right to Will

Islamic law provides special value to the physical and mental development of the fetus till the end of pregnancy. Islamic law also provides some rights regarding economics, among them one is right to will or bequest.⁵² According to many scholars *janin* or fetus is also a human being, so create a will in its favor is legal but with two conditions.⁵³ Child must be born alive and its delivery must be within the term of six months or within two years and second condition is that fetus must have existence in the womb of mother when there is declaration of will.

According to *Sunni* law as described in *Fatwa-i-Alamgiri* and *Hedaya* that legatee must have existence at the time of execution of will, and that will is valid if fetus born alive within six months from the date of will. According to *Shia* law it is also valid if fetus born in largest period of gestation that is ten lunar months. According to *Shia* law if fetus has no existence at time of testator's death, then bequest is invalid.⁵⁴ Similarly acceptance of will is not necessary in the case of unborn child, the acceptance will be presumed in this case unless that acceptance causes injury to legatee.⁵⁵ For both i.e. will and gift to unborn child the condition that fetus must born alive within six month or within two years from the date of will or gift is necessary for validation of will and gift.⁵⁶

4. Right to Hiba

Literal meanings of *Hiba* that is discussed in Muslim Personal law are "donation", "gift", and "grant." In gift donor is a person who donates or grants something and donee is a person who gets that thing. In this formal acceptance is not necessary, there is differ among scholars regarding possession, according to one view possession is necessary by done while according to other view possession is also not necessary like acceptance, *Maliki* has same view.

According to Muslim law *Hiba* can be made for every man, woman, minor, adult etc. According to *Hanfi* law, the done must have existence at the time of *Hiba*, so if fetus has existence in womb at the time of *Hiba*

then *Hiba* is valid and if fetus has no existence at the time of *Hiba* then it is not valid. Gift to child who is in the womb of mother is valid with condition that child must born within six months from the time of gift, in this case Muslim law consider the child had actually existence in the womb of mother at time of *Hiba*. But according to *Shia* law period of six month is not mention. Famous book of *Shia* law “*Al Lummah*” describes the time to take birth is ten lunar months from the date of gift.⁵⁷

5. Right not to Harm

Islamic religion is complete code of life and it provides protection from every kind of harm, and this protection is also extending to fetus. Protecting of fetus from harm is protection of human being. Islamic law ensures the protection of baby who is in the womb of mother from every kind of harm. It is duty of every person that he should abstain from doing anything which cause harm to himself or others. There is *Hadith* of Holly Prophet:

حَدَّثَنَا عَبْدُ رَئِيهِ بْنُ خَالِدٍ التَّمِيمِيُّ أَبُو الْمُعَلِّسِ، حَدَّثَنَا فُضَيْلُ بْنُ سُلَيْمَانَ، حَدَّثَنَا مُوسَى بْنُ عُقْبَةَ، حَدَّثَنَا إِسْحَاقُ بْنُ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ، أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى أَنْ "لَا ضَرَرَ وَلَا ضِرَارَ".⁵⁸

“There should be neither harming not reciprocating harm.”

This rule of Shari’ah applies to every creature not restricted to human being. If this text forbid to causing harm to animals and birds then without saying, it would apply to human and even fetus. This rule is called harm preservation. For the protection of fetus and avoiding fetus from every kind of harm, it is duty of woman not to do anything or any act that is dangerous for fetus or that may cause harm to it. Woman must not use any medication during pregnancy without consultation with doctor because that medication may cause harm to fetus, similarly pregnant woman must avoid smoking, alcohol and other narcotics that may cause harm to fetus.⁵⁹ Right not to harm to fetus can be evident from many sources in Shari’ah. Pregnant woman is exempted from many religious obligations, this is only to avoid fetus from harm. Fasting is a religious obligation on every Muslim and pregnant woman is exempted from fasting because there may be any harm to fetus because of this reason; such woman is given license to leave the fasting during Ramadan. There is *Hadith* of Holly Prophet:

حَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ، حَدَّثَنَا أَبُو هِلَالٍ الرَّاسِبِيُّ، حَدَّثَنَا ابْنُ سَوَادَةَ الْقُشَيْرِيُّ، عَنْ أَنَسِ بْنِ مَالِكٍ، رَجُلٍ مِنْ بَنِي عَبْدِ اللَّهِ بْنِ كَعْبٍ إِخْوَةَ بَنِي قُشَيْرٍ - قَالَ أَعَارَتْ عَلَيْنَا خَيْلَ لِرَسُولِ اللَّهِ ﷺ فَأَنْتَهَيْتُ أَوْ قَالَ فَأَنْطَلَقْتُ إِلَى رَسُولِ اللَّهِ ﷺ وَهُوَ يَأْكُلُ فَقَالَ "اجْلِسْ فَأَصِيبْ مِنْ طَعَامِنَا هَذَا". فَقُلْتُ إِنِّي صَائِمٌ.

قَالَ "اجْلِسْ أُحَدِّثُكَ عَنِ الصَّلَاةِ وَعَنِ الصِّيَامِ إِنَّ اللَّهَ تَعَالَى وَضَعَ شَطْرَ الصَّلَاةِ أَوْ نِصْفَ الصَّلَاةِ وَالصَّوْمِ عَنِ الْمُسَافِرِ وَعَنِ الْمُرْضِعِ أَوْ الْحَبْلَى". وَاللَّهُ لَقَدْ فَاهُمَا جَمِيعًا أَوْ أَحَدَهُمَا قَالَ فَتَلَهَمْتُ نَفْسِي أَنْ لَا أَكُونَ أَكَلْتُ مِنْ طَعَامِ رَسُولِ اللَّهِ ﷺ.⁶⁰

“A man from Banu Abdullah ibn Ka'b brethren of Banu Qushayr (not Anas ibn Malik, the well-known Companion), said: A contingent from the cavalry of the Messenger of Allah (ﷺ) raided us. I reached (for he said went) to the Messenger of Allah (ﷺ) who was taking his meals. He said: Sit down, and take some from this meal of ours. I said: I am fasting, he said: Sit down, I shall tell you about prayer and fasting. Allah has remitted half the prayer to a traveler, and fasting to the traveler, the woman who is suckling an infant and the woman who is pregnant, I swear by Allah, he mentioned both (i.e. suckling and pregnant women) or one of them. I was grieved for not taking the food of the Messenger of Allah (ﷺ).”

The same condition of fasting of pregnant woman is in Shia law:

“If there is the fear of harm to fetus, the obligation of fasting shall be removed from mother”⁶¹

Similarly in Islam pregnant woman is exempted from punishment if she violates any Islamic law or any law, her punishment shall be executed after delivery because in case of execution during pregnancy shall also cause harm to fetus and Quran explicitly forbids to give someone punishment for sin of another. The Holly Quran says:

﴿وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى﴾⁶²

“No one is punished for the sin, the other has committed.”⁶³

Delay in Hudud and Qisas case is for the safety of fetus and preserving it from harm because fetus cannot be hurt because of mother's sin. There is Hadith of Holly Prophet that explains that Qisas is applicable after delivery of fetus:

“If a woman killed anyone deliberately and she is pregnant then she should not be killed under the law of Qisas unless she delivered and foster her child. If a woman committed adultery, she should not be punished through Rajam unless she delivered and foster her baby.”⁶⁴

Correspondingly when woman is pregnant because of adultery then punishment of Hadd or Rajam is not applicable until she delivered and nourished the child.⁶⁵

6. Economic Rights of Fetus

Among economic rights of fetus there are inheritance, will and alimony. Islam takes many steps for preservation and safety of fetus, one of them is alimony. Islam confirms the alimony to pregnant woman, just on behalf of

fetus, because health of fetus is dependent on health of mother, the reason is that fetus cannot eat and drink it takes nutrition from mother. If a man divorced pregnant woman then he is liable to pay the expenses related to health of divorced woman till she deliver the baby. It is mentioned in Holly Quran:

﴿وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ﴾⁶⁶

“And if they should be pregnant, then spend on them until they give birth.”⁶⁷

Alimony is for both i.e. pregnant widow and pregnant divorcee, but there is situation on woman that in twain cases she must stay in house of her husband during *iddah*.⁶⁸

Situations in which Feticide is permissible

From all above discussion the general rule can be derived that feticide is not permissible, but exceptions are everywhere. There can be different situations in which feticide is permissible and these situations are controversial among scholars, because mostly scholars from Islamic law, Pakistani law and Western law rely upon the general rule and consider feticide prohibited. Islamic law consider feticide a big sin if it is done without and cause, similarly Pakistani law declare it a crime if it is done without just cause and same situation is in law of many Western countries in which feticide is an act liable for penalty. Every source i.e. Islamic law, Pakistani law and Western law describe different situations in which feticide is permissible but not over all, this permissibility is only restricted to these situation. These situations and exceptions can be of different nature like as to protect the life or physical or mental well-being of mother, to prevent the completion of pregnancy that has resulted from rape or incest, to prevent the birth of a child with serious deformity, mental deficiency, or genetic abnormality. These are the basic exceptions of feticide, there can be other exceptions but these are discussed in all sources i.e. Islamic law, Pakistani law and Western law.

1. Protect the Life of Mother

Islam provides fetus right to life and declares its status and due to this status its life is very sacred in eyes of Islam, thus Islam forbids from its killing while Islamic law also provides exception for feticide that is when the life of mother is in danger and there is no substitute except feticide. For feticide the views of four Sunni schools of thought and Shiite school of thought is that it is prohibited at any stage of pregnancy but all scholars exempt one situation that is when life of mother is in danger and it is valid situation for feticide because Islam gives preference the mother's life over

the fetus.⁶⁹ It is permissible to remove the fetus even after 120 days of pregnancy if the pregnancy poses an exceeding danger to the mother that must be confirmed by a reliable medical report and this is the only situation after 120 days in which feticide is permissible according to all Muslim scholars.⁷⁰

Muslim scholars agree universally that the life of mother has precedence over that of fetus, since the mother is considered the "original source of life" whereas a fetus is merely a potential life. Muslim scholars believe that feticide should be legal under the principal that "the greater evil (the woman's death) should be warded off by the lesser evil (abortion)."⁷¹

Pakistani law consider termination of pregnancy a crime and states punishment for such act but at the same time Pakistani law states an exception from the general rule of feticide. According to Pakistani law feticide or termination of pregnancy is permissible when the life of mother is in danger as Pakistani law states:

"If such miscarriage is not caused in good faith for the purpose of saving the life of the woman."⁷²

This statement clarify the situation in which feticide is permissible and that situation is when the life of mother is in danger. Sometime feticide is necessary to save the life or health of pregnant woman and *Shari'ah* gives its permission. Few clinical specialists issued a statement commenting position of feticide to allow feticide if necessary, to prevent the death of mother. Among the conditions that may require ending a pregnancy to save a woman's life are severe infection, heart failure, and severe cases of preeclampsia, in which a woman develops very high blood pressure and risk a stroke.⁷³

Erkia Levi, a gynecologist at university of North Carolina says:

"There are certain cases where ending the pregnancy are the only option, one of them is putting mother's life at risk."⁷⁴

While it is true that fetus has right to exist but it does not mean that feticide is unlawful in every situation. In some circumstances it may even be ethical for a mother to terminate the pregnancy to defend herself from the danger to her mental or physical health that she would face if she went on with the pregnancy. Even those who strongly oppose the feticide accept that feticide can be ethically justified in these cases when continuing with the pregnancy would result in mother's death.⁷⁵

Some people claim that this is case of "doctrine of double effect"⁷⁶ rather than of self-defense and that the death of fetus is merely a side effect of the treatment to save the mother. The rights of people to defend themselves when they are in danger are generally accepted and in extreme circumstances they may kill to defend themselves. In this case even if the

person causing the danger is entirely innocent, unaware of what they are doing, or otherwise incapable of being a danger the violation can still occur. Thus when fetus (entirely innocent) harms mother, this can be considered a danger and it can be removed.⁷⁷

2. Rape

Shari'ah forbids feticide i.e. termination of pregnancy because fetus has a great status in *Shari'ah* and there is no issue whether that child is child of rape or otherwise, but there is conflict between scholars regarding removing of child which is child of rape. Some Muslim scholars consider child of rape a legitimate child and its removal is not permissible because it has the same status that legitimate child has. So these scholars consider killing of such fetus a sin, these scholars allow its removal only if it is danger for life of mother.⁷⁸

While other scholars say that when a pregnancy is unintended and consequently unwelcome, such as in the instance of rape, the parents should terminate the fetus to avoid the embarrassment both mother and kid who are looking forward to it. A mother should also be able to determine whether or not she wishes to keep her child regardless of whether it was creation of rape or *zina*, because it is ultimately the child's mother who suffers most. A child of rape like one born of adultery (*walad zina*) is a lower-status member of society in terms of the rights guaranteed to him or her and the social status that he or she can attain.⁷⁹ *Hanfi* scholar like as *Muhammad bin Adam Al Kausri* says that in the case of rape many contemporary scholars consider it a valid reason for removing the fetus. As some scholar consider the child of rape a legitimate child similarly some scholars consider him illegitimate and urged to make an exception the rape of Bosnian and Albanian woman by Serb soldier in war of 1990. The major mufti of Palestine *Ekrima Al Said Sabri* had a different view than mainstream scholars. He permitted in his fatwa that a Muslim woman raped by enemy during Kosovo war to take medicine for removing the fetus because according to him the children born to those women might one day battle against the Muslims.⁸⁰

As discussed that this situation for permissibility of feticide is controversial. But the famous and general rule among Muslim scholars is that feticide in case of rape is not permissible, because in *Shari'ah* many scholars consider rape of child a legitimate child, and when it is legitimate so its status is clear in Islam and its killing is a sin in *Shari'ah*

3. Fetal Deformities

This situation is also controversial like previous one. Few Sunni Muslim scholars contend that fetus removal is allowed assuming the infant may be debilitated somehow and that would make its consideration outstandingly hard for parents, for example disfigurement, mental impediment etc.⁸¹ Islamic Sunni foundation of the world Muslim league is International Islamic Fiqh Council (IIFC: Academy) that is situated in Mecca, Saudi Arabia.

IIFC has ruled the following:

"If proven by a committee of at least two competent and trustworthy medical experts on the basis of medical examination with the use of appropriate equipment and laboratory findings before 120 days of pregnancy that the fetus has serious anomalies that will be present at birth, only then it is permissible to abort after the request of parents."⁸²

While Sunni contemporary scholars generally do not allowed feticide in this situation. Same controversial is in Shiite law. For instance *Ayatollah Makarim Sherazi* says that:

"It is problematic to abort the fetus (in case of deformity) particularly because you cannot be absolutely certain that the deformities are not compatible with life."

While *Ayatollah Fazal-Lankarani* gives permission to abort fetus before 4 months if fetus is dying from maternal illness."⁸³

Scholars who permit feticide in this situation allow it only before 120 days from conception while after four months no scholar of Sunni schools of thought as well as Shiite school of thought allow feticide in this situation.

These three situations are basic situations in which feticide is permissible and all these situations are controversial, except these conditions there is no other situation that allow feticide in *Shari'ah*.

Impact of Feticide on Society

Due to response of public pressure many states enacted laws concerning feticide during nineteenth century. The basic reason for reforming of anti-feticide laws is the welfare of society and woman.⁸⁴ Most of the groups that reform these laws give their attention on this issue that how these laws affect society and woman. Children are also part of society. This issue also affects the life of children; youngest children of society seek knowledge of feticide during AIDS classes or during their sex education. Not only this but in addition they learn about feticide from society i.e. they hear about feticide from different sources like as parents, other adults, movies, and from everywhere. The result of this is that children learn about removing of fetus in their very simple way. Because of this many children start to ask questions from mother for example they ask "When I was in your

womb, Mom did you wish to remove me?” or similarly other questions like as “Did you even removed a sister or brother of mine?” or “Did you had feticide?”

These questions are unanswerable by mother particularly for that mother who had removed fetus because she knows that these answers have harmful effect for child. Social effects of this issue may be more destroyable and harmful for society than anyone imagine. The social impact of this issue keeps the children in direct fear of life.⁸⁵ No one can deny that depriving fetus from life effect woman as well as effect community and society in bad way. Fetus effects society from many aspects like as, psychologically, morally and financially.

a. Psychologically

Psychologically elimination of fetus effect society and woman badly. Due to feticide, number of suicides increase in our country. Similarly brothers and sisters of feticide child may feel burden of expectations that isolate them from their companions. Mentally whole society as well as woman remains in depression because of feticide and due to this depression many women ruin their home.⁸⁶

b. Morally

Feticide also effect society and community morally, feticide has also impact on sexual activity. Feticide vanish the consequences of child-rearing and because of that there is incensement in sexual activity. Feticide also makes common the killing of human for convenience. Because of sexual activity there is death of society morally.⁸⁷ Moral that is the back bone of every community ruins because of feticide and then progress of society vanished.

c. Financially

Finance that is ingredient part of every society, on this ingredient feticide has also bad impact.

Financially feticide has a great impact on society from different aspect. Feticide decrease birth rate and the result of this there are many economic results, particularly social security. Feticide creates low population growth, which births social and economic issues especially in countries that has high income like as US. There is a larger economic loss because of feticide because when birth rate decrease then automatically economic problems increase.⁸⁸

Usually feticide targets minority populations. Great number of clinics is located near minority communities in big cities. There is genocide of disabled because of feticide; possible results of feticide may be death, infertility, infection etc. Feticide is a hot issue now a day, it has destructively impact on society in legal as well as in religious term, and

there is an immense need to find legal ways to protect 2 million lives globally that are victims of feticide each year, not only for this but there is also an immense need to find legal ways for preservation of society from the bad impact of this evil. Feticide not only affects society but it also affect both lives i.e. the life of child as well as the life of mother. It is a very sore issue for parents as well as for society.

Feticide is the result of social, religious and economic factor; rate of feticide changes every year, this issue is very controversial now a day. Different people have different opinion regarding this issue whether it is positive or negative; in short this issue affects society from different aspects, for instance ,financially, economically, psychologically and morally feticide has very bad consequences for society. In many states there are restricted laws that banned feticide in those countries any person who choose feticide it means that person committing a crime. From Islamic perspective it has also bad impact on community; if there is method to remove than it means there is encouragement of rape in society. Because of bad consequences every community discourage feticide and its practice and demand from government not to legalize it on state level.⁸⁹

There are many evidences that feticide affects physical and as well as emotional health, psychotically feticide forms stress disorder. Approximately more than eight million women per year suffer from feticide that may have to short- or long-term impact, like as anemia, prolonged weakness, chronic inflammation of the reproductive tract and secondary infertility. Of the women who experience serious complications each year because of feticide nearly three million never receive treatment. Feticide has important consequences for morbidity and mortality, accounting for an estimated 13% of maternal deaths in developing countries, and for 5 million women being treated for complications of feticide each year. Feticide also has economic results in terms of direct cost for system of health and indirect cost for women, their families, and communities. Feticide affects women's and families' budgets, since they must pay for the abortion, for some or all of the costs of treatment for feticide, and for costs incurred by inability to perform normal economic and domestic activities for a period of time. Feticide has social impact like as the risk of being denounced to authorities or imprisoned, the consequence of feticide on the well-being of children and other family members from the death of a mother, and stigma experienced by women and their families. Laws for killing of fetus vary basically on social believes, perspectives of community for abortion are heterogeneous and varying by gender, education, residence and position in society. There is need to community-based approaches to mitigate feticide. It is social

problem that consist of woman role in community and woman role in organization of family not only this but it is also a psychological issue that may affect the individuals, again it is an ethical, moral, religious and legal issue. This social evil should not be promoted by any community. In 1967 World Health Organization consider this issue a serious public health problem because public health is attached with promoting health, and preventing diseases through efforts of society. Many diseases emerge because of abortion like as breast cancer risk, mental disorder and premature death.

These are impacts of feticide that it has on society. Authorities must find some solutions with immense implication to eradicate this evil. If society or authorities did not pay their attention on this evil it will ruin the whole society and many lives in country. Every country must enact strict laws regarding abortion, to control this social as well as moral evil, not only this, but there must be a check and balance upon these laws to regulate these laws in their best way.

Family is essential of every society and abortion puts a bar on growth of family. Every society regards abortion negatively. Some society consider it as “killing of priest” and some society thinks it a worst sin than “killing of own parents.” According to some religion body is property of God, and woman has no right to interfere with it.

Conclusion

Life protection is one of major object of *Shari'ah* because of this killing of fetus is prohibited and considering sin if done without reasonable cause or without good faith. Feticide or seizing the fetus from his right to life is a tropical problem now a day; it has a negative impact on society as well as not allowed in *Shari'ah*. According to *Shari'ah* perspective it's snooping with God's part that's critter of everything. According to them if any person kills fetus it means that person is opposing the God's will. For this reason, women do not have the right to kill the fetus, but for women it can only be accepted in exceptional situations. There is a great need to overcome this problem for a very noble purpose which is the preservation of life which is a victim of this pain every year. The feticide with all its types should be discouraged because a large number of people have lost their lives due to this issue, especially in countries where health care centers are not in better condition. If the fetus reaches forty days of conception, its remoteness becomes forbidden according to many scholars, unless an urgent need does not exist, which justifies it in the eyes of Islamic law. If the fetus reaches 120 days, all scholars indicate that the termination of the gestation of a living fetus would be allowed only to save the life of the mother or in another reasonable cause. This problem is very

complicated problem of every region and society now a day. Approximately all basic religions consider the fetal murder a sin and give permission only in certain situations; the basic situation in all religions is when maternal life is a danger.

The fetus has great value in Islamic law, Pakistan law and in Western law. Even the right to live discussed in the constitution of many countries, this shows the fetal value in Western law. But in Pakistani law and Western law protection of fetal rights is not enough, because the lack of legal protection of the natural rights of the fetus in Pakistani law and Western law give birth to continuously breach of these rights. Islamic law gives sanctity and respect for the fetus not only after four months of conception, but also before four months of conception. This means that Islamic law maintains the sacred fetus in the mother's uterus and his life is very imported, resulting in prejudice to the fetus is not permissible because of this reason feticide is not permissible and there is a responsibility of *Ghurra*. There is no doubt that fetuses have many rights given by Islamic, national and international law, such as the right to life, property rights, the right not to harm, the right to inherit, the right to a will and equality rights. Therefore, the fetus can enjoy these rights without any hindrance from other people, and these rights cannot be taken away in any circumstance. Not only in national law and international law feticide is crime rather approximately all basic religion like as, Islam, Hinduism, Buddhism, Judaism and Christianity consider feticide a sin and prohibited act or detestable act.

Islamic law provides a lot of attention to the fetus and also gives many rights to him because in Islamic law it is also a human that develops in the uterus of the mother. In Islamic law fetus also has legal capacity but its legal capacity is inappropriate, consequently it has some rights but there is no obligation because of *Ahliyat-e-Naqisa*. The Islamic law states that the period of the soul starts from the third stage of life in the uterus as discussed in the Holly Quran and *Sunnah* and after that Islamic law considers it "*nafs*" So the verse of Quran that explicitly prohibits killing "*nafs*" also extends to the fetus, so killing the fetus is sin and punishment or penalty for those who kill the fetus is *ghurrah* in Islamic law that is 1/20 of full *diyat* and it will be given to fetal heirs. Despite this, Islamic law is not strictly applied in our country, since a fetus cannot obtain their legal status under Islamic law, and our state law has many gaps regarding fetal status because of that status of fetus in the law of our country is not much clear and ascertain.

Despite the fact that fetuses have rights in Pakistani law, such as right to life, right to property, etc., fetuses have no such value, rights, and status as

they do under Islamic law. Historically, the Western concept of pro-life & pro-choice and the concept of personhood have led to many western countries, especially the USA, giving no status to the fetus. The fetus is seen as a part of the mother and is therefore not entitled to any rights until birth. Nevertheless, several Western countries give it status and importance, and because of that status many Western countries grant it a constitutional right of life. Especially preamble of CRC clearly admits the status of fetus. Countries which recognize the status of child have laws for its protection but these laws are not strictly followed in those countries and consequently fetus lost its status.

The Qur'an and *Sunnah* make it clear that feticide is prohibited by Islam and abortion is also feticide because Islam considers a fetus a person after four months as it is during this period when the soul enters the body, and in this period, the fetus is developing in the womb of its mother and has organs. In all cases where the fetus reaches 120 days, scientists agree that abortion is only allowed to save the mother's life; otherwise, it is murder of the unborn child, or the murder of a soul. All people and everything created by God have the rights given by God. All these rights should be protected as much as possible, including rights of fetus that he has in *Shari'ah*. In the event of a conflict of rights, the priority of rights is established in accordance with the divine revelation and the prophetic orientation, for example when the life of the mother is in danger, the feticide is permissible because the life of the mother has priority on the life of the fetus. It is obvious to the above discussion that no school of thought, whether *Hanfi*, *Shafi*, *Hanbali*, *Maliki* or *Jaffari* authorizes the feticide without a reasonable cause that should be legitimate in the eyes of *Shari'ah*, therefore, according to all these schools abortion is a lesser sin before the soul period, while it is similar to murder after the period of soul and the same situation is in other major religions, all the major religion of the world did not support the feticide in the normal situation but under exceptional conditions, the feticide is allowed in all religions.

There must be a solution for the fundamental reasons of poverty, illiteracy and other reasons that increase the abortion ratio. The society should solve these problems without waiting for the government's support and take the necessary measures to eradicate this social evil of society that does not only destroy the life of the fetus but also the life of the mother.

Recommendations

All parents, young, societies and governments should play their role in eradicating the feticide; that is ethical and moral evil from all facets of life and must provide the fetus its right to life. Each country must promulgate

strict abortion laws, to control this social evil as well as moral, not only that, but there must be a check and a balance on these laws to regulate these laws in their best way. The feticide with its entire species should be discouraged because a large number of people have lost their lives because of this issue, especially in countries where health care facilities are not better. Islamic law must be strictly followed in country and everyone must help each other to eradicate this social evil from society. The Countries which have laws regarding fetal rights, should implement these laws. States who provide rights to fetus but have no laws regarding the protection of fetal rights must enact laws for protection of these rights that fetus has.

The Pakistani law has many shortcomings in the sections dealing with the fetus which must be covered for total protection of the fetus and its status. These loopholes are fully covered in Islamic law, there should be amendment in these sections and that amendment must comply with Islamic law to cover these loopholes and ambiguities, otherwise there is a high risk of misuse of this law.

Laws of countries regarding fetus must be amended keeping in view the international treaties that give impotence to fetus and provide it legal status and rights. Nation has to take steps for protecting the right of fetus, especially rights of fetus to life and for that all possible procedures must be adopted. There must be a solution for the fundamental reasons of poverty, illiteracy and other reasons that increase the feticide ratio and society should solve these problems without waiting for the government's support.

(REFERENCES)

¹ Sayyid Sabiq, *Fiqh u'l Sunnah*, Vol.2, (Cairo: Shirkah Manar al-Dawliyyah, 1997), P: 334.

² Al-Quran: 31.

³ Muhammad Taqi Usmani, *Meaning of the noble Quran* (Karachi: Quranic Studies Publishers, 2005).

⁴ Al-Quran: 151.

⁵ Muhammad Taqi Usmani, *Meaning of the noble Quran*.

⁶ Perihan Elif Emekci, "Abortion in Islamic ethics," *Relig Health Journal* 56 (2017): P: 884-895.

⁷ Stephanie Watson, "Abortion option by trimester," *Medical News Today*, 6 December 2018, p:6.

⁸ D. Weinberg Roy, *Family planning and the law*, 2nd ed. (Oceana publication; 2nd edition, 1979), P: 185.

⁹ J. D. Boyd and W. J. Hamilton, "Foetus or Fetus?", *British Medical Journal*, 1967.

¹⁰ www.Merriam Webster.com

-
- ¹¹ www.Dictionary.com
- ¹² Collin English Dictionary
- ¹³ Muḥ ammad ibn Ismā ‘ī l al-Bukhā rī , *Sahih Al-Bukhari*, Book Al-diyat, Hadith: 47.
- ¹⁴ Abu Dawud al-Sijistani, *Sunan Abi Dawud*, Book Al-diyat, Hadith: 79.
- ¹⁵ Al-Quran: 151.
- ¹⁶ Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ¹⁶ Al-Quran: 151.
- ¹⁷ Muḥ ammad ibn Ismā ‘ī l al-Bukhā rī , *Sahih Al-Bukhari*, Book Al-diyat, Hadith 6471.
- ¹⁸ Al-Quran: 31.
- ¹⁹ Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ²⁰ Al-Quran: 151.
- ²¹ Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ²² Constitution of Pakistan, 1973.
- ²³ Section 338-A, Pakistan Penal Code, 1860.
- ²⁴ Section 338-C, Pakistan Penal Code, 1860.
- ²⁵ Qaisar Abbas, “Pro-life and Pro-choice debate: A journey from restriction to regulation,” (2009).
- ²⁶ Section 382, Code of Criminal Procedure, 1898.
- ²⁷ Section 13, Transfer of Property Act, 1882.
- ²⁸ Convention on the rights of Child, 1989.
- ²⁹ Al-Quran: 151.
- ³⁰ Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ³¹ Al-Quran: 29.
- ³² Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ³³ Al-Quran: 32.
- ³⁴ Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ³⁵ Ghodrati Fatemeh, Akbar zadeh Marzeih, “Rights of fetus in Legalization abortion,” *Health Science Journal*: 1-15.
- ³⁶ Al-Quran: 31.
- ³⁷ Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ³⁸ Al-Quran: 151.
- ³⁹ Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ⁴⁰ Rida Irfan, Romesa Mariam, “Different aspects of fetal rights in the light of Islam,” December 2020.
- ⁴¹ Syed Ruhollah Mousavi, *A comprehensive law Ahl al-bayt*, (1994).
- ⁴² Mustafa Ahmed Zarqa, *Al-Mudkhal al fiqhi ‘l Aam* (Matba‘ at Ja‘mi‘ at Dimashq, 1959), 989.
- ⁴³ Muḥ ammad ibn Ismā ‘ī l al-Bukhā rī , *Sahih Al-Bukhari*, Book Al-diyat, Hadith 44.
- ⁴⁴ Al-Quran: 15.
- ⁴⁵ Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ⁴⁶ Al-Quran: 18.
- ⁴⁷ Rida Irfan, Romesa Mariam, “Different aspects of fetal rights in the light of Islam.
- ⁴⁸ Imran Ahsan Khan Nyazee, *Outline of Muslim Personal Law* (Rawalpindi: Federal Law House, 2012), 226.
- ⁴⁹ Uthman ibn Zaylai, *Kashf al-haqaiq fi sharhkanz Al-Daqaia*, Vol.2, (Bayrut: Dar al-Kutub al-Ilmiyah 2000).
-

-
- ⁵⁰ Raouane Azziz, Ruhifadzlyana Jailani, "Islamic law of inheritance for the unborn child according to contemporary medical information," *Ulum Islamiah Journal* 8 (2000) P: 38.
- ⁵¹ Rida Irfan, Romesa Mariam, "Different aspects of fetal rights in the light of Islam.
- ⁵² Ghodrati Fatemeh, Akbarzadeh Marzeih, "Rights of fetus in Legalization abortion," *Health Science Journal* 10.
- ⁵³ Sayyid Sabiq, *Fiqhu'l Sunnah*, Vol.2, P: 1097.
- ⁵⁴ Imran Ahsan Khan Nyazee, *Outline of Muslim Personal Law* (Rawalpindi: Federal Law House, 2012), P: 255.
- ⁵⁵ Ibid.
- ⁵⁶ Imran Ahsan Khan Nyazee, *Outline of Muslim Personal Law*, P: 257.
- ⁵⁷ Muhammad bin Makki, *Al-Lumamah Dimashqiah*, Book Al-Hiba (Qom: Dar ulIlm Publisher, 2000).
- ⁵⁸ Abū ' Abdillā h Muḥ ammad ibn Yazī d Ibn Mā jah, *Sunan ibn Majah*, Vol.1, Book Al Ahkaam, Hadith: 2340, (Bayrut: Dar Al-Kotob Al-Ilmiyah).
- ⁵⁹ Muhammad Sayyid Tantawi, "Children in Islam, their care, upbringing, and protection," (Al Azhar University Press 2005).
- ⁶⁰ Abū ' Abdillā h Muḥ ammad ibn Yazī d Ibn Mā jah, *Sunan ibn Majah*, ,Vol.1, Book Al Ahkaam, Hadith:2408.
- ⁶¹ Syed Ruhollah Mousavi Khumyny, *A comprehensive law Ahl al-bayt*, (1994).
- ⁶² Al-Quran: 18.
- ⁶³ Muhammad Taqi Usmani, *Meaning of the noble Quran*.
- ⁶⁴ Abd-ur-Rehman Al-Jaziri, *Kitab-ul-Fiqh-al-Madhahib-ul-Arbaá*, Kitabul Hadood, V.5, (2012), P: 320.
- ⁶⁵ Abū ' Abdillā h Muḥ ammad ibn Yazī d Ibn Mā jah, *Sunan ibn Majah*, Book Al-Diyat, Hadith: 2699.
- ⁶⁶ Al-Quran: 6.
- ⁶⁷ Muhammad Taqi Usmani, *Meaning of the noble Quran* (Karachi: Quranic Studies Publishers, 2005).
- ⁶⁸ Ala Al-Din Al-Kasani, *Bada' us Sânaé*, V.3, (Dar Ihya al Turath al Arabi, 1998), 209.
- ⁶⁹ Farida Ali, Akila Belembago, Sahar Hegazi, "Children in Islam their care, upbringing and protection", (PIXELTONE, New York 2005).
- ⁷⁰ The Islamic position on abortion, (Australian national Imams council 2019).
- ⁷¹ Jonathan E. Brockopp, *Islamic ethics of life: Abortion, War and Euthanasia*, (Columbia: University of South Carolina Press 2003), P: 64.
- ⁷² Section 338, Pakistan Penal Code 1860.
- ⁷³ Kim Painter, "Doctors say abortions do sometimes save woman's lives", *USA Today News*, 22 October 2012, P: 4.
- ⁷⁴ Ibid, P: 4.
- ⁷⁵ Lori Robertson, "Termination of pregnancy in self-defense", *Philosophy & Public Affairs* 13 (2012): 175-207.
- ⁷⁶ This doctrine says that if doing something morally good has a morally bad side effect it is ethically OK to do it providing the bad side-effect was not intended. This is true even if you foresaw that the bad effect would probably happen.
- ⁷⁷ Lori Robertson, "Termination of pregnancy in self-defense", P: 175-207.
- ⁷⁸ Jonathan E.Brockopp, *Islamic ethics of life: Abortion, War and Euthanasia*, P: 87-88.
- ⁷⁹ Ibid, P: 87-88.
- ⁸⁰ Ibid, P: 87.
- ⁸¹ Tom Ehrich, "Where does God stands on abortion?," *USA Today News*, 13 April 2006.
-

⁸² Abdul rehman Al-Matry, Jaffar Ali, "Controversies and considerations regarding the termination of pregnancy for fetal anomalies in Islam," *BMC Medical Ethics* (2014).

⁸³ K.M Hedayat, M Raza, "Therapeutic abortion in Islam: Contemporary views of Muslim Shiite scholars," *Journal of Medical Ethics* (2006).

⁸⁴ Richard A. Schwartz, "The social effect of feticide," *American Journal of Public Health* 62 (1971):131-135.

⁸⁵ Peter J. Riga, "The Social effects of abortion on children," *SAGE Journal* 6 (2017), P: 52-62.

⁸⁶ St Joseph County, "Abortion hurts woman in long term," *CBS News Today*, 14 August 2018, P: 6.

⁸⁷ Elizabeth Oltmans Ananat, Jonathan Gruber, Phillip B. Levine, "Abortion and selection," *Journal of Economics and Ethics* 91 (2009): P: 124-135.

⁸⁸ Henry Potrykus, Anna Higgins, "Decrease of the U.S. Population & Effects on Society," *Family Research Council Journal* 8 (2014): P: 1-12

⁸⁹ Phillip B. Levine, *Sex and consequences* (UK: Princeton University Press, 2007), P: 10.