

The permissibility or impermissibility of Selective Reduction

A medical Fatwa by Ustaaz, Ahmed Fazel Ebrahim

From (Ustaaz), Ahmed Fazel Ebrahim, 83 College Street, Mayfair, Johannesburg, South Africa
fatwa@fatwa.org.za

Assalaamu Alaykum, Dearest brother

I am glad that your wife is pregnant and expected to deliver triplets. May Allah bless your home and the children that are to be born. May Allah, through His graciousness and mercy in this holy month of Ramadhan, make the birth of those children to be the greatest joy of your family.

It is a high-risk pregnancy as the doctor said. I am sure all triplet pregnancies fall within this sector. Indeed history also has records of women who gave birth to five children at one instance.

I am happy that you say "All three babies look fine now."

For the doctor to be afraid of losing all of them at the 5th or 6th month of pregnancy or having premature babies since the statistic shows that 70% of the triplet babies are born prematurely is a medical opinion or fact that has substantiation and we do not deny its validity.

His suggestion of executing a selective reduction, which means he would reduce the pregnancy to 2 babies by inserting a needle into your wife's womb and stop one heart and the 5 % possibility of this procedure having a chance of losing all of them as well is something that scientist and bio-medical specialists dabble with in their absence of faith and recognition of an Allah who, in His wisdom, has the capability to create man like Aadam Alayhis Salaam without parents and without a womb. It is indeed true that loosing all three conceived children is possible and that it has happened that many women have lost all three children. A fellow student in my school class, had triplets as well. Likewise, there are also chances where many women had miscarriages with a single child in the womb. The possibility of having a premature child does not allow you the right to kill that child or to risk killing all the children in that womb. In the ultimate possible event of loosing all the children, we would accept that also as part of Allah's divine plan and that He, Allah allowed the conception of the three for a reason and He, had likewise, allowed their death for a reason. We must therefore not act as Gods besides Allah who think that giving life is in our hands and that we have the right to decide prior to birth to decide the fate and destiny of the innocent conceived children. Whether the birth would be fine, pre-mature or whether the foetuses would be still-born is the choice of Allah, not a human choice. Under extreme medical conditions due to valid and justifiable fears there may have been possibilities sometimes to even consider the termination of the pregnancy due to a life threatening situation to the biological mother. However, the case of triplets is not even a rare occurrence. It is normal in many societies.

As for your questions:

1. Is it Haram to perform the selective reduction?

Yes it is totally and absolutely Haraam. You are not Allah to decide the fate of the children. Selective reduction will, in this case, be equivalent to abortion.

2. You say: "You asked two Imams in the US. One of them said it is haram after 120 days of pregnancy and the other said it is haram after 40 days."

Both these Imams can only advocate that in the light of medical expertise and absolute medical evidence relating to the positive identification of factual proof and evidence relating to the loss of all the foetuses if there maybe justification to attempt to save the remaining other foetuses.

A hadith states that the *rooh* (the soul) is blown into the foetus after 120 days. It is because of that hadith that the scholars say that terminating pregnancy after infusion of the soul is like an induced abortion or murder of human life. However, neither does that same hadith or any other, clearly allow us to even terminate the growth of the foetus prior to the infusion of life. Some jurists have of course used that hadith in cases of expediency and dire need like cases of rape or other severe medical impairment to the foetus.

Since some scholars have considered the three Qur'anically given the initial stages regarding embryonic development of 40 days each which then total to 120 days before the soul is infused into it as a noteworthy process that is not void of implication. They thus, despite the implication of the hadith of Bukhari which states that the soul (*rooh*) is infused after 120 days, consider the Qur'anically given second stage to alter the primary state of the sperm in a significant manner since it is within the process of the human life that Allah creates and thus do not allow an induced abortion (or implicatively, a selective reduction) after the first 40 day period. The jurists differ in this regard and their opinions are quoted hereafter.

The differences of the opinions of the two U.S. Imams is because of the divergent opinions held by the Fuqaha of Islam and not because of any error in their understanding of the ruling of the Shari'ah.

You do not have a reason to be confused. The doctors are confused whether they have the right to give life or terminate it. As a Muslim you know what to do. **You have Yaqeen in Allah and let Allah decide the fate and destiny. Allow the pregnancy to continue and bear all odds till the end. May Allah make it a blissful period with love and joy in your homes. May you enjoy the three children. May the children enjoy you and your laps of mercy. Cry and say Jazakallah (We thank you Allah). Allah we will accept all three children with joy, love and care and knowledge that you will provide their sustenance and we need no fear in that regard.**

Your brother in Islam - Ustaaz Ahmed Fazel Ebrahim

Refer to the following pages for the view of the Fuqaha (Islamic jurists)

Selective Reduction - Is it permissible?

A preliminary Research report by Ustaaz, Ahmed Fazel Ebrahim
Ramadhan 1424 A.H. November 2003

I would now extract pertinent issues from the work “The *Fiqh* of medicine – Responses in Islamic Jurisprudence to developments in Medical Science.” By Ahmed Abdel Aziz Yacoub. Taha Publishers Ltd. 1 Wynne Road, London SW9 0BB

“And the Prophetic hadith:

1. The creation of any one of you is gathered in the belly of his mother for forty days as a drop (*nutfa*), then later a blood clot (*‘alaqa*) for the like of that, then later a morsel of flesh (*mudgha*) for the like of that. Then the angel is sent to him and breathes the *ruh* into him. (Bukhari and Muslim. Also in Sunan ibn Majah).

Notes by Ahmed Fazel Ebrahim

In the above *hadith*, Nabi S.A.W. specified 120 days as the term after which the *Ruh* (soul) enters the foetus. According to the Quranic verse, the sperm does not transform into the next stage of development except after the first 40 days. Therefore, some scholars have stated that an abortion demanded by absolute medical necessity either due to a life threatening situation for the mother or threat to the unborn foetus is to be done before 12 weeks (90 days). However, they refer to (12) weeks from the instance that the sperm transforms from *nutfa* to *‘alaqa* according to the Qur’anic verse since the first 40 days are difficult to medically determine. Note the *hadith* discusses the creation of the human and the infusion of the *Ruh* into the foetus. It does not discuss the right to terminate its development prior or after the infusion of the *Ruh*.

The author then quotes the views of the Muslim *Fuqaha* (jurists) regarding the permissibility of induced abortion.

Hanafi school:

Al-Fatawa al-Hindiya (Alamgir –1310 A.h. , vol. 5:356)

Allows a female to procure an abortion if her milk dried up after becoming pregnant and the father cannot afford a wet nurse provided that the pregnancy is in the stages of *nutfa*, *‘alaqa* or *mudgha*; with no defined limbs.

Notes by Ahmed Fazel Ebrahim on the extraction. I had no immediate recourse to the source:

This fatwa allows termination before 120 days. However, the early Muslims must have had an approximate calculation from the moment that the pregnant female stopped her menstruation in order to calculate 120 days. However, “with no defined limbs” was

beyond the technological and sonar scan capacity of the early Muslims. Likewise, although we may have the technology, there are many who cannot afford it. How could they resolve that? Would this be resolved by those that cannot afford technological manifestations of the womb?

Also, this work of *fatawa* (Islamic verdicts) allows the abortion despite Allah's warning "Do not kill your children *Khashyata Imlaaq* due to fear of poverty.

Badai as Sanai'a (Kasani, 1910, vol. 7:325)

If a woman procures an abortion¹ and the product cannot be identified as a male or female then the product is in the stage of *mudgha*; it is not a janin (foetus) yet, therefore there is nothing to that.

Notes by Ahmed Fazel Ebrahim on the extraction.

This jurist classifies the embryo development in Islamic terms by classifying the growth of the embryo to be "*Janin* or foetus," in Islamic terms, only after 120 days. Thus prior to 120 days, the entire embryo development is not classified as foetus.

The jurist implies that the female, in the above case, will not be financially liable to any penalty towards the father, but does not mention that she is allowed to do so, which is the impression that could be falsely taken.

Ad- Durr al-Mukhtar (Haskafi d. 1774 – Hashiyah Ibn 'Abidin, 1979, vol. 3:176)

It is said that, "it is up to the wife to procure an abortion before four months have elapsed since the beginning of the pregnancy.

Notes by Ahmed Fazel Ebrahim on the extraction.

This is not a ruling or a *fatwa* that provides permission. I need to refer to the source for exact details and cannot rely on the false impressions that have been created by the writer regarding permissibility of induced abortion that will also apply to selective reduction.

Al-Ikhtiyar (Musali 1356 A.H. vol. 4: 168)

"A woman procured an abortion; she is not culpable unless the discarded product had been differentiated into recognisable parts.

Notes by Ahmed Fazel Ebrahim on the extraction.

This statement neither grants a female the right to abortion. It only discusses the details of the embryo and foetus stage that would render her as a criminal in Islamic law and thus liable for financial compensation. Also the issue relating to "recognisable parts" is not

¹ which is equivalent to the selective reduction

differentiated from the initial 120 days prior to the infusion of the Ruh. It is thus an unsound view and opinion unless it is understood in the contexts of other legal writings by the jurists of the Hanafi School.

Maliki School

Ad-Dardier (Ash-Sharhul Kabier Daar Ihyaa al-Kutub, vol. 2:266) said:

The dislodging of semen that has developed within the womb, even before 40 days have elapsed, is not to be done (*la yajuz*). As to dislodging the products of conception after breathing of the *ruh* (soul) into it, that is *haraam* (forbidden) in the view of everyone (*ijma*).

The other scholars of the Maliki school

The views of the other scholars have been jointly given and are stated to be of the same effect; that they prescribe the punishment to be 5 camels if the mother was alive at the end of the pregnancy.

Notes by Ahmed Fazel Ebrahim on the extraction.

Firstly, I am not satisfied, in view of the author's earlier quotations and impressions, to accept his statement unless I verify and do a personal reading of all those sources.

Secondly, he does not specify whether the punishment of 5 camels is due if the abortion is before or after 120 days.

The sources Ibn Rushd, Bidayat al Kulliyat vol. 2:45-453; Baji, Al-Muntaqa...Muwatta Vol.7:89; Khirshi, Sharh Mukhtasar Khalil (1317 A.H.) vol. 8:32) need to be read by me.

The Shafi School

Ash-Shafi (Al-Umm 6:107) said:

If in the material that descended something beyond the stage of *mudgha* or '*alaqa*, a finger or a nail or an eye, could be discerned then *ghurrah* (the value of 5 camels) is due.

Notes by Ahmed Fazel Ebrahim on the extraction.

The author does not quote whether Imam Shafi discusses the consequences of any act done upon the pregnant female, due to which she aborts or whether he discusses an induced abortion. The above statement of Imam Shafi does not imply permission to abort – nor before 120 days and neither thereafter.

Ar-Ramli (Nihayatul Muhtaj 1357 A.H. – vol. 7:379-380) said:

The learned people were divided in their opinion about *nutfa*, before the completion of forty days of pregnancy, one group said that it is not like an induced abortion nor infanticide; the other group thought that whatever has settled in the womb should not be disturbed, it has sanctity and it is not to be removed (*la yajuz*).

Notes by Ahmed Fazel Ebrahim on the extraction.

The above statement clearly shows that the scholars differed regarding the classification of the embryo or foetus prior to 40 days as a form of human life. Thus one group allowed induced abortion before 40 days while another did not allow it. The group that allowed it before 40 days, did not allow it after 40 days because they considered the hadith of Bukhari and Muslim which states that the unborn person remains in the belly of his mother for 40 days as a drop (*nutfa*) and then transforms into a blood clot. Thus, for as long as the primary spermicidal state did not differ and change into '*alaqa*, they allowed extraction since no apparent change has occurred to it in relation to observation with the physical and naked eye.

The other group fully recognized the periods of embryonic changes and the instance of soul infusion but have neither found sound and explicit evidence in the qur'an and hadith to allow the abortion – neither before 120 days and neither before 40 days prior to an internal change within the womb since the fate of the sperm which entered the womb was to now rest in the hands of Allah. (end of A Fazel's notes on this point)

Continuation of Ar-Ramli

...al-Karabisi (**Nihayatul Muhtaj 1357 A.H. – vol. 7:442-443**) asked Abu Bakr ibn Sa'id al-'Iraqi about someone who gave his wife some medicine and caused her to abort; al-Iraqi said, 'so long as it is *nutfa* there is nothing to it: the balance is in favour of disallowing it (*haram*) after the breathing of the *ruh* into it (120 days) and allowing it before then (*ja'iz*).

Notes by Ahmed Fazel Ebrahim on the extraction.

Although Abu Bakr ibn Sa'id states *nutfa*, He could imply that after the *nutfa* stage, once development reaches '*alaqa* and *mudgha*, the husband would have become a criminal and liable for financial compensation to his wife.

He, however concedes that the other scholars allow induced abortion without criminal attribution before 120 days because of their inference from the hadith of Bukhari and Muslim, but he is of the opinion, that once embryonic development started, as given in the Qur'an, any induced abortion would be a criminal issue and the person causing the abortion would be held liable for financial compensation in terms of Islamic Law and its rules on blood money or *Diyyah*.

The Hambali School

There are two diametrically opposed views within the school.

Ibn Qudama (Al-Mughni 1981, vol. 8:815) said:

In the case of someone who hits a pregnant women causing her to abort; and in the case of the women who aborts herself: in either case *ghurrah* (5 camels) and *kaffara* (expiation) are due.

Notes by Ahmed Fazel Ebrahim on the extraction.

The above discusses a criminal offence of a third party and a case of a female who induces an abortion to her own person. The female would likewise, be held liable to pay 5 camels and make Kaffarah. However, it does not discuss the permissibility of an induced abortion and neither the stages wherein such an abortion would be allowed.

Al-Bahwati (Sharh Muntaha al-Iradat, Beirut, vol. 1:115) says:

Aborting a pregnancy, so long as the *ruh* has not been breathed into it, is allowed (*mubah*).

Notes by Ahmed Fazel Ebrahim on the extraction.

Although we have permission in the above case within the time frame of 120 days, yet we need clarification whether it was a general allowance or an allowance given for specific circumstances.

Other Interpretations quoted by the author

1. Declaration of the Higher Council for Islamic Legal Opinions in Kuwait – 29 September 1984 [al-‘Awadi, A.A., (ed.), Human Life, its beginning and End in Islamic Law (in Arabic), Kuwait: Islamic Organization of Medical Sciences, 1985:128-129.]

After 40 days and before 120, abortion may not be done except in the following two circumstances:

- (i) If the continuation of pregnancy would cause...harm to the woman...and
- (ii) If it is certain that the foetus will be born with severe deformation,
or
Physical or mental deficiency, neither of which can be cured.

Notes by Ahmed Fazel Ebrahim on the extraction.

This is a unique blend of the Qur'anic verse and the *hadith* relating to life infusion as well as other ahadith relating to the protection of life, together with consideration of juridical principles of *Usool al fiqh* regarding the *Maslaha* (benefit) of the child and *Dharoorah* (dire need) of the situation. However, the use of foetus, in Islamic terms, for an embryonic development before 120 days would be a non-technical expression.

In relation to your case regarding the triplets, there is no positive identification of harm to your wife. Neither is the fear regarding a pre-mature birth related to birth with deformity. The fear that a third foetus would harm the other two is purely subjective and there is no solid evidence to grant any one foetus the punishment of termination over the other two. However, the induced abortion or termination of the life and development of any foetus by a medical specialist or practitioner is indeed a reality that could extend to the lives of the other foetuses. Thus, it is logical to accept to allow the continuation of the pregnancy against medical advice and conform to the natural cause of action that Allah's wants you to comply with.

2. The Fatwa proclaimed in 1976 by "The Council of Grand Jurists in the Kingdom of Saudi Arabia.

Fatwa No. 42 dated 13/4/1396 A.H. (1976). Abdel Wahab Ibrahim Abu Suliman

There is no objection to prevent pregnancy if there is need for that, as in the case of a Caesarean section being necessary for delivery, or if delaying the pregnancy for a period suits the welfare (*maslaha*) of the married couple, there is no objection, then, to prevent pregnancy or delay it; enacting what is in the *Sahih al-Hadith* (Prophetic sayings) and what is related from a multitude of *sahaba* (companions of the Prophet) as to the permissibility of *'azl (coitus interruptus)*, and in accordance with the sayings of some *fuyah* as to the permissibility of taking medicines which will lead to abortion, providing that it within the first forty days of pregnancy, it may be mandatory to prevent pregnancy in case of a virtual necessity.

Notes by Ahmed Fazel Ebrahim on the extraction.

The above edict discusses, initially prevention of pregnancy, which is external to the scope of your question.

The second part allows medication to induce an abortion within 40 days, is most likely an acceptance of the views of scholars who infer from the Qur'anic verse that a change in the sperm drop after 40 days of stay within whichever biological sections of the female body, does provide it with an identity to life although the element of having a soul is still absent after the first 40 day stage. Their view perhaps, because of being Saudi Scholars, is taken from another Hambali source or, alternatively, in the absence of being a Hambali opinion, is found to be the safest course of action in relation to all the opinions and views in this regard because the apparent absence of change in the sperm condition during the first 40 days would allow any extraction in that period because sperm, itself, can be emitted and discarded as in the practice of *coitus interruptus* that was allowed by the *hadith*. The allowance of such a pregnancy-prevention measure will necessitate the

discarding or ejected semen, and since the latter is not fully transformed in the womb until forty days, its extraction is thus allowed in that period.

3. Decision of the Majam'a al-Fiqh al-Islami, in Makkah al-Mukarramah, 10-17 February 1990, regarding termination of pregnancy for malformation of the foetus, is that:

If the pregnancy is earlier than 120 days, and the foetus or embryo is deemed grossly malformed and that if born at term then its life will be miserable and will cause misery to its people, the pregnancy may be terminated. But if the pregnancy is beyond 120 days then it is impermissible to terminate the pregnancy whatever the condition of the foetus: termination of pregnancy to preserve the life of the mother is permissible irrespective of the condition of the foetus.

Notes by Ahmed Fazel Ebrahim on the extraction.

The scholars above adopted the *hadith* regarding the infusion of the *ruh* after 120 days, thus allowed an inference to permit termination of pregnancy before 120 days but only in justifying cases that relate directly to the development of the embryo. Beyond 120 days, the medical diagnoses of the foetus are not given consideration and its destiny is left in the hands of Allah. Furthermore, the mother's life is given preference in the event of the foetus, whether single or multiple, becomes a positive cause for the loss of the mother's life