

**Review article:**

**A Medico-legal Perspective on the Termination of Pregnancies Resulting from Wartime-Rape**

Fazli Dayan<sup>1</sup>, Mian Muhammad Sheraz<sup>2</sup>, Muhammad Riaz Mahmood<sup>3</sup>,

Abu Kholdun Al-Mahmood<sup>4</sup>, Sharmin Islam<sup>4</sup>

**Abstract:**

The study is designed to investigate the issue of abortion for rape-victims to draw the attentions of Islamic clerics in order to appraise consciousness and outlook of legal edicts within constrain of Islamic bio-medical and bio-ethical norms. For this purpose, a number of Islamic treatises are systematically examined, and a cross-cultural along with a cross-country assessment of 47 countries abortion laws particularly 'Muslim-majority' (OIC member) countries are conducted to assess the momentous impacts on rape-victims. Additionally, contemporary data i.e. legal edicts and various reported rape/adultery cases in different Islamic countries are analyzed with special reference to the circumstances in which the verdicts are issued. The study asserts that mostly the classical and contemporary literature silent on the cited issue except few of the legal edicts. Although, Islamic lit and scripts including bio-medical and bio-ethical has discussed it in general way. As a result, the rape victims appeared that they may be allowed termination of unwanted fetus due to coerced sexual relation. But, whether in preview of, some of the legal edicts which causes intricacy, the state laws, rules and more particularly the religious and cultural aspects may allow this kind of deliberation? A predominantly conventional approach was found, since 18 out of 47 countries do not allow abortion except for necessity. Less than 50% of OIC members legally permit abortion on medical grounds. Nevertheless, there was a substantial diversity between Muslim countries. Albeit, a multidimensional viewpoint is very important due to the consequential psychiatric and social problems, since there is an immense need to provide real solutions to such cases that would not contradict Islamic bioethical principles. Therefore, termination of rape resulting pregnancies may be declared valid, provided with specific conditions and guidelines as per *Shariah* keeping in view bio-medical and bio-ethical norms.

**Keywords:** Abortion, Termination, Pregnancy, Rape, Islam and Bioethics

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**Preliminary**

**Objective:** To investigate the issue of abortion for rape-victims, particularly in Pakistan, with a view to draw the attentions of Islamic clerics in order to appraise consciousness, attitudes and outlook of legal edicts with regard to termination of rape resulting pregnancies within the constrain of Islamic law keeping in view the Islamic bio-medical and bio-ethical norms.

**Methodology:** A number of classical and

contemporary Islamic treatises, particularly those debated the subject of abortion, are systematically examined. Thus, a cross-cultural study conducted to assess the momentous impacts on rape-victims and more importantly the consequential psychological and mental disorders. The contemporary data i.e. legal edicts and various reported rape/adultery cases in different Islamic countries are analyzed with special reference to the circumstances in which the verdicts are issued. Accordingly, this research study

1. Dr. Fazli Dayan, Assistant Professor, Department of Shariah & Law, Faculty of Religious and Legal Studies, Islamia College University, Peshawar, Khyber Pakhtunkhwa, Pakistan
2. Mian Muhammad Sheraz (PhD Law Scholar), Department of Law, IIU, Islamabad, Pakistan
3. Dr. Muhammad Riaz Mahmood, Assistant Professor, Department of Islamic Studies, University of Gujrat, Pakistan
4. Prof. Dr. Abu Kholdun Al-Mahmood, MBBS, MPhil, PhD, Prof. & Head Department of Biochemistry, Ibn Sina Medical College, Bangladesh
5. Dr. Sharmin Islam, Associate Professor, Eastern University, Bangladesh

**Correspondence to:** Dr. Fazli Dayan, Assistant Professor, Department of *Shariah* & Law, Ahmad Faraz Block, Islamia College University, Peshawar, 25120, Khyber Pakhtunkhwa, Pakistan,  
**Email ID:** [dayansherpao@gmail.com](mailto:dayansherpao@gmail.com) [dr.dayan@icp.edu.pk](mailto:dr.dayan@icp.edu.pk) [fazli.dayan@iiu.edu.pk](mailto:fazli.dayan@iiu.edu.pk) **Contact:** 0092-333-9889668

conducted a cross-country assessment of 47 countries abortion laws particularly 'Muslim-majority' (OIC member) countries.

**Results:** Mostly, the classical and contemporary literature silent on the termination of rape resulting pregnancies except few of the legal edicts. Although, classical and contemporary treatises, including bio-medical and bio-ethical, scripts has discussed abortion in general way. As a result, the rape victims appeared that they may be allowed termination of unwanted fetus due to coerced sexual relation. Thus, due to unavoidable circumstances, the rape-victims were optimistic that stand support for fetus termination in such cases (rape) will definitely have positive effects on their lives. But, whether in preview of, some of the legal edicts which causes intricacy, the state laws, rules, regulations and more particularly the religious and cultural aspects may allow this kind of deliberation? A predominantly conventional approach was found, since 18 out of 47 countries do not allow abortion under any circumstances except for the case of necessity to save mother's life. Thus, less than 50% of OIC member countries legally permit abortion for the case of necessity on medical grounds. Nevertheless, there was a substantial diversity between Muslim countries, whereby 10 countries i.e. 18% among the OIC members permit abortions only on couple's/woman's request. While another 18% allow it for 'physical/mental health', 'fetal abnormality' including 'rape' and 'incest'. So, among the socially conservative Muslim countries, 7 of them permit abortion for fetus deformities during the first 4 months of its gestation; 4-out of 7-countries in sub-Saharan Africa; and another 3 member countries in the Middle East permits it for fetus genetic disorders.

**Conclusion:** A multidimensional viewpoint, concerning the issue of termination of rape resulting pregnancies, is very important due to the consequential psychiatric and social problems. Thus, comprehended (interdisciplinary and multidisciplinary) experts/professionals and religious scholars needs to establish a clear-cut stand to facilitate the rape-victims. Since, there is an immense need to provide real solutions to such cases that would not contradict Islamic bioethical principles. Because, an unwanted pregnancy often causes impaired mother-child relationship which leave negative impacts on the infant's physical and mental health. Hence, non-

compliance and non-allowance of abortion in rape cases may expose the victims to further grief, sorrow and regret. Therefore, termination of rape resulting pregnancies may be declared valid, provided with specific conditions and guidelines as per *Shariah* keeping in view bio-medical and bio-ethical norms.

### Introduction

Arguably, is the issue of abortion or termination of pregnancies for a Muslim women rape-victim justified by necessity? Indeed, such a complex matter, whether rape is committed in war or even in peace times, needs thorough investigation from the perspective of Islamic law. Because, the unwanted resulting pregnancy could cause psychiatric dilemma and mental disorder, since habitually the raped victim (i.e. the patient) suffers from a major mental depressive disorders along with post-traumatic stress disorder, which may justify fetus termination on a psychological and clinical basis; i.e. medical necessity.<sup>1</sup> However, some of the legal edicts had caused uncertainties, by linking the process of termination to killing of a human soul unjustly particularly after fetus '*ensoulment*', on the final decision making with regard to abortion in rape cases. So, therefore, prior to making this kind of deliberation, termination of pregnancies for a rape-victim Muslim woman, demands the Islamic scholars to be well-understood of the relevant and connected/involved issues, like psychiatric and social problems beyond the clinical judgment in relation to termination of pregnancies which encompasses legal provision, ethical obligation and clear religious understanding needs for a stand support of medical decisions in rape cases.<sup>2</sup>

Factually, the classical treatises of Islamic law and jurisprudence do not encourage abortion, rather principally deliberate fetus termination stand prohibited. However, majority of the jurists deem it permissible in case of necessity and dire need, provided with specific stages of fetal development. Nevertheless, there is an agreement among the jurists regarding abortion at the time when the fetus could cause an imminent threat to mother's life. But, after fetus '*ensoulment*' (i.e. 120 days), abortion regarded as prohibited except for medical necessity (*see table no. 1*). However, there is remarkable diversity among the jurists with regard to other circumstances for example "preserving physical beauty or mental health", "social or economic reasons", "fetal

impairment/deformation”, “rape or adultery” and many other reasons causes perplexity and intricacy. That is why, 100% of the rape-victims are not satisfied with the existing laws, more particularly with the attitude of traditional clerks; and would look towards comprehended scholars of the religion

for appropriate answers to such issues and more importantly to modern-day biomedical and bioethical queries. This study, therefore, attempts to provide a framework and a consolidated path to the question of abortion/termination of rape resulting pregnancies.

**Table No. 1. Embryology in the Holy Quran i.e. fetal development stages and views of the jurisprudential legal schools**

Stage(s)	Stage Name	Time Period/ Fetus age	Occurrence/ What occurs	Views of <i>Fiqh</i> School(s) Regarding Abortion	
1	<i>Nutfah</i> (sperm/semem)	Conception up-to 40 days	When both the sperm and egg (ovum) gathered In the female’s womb	Hanafi	Permitted
				Mālikī	Minority Permitted
				Shāfi’ī	Majority Permitted
				Hanbalī	Permitted
2	<i>Alaqah</i> (Blood clot)	After conception: 41-80 days	The fertilized ovum develops into a clinging/ congealed blood clot	Hanafi	Permitted
				Mālikī	Prohibited
				Shāfi’ī	Some Permitted
				Hanbalī	Some Permitted
3	<i>Mudghah</i> (Lump of flesh)	Clot forms into flesh: 81-120 days	The congealed blood clot forms into a clump of flesh in the female’s womb	Hanafi	Permitted
				Mālikī	Prohibited
				Shāfi’ī	Some Permitted
				Hanbalī	Some Permitted
4	‘ <i>Izām</i> (bones) And <i>lahm</i> (flesh)	Skeleton: 121-180 days	The clamp of flesh develops into (human) skeleton i.e. bones and muscles	Hanafi	Prohibited
				Mālikī	Prohibited
				Shāfi’ī	Prohibited
				Hanbalī	Prohibited
5	<i>Khīḷqan ākhar</i> (Sprit/ 'ensoulment')	Human shape: 121-180 days	120 days after conception The fetus is being <i>en-souls</i> with Allah’s spirit	Hanafi	Prohibited
				Mālikī	Prohibited
				Shāfi’ī	Prohibited
				Hanbalī	Prohibited

**Important note:** The presented table is compiled by the author (Fazli Dayan) through consulting the well-accepted classical treatises of Islamic law. Resultantly, the standard views of four established legal schools of thought has taken into account and have been presented for the ease of readers. Accordingly, their followers may follow one of the standard rules of any one of these equally orthodox schools. Moreover, the *Shī’ah* school of thought is excluded from the present study to avoid additional discussion, although mostly contemporary *Shī’ah* scholars do not allow abortion without assessing any reason to it. However, they tolerate abortion/fetus-

termination on the basis of extreme necessity, before fetus properly *en-souls*, (i.e. four months<sup>0</sup>, only on the grounds of fetal deformation or threat to mother’s life.

**Reported Cases**

Various cases are reported particularly in Muslim countries (*see table no. 2*). Some girls/women are ganged raped, while many are raped during war-time. One interesting thing is that almost all of them seek legal abortion, since, normally in such cases; the decision is fully supported by the victim’s parents for the purpose of face-saving and to avoid unavoidable consequences of psychological and mental disorders.

**Table No. 2.** Some glimpse of the honor killing rape-victims (including rape/adultery in wartime and peace time) in Muslim countries and its consequences

No	Case nature/ and victim's name	Country/State name and case year	Occurrence/ what occurs	Jurisprudential view, i.e. legal analysis
1.	Rape (Amal)	Jordan (1999)	A, 17 years old Jordanian girl named 'Amal' told her family that she became pregnant after being raped by her father's friend. Thus, her sister-in-law sold her gold jewelry, to pay for an unwanted fetus termination or abortion, but the doctor refused to perform the process of abortion telling them that it is an illegal procedure. After going back to home, her father bought a gun through the money which came from his daughter's sister-in-law's gold jewelry. So, he (Amal's father) and his son 22 years old (Amal's) brother shot Amal eight times, leaving her for dead. But, fortunately, she survived and sent to jail. So, it must be noted here that Amal was a six months pregnant girl at the time since her father, brother and cousins wanted to kill her. <sup>3</sup>	Again, this case faces multiple questions, however, and hence the fetus termination/abortion in rape cases may be declared valid at any time in order to avoid the victims from greater harm.
2.	Adultery (Karteen Karikender)	Fujairah UAE (2000)	A, 29 years old Indonesian expatriate, pregnant woman was convicted by an Islamic tribunal in the United Arab Emirate of Fujairah and ordered to be stoned to death for adultery. Her crime was that the police had arrested her after it was reported that she was unmarried and become pregnant. <sup>4</sup> Although, later on her appeal was accepted, since, a lawyer was hired, by the Indonesian embassy in Abu Dhabi, on behalf of the accused (woman) to appeal against the sentence.	This case, however, again faces multiple legal questions, such as, whether a woman, despite of adultery or rape, may subject to punishment while she is pregnant? Or the punishment shall be delayed till she has given birth and the child is properly weaned. Additionally, whether for unmarried male or female adulterer the prescribed punishment, called <i>Hadd</i> as per Islamic law, was hundred lashes or stoning to death? Since, in Islam, the one who is married will be stoned to death after the crime of fornication is duly proved as per Islamic law of evidence. Furthermore, one very interesting point even in case of an established adultery, will the punishment of adultery for unmarried man/woman is hundred lashes or stoning to death? Since, in the cited case, whatever as the case may be, the victim raped/adulterer girl was unmarried and pregnant. Hence, as per Islamic law, so many queries/questions possibly are raised on the mentioned case. That is why, due to ignorance, non-Muslims blame Islam and Muslims community. But, the reason is, however, ordinary Muslims not only lack the real understanding of <i>Shariah</i> rather its improper and unsound application cause an intricacy which may shake the roots/core concepts of Islamic law.
3.	Premarital sex/ Adultery (Amina Abdullahi)	Zamfara State of Nigeria (2001)	A, 17 years old, pregnant girl received 100 lashes in a public flogging due to 'premarital sex' by the evidence that she had become pregnant out of the wedlock. Although, her claim of rape by three men was dismissed by a <i>Shariah</i> court and she was convicted in 'Gusau' capital of Nigeria's northern 'Zamfara' state and sentenced her 100 lashes. The <i>Shariah</i> court also added 80 lashes to her sentence of rape for false accusations ( <i>qizf</i> ). Accordingly, she received 180 lashes for adultery and <i>qazf</i> respectively. <sup>5</sup>	This case, however, face/ confronts many legal questions within constrain of Islamic law. Such as, despite the fact, whether punishing a pregnant women is allowed in Islamic law? Secondly, in the event of her claim of rape by three men; whether in such case <i>Hadd of Zina</i> along with the <i>qazf</i> is applied? Although, one cannot deny the facts but the way people interpreting the legal rules are beyond understanding of one's mind.
4.	Marrying against the family-Will Ghazala Khan	Denmark 2005	A, 18 years old Ghazala Khan, a resident of Danish town of Middelfart, Demanrk, was a Pakistani origin descent girl, who was shot dead by her brother (Akhtar Abbas) two days after she had concluded her love marriage to Emal Khan, against the will of the family members. So, factually, Ghazala's brother (Akhtar Abbas) shot both the newly weeded couple (Ghazala and Emal Khan). However, Ghazala was shot fatally and thus murdered/killed instantly/ on spot. But, so far as her husband, Emal Khan's is concerned, he was shot twice in his abdominal region and hence survived later after a long surrogacy.	This case confronted many legal questions as per Islamic law. see, the below case.
5.	Marrying against the family-Will Sadiah Sheikh	Belgium 2007	A, 20 years old Belgian woman of Pakistani origin was shot by her brother (Mudusar Sheikh). Since, her sister (Ms. Sadiah Sheikh) had left her house after her parents forced her for an arranged marriage i.e. to marry a cousin to whom she had never met in Pakistan. Although, despite the wish of her family, she moved with a Belgian man named Jean to whom she loved. Later, Sadiah Sheikh's brother (Mudusar Sheikh) confessed the murder of her sister during the trial in the year 2011, claiming that he had done the murder alone, but a jury pronounced all the associated four members of the family guilty of the murder and sentenced each to prison. The case, however, has been called Belgium's first honor killing trial.	This case faces numerous legal questions as per Islamic law. Because, marital contract/bond, marrying to someone else is the sole right of the parties (couple i.e. male and female) to the contract, but due to ignorance of the <i>Shariah</i> and law ordinary normally people deem love marriages against the principles of <i>Shariah</i> . And hence they think it equivalent to adultery and an unlawful, illegal and prohibited sexual relation. Although, it is the sole right of the marrying partners i.e. boys and girls as per Islamic law. Since, the example of <i>Fāṭimah bint Muhammad</i> (May Allah be pleased with her) is very important to quote in this regard, as her marriage contract was already concluded in the heavens, but, however, her beloved father (i.e. the Prophet Muhammad (peace be upon him), put forward the proposal from <i>Ālī</i> to <i>Fāṭimah</i> . To which she remained silent and accordingly did not reject the proposal. The Prophet Muhammad (peace be upon him) took this to be a sign of affirmation and consent, since there was a clear signs from the God almighty for her destiny. Thus, it clearly signifies that concluding marital contract is the sole right of the parties to the marital contract.

**Important note:** The presented table is compiled by the author (Fazli Dayan) through consulting various studies.

Many cases, even in Islamic countries, are reported, for example: in Jordan, a 21 years old girl/woman was shot to death by her brother, because she was pregnant outside marriage. Her brother said he killed his sister to “wash the family honor”.<sup>6</sup> Further, 14 years old mentally retarded Arab girl/woman was raped in the street. Accordingly, when her pregnancy became visible and apparent, she was put to death.<sup>7</sup> Moreover, in Bangladesh, an adolescent girl was poisoned by her parents when they discovered her extramarital pregnancy.<sup>8</sup> In a study of 38 cases of sexual abuse among Palestinian girls aged up to 19 years; so 11 of the victims had sought help in order to terminate a pregnancy resulting from sexual rape. While, 3 of 11 girls were killed/murdered by their family member/s; 2 had been incarcerated by authorities to save their lives but 1 was killed by a sister who slipped poisoned food into her cell.<sup>9</sup> Similarly, an 18 years old girl/woman died in Bangladesh after an Islamic cleric ordered her buried to the waist in mud and lashed 101 times with a bamboo cane for having ‘premarital sex’ and then inducing an abortion with herbal medicines. Thus, despite of the method of punishment through ‘bamboo cane’, however, the fact is that the cleric prevented her family from taking her (the victim/patient) to a hospital after the sentence has been completed accordingly.<sup>10</sup> This kind of situations/cases may definitely harm the true essence of *Shariah* and law. Therefore, these sorts of cases need proper investigation, and hence the fetus termination/abortion in rape cases may be declared valid at any time in order to avoid the victims from greater harm.

### Methodology

Despite the classical and contemporary Islamic treatises—more particularly—those debated the subject of abortion, a cross-cultural study are conducted to assess the momentous impacts on rape and adultery-victims. The contemporary data i.e. legal edicts and various reported rape/adultery cases in different Islamic countries are analyzed with special reference to the circumstances in which the verdicts are issued. Thus, this research study conducted a cross-country assessment of 47 countries abortion laws particularly ‘Muslim-majority’ (OIC member) countries. A predominantly conventional approach was found, since 18 out of 47 countries do not allow abortion under any circumstances except for the case of necessity to save mother’s life. Hence, less than 50% of OIC member countries legally permit abortion for the case of necessity on medical grounds. Nevertheless, there was a substantial

diversity between Muslim countries, whereby 10 countries a total of 18% among the OIC members permit abortions only on woman’s request. While, another 10 equal to 18% allow abortion in case of ‘physical and mental health’, ‘fetal abnormality’ including ‘rape’ and ‘incest’. So, among the socially conservative Muslim countries; 7 of them permit abortion for fetus deformities during the first 4 months of its gestation; 4 out the 7 countries in sub-Saharan Africa (Benin, Burkina Faso, Chad and Guinea); and another 3 member countries in the Middle East (Kuwait, Qatar and Iran) permits it for fetus genetic disorders (*see table no. 3*). Therefore, this research study clearly indicates that abortion of rape resulting pregnancies is regarded in Islamic law as per the legal edicts (*see table no. 4*), since, it is one of the most important bioethical issues, probably for specific reasons of consequential dilemmas attached to it. Because abortion, in such cases, carries no strict bar particularly on the unmarried adulterer and rape-victims from the religious perspective, provided that if it is within constrains of Islamic law and bioethical/biomedical norms.

*Keywords to various grounds:* L/T: Life/Threat (means that abortion is allowed, to save life in threat, at the time when the continuation of pregnancy threatens the mother’s life. While, P.H: Physical Health, (render allowed abortion in cases where the resulting pregnancy could cause the mother’s physical health. And, M.H: Mental Health (refers to a situation when the inducing pregnancy causes the mother’s mental health). So, F.I: Fetal Impairment, (signify that abortion is legal to be carried-out in case of fetal impairment i.e. when the fetus is deformed in nature). Whereas, R & I: Rape & Incest (shows that abortion is even lawful in rape & incest cases). And, U.R: Upon Request (indicates that abortion is allowed upon the mother’s request on additional enumerated grounds such as the fear of lactation, mother’s age, and likewise grounds of financial matters, devastating and deficient capacity to care a child diligently).

*Important note:* The presented table is compiled by the author (Fazli Dayan) through consulting both the classical and contemporary treatises of Islamic law. Notably, the classical jurists did not make any distinction between the pregnancies resulting from rape and adultery. Additionally, looking towards classical treatises of the Islamic law and jurisprudence, one cannot find specific research or

**Table No. 3. Basis for abortion rights available in OIC member countries**

Country Name & Available Right's Basis					
L/T: Life /Threat	P.H: Physical Health	M.H: Mental Health	F.I: Fetal Impairment	R & I: Rape & Incest	U.R: Upon Request
Afghanistan	Algeria	Algeria	Burkina Faso	Burkina Faso	Albania
Algeria	Burkina Faso	Gambia	Chad	Guinea	Azerbaijan
Bangladesh	Chad	Malaysia	Guinea	Mali	Bahrain
Burkina Faso	Comoros	Morocco	Iran	Sudan	Kazakhstan
Brunei	Gambia	Sierra Leone	Kuwait		Kyrgyzstan
Chad	Guinea		Niger		Turkey
Comoros	Jordan		Qatar		Turkmenistan
Djibouti	Kuwait				Tunisia
Egypt	Malaysia				Uzbekistan
Gambia	Maldives				
Guinea-Bissau	Morocco				
Guinea	Niger				
Indonesia	Pakistan				
Iran	Qatar				
Iraq	Saudi Arabia				
Jordan	Sierra Leone				
Kuwait					
Lebanon					
Libya					
Mali					
Malaysia					
Maldives					
Mauritania					
Morocco					
Niger					
Nigeria					
Oman					
Pakistan					
Qatar					
Saudi Arabia					
Senegal					
Sierra Leone					
Somalia					
Sudan					
Syria					
United Arab Emirates					
Yemen					

*Important note:* The presented table is compiled by the author (Fazli Dayan) through consulting various studies, legislative data and concerned state laws.

Table no. 4. Glimpse of the legal edict(s) regarding fetus termination resulting from sexual relation i.e. rape/adultery					
N	Developmental Stage name	Time period/ Fetus age	Occurrence/ what occurs	Scholar's/Council's/ Country name	Jurisprudential view
1	Nutfah (sperm/semen)	After conception: Up-to 40 days	Both the sperm and egg (ovum) gathered in the female's/mother's womb	Rawwās Qal'ahjī <sup>(a)</sup> (Ḥanafī)	Permitted
				Al-Qardāwī <sup>(b)</sup> (Salafī)	Permitted
				Alī al-Tantāwī <sup>(c)</sup> (Shāfi'ī)	Permitted
				'Ekrima Sa'īd Sabrī <sup>(d)</sup>	Permitted
				Islamic Supreme Council of Algeria <sup>(e)</sup>	Permitted
				The Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia <sup>(f)</sup>	Permitted
				Kuwait <sup>(g)</sup>	Permitted
2	'Alaqah (Blood clot)	After conception: 41-80 days	The fertilized ovum develops into a clinging/ congealed blood clot	Rawwās Qal'ahjī (Ḥanafī)	Permitted
				Al-Qardāwī (Salafī)	Prohibited
				Alī al-Tantāwī (Shāfi'ī)	Permitted
				'Ekrima Sa'īd Sabrī	Permitted
				Islamic Supreme Council of Algeria	Permitted
				The Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia	Permitted
				Kuwait	Permitted
3	Muḍghah (Lump of flesh)	Clot forms into flesh: 81-120 days	The congealed blood clot forms into a clump of flesh in the female's Womb	Rawwās Qal'ahjī (Ḥanafī)	Permitted
				Alī al-Tantāwī (Shāfi'ī)	Permitted
				Al-Qardāwī (Salafī)	Prohibited
				'Ekrima Sa'īd Sabrī	Permitted
				Islamic Supreme Council of Algeria	Permitted
				The Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia	Permitted
				Kuwait	Permitted
4	'Izām (bones) and laḥm (flesh)	skeleton: 121-180 days	The clamp of flesh develops into (human) skeleton i.e. bones and muscles	Rawwās Qal'ahjī (Ḥanafī)	Prohibited
				Al-Qardāwī (Salafī)	Prohibited
				Alī al-Tantāwī (Shāfi'ī)	Permitted
				Islamic Supreme Council of Algeria	Prohibited
				The Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia	Prohibited
				Kuwait	Prohibited
				5	Khlqan ākhar (Sprit/ 'ensoulment')
Al-Qardāwī (Salafī)	Prohibited				
Alī al-Tantāwī <sup>(c)</sup> (Shāfi'ī)	Permitted				
Islamic supreme Council of Algeria	Prohibited				
The Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia	Prohibited				
Kuwait	Prohibited				
Kuwait	Prohibited				

independent title related to fetus termination resulting from illegal, unlawful and prohibited sexual activity. Although, earlier jurists' definitely talked about abortion in general way, but they did not make any distinction between the abortions consequences from lawful sexual relation than resulting from prohibited sexual activity. Similarly, they did not make any distinction between the pregnancies resulting from consensual and coerced sexual relation too. Despite the fact, some of the jurists such as al-Zarqānī,<sup>11</sup> al-Khurashī,<sup>12</sup> Ulaysh<sup>13</sup> among the *Mālikī's*, and al-Ramlī<sup>14</sup> from the *Shāfi'ī* school of thought slightly discussed the case of rape resulting pregnancies.<sup>15</sup> But, this does however, did not meet the present day requirements. That is why; the contemporary Islamic legal discourse has been taken into account, and hence a summary of prominent legal edicts (*fatwā's*) are presented in shape of table for the ease of readers. Additionally, from the step 4 & 5 one can draw a conclusion that fetus termination after 120 days is consensually prohibited except Alī al-Tantāwī (Shāfi'ī) who deems it permissible. Although, in our understanding, Alī al-Tantāwī's view point maybe opted by the unmarried rape victims i.e. women/girls. Since, in marital/marriage bond, even in case of rape/adultery because of doubts, the resulting offspring possibly is attributed to bed. Further, those who hold prohibition for the fetus termination after it is being *en-sould*, yet, they deem it permissible in case of medical necessity; when the fetus threatens female's/mother's health/life. Thus, in the later stages of fetal development, after 120 days, abortion was allowed only when the resulting offspring could cause an imminent threat to mother's life.<sup>16</sup>

<sup>(a)</sup> He was 'Abd al-Fattāh Rawwās Qal'ahjī al-Ḥanafī, (died. 2014/1435. H)

<sup>(b)</sup> Al-Qardāwī, approved a legal edict (*fatwa*) allowing fetus termination resulting from rape. He contended that "pertaining to abortion, the basic principle concerning it is unlawful. But, undoubtedly, raping a Muslim woman by an evil enemy is a strong reason for the victim to have an abortion". He also contended that "the above is the trend I follow in my *fatwa's* on this issue in normal cases. But there are some jurists who think that it is permissible to have an abortion within the first 40 days of pregnancy. Some of them even permit it until before the soul is breathed into the embryo. However, there are some exceptional cases in which one may adopt one of the latter views, and the stronger the excuse, the clearer the reason for the dispensation is, and if that is within the first 40 days, it means that the dispensation is

more appropriate".<sup>17</sup>

<sup>(c)</sup> He was Muhammad Alī al-Tantāwī al-Shāfi'ī, remained a grand Imām/*Muftī* of al-Azhar from 1996-2010 and was a contemporary scholar of the Islamic law, issued a controversial *fatwa* in 2007; allowing raped victims (women/girls) to abort their resulting pregnancies even after (*ensoulment*) 120 days, provided that if they i.e. raped victims women/girls are "of good reputation, chaste and pure".<sup>18</sup> It is also reported that the same kind of *fatwa* was issued for the Bosnian women raped by Serbian forces to terminate their resulting pregnancies from unlawful/unwilling sexual violence.<sup>19</sup>

<sup>(d)</sup> He was, Sheikh 'Ekrima Sa'īd Sabrī, remained a chief *Muftī* of the Palestinian from October 1999 to July 2006. So, in 1999, he permitted Muslim women who were raped in Kosovo war by the Serbs forces to take '*abortifacient*' i.e. abortion-inducing drugs/medicine to prevent pregnancy resulting from rape, viewing that the newborn may be used as a weapon of war by the Serbian forces against the Muslims.<sup>20</sup> Thus, from this argumentation, it seems that his ('Ekrima Sa'īd Sabrī) decision/legal edict is based on the theory of jingoism (patriotism/nationalism) more than humanitarian and medical basis.<sup>21</sup>

<sup>(e)</sup> It is reported that a *fatwa* was issued for the Bosnian women raped by Serbian forces to terminate their resulting pregnancies resulting from unlawful/unwilling sexual violence.<sup>22</sup>

<sup>(f)</sup> The *fatwa* committee of the national council for Islamic religious affairs of Malaysia, in its 52<sup>nd</sup> meeting held on July 1<sup>st</sup>, 2002, issued *fatwa* on the legality of abortion for rape victims within the four months. Thus, the *fatwa* committee concluded that it is illegal if the fetus is older than 120 days, since after the prescribed limits of four months '*ensoulment*' takes place i.e. the spirit is blowing in it.<sup>23</sup>

<sup>(g)</sup> Factually, in Kuwait during the year of 1982, permission was granted to women/girls rape victims to abort their impaired fetuses within 4 months of gestation.<sup>24</sup> While in later stages of fetal development, after 120 days, abortion was allowed only when the resulting offspring could cause an imminent threat to mother's life.<sup>25</sup>

### Discussions

Certainly, the recent legal edicts concerning termination of pregnancies resulting from wartime-rape and even in peace time rendered its treatments and therapies justified on the basis of medical necessity. But, at the same time, it must be noted that such decision should be based on the clinical judgment(s) with regard to intrinsic concerns. Thus,



prior to decision making, physicians', medical practitioners' and psychiatrists' should be aware of the legal, ethical and religious aspects connected to termination of pregnancies resulting from rape.

➤ **Intrinsic Concerns and Consequences:**

Generally, in Islamic law and Islamic bio-medical ethics, an ongoing scholarly controversy exists over the legal, ethical, medical and religious issues. One of them is 'abortion' or termination of pregnancy that refers to therapeutic abortion. Indeed, such practice is normally performed worldwide on the basis of necessity for the purpose of saving an existing life.<sup>26</sup> But, certainly, the issue of abortion in case of rape needs a thorough deliberation, because; 1) where a victim suffers from rape resulting pregnancy, and if it becomes clear from her clinical examination that the patient faces SSMD; '*significant symptoms of major depression*' and PTSD; '*post-traumatic stress disorder*' which might fulfill the requisite criteria for respective clinical/medical emergency, with regard to the high risk of a worsening psychiatric condition requiring intensive psychiatric management; for which the termination of pregnancy is the only remedy available, then such case justifies abortion on the basis of necessity and severe need? 2) Whereas, on the other hand, viewing the views of legal discourse; it is prohibited to terminate pregnancy while the soul has already been blown in it or once the fetus reaches to (or more than) the age of 120 days. Because, termination after the fetus is being *en-sould* is considered as a crime against the unborn. But even, in such case, if necessity demands otherwise, then abortion is justified on the basis of necessity.<sup>27</sup> Equally, abortion or fetus termination after 120 days is permissible on the basis of established clinical/medical emergency/necessity, for example, when in view of physicians, the fetus is physically deformed in nature or severely defective and terminally ill that could cause threat not only to mother's health, rather after the birth the baby/newborn will be a continuous agony for the family and society.<sup>28</sup> Even then, these sorts of cases justify fetus termination/abortion for the larger interests of the family and society.<sup>29</sup>

➤ **Dilemma of Psychological and Mental Disorders: A Case of Necessity**

In contrast, having examined the legal discourse and the *modus-operandi* with regard to abortion, mostly verdicts/legal edicts are literally silent on the issue of psychological and mental disorders faced by the raped-victims particularly after inducing

pregnancies. Although, comparatively, the issue of psychological and mental disorders is more severe in nature than other medical grounds which are addressed/discussed by the existing legal edicts/discourse, since it adversely affects not only the patient's life but also bears negative impacts on the associated family members.<sup>30</sup>

In case of pregnancy resulting from rape, the psychological effects may be devastating, particularly for a girl who's first sexual experience consisted of rape.<sup>31</sup> So, young and teenager girls who become pregnant at a very early age of their life faces serious risks to their health because the skeletal growth is incomplete in many girls/women until they attain the age of 18 years, while the birth canal may not mature until they reach to the age of 20-21 years. Thus, deaths related to pregnancy and childbirth ratio is 2-5 times higher among girls/women under the age of 18 than those aged are between 20-29 years.<sup>32</sup> Accordingly, sometimes, a woman/girl who becomes pregnant due to rape or unlawful sexual activity makes such decisions that will affect the continuing course of her life.<sup>33</sup>

➤ **The Case of Hypertension during Rape Resulting Pregnancies:**

The case of severe hypertension, sometime, creates the possibility of higher medical risks that often ruin the patient's health and life too. However, the legal edicts which are based on medical necessity clearly utter that if physicians affirm the case of medical necessity, then couple/mother can go for abortion even after (*ensoulment*) 120 days. But, question arises, where a raped victim (Muslim woman) makes a request for such procedure on psychological risks, then the existing legal discourse may allow such process of termination? Will, let us to simplify the issue furthermore, if an ordinary Muslim woman/mother makes a request for fetus termination (resulting from lawful relation) less than the age of 120 days on the basis of medical necessity; that she had psychological grounds and it could cause an imminent threat to her life. So, accordingly, if her claim/request is based on the opinion of physicians and psychiatrists', then generally the legal edict might go in her favor with viewing that she qualifies for the legal provision which render allow such procedure on the basis of medical necessity. Moreover, a step forward, where the same may arises after 120 days, the fetus is being *en-sould*, then undoubtedly the legal edicts will allow her on the basis of medical necessity with a view of a good faith to save an existing life.<sup>34</sup>

➤ **Intrinsic/Cultural and Medical Concerns Connected to Rape Resulting Pregnancy:**

Indeed, mostly in rape cases the victim faces societal pressure that could cause hypertension, psychological, and mental disorders.<sup>35</sup> Accordingly, it could cause her fatal and non-fatal outcomes, such as ‘death’ due to intentional injury (murder) and sometime lead to ‘suicide’. Equally it causes ‘AIDS’ and ‘maternal mortality’. While non-fatal effects related to ‘mental health’ are ‘low self-esteem’, ‘sexual risk-taking’, ‘substance and alcohol abuse’ (particularly in western countries), ‘anxiety’ and ‘depression’, and distress associated to ‘physical health’ consequences in an ‘injury’, ‘disability’ and other ‘physical symptoms’, while issues linked to ‘sexual and reproductive health’ is the transmission of ‘STIs’ ‘*sexual transmission infections*’, ‘gynecological problems’ that could lead to ‘unwanted pregnancy’, ‘pregnancy complications’, ‘miscarriage’, ‘unsafe abortion/termination’ and other connected sexual problems.<sup>36</sup>

In this way, the rape resulting pregnancy might face multiplicity of problems including mental agony and moral anguish not only from the victim’s family but also from the society.<sup>37</sup> The reason is obvious, because in a country like Pakistan and more specifically in the northern western areas, where the religious, cultural, ethical and moral values are rigid, and the then resulting offspring could cause severe stress which might lead to hostility. As, the customary norms deem it such an act of agony and anguish. Then, off course, the future controversies’ are imaginable, since these sorts of situations often rests several valuable lives. Thus, the resulting and impending concerns, despite of physical or mental health and other disabilities connected to fetal impairment resulting from rape, like social or economic reasons require a balance between imminent risks and benefits.<sup>38</sup>

The theory of risks vs. benefits, in our understanding, may play a very important role with regard to opt the view of continuity or termination of a pregnancy resulting from an unlawful/coerced activity, that could cause certain risks both physically and psychologically. Hence, these kinds of circumstances are made explicit in the Rabat conference on *Islam and family planning* in the year 1974; whereby an Indonesian scholar Achmad Gazālī listed conditions that justify an abortion that include rape, incest, psychological state of mother, and fetal impairment.<sup>39</sup> Additionally, al-Qardāwī approved a *fatwa* allowing termination of pregnancy resulting from rape; contended that, “undoubtedly, raping a

Muslim woman by an evil enemy is a strong reason for the victim to have an abortion”.<sup>40</sup> Indeed, Alī al-Tantāwī, another contemporary scholar, issued a *fatwa* in 2007; allowing raped victims (women/girls) to abort their resulting pregnancies even after (*ensoulment*) 120 days, provided that if they are “of good reputation, chaste and pure”.<sup>41</sup> It is also reported that the same kind of *fatwa* (legal edict) was issued for the Bosnian women raped by Serbian forces to terminate their resulting pregnancies from unlawful/unwilling sexual violence.<sup>42</sup> While a similar legal edict is also issued for the raped victims in Algeria.<sup>43</sup> It is also reported that some other Islamic scholars like Rawwās Qal‘ahjī<sup>44</sup> al-Ḥanafī etc., and Islamic councils such as ‘Islamic supreme council of Algeria’ hold permissibility for abortion/fetus termination resulting from rape before ‘*ensoulment*’.<sup>45</sup> Moreover, in Kuwait during the year of 1982, permission was granted to women/girls rape victims to abort their impaired fetuses within 4 months of gestation.<sup>46</sup> While in the later stages of fetal development, after 120 days, abortion was allowed only when the resulting offspring could cause an imminent threat to mother’s life.<sup>47</sup> In addition, in 1999, ‘Ekrima Sa’īd Sabrī,<sup>48</sup> chief *Mufīī* of Palestinian permitted Muslim women who were raped in Kosovo war by the Serbs forces to take ‘*abortifacient*’ i.e. abortion-inducing drugs/medicine to prevent pregnancy resulting from rape.<sup>49</sup> The *fatwa* committee of the national council for Islamic religious affairs of Malaysia, in its 52<sup>nd</sup> meeting held on July 1<sup>st</sup>, 2002, issued *fatwa* (legal edict) on the legality of abortion for rape victims within 4 months.<sup>50</sup>

**Conclusion**

Consequently, the nature of psychological trauma of the raped victims encompasses a broad spectrum of psychological reactions and psychiatric morbidities. Because, an unwanted pregnancy often causes impaired mother-child relationship, which leave negative impacts on the infants’ physical and mental health. Hence, non-allowance of abortion in such cases may expose the victim (raped women/girls) to further grief, sorrow and regret. However, on the other hand, legal and justified process if carried out for various reasons can overcome the probable risks, and accordingly it may rarely cause negative psychological/mental consequences. Since, as per majority opinion, almost all the jurists have an agreement that an imminent threat to the mother’s life is a strong justification for induced abortion or fetus termination, no matter the stage of fetal gestation, provided that such process of abortion/termination

after ‘ensoulment’ must be based on strong medical necessity. Additionally, in our understanding, in normal circumstances the rape victims may refrain from opting practice after the fetus is being *en-sould*. Although, in extra ordinary situations, the views of ‘Ekrima Sa’id Sabrī (chief *Muftī* of Palestinian) and al-Tantāwī (grand *Muftī* of Egypt) may be acted upon, provided that the rape victims should be unmarried. Because, in case of an existing marital contract the then resulting offspring, even in case of rape, possibly be attributed to bed. But, once the legal and valid marital bond no longer exists, the view of both these leading scholars of Islamic law and jurisprudence may be opted particularly for unmarried women/girls rape victims, as the victim and her family might wanted to get rid of the outcome of this iniquitous attack and especially from further moral, ethical and societal anguish, since the resulting offspring will also face the stain of an illegitimate child for entire life. For the reason of legal, ethical, moral and societal norms, the whole society will not forgive the rape victim and her entire family particularly the resulting offspring by calling him an illegitimate child or illicit genealogy. Therefore, she (the rape victim) will be given this dispensation out of necessity, especially in the first days of pregnancy till the fetus *en-souls* i.e. 4 months. But, nevertheless, the case of necessity in extra ordinary circumstances should be determined by religious scholars, physicians and people of wide experience and wisdom. Otherwise, the general/original rule (of prohibition) should be applied after 120 days (*ensoulment*) of gestation if

the rape victim is married woman. However, if the rape victim is unmarried, then the *fatwa* of Sa’id Sabrī and al-Tantāwī may be opted, since there is an immense need to provide real solutions to such cases that would not contradict Islamic principles and bio-medical norms.

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**FD** perceived, conceived and designed the study, while **MMS** participated in its design and helped **FD** in critical review. **FD & MMS** both did data collection. **FD** solely did statistical data analysis. **MMS & MRM** helped **FD** in analysis. **FD** did manuscript writing & drafting. **AKA & SI** did final review of the manuscript. **FD** takes responsibility/accountability for all aspects of work in ensuring that queries related to the integrity of the study are appropriately investigated and resolved. All the authors read and approved the study.

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Dr. Fazli Dayan, frequently writing on contemporary medical issues related to family matters. His authorship includes: Surrogacy and Inter-Related Issues: A Legal Analysis from the Perspective of Islamic Law. Journal of Applied Environmental and Biological Sciences. 2107;(6):31-40. The Status of Surrogacy, Surrogate Mother in Islamic Law: A Critical Analysis. Journal of Applied Environmental and Biological Sciences. 2017;(7):31-38. CRISPR Cas-9 genome editing and Islam: A religious perspective. Bangladesh Journal of Medical Science. 2019;18(1):7-13, 2019. Ethico-legal aspects of CRISPR Cas-9 genome editing: A balanced approach. Bangladesh Journal of Medical Science. 2020;19(1):11-16. Besides, Dr. Dayan’s upcoming publications are: The Application of Necessity in Medical Treatment and Islamic Law: An Analysis. The Concept of Medical Treatment and Guidelines for Physicians

- in Islamic Perspective. Termination of Pregnancies Resulting from Wartime-Rape: An Islamic Perspective. And, Holding Health Care Accountable: A Solution to Mitigate Medical Malpractice in Pakistan. May Allah accept his efforts and guide him to the right path.
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