

## 115954 - Ruling on aborting a foetus before forty days in order to avoid back-to-back pregnancies

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### the question

A woman found out that she is two or three weeks pregnant, and she is breastfeeding her four-month-old baby. Is it permissible for her to abort the pregnancy, because of what it may cause of harm to her (as a result of two pregnancies being too close together), and also because of possible harm to her baby during the breastfeeding period, because she would be forced to stop breastfeeding during this pregnancy?

### Detailed answer

Firstly:

The fuqaha' differed concerning the ruling on abortion before forty days. A number of the Hanafis and Shaafa'is – and it is also the view of the Hanbalis – is that it is permissible.

Ibn al-Humaam (may Allah have mercy on him) said in *Fath al-Qadeer* (3/401): Is it permissible to abort a pregnancy after getting pregnant? It is permissible so long as no human features have appeared in the embryo. Then elsewhere, they said: The appearance of human features does not occur until after one hundred and twenty days. This means that what they meant by the appearance of human features is when the soul is breathed into the embryo, otherwise they are wrong, because the appearance of human features could occur before that time. End quote.

Ar-Ramli (may Allah have mercy on him) said in *Nihaayat al-Muhtaaj* (8/443): The more correct view is that it is prohibited after the soul has been breathed into the embryo in all cases, and it is permissible before that time.

In *Haashiyat Qalyoobi* (4/160), it says: Yes, it is permissible to abort the pregnancy, even by using medicine, before the soul is breathed into the embryo, in contrast to the view of al-Ghazaali.

Al-Mirdaawi (may Allah have mercy on him) said in *al-Insaaf* (1/386): It is permissible to take medicine to abort a nutfah. This was stated in *al-Wajeez*, and was mentioned in *al-Furoo'*. Ibn al-Jawzi said in *Ahkaam an-Nisa'*: It is haraam. And it says in *al-Furoo'*: The apparent meaning of the words of Ibn 'Aqeel in *al-Funoon* is that it is permissible to abort it before the soul is breathed into it. And he said: There is evidence for that. End quote.

Ibn Rajab al-Hanbali said in *Jaami' al-'Uloom wa'l-Hikam*: It was narrated that Rifaa'ah ibn Raafi' said: 'Umar, 'Ali, az-Zubayr, and Sa'd sat with me, along with other Companions of the Messenger of Allah (blessings and peace of Allah be upon him), and they discussed 'azl (coitus interruptus). They said: There is nothing wrong with it. A man said: They are saying that it is akin to burying the female infant alive. 'Ali said: it cannot be akin to burying the female infant alive unless [the embryo] has gone through seven stages: [first] it is created from an extract of clay, then becomes a sperm-drop, then becomes a clinging clot, then becomes a lump [of flesh], then becomes bones, then becomes flesh, then becomes another creation. 'Umar said: You have spoken the truth, may Allah grant you long life.

Narrated by ad-Daaraqutni in *al-Mu'talif wa'l-Mukhtalif*.

Then Ibn Rajab said: Our companions stated clearly that once the child becomes a clinging clot, it is not permissible for the woman to abort the pregnancy, because it is already the start of a child that has the potential to develop fully, unlike the sperm-drop, which is not yet the start of a child and may never be ready to develop fully. End quote.

The Maalikis are of the view that it is not permissible to abort the pregnancy at all. This is also the view of some of the Hanafis, some of the Shaafa'is, and some of the Hanbalis. Ibn ad-Dardeer said in *ash-Sharh al-Kabeer* (2/266): It is not permissible to abort the embryo that has formed in the womb, even before forty days, and when the soul has been breathed into it, it is haraam [to abort it] according to scholarly consensus. End quote.

Some of the fuqaha' limited the permissibility of abortion to cases where there is a valid reason for it. See: *al-Mawsoo'ah al-Fiqhiyyah al-Kuwaitiyyah* (2/57).

It says in a statement of the Council of Senior Scholars:

1.. It is not permissible to abort a pregnancy at any stage, except with shar'i justification and within very narrow parameters.

2.. If the pregnancy is in the first stage, which is the first forty days, and aborting it serves a shar'i purpose or will ward off harm, it is permissible to abort it. As for aborting it during this period for fear of difficulties in raising children, or for fear of not being able to afford the costs of raising and educating them, or for fear about their future, or because the spouses think that they already have enough children, that is not permissible." (*Al-Fataawa al-Jaami'ah* 3/1055).

It says in *Fataawa al-Lajnah ad-Daa'imah* (21/450): The basic principle concerning a woman's pregnancy is that it is not permissible to abort it at any stage except with shar'i justification. If the pregnancy is still at the sperm-drop stage, which is forty days or less, and aborting it will serve a legitimate shar'i interest or will ward off some harm that is expected to befall the mother, then in that case it is permissible to abort it, but this does not include fear of hardship in raising the children, or not being able to afford the expenses of raising them, or thinking that a certain number of children is enough, and other unacceptable justifications.

But if the pregnancy has progressed beyond forty days, it is haraam to abort it, because after forty days it becomes a clinging clot, and this is the beginning of human creation. Therefore it is not permissible to abort it after it reaches this stage, unless a trustworthy council of doctors determines that continuation of the pregnancy will pose a danger to the life of the mother, and that there is the fear that she may die if the pregnancy continues. End quote.

What appears to be the case is that there is nothing wrong with aborting the pregnancy in the case mentioned, if it is expected that harm will befall the mother due to back-to-back pregnancies, or that harm will befall the nursing infant.

And Allah knows best.