

Different Aspects Fetal Rights in the Light of Islam

ROMESA MARIAM & RIDA IRFAN

Abstract

In contemporary times personhood is one of the most contentious topics in debates. Undoubtedly laws have been made the world which protects the human right but very few of them are involved in protecting the fetus. The basic cause of this is that some legal authorities do not take gravidity as a personhood but it is a fact that if fetus is not a person, it is still necessary to grant fetus its right in order to protect the human life. Protecting fetus actually protects the human and rescue the human rights as well. There is a point in fetal right debate that conferring rights to fetus would in the end undermine the moral and physical autonomy of pregnant women. Islam is a complete code of life and being Muslims, it is our belief that there is a solution of every problem in it. In the following research paper, we will try to explain the inherent humanity of an unborn child in the light of Islamic Shariah. Moreover, we will discuss the human rights before birth and in the same way we will throw light on the Islamic distributions of fetal rights in unwanted and disordered Pregnancies. Similarly, the pregnancies which are resulted in rapes and adultery will also be discussed here in their respect of fetal rights. This research article will touch this sensitive and a bit ignored area of human life and try to unfold and discover the availabilities of fetal rights which are granted by Islamic Shariah.

Different Aspects of Fetal Rights in the Light of Islam

Allah Almighty has declared us the superior amongst all living beings, has taught us to respect each other, blessed us with a balanced mind and body and facilitated us with all the blessings of life. Moreover, He Almighty has explained us the division of our rights and duties with the perfect balance and justice in that division. No doubt that discussion on human rights in general and mainly to discuss them in the light of Islam needs time and patience. So, to know and understand any type of rights with their Islamic perspective, there are some points which have to be cleared; first of them is that whenever there is any discussion on human rights it is prior noted that Islam has presented the detailed charter of human rights at that time when rest of the world is unaware of even the word 'right'. History can prove it that western world had no concept of Human rights before 17th century.¹

Secondly it must be understood that Islam always talks about human rights without any division of color, nation, religion or sect, rather it considers all the human race equal in this respect.

Along with that it is also evident that whenever Islam talked about rights then it means that these are the order of God which are obligatory for every believer. These are not the responsibilities declared by any society or culture, nor a resolution of any assembly or law of a legislative council rather they are the laws of Almighty and they must have to be accepted and observed. And it is necessary for every Islamic government to observe, accept, recognize and enforce these rights. By keeping in view, the Islamic approach regarding human rights, if we study the basic human rights then we will find that Islam discusses these rights over three periods of human development before and after his birth.

¹ Peter N.Steams, Human Rights in the world History, pg.69 ;Lukman Harees, The Mirage of dignity on the Highway of Human progress,pg.195

Three Worlds of a Man

The first world of a man is in his mother's womb, in which he is created and developed completely. Then nature brings him to the present world where he is told that there is one more world waiting for you which is never ending (*Akhirah*). Every next world is bigger than its previous one. There are different aspects of human rights and duties among these three worlds. In his second or present world man is given a lot by nature but he must be paid also. No doubt that nature's blessings are a lot more than what he should be paid off:

فباى الاء ربكما تكذبن²

The similarity between the first (in the womb) and the last (*Akhirah*) world is that there are not any duties of man. Human(baby) gets automatically in womb what he needs and in *Akhirah* he will also get as a reward or as a punishment for whatever he did in this world. The last world is the world of people divided into two parts; one is blessed and called *Janati* (those who will go *Jannah*) and the others is cursed who will go to hell.³ According to Islamic *Shariah* the rights of a human are acknowledged even when he is in his mother's womb. Here the Islamic law of *Áhlyt e Nâqisâ* (إبليت ناقصه) is implemented and the life developing in mother's womb is not questioned for any duties rather it gets some rights like inheritance and *Hiba* etc. If we consider the human history in this respect we can see a vivid superiority of Islamic law over other worldly laws.

In 1959 UNO had declared the rights of children for the first time.⁴ UNO in 1966 had made laws for a human who is developing in a womb a fetus (laws before birth). In 1969 American convention was organized on human rights in which rights for Janine (fetus) were made.²⁴ countries of Latin America had signed this charter in which it is explained that a human has his rights from the foremost stage of his development. USA had not signed this charter. More over this agreement had never meant that the countries who signed it must have a restriction on abortion.⁵

The term 'fetal rights' had emerged after renowned case of terminating pregnancy named *Rove.v.wade*. In this case American supreme court had declared that a woman has a legal right to terminate her pregnancy during first trimester. She can terminate it during second trimester also but the state has the right to prohibit that termination if it is fatal to mother's health. The court had also decided that according to 14th amendment of American constitution the fetus is not a 'person'. However, the supreme court had also written that state is interested in the life of a fetus when it became able to survive outside the mother's womb. After this decision state had mad the law that after six months of pregnancy, its termination is illegal, rather it is necessary.⁶ In order to make human rights safe, laws have been made all over the world but there are very few examples of using these laws for the safety of fetus. Usually the term fetus is used for a developing human in the womb of his mother from conceiving to birth. Fetus (*Janin*) is an Arabic word which means the hidden thing, anything which cannot be seen through eyes. Ibn e Manzoor Africi has defined as:

² *Al-Rehman* 55:13

³ *Al-Isra* 17:97; *Qaaf* 50:35

⁴ UNO General Assembly Resolution 1386(xiv), 1959

⁵ See: Joseph, Rita, Human Rights and the unborn child

⁶ *ROE v.WADE*, 410 U.S.113,93

هو الولد مادام في بطن امه لاستتاره في ه من جنن اذا ستر يقال: جن الشيء يجنّ: اذا ستره وكل شيء ستر عنك فقد جن عنك وسمى الجن بجدا لاستتارهم واختفائهم عن الابصار وسمى الجنين به لاستتاره في بطن امه و جنّ في الرحم يجن جنا: استتر و جمع اجنة و اجنن⁷

Janin(fetus) is a developing human in mother's womb and it is called *Janin* because it is a hidden thing in womb and anything which is out of sight is called *Janin*. The word 'Jin' is also from *Janin* and *Jins* are also hidden from our eyes. Similarly, *Janin* is called *Janin* as it is in womb and away from human's sight and its plural is اجنن and اجنه. The word 'fetus' and 'embryo' is used in English language for جنين. Usually both are considered as synonymous but there can be a slight difference. Embryo is the developing human in the first eight weeks inside the womb of his mother while fetus is the developing human from ninth week till birth.⁸

Stages of Fetal Development

Quran and Sunnah has defined the different stages of fetal development and Islamic Shariah has declared the rights of fetal according to these stages. Allah Almighty says in Quran about the development stages of fetus as:

يا أيها الناس إن كنتم في ريب من البعث فإننا خلقناكم من تراب ثم من نطفة ثم من علقة ثم من مضغة مخلقة وغير مخلقة لنبين لكم ونقر في الأرحام ما نشاء إلى أجل مسمى⁹

"O mankind! If you are in doubt about the Resurrection, then verily! We have created you (i.e. Adam) from dust, then from a *Nutfah* (mixed drops of male and female sexual discharge i.e. offspring of Adam), then from a clot (a piece of thick coagulated blood) then from a little lump of flesh, some formed and some unformed (miscarriage), that We may make (it) clear to you (i.e. to show you Our Power and Ability to do what We will)."

Hadith Nabvi has also told us about the different stages of human development. *Hazrat Abdullah bin Masood* Narrated a Hadith in this respect:

Allah's Apostle, the truthful and truly-inspired said; each one of you collected in the womb of his mother for forty days, and then turns into a clot for an equal period (of forty days) and turns into a piece of flesh for a similar period and then Allah sends an angel and orders him to write four things, i.e. deeds, his livelihood, his age and weather he will be of the wretched or the blessed (in the hereafter) then the soul is breathed into him.¹⁰

From the Quranic verses and *Hadith*, we become familiar of following developmental stages of a fetus:

⁷ *Lissan - ul -Arab*, جنين : ماده

⁸ Moor & Persuade, *The Developing Human*, pg.3; Merriam Webster dictionary, word: embryo, fetus.

⁹ *Al-hajj* 22:05 the same topic discusses by Allah Almighty in other Surahs: *Al-mominun* 23:12-14; *Al-Sajda* 32:7-9

¹⁰ Muslim, Imam, *Al-Jamé-Al-saahi*, Book 33 (*kitab ul Qadar*) Chapter 1: The growth of Child in mother's womb.... Number: 6390

1: Stage of 'Nutfaah' (Drop): When the Siemen of a man and a woman have combined they made a drop (نطفه) from which the fetus takes its birth. This is explained *Hadith* narrated by *Hazrat Anas* (r.a): "If a man's semen is more active than the child resembles his father and if women's drop is active than man then the child resembles his mother".¹¹

Quran has also used a term "*Nutfah Amshaj*" for this: انا خلقنا الإنسان من نطفة أمشاج نبتليه فجعلناه سميعا بصيرا¹²

"We have created man from a mixed sperm-drop to put him to a test; then We made him able to hearable, to see"

The first thing required for the creation of man is semen. The Holy Quran remembers it as "*Nutfah*" (drp of semen) as in the verse mentioned above and many other verses, for example: "*From the drop of semen, He created*". The Holy Quran remembers this drop of semen as mixed (*Amshaj*). *Amshaj* means a mixture. It is accepted in the modern medical sciences that the semen or *Nutfah* is composed of: (1) Sperm i.e. the male germ cells, and (2) The secretions from the following: Vas-Deferns, Seminal-Vehicles, Prostate, Urethral Gland and Bulb o urethral Glands¹³

2. Stage of *Alqah* علقه (Leech like Structure): Many scholars have the same point of view for '*Alaqah*' that it is like thick blood or a piece of frozen blood. *Alaqh* is a clot like structure, just as a leech or frozen type of blood and its plural is *Alq* علقه¹⁴.

Some recent *Mufassirin* and doctors describe it as a leech like structure. Dr. Muhammad Ali Baar says: "Doctors have some opinion about *Alaqah* that in this stage of '*Nutfah Amshaj*' (mixture), the *Alaqah* sticks to the wall of mother's womb".¹⁵

3. Stage *Mudghah* مضغه (Chewed like Substance): Morphologically It means a small, chewed piece of meat and this stage emerged after 20 to 21 days of conception. It also has two types: مضغه غير مخلقه: in this stage it is shapeless and human features are not emerged yet, and مضغه مخلقه: then it reaches to a stage where human features are becoming prominent and visible.

4. Stage *Izam* عظام (Skelton/Bones): In this stage bones are created and its head, hands and feet are visible. In a *Hadit*, it is stated:

"When forty nights pass after the semen gets into the womb, Allah sends the angel and gives him the shape. Then he creates his sense of hearing, sense of sight, his skin, his flesh, his bones"¹⁶

5. Breathing of Life: This stage of ensoulment has been discussed several times in Quran:

¹¹ *Saahi-al-Muslim*, Book 3, (kitab 'ul' *Hadith*), number:614

¹² *Al-Insan*76:2

¹³ M.Y.Sukkar & Authors, *Concise Human physiology*,

¹⁴ Muhammad Salam Madkur, *Al-Janin-wal-Ahkam-ul-Mutaàliqah*, pg.57-58

¹⁵ Muhammad Ali Baar,D. *Khalaqal insan Bain at-tib wa -al-Quran*, pg.209

¹⁶ Muslim, Imam, *Al-Jame-Al-sahhi*, Book 33 (*kitab uk Qadar*) Chapter 1: The growth of Child in mother's womb.... Number: 6393

ثم سواه ونفخ فيه من روحه وجعل لكم السمع والأبصار والأفئدة قليلا ما تشكرون¹⁷

Imam ibn Kathir describes the period of this stage in the right of following *Hadith*. Allah 's Apostle says: " when there passes four months on *Nutfah* then Allah sends an angel to it who breathe life into it(fetus) behind three layers of womb"¹⁸ Imam *Qurtabi* has also described the period of ensoulment is approximately in 4th month of pregnancy. ¹⁹ This debate shows that *Janin* is a body which is present in womb, whether before 4 months or after the completion of 4 months.²⁰ All stages of fetus have been cleared from the debate and Islamic Sharia has declared the respect and rights of fetus by keeping in view all these development stages. Following time will throw light on this aspect of Islamic law.

Fetus's Right for Life

As Islam has ensured the life of a born baby similarly it ensure the safety of a baby's life who is still in her mother's womb. Quran and Sunnah has taken several steps for the safety of fetus from *Nutfah* (its initial most stage) till the completion of pregnancy(birth). Islam has divided the debate of sanctity and safety of fetus into two parts, i.e. outside the womb -Islamic jurists have difference of opinion on this aspect. This difference is based on *ázl* (coitus interruption or withdrawing during intercourse) is permitted or not. Most of the Sahaba and jurists have permitted *ázl* but some of them considers it *Haram* and some thinks that it is *Makruh*.²¹and inside the womb -When *Nutfah* changes to *Alaqah* and to *Mudghah*, then at this stage we cannot declare it as human because both these stages are before the stage of breathing life. At this point the right of life of a fetus is divided into two different opinions of Islamic scholars

Aborting Pregnancy Before Ensoulment

There is a difference of thoughts that what Islam says if anyone will abort pregnancy before 4 months of gestational age. There are two school of thoughts: At this stage aborting is not *Haram* or abortion is *Haram* both before and after ensoulment. According to Hanbali, Shafie and Hanafi, aborting a pregnancy is permitted before ensoulment because till then we cannot consider it a sin if it is done without any reason. Imam Shami gives the reason of abortion in his fatwa as:

"Abortion is allowed as long as nothing of the body has been created and we cannot say it a person at this stage, so it will not treat as a person that its life must" be safeguarded. So, termination (*Isqat*) is allowed at this time."²²

¹⁷ *Al-Sajda*32:09

¹⁸ *Tafseer Al Quran il azeem*, v:5, pg.347

¹⁹ *Qurtabi, Al-Jamey- ahkam-ul- Qur'an*, See: Esmailzadeh Mahdi & authors, Developmental biology in Holy Qur'an, Journal of Physiology and Pathophysiology.pp. 1-7, January 2012

²⁰ See detail: Al-nujaimi,Muhammad, *Al-Injab-us-Sanaie*, pg.43-53

²¹ Navavi, Yahya bin Sharaf, Imam, *Al-Majmou Sharhul muhazzib*, v16, pg. 463; Saahi Muslim, Book008(*kitab un nikah*), chapter22, AL *azl*, coitus interrupts, number 3371

²² See: Ibn e Aâbdin shami, *Rudd ul Mukhtar (kitab un nikah)*, v:4, pg.336; Bader ud din, Qazi, *Jamey ul Fasulin*, V:2, pg.354 ; Abdul Fattah Mehmod,Doctor, *Al Ij haz-min-Manzor Islami*, pg.32; gad-elhak,Sheikh, *Ahkam-al-Shariah-al-Islamiah*,pg.139-141

Some Islamic jurists say that aborting a pregnancy without any valid reason is not allowed. It is permitted if there are following reasons: (a) If the life of an unborn child is endangered that it will born very weak and will not be able to survive; (b) If mother's health is not capable a child and delivery causes any risk to her life and health and (c) If mother has another child who is breastfeed and weak and he cannot survive without breastfeeding.²³

In all these cases Abortion is permissible both before and after ensoulment but for this it is necessary that it will be decided with the opinion of very responsible doctor who is aware of Islamic teachings in this respect. However Unnecessary Aborting is *Makruh* and the one who will do this considers sinful.²⁴ Ensoulment has taken place by 120 days after conception and after ensoulment fetus is considered as human and Islam has ensured the safety and sanctity of its life. At this stage termination without any medical reason will be considered as *Haram*. *Hazrat Abu Huraira* narrated a Hadith:

Among the two women of *Hudhail* tribe, one thrown a stone to other which cause her miscarriage, Allah's Apostle decided to give a servant as a paying of forfeit of the loss.²⁵

It shows that abortion is not allowed without any medical and legal pretext or reason and if anyone aborts pregnancy without any medical or legal advice then he/she will consider culprit. What Sharia says for surgery to become infertile permanently: It means if a woman makes herself infertile through surgical process which means to make herself unable to child bearing. It is called Hysterectomy in medical language. Hysterectomy is forbidden in Sharia. Former *Sheikh Al Azhar Gad-elhak* Fatwa on hysterectomy and Vasectomy (male and female surgery for infertility):

Any treatment to become infertile permanently for both male and female rather it is through surgery or with the use of any contraceptive medicines is totally forbidden and *Haram*. Because it makes human disable from reproduction and this is forbidden because breeding of human race is one amongst the five most important aims of Islamic Shariah.²⁶

For the safety of fetus's life Islam has blessed the pregnant woman certain exceptions:

Delay in the implementation of *Hudud* and *Qisas* punishment for pregnant woman. This delay is only for the safety of fetus's life that it cannot be hurt through any hit, received by its mother. This concession is only for fetus because if it is for a woman then she will not be punished after delivery²⁷. Allah's Apostle says:

"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* رجم, unless she delivered and foster her baby."

²³ Al-Buti, Saeed Ramzan, Doctor, *Masalla Tahdeed un Nasal*, pg.223

²⁴ Gad'elhak, *Mukhtarat min'al'Fataawa wal'Bahoos*, pg.94-95,102

²⁵ *Saahi Al-Muslim*, Book 016, (*Kitab Al Qassama-wa-diyaaat*), Chapter:10, Blood-Wit of the child in the womb, number 4166

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²⁷ Al-Jaziri, Abd-ur-Rehman, *Kitab-ul-Fiqh-al-Madhabib-ul-Arbaá*, *Kitab ul Haddood*, V:5, pg.320

Above Hadith proves that *Qisas* is applicable on pregnant woman after she delivered and breastfed her child till the child be able to live without mother (two years of breastfeeding). Similarly, if a woman gets pregnant due to adultery then *hadd* of *rajam* is not applied on her unless she delivered and nourish her child with her maximum for two years.²⁸ Here we have an instance from a woman of *Ghamid* tribe. She admits her adultery before Allah's Apostle and present her for the application of Hudd but Allah's apostle sent her back and when after delivery she came again, He PBUH sent her back again and orders her to complete the duration of lactation. Then after entrustment of that child to another Muslim, Hudd of adultery has practiced on that woman.²⁹ For the fetus's life and proper health Islam has given certain concessions to pregnant woman is performing different duties which are otherwise very important to perform in time, Hadith is:

No doubt that Allah has delayed fasting for passenger and lessen for him half of a prayer and for pregnant and Lactate mother, He Almighty has also lapsed fasting for the certain period.³⁰

It means that for the proper nourishment of fetus pregnant woman have this concession not be fast in Ramadan during pregnancy and after delivery when the child's health and life is out of danger she can complete her count of fasts which she had missed.³¹

Delivering Fetus Because of Mother's Death

An Islam safeguard the life and commodity of a human similarly it also ensures the safety of a child who is still in mother's womb. In case of a death of pregnant woman if the baby in her womb is at that stage of its development when it is possible for its survival outside the womb, for the survival of that baby license for the dissection of woman's abdomen is debated amongst jurists as follows:

Many Jurists including *Imam Shafi* and *Imam Novi* along with famous jurists of Hanafi school of thought agrees on the dissection of died mother's abdomen if gestational age of pregnancy is more than 6 months and if the baby is at the stage of survival outside womb.³²

However, *Imam Ahmed bin Hanbal* and other *Hanbli* Jurists oppose this opinion and emphasize on the alternative ways to bring out the baby. It is to be noted that differences of opinion are only on the dissection of mother's abdomen. Otherwise both schools of thought are pursuant to ensure baby's life.

Punishment for a Person Who Causes Fetus Death

In Islamic Shariah if anybody hits the back, abdomen or any other organ of a pregnant woman or pushed her forcedly or threatens her which causes the woman to have miscarriage, two possibilities occur. The child dies or its born alive. The one who is responsible for this situation will be culprit and if the child dies then Ghurra (compensation to be paid by a person who causes the death of a fetus)

²⁸ Ibn e Majâ, *Al-Sunan*, Book of Blood Money (الديات), chapter36, number: 2694, v:3

²⁹ *Sahii Muslim*, Book 017(Hudud), chapter05, number:4205

³⁰ *Al-Tirmadhi, Jamei*, Book of fast (الصوم), number:

³¹ Gad-elhak, Sheikh, *Al-tafula fi Shariat -al-Islamia*, pg.11; Muhammad bin Mehmood, *Masaail-fi-Zawaj wa Al Hamel wa Al waladah*, pg.120-126

³² Inn e Nujaim, *Al-Ashbha wa Nazair*, v:1, pg.258 Mustafa Zarqa, *Al'Mudkhill'al fiqhi'l Aam*, b:2,pg.984

is compulsory to be paid. There are two possibilities of *Ghurra*: (a) It means to free a slave as compensation and most of the jurists agreed upon it, (b) For some jurists this compensation may also be in the form of a horse or mule.³³

Anyway, *Ghurra* of *Janin* can be horse also instead of a slave, if nothing of these available then it will be paid in form of currency. *Hanafi* school of thought it is the amount of 500 Dirham while Imam Malik suggests 600 *Dirhum* and for the Shafie school of thought it is 5 camels or the amount equals to it.³⁴

Adultery which Led to Pregnancy

Pregnancy due to adultery have two possibilities: (a) Pregnancy because of forced adultery زنا بالجبر (b) Pregnancy due to adultery by *mutual* consent زنا بالرضا. All Islamic scholars are agreed in the point that aborting pregnancy due to unlawful sex is not permitted because natural consent is present in the sin. Abortion is not the Islamic solution because if the door is left open, for this then consequences could be very destructive and cause shamelessness in the society. Moreover, the scholars also have kept in view the sacredness of the life of a fetus who resulted due to unlawful sex their reasoning depends, on this Holy verse: "No bearer of burdens can bear the burdens of another"³⁵ Therefore, the aborting pregnancy due to illegitimate sex is not permissible because it is the sin of two adults and unborn should not to pay the price for a sin of his parents. Hanafi Fiqh says: "And the fetus (due to illicit sex) is also honored, as it is not guilty of any wrongdoing thus it will not be permissible to abort" it³⁶

Pregnancy due to Rape (Forced Adultery)

It is permissible to abort pregnancy resulted in Rape before ensoulment. This is lawful to save the honor and sanctity of a woman who undergo this violated act. If she wants to save that child then then she should not be enforced. According to Sheikh Saaleh Almunjid:

"Undoubtedly the rape of a Muslim woman by an evil enemy is a strong reason for the Muslim woman and for her family to have an abortion. For she will hate this foetus, the result of this iniquitous attack, and she will want to get rid of it. So, this concession is to be given because of necessity, especially in the first days of the pregnancy. Nevertheless, there is nothing wrong with a Muslim woman who has suffered this disaster keeping the foetus without being forced to get rid of it. If it is decreed that it should remain in her womb for the usual term and she gives birth to it, then it will be a Muslim child, as the Prophet (pbuh) said: "Every newborn is born in a state of fitrah (the natural state of man, i.e., Islam)." The fitrah is the religion of Tawhid, i.e., Islam."³⁷

³³ Ibn-e Hazam, *Al-Muhaalah*, (kitab 'ud'dima ' wal' qisas) Masala:2124, pg.2000

³⁴ For detail see: Al-Diyyah Bain Al Aáqoobah wa taàweez, pg.244; Mushkila -til-Ijhaz,, pg.46; *Kitab-ul-Fiqh-al-Madhahib-ul-Arbaá*, (Kitab ul Hadood) v:05,pg.326-331

³⁵ *Al-Isra*,17:15

³⁶ Al-Buti, Muhammad Saeed Ramazn, *Tahdeed-un-Nasal*, pg.89

³⁷ <https://islamqa.info/en/13317>

Implanting Organs and Fetus

The decision taken in 1990 by the Islamic Fiqh Academy Jeddah has explained the Islamic view regarding fetus safety and sanctity of its life. The decision is: Fetus cannot be used as source of obtaining organs to be transplanted in another person, except in certain cases and under certain conditions which must be fulfilled:

A) No abortion can be provoked in order to use the fetus for transplant of its organs in the body of another person. The operation should be restricted to a case of natural abortion or an abortion for a lawful purpose, and no surgical operation should be resorted to in order to remove the fetus unless it is essential to save the mother's life.

B) If the fetus has a chance of remaining alive, medical treatment must be directed to keep it alive, and not for using it in organ transplant. If it cannot survive, it must not be used except after its death and under the conditions stipulated.

Organ transplant operation must not, at all, be used for commercial purpose. Supervision of organ transplant operation must be entrusted to a specialized and reliable body.³⁸ There is one more aspect to ensure the safety of fetus life which is to deprive the murderer of fetus from its inheritance. Islamic law deprives the murderer from inheritance. *Hazrat Abu Huraira* narrates a Hadith: "The killer does not inherit"³⁹ The murderer is deprived of inheritance so that anyone cannot threaten a life of derived. Similarly, if a person killed a fetus then he will not get any portion from fetus inheritance.

Mother is also responsible to protect the life of a 'being' developing in her womb. If she intakes something which causes her miscarriage and she is aware of the consequences before and then she will consider culprit and face two *Ta'zir* punishment; (a) One is to deprive from fetus inheritance, and (b) Secondly, she should have pay the compensation⁴⁰ Similarly, if *Isqat* (miscarriage) occurred due to any criminal act of father then ransom will also due on him and he will also deprive from inheritance.

During pregnancy if the husband of a woman dies or she is divorced then after delivery the lineage of a baby is will be attributed towards her husband. Islam is very sensitive in establishing lineage so it makes compulsory for widow or divorce to complete the term of *Iddat* so that the baby's lineage can be attributed to her husband. It is necessary that a child is born after marriage within the minimum (6 months) or maximum term (2 years) of pregnancy to establish its lineage towards father.

Economic Rights of Fetus

This includes rights of inheritance, alimony rights and will rights. Islam has taken many measures for the safety of Janin and one of them is the right to alimony. As fetus cannot eat or drink directly and takes nutrients from its mother. Islam ensures the alimony of pregnant woman on behalf of fetus because if mother is healthy the fetus will also healthy. To pay this right to the mother is father's responsibility and if he divorced his pregnant wife then it is due on him to pay the expenditure related

³⁸ Resolution and Recommendations of the council of Islamic Fiqh Academy, 1985-2000, pg.112

³⁹ Ibn e Majâ, *Al-Sunan*, Book of Blood Money (الدييات), chapter14,number:2645

⁴⁰ For detailed see: *Jareemah'tu'ljahaz'il'awamil*, pg.118 ; *Al-Muhaala*, pg.2000

to diet and health of divorced expectant woman till the birth of her child. And if husband stopped paying the alimony after divorce and then pregnancy confirms later, in such case he must have to pay the amount which was missed earlier. In Quran:

وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ ۚ⁴¹

“And if they are pregnant, spend on them till they lay down their burden”.

Islamic law has ensured the alimony for both pregnant widow and pregnant divorce and makes husband responsible for this. But here it puts a condition on a woman that in both cases she will stay in husband's home during the term of Iddat.⁴² All the expenditure for pregnant divorcee will be paid from husband's money and not from the fetus's portion of wealth. Hanafi Jurists *Imam Jisas* says:

Mother's alimony is due on husband without considering if the owner of wealth is fetus. This alimony can never be part from fetus's wealth.⁴³

Will Testament and Fetus

As *Janin* is also a human being so it is legal to design a will for him although some conditions necessary for fetus for devisee: (a) The fetus is not an inheritor of died person because Hadith is: *Allah has given the rights to everyone deserves it, so there is no will for the inheritor.*⁴⁴ (b) The testament of will is right during pregnancy but it will be expired if child have born dead, and (c) The delivery within the term (minimum 6 months & maximum of 2 years) is also conditioned because lineage can prove within the term.⁴⁵

Inheritance/Legacy:

Fetal can gather the rights of inheritance. Islamic law has secured the right of inheritance for a person before even his birth. Fetus cannot be deprived of inheritance. If the ancestor (the person from whom inheritance is received) of fetus died before its birth then fetus portion from deceased's inheritance must be saved and according to some jurists property cannot be divided until fetus's portion will be declared and saved. Some jurists are of the view that as it is not known whatever the gender of fetus will be, so we cannot define exactly the amount of its inherited portion, the division of inheritance cannot be possible then. It should be postponed till delivery.

Doctor Mehmood Ahmed Ghazi has an interesting opinion in this respect that the fetus has the right to take the stay order against the division of inheritance. Fetus can become heir only if borne within the maximum and minimum term of pregnancy. Similarly, widow is in term of *Iddat* and father has not disowned him. If the father disowned that child and the couple separated under the process of *اللعان* *Líán* (legal judgement separating a wife from her husband in Islam; sworn allegation of adultery committed by one's spouse) then the fetus will only inherit its mother's property.⁴⁶

If inheritors postulate then the inheritance can be divided among heirs without waiting for the birth of child so that they will not suffer and enjoy the benefit of property. However, one amongst

⁴¹ *Al-Talaq* 65:6

⁴² *Al-Talaq* 65.; see: *Kasani, Bada' us sânaé*,v3,pg.209

⁴³ *Jasas, imam, Ahkam'ul'Quran, (Tafssir 65:1), (Bab'alsukna lil mutalaqa)*,v:5,pg.355

⁴⁴ *Al'Timidhi, Jāmi, Book of Testament (Wasáyà), chapter5, number:2120*

⁴⁵ *Syed Sabiq, Fiqh'Sunnah, pg.1097*

⁴⁶ *Zaki ud din, doctor, Ahkam ul wasiya wal meeras wal waqaf, pg. 418 ; Al-Injab us sanáí Bain Al'Tahleel wa Al tehrim, pg.206*

the heirs will act as a guarantor to save fetus's inheritance from loss of wastage. Fetus's share will be withheld and other inheritance will be divided among heirs.⁴⁷

If a fetus has any type of property then a caretaker can be appointed to ensure its safety. However, the authority of the caretaker is limited. He cannot have the right to use even minimum from this property. For instance, he cannot use it in any business, cannot buy a present for anyone, not to pay any expenditure of any relative from this. This is because Islamic Fiqh has not imposed any duty onto fetus.

Like right of testament and legacy, Iqrar is also a right of fetus, for example, someone says that he has some part of fetus property from will and legacy. But it's necessary that fetus should exist at time of this claim.⁴⁸ From the above discussion, it's clear that Islam has blessed human beings with so many rights even before his birth. Not only given the rights, rather protect them by mentioning them in law. Many rights are essential for the completion of different steps of human creation in mother's womb.

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⁴⁷ Abd'il'wadood, doctor, *Al-wasâyâ wal auqaf wal mwarith*, pg.372-376

⁴⁸ *Kasani, Badaie us sanae*, v7, pg.223

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