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CLASSICAL MUSLIM SCHOLARLY INTERPRETATIONS OF WHEN PREGNANCY BEGINS?

Keywords: Abortion, Islam, Embryology, Fertilization, Implantation, Family Planning

Abstract:

Muslim scholars apply *fiqh* (substantive law) from classical text to modern understandings of embryology, yet sometimes we may fail to grasp that the theories of early human development then, may have been quite different to what we know today. There can be a serious charge of misapplication of *fiqh* when these theories do not correspond. I will demonstrate this using the case of how we define pregnancy. Pregnancy is the state “from conception to birth”, but there are problems with this definition as “conception” can mean either fertilization or implantation. This definition is important as it is a determining factor to when we can say a particular intervention is abortifacient or not. I will examine classical Islamic texts to identify whether there was any theoretical conception of the zygote (the fertilized egg), whether it had any independent moral status, and how fertilization and implantation were understood by classical Muslim scholars compared to what we know today. This will allow us to avoid any misapplication of *fiqh* pertaining to issues related to this topic.

This paper will address the following questions:

1. The normative position of *al-‘āzī* (preventing sperm fertilizing the egg) and to what stage of embryology this ruling extends to.
2. How should Muslims reconcile descriptions of early embryology in the Qur’ān with current understandings of embryology and science? In particular *nuṭfa*, *‘alaqa*, fertilization, implantation and the stage when embryo receiving maternal/ placental nourishment.
3. The moral significance of fertilization.
4. Where the theories of early human development according to early Muslim scholars, may have been quite different to what we know today.
5. The Islamic understanding of when pregnancy begins and how it should be calculated
6. The moral status of the zygote (*nuṭfa amshāj*) and the different rulings according to the classical sunni schools of jurisprudence and contemporary scholars.



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Introduction

There is no single definition of Pregnancy. The American Heritage Stedman's Medical Dictionary defines "pregnancy" as "from conception until birth."¹ This can be confusing as "conception" can mean either fertilization² or implantation³ and to others may mean both.⁴ The discovery by O. Hertwig (1875-1878), of the very nature of fertilization- i.e. the fusion of the egg's and spermatozoon's nuclei, and Schleiden and Schwann's discovery in 1839, recognising that the embryo develops from the single-celled zygote, led to a change of views on the ethics of the beginning of life.⁵ In 1859 the American Medical Association published a statement strongly opposing abortion, commenting on the independence of the zygote during the time between its formation and its implantation. This was based upon the idea that the single-celled zygote was alive and an independent being.⁶

The American College of Obstetrics and Gynecology in 1965 attempted to redefine "conception" to mean implantation rather than fertilization,⁷ however, medical dictionaries and even English language dictionaries both before and after 1966⁸ defined "conception" as synonymous with fertilization.⁹ Life was seen to begin at the moment when the genetic information contained in the sperm and ovum (female egg) combine to form a genetically unique cell. As Eberl indicated, "What is controversial is whether this genetically unique cell should be considered a human person."¹⁰

The single-celled zygote is a very different kind of cell than that of sperm or ovum, and contains a unique genome that will determine most future physical characteristics and functions of the person.¹¹ However, there is a potential for the conceptus to split into identical twins prior to implantation, and so (the argument goes) the conceptus cannot be regarded before implantation as a single human being.¹² So, does

¹ "Pregnancy" The American Heritage Stedman's Medical Dictionary, Houghton Mifflin Company Sept 2002

² Mosby (2012). Mosby's Medical Dictionary. Elsevier Health Sciences. p. 415; Dorland (2011). Dorland's Illustrated Medical Dictionary. 32nd Edition, Saunders. May 2011

³ "Sex Selection" (PDF). ACOG. Number 360, February 2007.

<https://web.archive.org/web/20150610232320/http://www.acog.org/~media/Committee%20Opinions/Committee%20on%20Ethics/co360.pdf>

⁴ "Conception". Merriam-Webster. <https://www.merriam-webster.com/dictionary/conception>, retrieved July 2019

⁵ Moore KL, Persaud TVN. The Developing Human, 7th ed. Philadelphia: Saunders-Elsevier, 2003; 31; Carlson BM, Human Embryology and Developmental Biology, 3rd ed. Philadelphia: Mosby-Elsevier, 2004; 2, 8-10, 31.

⁶ Report on Criminal Abortion, JAMA, Vol XII-6, 1859.

⁷ ACOG Terminology Bulletin. Terms used in reference to the fetus. Chicago. ACOG No. 1. Sept 1965. Dr. Bent Boving argued for changing the definition by moving the date of conception from when fertilization occurs to when implantation occurs. He said that "the social advantage of [birth control] being considered to prevent conception rather than to destroy an established pregnancy could depend upon something so simple as a prudent habit of speech." Bent Boving, "Implantation Mechanisms," in Mechanics Concerned with Conception, ed. C.G. Hartman (New York: Pergamon Press, 1963), p. 386. Accessed July 2019 from https://en.wikipedia.org/wiki/Beginning_of_pregnancy_controversy.

⁸ The American College Dictionary, Random House, NY: 1956. p. 249.; Stedman's Medical Dictionary, Williams and Wilkins Co. 21st ed, Baltimore 1966. pp. 352,583,586.

⁹ Webster's New International Dictionary of the English Language Unabridged, Merriam-Webster, Encyclopedia Britannica, 1986. pp. 469.; Merriam-Webster Deluxe Dictionary, 10th collegiate Ed., Readers Digest, Pleasantville, NY, 1998. pp. 373,677,671.; Tabor's Cyclopedic Medical Dictionary. 14th edition, FA Davis Co, Philadelphia., 1981. p. 322.

¹⁰ Eberl JT. The beginning of personhood: A Thomistic biological analysis. Bioethics. 2000;14(2):134-157. Quote is from page 135.

¹¹ Müller-Wille S. Cell theory, specificity, and reproduction, 1837-1870. Stud Hist Philos Biol Biomed Sci. 2010;41(3):225-231.

¹² Ashley, Benedict and O'Rourke, Kevin. Ethics of Health Care: An Introductory Textbook, (Georgetown University Press 2002). p. 127



that make this single-celled zygote an independent agent with intrinsic moral value significant enough for it to be considered the initial organism which determines the beginning of pregnancy or life, and hence any act that terminates its progression and growth is to be considered an act of abortion or its equivalent. Or, is this just a pre-embryonic¹³ process which leads to pregnancy, and its normative status does not reach the standard of what we would consider pregnancy, and hence to terminate its further development would not be tantamount to abortion but a lesser crime, if at all.

The American Medical Association at its 2004 Annual Meeting, passed a resolution in favour of making “Plan B” emergency contraception available over-the-counter, and one of the claims in the resolution was that hormonal contraception that may affect implantation “cannot terminate an established pregnancy.”¹⁴ Similarly, the British Medical Association has defined an “established pregnancy” as beginning at implantation¹⁵, yet the legal definition in the United Kingdom remains unclear.¹⁶

Ethical concerns peaked with the introduction of over-the-counter emergency contraception and whether they were considered abortifacients. Birth control methods usually prevent fertilization and this cannot be seen as abortifacient because, by any of the above definitions, pregnancy has not started. However, some methods might have a secondary effect in preventing implantation, thus contributing to the death of the pre-embryo. Those who define pregnancy from fertilization subsequently may conclude that these agents should be considered abortifacients. Others differentiate between aborting an established pregnancy and destroying a fertilized egg. Pregnancy is at implantation not before, and it is from this stage when a fertilized egg is killed that one can consider this an abortion. Prior to this is not pregnancy but destruction of the embryo or pre-embryo and is quite a separate matter which requires us to determine the moral status of this embryo and rulings related to it, to justify its destruction. Some methods of birth control as well as some methods of infertility treatment might be classified as causing abortions depending on which stance one takes.¹⁷

¹³ the term “ pre-embryo” has been used to describe the conceptus before implantation in the uterus. Spallone, Patricia. “Bad Conscience and Collective Unconscious: Science, Discourse and Reproductive Technology” in Rosenbeck, Bente et al. p. 131-132 (Museum Tusculanum Press 1995).

¹⁴ FDA Rejection of Over-The-Counter Status for Emergency Contraception Pills American Medical Association House of Delegates Resolution:443. Retrieved July 2019

¹⁵ BMA (May 2005). "Abortion time limits: A briefing paper from the British Medical Association". Archived from the original on 2006-08-27. Retrieved July 2019. "The term 'abortion' is used throughout this paper to refer to the induced termination of an established pregnancy (i.e. after implantation)."

¹⁶ Hope, T. & Savulsecu, J. "Handout 3: Outline of Legal Positions in England and Wales". Medical Ethics and Law Teaching Materials: Termination of Pregnancy. The Oxford Centre for Ethics and Communication in Health Care Practice, Oxford University. pp. Appendix 3: Some key points in the law on abortion and fetal damage.– "It is generally assumed that when the Act states that 'pregnancy has not exceeded its 24th week' it means 24 weeks since the first day of the woman's last period. But this is not clear – particularly if there is evidence that conception had taken place on a day after this....The Attorney General said, in 1983 (see Brazier 1992 page 293-4) that there is no pregnancy until implantation. This is persuasive but not binding precedence." "Termination of Pregnancy Handout (pdf)" (PDF).

<http://www.ethox.org.uk/education/teach/pregnancy/pregnancy3.htm> accessed July 2019

¹⁷ The controversy is not primarily a scientific issue, rather an issue which is influenced by larger social, legal, medical, religious, philosophical, and political factors. But this is beyond the remit of this paper.



Islamic Perspective

Islam recognizes the sanctity of human life and believes it should be protected fully. It also recognises that there are stages in the embryological development of early human when the moral status of the pre-embryo or embryo is less, and hence less stringent conditions are required to abort or terminate the human organism compared to the human person who is fully protected.

The killing of a single individual human being is tantamount to the mass murder of the whole of mankind:

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

“...anyone killed a person not in retaliation for murder or for spreading mischief on earth, it would be as if he killed all mankind... (Q. 5:32)” Killing children is specifically condemned. In this regard, the Qurān says:

وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ كَانَ خِطْئًا كَبِيرًا

“And do not kill your children for fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin (Q. 17:31).”¹⁸

وَإِذَا الْمَوْءُودَةُ سُئِلَتْ بِأَيِّ ذَنْبٍ قُتِلَتْ

And when the girl [who was] buried alive (*maw'udah*) is asked. For what sin she was killed (Q. 81:8-9)

All Muslim jurists consider abortion a serious crime and tantamount to infanticide (*al-wa'd*) at the time when the embryo or foetus is considered a child and and/ or a human person. This is usually taken to be after ensoulment.¹⁹ Anything before this, then there is a difference of opinion, and most consider it a minor crime, requiring compensation by some.²⁰

Muslim jurists describe a practice where the male semen is prevented from reaching the womb. The semen is wasted before fertilization. The intrinsic moral value assigned to this semen is inferred through the ruling of *al-'azl* (*coitus interruptus*- withdrawing before ejaculation during intercourse).²¹ Semen which has not yet reached the womb does not have the capacity for (human) life, but requires external intervention in achieving this goal.²² To waste the semen is disliked unless there are justifications, as it has “some” potential for human life, and to waste it, is to deny the right of the wife who has not consented

¹⁸ See also Q. 6:137, 6:140, 6:151

¹⁹ Majority of Muslim jurists consider ensoulment at 120 days gestation. Musallam BF. 1983. Sex and Society in Islam: Birth Control before the Nineteenth Century. Cambridge: Cambridge University Press.

²⁰ The compensation is a *ghurra* – the value of the *ghurra* is usually one-twentieth of the *diya*

بدائع الصنائع، الكاساني ٣٢٥/٧، الشرح الكبير للدردير: ٢٦٨/٤، مغني المحتاج: ١٠٣/٤، المهذب: ١٩٨/٢، المغني: ٧٩٩/٧، بداية المجتهد ٤٠٧/٢
^{٢١} العزل (اصطلاحاً): عرفه ابن حجر: النزوح بعد الايلاج؛ لينزل خارج الفرج . معجم الفقهاء، للقلعي ٣١٠/٣ فتح الباري بشرح صحيح البخاري، للعسقلاني وعرفه النووي : ان يجامع فإذا قارب الانزال نزع وانزل خارج الفرج ٩١٠/٢ شرح النووي على صحيح مسلم ، للنووي ،
^{٢٢} فتاوى أهل سمرقند وكان يقول: مآل الماء بعدما وصل إلى الرحم الحياة، فإنه لا يحتاج إلى صنع أحد بعد ذلك، لينفخ فيه الروح، وإذا كان مآل الحياة للحال كما في بيضة الحرم لما كان مآلها أن تصير صيداً يعطى لها حكم الصيد حتى إن من أتلف بيضة صيد الحرم ضمن بخلاف العزل؛ لأن الماء قبل أن يصل إلى الرحم ليس مآله الحياة، فإنه يحتاج إلى صنع بعد ذلك لينفخ فيه الروح، وهو الإلقاء في الرحم، أما هنا بخلافه



because it deprives her of a potential child.²³ With regards to *al-‘azl*, the correct Islamic legal view is that it is permissible because of narrations from the companions of the Prophet (saw) like Jābir, who narrates, “We used to practise *al-‘azl* at the time when the Qurān was being revealed” – i.e., at the time of the Prophet (saw). If that action had been prohibited, the Prophet (saw) would have forbidden it. However, Muslim jurists say that one should not engage in *al-‘azl* with a free woman except with her permission, because she has the right to have children, or at times of poverty for fear of economic hardship and tribulation, where acts preventing the sperm reaching the uterus (womb) would be disliked.²⁴

There are apparently conflicting *aḥādīth* regarding the permissibility of *al-‘azl*. Most jurists consider it permissible, and a few claim it is prohibited, as is the case with some of the companions of the Prophet (saw).²⁵ Normative terms are used interchangeably in the *aḥādīth* causing confusion and suggesting conflicting views of permissibility and prohibition.

Abu Sa‘īd al-Khudri narrates that a man came to the Messenger of Allah (saw) stating that he performs *al-‘azl* with his slave girl because of the fear of making her pregnant and that the Jews consider *al-‘azl* as minor infanticide (*al-maw’ūdat al-sughra*). The Prophet (saw) said that the Jews had lied and if Allah (swt) willed to create (a child) then we would not have the ability to change that.

عن أبي سعيد الخدري قال : أتى رجل رسول الله صلى الله عليه وسلم فقال : يا رسول إن لي جارية وأنا أشتيها ما يشتيها الرجال وأنا أعزل عنها أكره أن تحمل ، وإن اليهود تزعم أن العزل هي المؤودة الصغرى فقال رسول الله صلى الله عليه وسلم : كذبت . يهود كذبت يهود لو أراد الله أن يخلقه لم نستطيع أن نصره^{٢٦}

The *ḥādīth* suggests that the Prophet (saw) did not consider *al-‘azl* as minor infanticide (*al-maw’ūdat al-sughra*) indicating that minor infanticide is something that is prohibited and occurs at a later stage.

Then there is the narration of Judāmah bint Wahb, when the Prophet (saw) states that he was to prohibit *al-ghīla* (the act of having intercourse whilst the wife was still breastfeeding), but then he saw that the Romans and Persians perform *ghīla* and it doesn’t harm their children. Then the Prophet (saw) was asked about *al-‘azl* and the Prophet (saw) replied that this is a hidden infanticide (*al-wa’d al-khafī*)

عن جدامة بنت وهب أخت عاكشة قالت : حضرت رسول الله صلى الله عليه وسلم في أناس وهو يقول لقد هممت أن أنهى عن الغيلة فنظرت في الروم وفارس فإذا هم يغيلون أولدهم فلا يضر أولدهم ذلك شيئاً ثم سألوه عن العزل فقال رسول الله صلى الله عليه وسلم ذلك الواد الخفي^{٢٧}.

^{٢٣} إن العزل دون إذن الزوجة مكروه لن القذاف طريق النجاب وبه يحصل الولد ، ولها في الولد حق ، وبالعزل يفوت الولد ، فإذا كان العزل برضاها فإنه ل يكره ، لأنها رضيت بفوات حقها ، ولما روي عن رسول الله صلى الله عليه وسلم أنه قال : اعزلوهن أول تعلقهن إن الله تعالى إذا أراد خلق نسمة فهو خالقها (بدائع الصنائع ٢٣٤:٣)
^{٢٤} فقد روي عن عشرة من الصحابة ذلك وهم : علي ، وسعد بن أبي وقاص ، وزيد بن ثابت ، وأبي أيوب ، وجابر ، وابن عباس ، والحسن بن علي ، وخباب بن الارت ، وأبو سعيد ، وابن مسعود ، وابن مسعود ، وأن غالب المذهب على لزوم موافقة الزوجة مع إمكان التغاضي عنه عند فساد الزمان والخوف من الولد السوء) شرح فتح القدير (٢:٤٩٤)
^{٢٥} كن عمر وعثمان يكرهان العزل ، ويقولن من جامع فأكسل فعليه الغسل ، وكان رجال من النصال لا يرون بالعزل بأساً ويقولون : من جامع ثم أكسل فلا غسل عليه (أخرجه سعيد بن منصور (٢٢٣٠) من طريق هشيم ، نا يحيى بن سعيد عن سعيد بن المسيب .. فذكره
^{٢٦} أخرجه النسائي في العشرة (١٩٨) 7/230 وابن أبي عاصم في السنة (٣٨٦) والطبراني (٧٦٨٢) من طرق عن أبي رفاعة ، عن أبي سعيد الخدري به مرفوعاً ، والحديث صحيح بشواهده.
^{٢٧} أخرجه مسلم (١٤٤٢) والنسائي (٣٣٢٦) وأبو داود (٣٨٨٢) والترمذي



The Prophet (saw) claimed *al-‘azl* being synonymous to hidden infanticide (*al-wa’d al-khafī*). Some jurists have taken this to be a prohibition and those who oppose *al-‘azl* use this ḥadīth as proof.

‘Abdullah ibn Mas‘ūd claims *al-‘azl* to be hidden minor infanticide (*al-maw‘ūdāt al-sughra al-khafī*) and that there was no issue with it.

عن ابن مسعود قال في العزل : هو الموءودة الصغرى الخفية^{٢٨} عن ابن مسعود رضي الله عنه أنه كان لا يرى بالعزل بأساً^{٢٩}

Here ‘Abdullah ibn Mas‘ūd claims minor infanticide, but of the hidden type. He uses terms similar to what the Prophet (saw) used, such as hidden infanticide and minor infanticide, yet he claims it to be permissible.

‘Alī Ibn Abi Tālib states that minor infanticide (*al-maw‘ūdāt al-sughra*) is not infanticide until it has passed and completed all seven stages as mentioned in the Qurān.

عن علي بن أبي طالب رضي الله عنه: عن عبد الله بن عدي بن الخيار قال ثم تذاكر أصحاب رسول الله صلى الله عليه وسلم ثم عمر العزل فأختلفوا فيه فقال عمر قد اختلفتم وأنتم أهل بدر الخيار فكيف بالناس بعدكم إذ تناجي رجلن فقال عمر ما هذه المناجاة قال إن اليهود تزعم أنها الموءودة الصغرى فقال علي إنها لا تكون موءودة حتى تمر بالتارات السبع ولقد خلقنا النسان من سللة من طين إلى آخر الية^{٣٠}

According to ‘Ali, minor infanticide is an act of killing in the later stages of development after ensoulment.

Mujāhid states that they asked Ibn ‘Abbas regarding *al-‘azl*. He responded that it is not infanticide (*al-maw‘ūdāh*) until it has completed all the stages of its creation as mentioned in the Qurān.

عن مجاهد قال : سألتنا بن عباس عن العزل فقال : أوجلكم أن تسألوا ، قالوا : فسألنا حتى ببينتنا ، فرجعنا إليه ، فتلا علينا : وقد خلقنا النسان من سللة من طين حتى ، ثم أنشأناه خلقا آخر فقال: كيف تكون من الموءودة حتى تمر على هذا الخلق^{٣١}

Mujāhid also indicates that it is after all stages of development that abortion will be considered major infanticide (*al-maw‘ūdāh*)

In conclusion, the majority of Muslim scholars consider *al-‘azl* permissible and they provide an explanation for this apparent conflict and confusion found in the ḥadīth as stated above. The explanations provided by them are as follows:

^{٢٨} أخرجه عبد الرزاق في مصنفه (١٢٥٨٠) ومن طريقه الطبراني (٩٦٦٥٤ وسعيد بن منصور في سننه (٢٢٢٢) من حديث معتمر بن سليمان قال : سمعت أبي قال : حدثني أبو عمرو الشيباني عن ابن مسعود به. قال الهيثمي : رجاله رجال الصحيح وقد رجع عنه - يعني ابن مسعود.

^{٢٩} أخرجه عبد الرزاق (١٢٥٦٧) من طريق الثوري عن إبراهيم بن مهاجر ، عن النخعي أن ابن مسعود .. فذكره. وإبراهيم صدوق فيه لين ، وإبراهيم لم يمسح من ابن مسعود.

^{٣٠} عن روح بن الفرج قال ثنا يحيى بن أخرجه الطحاوي في شرح المعاني عبد الله بن بكير قال حدثني الليث قال حدثني معمر بن أبي حبيبة عن عبد الله بن عدي بن الخيار ... فذكره

^{٣١} أخرجه عبد الرزاق في مصنفه (١٢٥٧٠) والبيهقي في الكبرى من طرق عن العمش عن عبد الملك بن / والطحاوي في شرح المعاني ميسرة ، عن مجاهد قال : سألتنا ابن عباس عنه فذكره . ورواته ثقات.

وأخرج عبد الرزاق أيضا في مصنفه (١٢٥٥٣) من حديث ابن جريج ، قال أخبرني عبد الله أبي يزيد وهو جالس أن ابن عباس سأله رجل وهو جالس عنده عن عزل النساء ... فذكره بنحوه).



1. Judāmah bint Wahb's narration is weak. This narration suggests that the Prophet (saw) prohibited *al-'azl*. Ṭaḥāwī claims this opinion is abrogated³². Ibn Qayyim asserts that this ḥadīth conflicts with many other ḥadīth and this suggests that the meaning of the ḥadīth is that *al-'azl* refers to *al-wa'd al-khafī* hidden infanticide, and this practise is just disliked (*tanzīhī*) and not actually prohibited, though he continues that a group consider the ḥadīth to be weak (*da'if*).³³ In other words it doesn't carry the epistemic grounding to question the other ḥadīth which permit *al-'azl*.
2. Judāmah's ḥadīth is to be reconciled with those which indicate permissibility. Al-Nawawī asserts the same as does Ibn Qayyim, that if we are to reconcile, then it should be that Judāmah's narration indicates that *al-'azl* is just disliked (*tanzīhī*) and not actually prohibited, whereas those ḥadīth that permit *al-'azl* do not actually negate or conflict with what Judāmah's narration implies i.e. that the act is disliked (*tanzīhī*)³⁴, as it still suggests that the practise is permissible.
3. There is a difference between the meaning of *al-wa'd al-khafī* (hidden infanticide)³⁵ which is synonymous with *al-'azl*, and the meaning of *al-maw'ūdat al-sughra* (minor infanticide)³⁶, which is to kill an embryo at a later stage of its development when it is generally prohibited. This is what the Prophet (saw) meant when he claimed that the Jews had lied and that *al-'azl* was not *al-maw'ūdat al-sughra*. In other words they are not the same thing. Al-'Irāqī states that *al-wa'd al-khafī* is hidden infanticide because this is to block the means to it becoming a child (i.e. it is not yet a child), whereas *al-maw'ūdat al-sughra* is manifest infanticide (*wa'd zāhir*) which is minor infanticide as compared to the major infanticide of a live child (*w'ad al-walad*) buried alive which is referred to in the Qurān.³⁷

In summary, *al-'azl* is synonymous to *al-w'ad al-khafī* (hidden infanticide) and is permissible, whereas *al-maw'ūdat al-sughra* (minor infanticide) refers to killing during the normative state before ensoulment

³²مشكل الآثار ٢:٢٧٣

³³ وقال ابن القيم : أما حديث جدامة بنت وهب فإنه وإن كان رواه مسلم فإن الحديث الكثيرة على خلفه وقد قال أبو داود حدثنا موسى بن إسماعيل حدثنا أبان حدثنا يحيى أن محمد بن عبد الرحمن بن ثوبان حدثه أن رفاعه حدثه عن أبي سعيد الخدري رضي الله عنه أن رجل قال يا رسول الله إن لي جارية وأنا أعزل عنها وأنا أكره أن تحمل وأنا أريد ما يريد الرجال وإن اليهود تحدث أن العزل المؤودة الصغرى قال كذبت يهود لو أراد الله أن يخلقه ما استطعت أن تصرفه وحسبك بهذا السناد صحة فكلهم ثقات حفظ وقد أعله بعضهم بأنه مضطرب فإنه اختلف فيه على يحيى بن أبي كثير فقيل عنه عن محمد بن عبد الرحمن بن ثوبان عن جابر بن عبد الله ومن هذه السلام أخرجه الترمذي والنسائي وقيل فيه عن أبي مطيع بن رفاعه وقيل عن أبي سلمة عن أبي هريرة عن ابن ثوبان عن رفاعه عن أبي سعيد ويبقى الخلاف في اسم أبي رفاعه محمد بن عبد الرحمن عن جابر وعنده عن ابن ثوبان عن أبي سلمة عن أبي هريرة عن ابن ثوبان عن رفاعه عن أبي سعيد ويبقى الخلاف في اسم أبي رفاعه الشياطين هو أبو رافع أو ابن رفاعه أو أبو مطيع وهذا ل يضر مع العلم بحال رفاعه ول ريب أن أحاديث جابر صريحة صحيحة في جواز العزل وقد قال الشافعي رحمه الله ونحن نروي عن عدد من أصحاب النبي صلى الله عليه وسلم أنهم رخصوا في ذلك ولم يروا به بأسا قال البيهقي وقد روينا الرخصة فيه عن سعد بن أبي وقاص وأبي أيوب النصاري وزيد ابن ثابت وابن عباس وغيرهم وهو مذهب مالك والشافعي وأهل الكوفة وجمهور أهل العلم وقد أجيب عن حديث جدامة بأنه على طريق التنزيه وضعفته طائفة وقالوا كيف يصح أن يكون النبي صلى الله عليه وسلم كذب اليهود في ذلك ثم يخبر به كخبرهم هذا من المحال البين. زاد المعاد (٤:٢١٧)

³⁴ ثم هذه الحديث مع غيرها يجمع بينها بأن ما ورد في النهي محمول على كراهة التنزيه وما ورد في الذن محمول على أنه ليس بحرام

وليس معناه نفي الكراهة شرح مسلم

³⁵ وعن علي أيضا أنه سئل عن العزل عن النساء فقال : ذلك الواد الخفي أخرجه عبد الرزاق في مصنفه (١٢٥٧٩) من طريق إسرائيل عن يونس بن عبد العلى ، عن محمد بن الحنفية به ، وإسناده صحيح . وأخرج سعيد بن منصور أيضا (٢٢٢٣) من حديث حماد بن زيد ، عن عاصم بن أبي النجود ، عن زر بن حبيش ، عن علي بنحوه ، وإسناده حسن

³⁶ فقه الإمام علي بن أبي طالب ٤٥/٣ الباليساني - فقال عمر ما هذه المناجاة قال إن اليهود تزعم أنها المؤودة الصغرى فقال علي إنها لا تكون مؤودة حتى تمر بالآترات السبع . ولقد خلقنا النسان من سللة من طين إلى آخر الية أخرجه الطحاوي في شرح المعاني عبد الله بن بكير قال حدثني الليث قال حدثني معمر بن أبي حبيبة عن عبد الله بن عدي بن الخير ... فذكره .

³⁷ ويقول العراقي : أما حديث جدامة فقد اختلف في زيادة العزل فيه فلم يخرج مالك في حديثه وقال البيهقي في المعرفة : عورض بحديث أبي هريرة أن النبي صلى الله عليه وسلم سئل عن العزل قالوا إن اليهود تزعم أن العزل هو المؤودة الصغرى قال : كذبت يهود . وحمل حديث جدامة على العزل عن الحامل لزوال المعنى الذي كان يحذره من حصول الحمل ، وفيه توضيح للحمل لن المنى يغذوه فقد يؤدي العزل إلى موته أو ضعفه فيكون وأدا خفيا . وأما قولهم أنها مؤودة صغرى فإنه يقتضى أنه وأد ظاهر ولكنه صغير بالنسبة إلى وأد الولد بعد وضعه حيا ، وبخلاف قوله صلى الله عليه وسلم إنه الواد الخفي فإنه يدل علماته ليس في حكم الظاهر أصل ، فل يترتب عليه حكمه ، وإنما شبهه بالواد من وجه لن فيه قطع طريق الولد طرح التنزيه



or birth according to the majority opinion. *Wa'd al-walad* or *wa'd* (major infanticide) is the killing after birth and is the killing of a human person. It is important to make sense of these terminologies as they provide some support in attributing normative status to the stages of early human development.

al-'Azl or *al-w'ad al-khafī* is not completely free of conditions and is permitted with varied conditions according to the different *sunnī* schools of *fiqh*:

1. It is permissible with the consent of the female – This is the opinion noted from ten of the companions³⁸ of the Prophet (saw) and also the Ḥanafīs³⁹ and majority Shāfi'īs⁴⁰

ما روي عن ابي هريرة (رضي الله عنه)، قال : قال النبي (صلى الله عليه وسلم) ان اليهود تقول : ان العزل هي المؤودة الصغرى ، قال رسول الله صلى الله عليه وسلم كذبت اليهود لو اراد الله خلقها لم تستطع عزلها^{٤١}

2. Only permitted with consent from free woman – Earlier Ḥanafīs⁴² and Malikis⁴³ some Shāfi'īs⁴⁴ and majority Ḥanbalīs⁴⁵
3. Permitted even when not consented (only in absence of wife) due to distant travel, battles, corrupt times and fear of unruly children, or to have gaps between children – Later Ḥanaf,⁴⁶ some later Shāfi'īs and minority Ḥanbalīs
4. Permissible with her consent with financial liability and she can refuse when she returns the financial liability as she wishes – later Mālikīs⁴⁷

The practice of *al-'azl* has its minor limitations and is described to have less stringent conditions and hence seen as permissible. This suggests that the ejaculated semen has some intrinsic moral status and this status requires certain conditions for it to be destroyed through our actions, as has been shown by the legal verdicts of Muslim jurists. So, to what stage of early human development does the normative state of *al-'azl* remain? After which stage does the ruling related to *al-'azl* cease and more stringent conditions apply? When is it to be considered *al-maw'ūdāt al-sughra* (minor infanticide) and when it is considered to be a crime to abort? If preventing fertilization by blocking semen through the practice of *al-'azl* is considered acceptable or permissible, then would the rule of *al-'azl* extend beyond fertilization of the ovum and to the zygote and to what stage of development? To address this question, the first line of enquiry would be to ask whether classical Muslim scholars saw the sperm, zygote and the equivalent process to fertilization and implantation, as we do today. And what normative value did they associate to them.

³⁸ علي، سعد بن ابي وقاص ، زيد بن ثابت ، ابي ايوب ، جابر ، ابن عباس ،الحسن بن علي ، خباب بن الأثرث ، ابو سعيد ، ابن مسعود (المغني مع الشرح الكبير ، لأبن قدامة ١٣٣ / ٨

³⁹ بدائع الصنائع ، الكاساني ، ٣٣٢/٢ شرح فتح القدير ، لابن الهمام ، ٤٠١/٣ ، الفتاوى الهندية ، نظام الدين ، ٣٣٥/١

⁴⁰ فتح الباري ٢٤٤/٩ احياء علوم الدين ٥٣/٢

⁴¹ البحر الزخار ، لابن المرتضى ٢١٢

⁴² بدائع الصنائع ، ٣٣٢/٢

⁴³ القوانين الفقهية ، لابن الجزي / ٢١٢ - ١٤١ / ١٧ المنتقى ، للباقي ، ١٤١-١٤٢

⁴⁴ احياء علوم الدين ، ٥٣/٢

⁴⁵ زاد المعاد ، لابن قيم الجوزية ، ١٦/٤ ، المغني ، ١٣٢/٨

⁴⁶ شرح فتح القدير ٤٠١/٣ ، الفتاوى الهندية ، ٣٥٦/٥

⁴⁷ مواهب الجليل لشرح مختصر خليل ، للحطاب ٤٧٦ / ٣ التاج والاكليل ، للعبدي ٤٧٦/٦



Classical Interpretations of Equivalence to Zygote

The *nutfa* just refers to “a drop”, as this agrees with the language of the Qur’ān and thus it can be used interchangeably as “a drop of ejaculated semen which contains the sperm that will fertilize” or, “a drop consisting of a fertilized egg (zygote)”. In other words, the Qur’ān makes reference to that constituent drop of semen (which contains the sperm that is destined to fertilize), which will then fertilize the egg (ovum) to develop into a zygote. This has the physical property of a drop of liquid which will then implant in the womb (uterus), suggesting that Allah (swt) has used the term *nutfa* broadly to describe milestones associated with the fertilization process prior to implantation. The physical manifest property of a drop of liquid i.e. *nutfa*, has been associated with this important stage.

Nutfa is a stage of development in early embryogenesis stated in the Qurān. The Qurān describes an important process of fertilization described as the mixing of drops in early human development from the ejaculation of a “drop” (containing the sperm) to a production of a “drop” (containing the zygote) that will implant. Just like the words *mā’* or *manī* are used by jurists and refer to the semen generally, and not specifically, or explicitly to what is contained in the semen (i.e. sperm + seminal fluid), similarly the term *nutfa* refers to “a drop of liquid” which consists of semen (in the early stage) and then this becomes a drop that contains the fertilized egg (zygote) after fertilization. The reference here to *nutfa* in the Qurān is to a “drop”, and the Qurān does not reveal, nor is explicit about its microscopic contents i.e. sperm and / or zygote contained in that drop, though that can be inferred from the science we have today with the use of advanced technology that can directly observe microscopic entities.

The Qur’ān describes the stages of development of human life

وَلَقَدْ خَلَقْنَا الْإِنْسَانَ مِنْ سُلَالَةٍ مِّنْ طِينٍ ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَّكِينٍ ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً فَخَلَقْنَا الْعَلَقَةَ مُضْغَةً فَخَلَقْنَا الْمُضْغَةَ عِظَامًا فَكَسَوْنَا
الْعِظَامَ لَحْمًا ثُمَّ أَنْشَأْنَاهُ خَلْقًا آخَرَ فَتَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ

“And verily we did create man from a quintessence (of clay). Then we made it into a *nutfa* in a place of rest, firmly fixed. Then we made the *nutfa* into an *‘alaqa*. Then of that *‘alaqa* we made a *mudgha*. Then of that *mudgha* bone and then, clothed the bones with flesh. Then we developed out of it another creature (by breathing life into it). So blessed be Allāh, the Most Marvellous Creator.” (Q. 23:12-14)

The Qur’ān describes seven stages of development- quintessence of clay, *nutfa* in a place of rest [womb], firmly fixed, *nutfa* to *‘alaqa*, *‘alaqa* to *mudgha*, *mudgha* to bone, clothing of bones with flesh and finally another creature. We will be focussing mainly on the *nutfa* stage.

There is a ḥadīth which indicates that not the whole of this semen (*mā’*) actually becomes the child. Abu Sa’īd al-Khudri narrates from the Prophet (saw) when he was asked regarding *al-‘azl*,

ما من كل الماء يكون الولد، وإذا أراد الله خلق شيء لم يمنعه شيء



“Not all of the *mā'a* (semen) becomes a child. If Allāh wills to create something then nothing can prevent Him”.⁴⁸

This can be interpreted in two complementary ways. Firstly, only some aspect of the whole semen is essential for creation of man i.e. the *nutfa* (this differentiates between semen and *nutfa*). Secondly, that the final product which implants in the uterus to create a child is not solely the male contribution i.e. solely the semen.

Regarding the first interpretation, the *nutfa* refers to a small “drop” of liquid⁴⁹. This should be interpreted as the drop of semen that has the destined sperm. Only one sperm out of approximately three million get to fertilize the female egg. Therefore, the *nutfa* should be seen as a drop of liquid which is a part of the semen that goes on to contribute to the creation of the zygote. The male *nutfa* once entering the uterus and travelling to the fallopian tube mixes with the female germinal fluid (female *nutfa*) containing the egg, and fertilizes it in the fallopian tube, and then the zygote which is the product of this fusion (the mixed *nutfa* – *nutfa amshāji*) is transported to the uterus to implant. *Nutfa* refers to a drop of liquid and represents the common, manifest, physical property of the *stage* or *process* of pre-implantation or fertilization.

The verse describes these terms as stages,

وَقَدْ خَلَقَكُمْ أَطْوَارًا

“While He has created you in stages? [Q. 71:14], Ibn ‘Abbas, Qatāda, ‘Ikrima, Saddī, Ibn Zayd all state that this verse indicates that embryological development is in stages *aṭwār* termed – *nutfa*, ‘alaqa and then *muḍgha* until the last stage of the human person.⁵⁰

The companions of the Prophet (saw) and classical Muslim scholars saw embryological processes not at the microscopic level but what could be seen and explained with the unaided eye. The language used to describe the processes of nature in the Qurān is in accordance to the language and understandings of the Arabs at the time of the Prophet (saw) when the Qurān was revealed, and not necessarily as we observe

⁴⁸ صحيح مسلم، كتاب النكاح، باب حكم العزل، حديث رقم ١٤٣٨، ١٠٦٤:٢ يرويه أبو سعيد الخدري قال: مَا مِنْ كُلِّ الْمَاءِ يَكُونُ الْوَلَدُ، أَخْرَجَهُ مُسْلِمٌ فِي صَحِيحِهِ ٢/١٠٦١، برقم: ١٤٣٨. عن أبي سعيد الخدري -رضي الله عنه- قال: سئل رسول الله -صلى الله عليه وسلم- عن العزل؟ فقال -صلى الله عليه وسلم-: «ما من كل الماء يكون الولد، وإذا أراد الله خلق شيء لم يمنعه شيء، عمدة القاري للعيني ٢٠/١٩٦. يقول العيني: «إذا أراد الله خلق شيء لم يمنعه شيء» وهذه الألفاظ كلها مصرحة بأن العزل لا يرد القدر، فيض القدير للمناوي ١/٢٦٨ ويقول المناوي: «إذا أراد الله خلق شيء لم يمنعه شيء» فإذا أراد خلق الولد من المنى لم يمنعه العزل، بل يكون وإن عزل، وهذا قاله لما سئل عن العزل فأخبر أنه لا يعني حذر من قدر، شرح النووي على مسلم ١٠/٩. ففي هذا الحديث إخبار عن حقيقتين علميتين، الحقيقة الأولى تتعلق بتخصيب البويضة، وعدد المنويات التي تقوم بهذه العملية، والحقيقة العلمية الثانية تتعلق باحتمال وقوع الحمل مع العزل، وأنه لا راد لأمر الله تعالى. والعزل هو أن يجامع فإذا قارب الإنزال نزع وأنزل خارج الفرج

⁴⁹ فتح الباري، لابن حجر: ٤٧٩:١١، الأعلام للزركلي ٧/١٠٨. لسان العرب، لابن منظور ١٠/٧٤، تاج العروس من جواهر القاموس، لمحمد بن محمد بن عبد الرزاق الحسيني، أبو الفيض، الملقب بمرتضى الزبيدي دار الهداية، قال ابن منظور في لسان العرب: "نطفة: النطفة هي صغار اللؤلؤ والواحدة نطفة ونطفة شبيهت بقطرة الماء". وقال الزبيدي في تاج العروس: "ونطفت أذان الماشية، ونطفت: ابتلت بالماء فقطرت. أمشاج: جمع مشج وهي الأخلاط، يقال: مشجت هذا بهذا إذا خلطته وهو مشوح به ومشيج أي مخلوط".

⁵⁰ تفسير ابن كثير - مَا لَكُمْ لَا تَرْجُونَ لِلَّهِ وَقَارًا وَقَدْ خَلَقَكُمْ أَطْوَارًا (سورة النور) وقد خلقكم أطوارا قيل: معناه من نطفة، ثم من علقة، ثم من مضغة. قاله ابن عباس، وعكرمة، وقتادة، ويحيى بن رافع، والسدي، وابن زيد



and describe nature today through modern science.⁵¹ Modern science describes these processes microscopically and is reductionist in its nature when describing physiological or biological processes.⁵²

The Qurān differentiates *nuṭfa* from semen (*manī or mā*’).

أَلَمْ يَكُنْ نُطْفَةً مِّنْ مَّيِّ يُمْنَىٰ

Had he not been a *nuṭfa* from (*min*) semen emitted? [Q. 75:37]

The word “*min*” here, grammatically indicates the meaning of *tab ṭd* (i.e. a constituent of). This suggests that the *nuṭfa* is a part of the semen and not actually the semen. (i.e. the part which contains the sperm that will fertilize the female egg). Yet at the same time the Qurān refers to them in the same manner by describing the *nuṭfa* as being ejaculated in the same sense as semen.

وَأَنَّهُ خَلَقَ الذَّكَرَ وَالْأُنثَىٰ مِنْ نُطْفَةٍ إِذَا تُمْنَىٰ

“And He created the two sexes male and female from a drop (*nuṭfa*) when ejaculated (or planned)” [Q. 53:45-46]

This identifies that the *nuṭfa* is also ejaculated with the remaining semen. It could be argued that it would therefore make sense to consider the *nuṭfa* as the *sperm* which fertilizes, as it is a constituent of the semen and is ejaculated with the semen. If we were to accept that *nuṭfa* refers to sperm, then there is an apparent problem as there is *no* mention of the female contribution. This is problematic because the verse follows, “We made (*khalaqnā*) the *nuṭfa* into an ‘*alaqa*’”. This would therefore suggest that the child was contained in the man’s sperm or *nuṭfa* independent of the female contribution to become an ‘*alaqa*’, and this would be incorrect. We know that the sperm doesn’t become a zygote alone, but it fertilizes a female egg, which then becomes the zygote and early stages of man. The *nuṭfa* mentioned in the verse refers to *nuṭfa amshāj* (mixed *nuṭfa*) i.e. “We made (*khalaqnā*) the *nuṭfa* [*amshāj*] into an ‘*alaqa*’”. This is the most acceptable explanation as Allah (swt) has mentioned, “Indeed, We created man from a drop mixture (*nuṭfa amshāj*) that We may try him; and We made him hearing and seeing” [Q. 76:2]

⁵¹ الفوز الكبير في أصول التفسير المؤلف: الإمام أحمد بن عبد الرحيم المعروف بـ «ولي الله الدهلوي» (المتوفى: ١١٧٦ هـ) عرَّبه من الفارسية: سلمان الحسيني الندوي الناشر: دار الصحوة – القاهرة الطبعة: الثانية - ١٤٠٧ هـ - ١٩٨٦ م اسلوب القرآن الكريم في عرض العلوم القرآنية: وقد جاءت هذه العلوم في القرآن الكريم على طريقة العرب الأولين، لا على منهج العلماء المتأخرين، فلم يلتزم في آيات الأحكام، منه، طريق الإيجاز والاختصار كمؤلفي المتون الفقهية، ولا طريق تنقيح الحدود والقيود، كما يفعله الأصوليون. وقد التزم في آيات الجدل والمخاضة إيراد الأدلة المشهورة المسلمة، والبراهين الخطابية، لا تنقيح البراهين، وتقسيما على طريقة المنطقيين. ولم يراع في الانتقال من مقصد إلى آخر، ومن موضوع إلى موضوع آخر، تلك المناسبة، التي يراعيها الأدباء المتأخرون، بل ألقى على عباده ما رآه مهماً، سواء كان مقدماً أو مؤخراً

⁵² 31. Brigandt, Ingo and Love, Alan, "Reductionism in Biology", The Stanford Encyclopedia of Philosophy (Spring 2017 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/spr2017/entries/reduction-biology/>>. Accessed July 2019



Classical Interpretations of Equivalence to Fertilization

According to classical Muslim scholars fertilization, described by them as *akhlāt*, was thought to occur after implantation which is now known to occur before.

إِنَّا خَلَقْنَا الْإِنْسَانَ مِنْ نُطْفَةٍ أَمْشَاجٍ نَبْتَلِيهِ فَجَعَلْنَاهُ سَمِيعًا بَصِيرًا

Indeed, We created man from a drop mixture (*nutfa amshāj*) that We may try him; and We made him hearing and seeing. [Q. 76:2]

The above verse elaborates and describes the *nutfa* as a drop “mixture” (*nutfa amshāj*) suggesting that there is a process of mixing to create man. In Arabic *amshāj* means mixture, and *nutfa amshāj* indicates a mixture of male and female germinal fluids. Muslim scholars agree on deriving this meaning of “mixing” (*akhlāt*) from the above expression. The Muslim exegetists, al-Farā’a (d. 822 AH) claims this *nutfa amshāj* to be a mixing or fusion (*al-akhlāt*) between male and female fluid, blood and congealed clot (*al-‘alaqa*).⁵³ al-Baghwī (d. 1122 AH) also states that *amshāj* is to mix (*akhlāt*)⁵⁴ al-Ṭabarī (d. 923 AH) asserts that Muslim scholars state that this is the mixing of the male and female fluids. This is supported by the verse of the Qurān.⁵⁵

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ

O mankind, indeed We have created you from male and female [Q. 49:13].

The female contribution (egg) is at times also referred to as *nutfa* (a drop), as both contribute to the final product of zygote.⁵⁶ Many of the Qurānic scholars acknowledged that the early human creation was from a mixture of male and female fluid.

Appreciating that Muslim scholars were aware of a similar process resembling what we consider fertilization today, which includes the fusion or mixing of male and female germinal fluid, the question arises, did they assign it moral significance. It could be argued that they were not aware of the degree of significance of fertilization as a determining factor for sexual and genetical/ physical characteristics with its associated biological events, and hence did not give the same value as what they would have, if they had known.

⁵³ ونقل البخاري هذا الكلام في صحيحه في تفسير سورة الإنسان ٨٨٤/٨ غير منسوب، وأوضح ابن حجر أن هذا الكلام للفراء. والله أعلم
⁵⁴ وفيات الأعيان ٢: ١٣٧

⁵⁵ تفسير الطبري ٨٩: ٢٤ القول في تأويل قوله تعالى: يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ (سورة الحجرات ١٣-١٤) يقول تعالى ذكره: يا أيها الناس إنا أنشأنا خلقكم من ماء ذكر من الرجال، وماء أنثى من النساء. وبنحو الذي قلنا في ذلك قال أهل التأويل. *ذكر من قال ذلك: حدثنا أبو هشام، قال: ثنا عبيد الله بن موسى، قال: أخبرنا عثمان بن الأسود، عن مجاهد، قال: خلق الله الولد من ماء الرجل وماء المرأة، وقد قال تبارك وتعالى (يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ). (حدثنا ابن خُمَيْدٍ، قال: ثنا مهران، قال: ثنا عثمان بن الأسود، عن مجاهد، قوله (إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ) قال: ما خلق الله الولد إلا من نطفة الرجل والمرأة جميعاً، لأن الله يقول (خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ).

⁵⁶ تفسير الطبري- روى أحمد عن عبد الله، قال: ((مر يهودي برسول الله صلى الله عليه وسلم، وهو يحدث أصحابه، فقالت قريش: يا يهودي، إن هذا يزعم أنه نبي، فقال: لأسألنه عن شيء لا يعلمه إلا نبي، قال: فجاء حتى جلس، ثم قال: يا محمد، مم يخلق الإنسان؟ قال: يا يهودي، من كل يخلق، من نطفة الرجل ومن نطفة المرأة، فأما نطفة الرجل فنطفة غليظة منها العظم والعصب، وأما نطفة المرأة فنطفة رقيقة منها اللحم والدم، فقام اليهودي، فقال: هكذا كان يقول من قبلك أخرج الإمام أحمد في مسنده أن يهودياً مر بالنبي صلى الله عليه وسلم وهو يحدث أصحابه فقالت له قريش: يا يهودي، إن هذا يزعم أنه نبي فقال: لأسألنه عن شيء لا يعلمه إلا نبي، فقال: يا محمد، مم يخلق الإنسان فقال رسول الله صلى الله عليه وسلم: "يا يهودي، من كل يخلق: من نطفة الرجل ومن نطفة المرأة، فقال اليهودي: هكذا كان يقول من قبلك"



Ibn ‘Abbās narrates that the dominant liquid in gender will determine final gender of child and this is explained as the male liquid (*mā’ al-rajul*) meeting the female liquid (*mā’ al-mar’a*).⁵⁷ He also states that the male and female liquid meet in the womb and one of them becomes the child. The male liquid is dense white (*abyaḍ ghalīdh*) and the female is a light yellow (*asfar raqīq*).⁵⁸ Ibn ‘Abbās’s statement suggests two things that were assumed at the time; **firstly** that the equivalence to what we consider fertilization occurs in the womb, and **secondly** that the dominant liquid in gender will determine final gender of child.

In relation to the **first point**, there are many accounts from classical Muslim scholars that clearly identify that they believed that this process of *nuṭfa amshāj* occurring in the womb was *after* the *nuṭfa* was established in the womb (i.e. equivalence to what we would consider implantation), which is quite different to what we know today. We know now that fertilization occurs in the fallopian tubes *before* implantation. We could argue that the fallopian tubes should be considered a part of the womb (*raḥim*) as classical Muslim scholars were not aware of their existence and hence, when they refer to the semen mixing *akhlāt* with the female contribution in the womb, then this is correct because the fallopian tubes are to be considered part of the womb. This is beside the point, because the two important points to note here are (1) not to do with the anatomy of the womb and whether the fallopian tubes are considered part of the womb or not, but rather, the chronology of events i.e. what came first; fertilization or implantation.. The other point is (2) not to do with where the *nuṭfa* travels, but rather, where it implants. This is because normative value is assigned to what occurs before and after implantation and its level of potential viability to become a child. We know now that fertilization comes first and that the embryo must implant in the womb lining (uterine endometrium) for it to be a viable pregnancy and not the fallopian tubes, which is not a viable pregnancy. Classical Muslim scholars presumed fertilization *akhlāt* occurred *after* implantation which is now known to occur before. I will elaborate on this matter later on.

In relation to the **second point**, that the dominant liquid in gender will determine final gender of child, we now know that this is related to the time of fertilization determined by chromosome characteristics - and it will be the male (or rather the male's sperm) that determines whether the child will be a boy or a girl.

Prior to fertilization, the unfertilized egg carries an X chromosome while the sperm can carry either an X or a Y chromosome. The gender of the zygote comes down to one simple event: If the sperm carrying an X chromosome fertilizes the egg, a girl will be conceived. If the sperm carrying a Y chromosome fertilizes the egg, a boy will be conceived. This however has been described as the mixing of two liquids (male and female contributions) equivalent to what we consider fertilization.

This information about sex determination is transmitted in the Qur’an:

وَأَنَّهُ خَلَقَ الذَّكَرَ وَالْأُنثَىٰ مِنْ نُطْفَةٍ إِذَا تُمْنَىٰ

“And He created the two sexes male and female from a drop (*nuṭfa*) when ejaculated”. [Q. 53:45]

⁵⁷ عن ابن عباس وفي حديث النبي يلتقي الماان، فإن علا ماء المرأة ماء الرجل أنتت وإن علا ماء الرجل ماء المرأة أذكرت
⁵⁸ معالم التنزيل في تفسير الق آرن، لمحيي السنة، أبو محمد الحسين بن مسعود البغوي، ت ٥١٠ هـ، حققه وخرج أحاديثه محمد عبد الله النمر - عثمان جمعة ضميرية - سليمان مسلم الحرش، ط دار طبية للنشر والتوزيع، ٢٩٢/ ط الاربعة، ١٤١٧ هـ - ١٩، ٢٩٢: ٨.



Furthermore, when the Prophet (saw) was asked about the reason why the child sometimes resembles the father and other times the mother, he responded, “when the semen of the male dominates the germinal fluid of the female, then it (the child) will resemble him (the father) and if the female germinal fluid dominates the male then it (the child) will resemble her (the mother).⁵⁹ Ibn Qayyim (d. 1350) asserts that the liquid of the man does not alone lead to birth of a child, until it mixes (*yumāzīj*) with another essence (*māda ukhrā*) from the woman. He further elaborates that the limbs, body parts and form are determined by the meeting of these two germinal fluids.⁶⁰

Sayid Qutub, a contemporary scholar of Quranic exegesis explains that *al-amshāj* is to mix (*al-akhlāt*) and he further asserts that this is sometimes taken as the formation of the nutfa from the male gamete and female egg after fertilization and the fusion of the chromosomes in the nutfa which science refers to as “genes”.⁶¹

Classical Muslim scholars acknowledged that it was at this important stage of fusion/ mixing (*al-akhlāt*), that a male and female contribution led to sex determination and parental characteristics.⁶²

⁵⁹ قال ابن القيم: "وسئل صلى الله عليه وسلم عن شبه الولد بأبيه تارة وبأمه تارة فقال (إذا سبق ماء الرجل ماء المرأة كان الشبه له ، وإذا سبق ماء المرأة ماء الرجل فالشبه لها) متفق عليه
⁶⁰ التبيين في أقسام القرآن، لمحمد بن أبي بكر بن أيوب بن سعد شمس الدين ابن قيم الجوزية، ت تحقيق: محمد حامد الفقي، ط دار المعرفة، بيروت، لبنان، بدون ذكر سنة ورقم الطبعة، ٣٣٦-٣٣٥ قال الإمام ابن قيم الجوزية في كتابه "التبيين في أقسام القرآن": "ومني الرجل وحده لا يتولد منه الولد ما لم يمازجه مادة أخرى من الأنثى". وقال أيضاً: "إن الأعضاء والأجزاء والصورة تكوّنت من مجموع المائين، وهذا هو الصواب".
قال الإمام ابن حجر العسقلاني المتوفي سنة (٨٥٢ هـ) في فتح الباري -كتاب القدر- "والمراد بالنطفة المنى وأصله الماء الصافي القليل، والأصل في ذلك أن ماء الرجل إذا لاقى ماء المرأة بالجماع وأراد الله أن يخلق من ذلك جنيناً هياً أسباب ذلك". ثم قال: "وزعم كثير من أهل التشريح أن منى الرجل لا أثر له في الولد إلا في عقده وأنه إنما يتكون من دم الحيض، وأحاديث الباب (أي الموضوع) تُبطل ذلك".
⁶¹ وقال سيد قطب في ظلال القرآن في تفسيره للآية أيضاً: "الأمشاج الأخلاط، وربما كانت هذه إشارة إلى تكوّن النطفة من خلية الذكر وبويضة الأنثى بعد التلقيح، وربما كانت هذه الأخلاط تعني المورثات الكامنة في النطفة، والتي يمثلها ما يسمونه علمياً "الجينات"، وهي وحدات الوراثة الحاملة للصفات المميزة لجنس الإنسان أولاً ولصفات الجين العائلية أخيراً، وإليها يُعزى سير النطفة الإنسانية في رحلتها لتكوين جنين إنسان لا جنين أي حيوان آخر كما تُعزى إليها وراثة الصفات الخاصة في الأسرة، ولعلها هي هذه الأمشاج المختلطة من وراثت شتى".
⁶² تفسير الطبري - روى أحمد عن عبد الله قال: ((مر يهودي برسول الله صلى الله عليه وسلم وهو يحدث أصحابه فقالت قريش: يا يهودي إن هذا يزعم أنه نبي. فقال: لأسألنه عن شيء لا يعلمه إلا نبي. قال: فجاء حتى جلس. ثم قال: يا محمد، مم يخلق الإنسان؟ قال: يا يهودي، من كل يخلق. من نطفة الرجل ومن نطفة المرأة فأما نطفة الرجل فنطفة غليظة منها العظم والعصب، وأما نطفة المرأة فنطفة رقيقة منها اللحم والدم. فقام اليهودي، فقال: هكذا كان يقول من قبلك أخرج الإمام أحمد في مسنده أن يهودياً مر بالنبي صلى الله عليه وسلم وهو يحدث أصحابه فقالت له قريش: يا يهودي، إن هذا يزعم أنه نبي فقال: لأسألنه عن شيء لا يعلمه إلا نبي، فقال: يا محمد، مم يخلق الإنسان فقال رسول الله صلى الله عليه وسلم: "يا يهودي، من كل يخلق. من نطفة الرجل ومن نطفة المرأة، فقال اليهودي: هكذا كان يقول من قبلك" (أي من الأنبياء قال ابن منظور في لسان العرب: "نطفة: النطفة هي صغار اللؤلؤ والواحدة نطفة ونطفة شبيهت بقطرة الماء".
وقال الزبيدي في تاج العروس: "ونطفت أذان الماشية، وتنطفت: ابتلت بالماء فقطرت. أمشاج: جمع مشج وهي الأخلاط، يقال: مشجت هذا بهذا إذا خلطته وهو مشوج به ومشيج أي مخلوط."
قال ابن جرير الطبري المتوفي سنة (٢١٠ هـ) في تفسير قوله تعالى: { هَلْ أَتَى عَلَى الْإِنْسَانِ حِينٌ مِّنَ الدَّهْرِ لَمْ يَكُنْ شَيْئاً مَّذْكُوراً * إِنَّا خَلَقْنَا الْإِنْسَانَ مِنْ نُّطْفَةٍ أَمْشَاجٍ نَّبْتَلِيهِ فَجَعَلْنَاهُ سَمِيْعًا بَصِيْرًا } [الإنسان: ١-٢] "إنا خلقنا الإنسان من نطفة أمشاج: إنا خلقنا ذرية آدم من نطفة يعني: من ماء الرجل وماء المرأة، والنطفة كل ماء قليل في وعاء، وقوله أمشاج: يعني أخلط واحداه مشج ومشيج يقال منه إذا مشجت هذا بهذا، خلطته، وهو مشوج به، ومشيج أي مخلوط، وهو اختلاط ماء الرجل بماء المرأة".
وقال الحسن البصري: "مشج (أي) خلط ماء الرجل مع ماء المرأة".
وقال مجاهد: "خلق الله الولد من ماء الرجل وماء المرأة، وقد قال الله تعالى: { يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَى. }"
وقال ابن كثير المتوفي سنة (٧٧٤ هـ) في تفسير آية سورة الإنسان: "يقول الله تعالى مخبراً عن الإنسان أنه وجد بعد أن لم يكن شيئاً مذكوراً لضعفه وحقارته، فقال تعالى: "هل أتى على الإنسان حين من الدهر لم يكن شيئاً مذكوراً" ثم بين ذلك فقال جل جلاله: { إِنَّا خَلَقْنَا الْإِنْسَانَ مِنْ نُّطْفَةٍ أَمْشَاجٍ } أي أخلط والمشج والمشج، الشيء المختلط بعضها في بعض".
قال ابن عباس رضي الله عنهما في قوله تعالى: من نطفة أمشاج: "يعني ماء الرجل وماء المرأة إذا اجتماعا واختلطا ثم ينتقل بعد من طور إلى طور، ومن حال إلى حال، ومن لون إلى لون"،
وهكذا قال عكرمة ومجاهد والحسن البصري والربيع: "الأمشاج هو اختلاط ماء الرجل بماء المرأة".



Moral significance of the Equivalence to Fertilization

The moral significance of fertilization was acknowledged by classical Muslim scholars. Some gave this process higher normative status compared to others. Early Muslim scholars understanding of this process of *akhlāt* differed from our understanding today, both in, (1) the sequence of fertilization relative to implantation and, (2) the duration between *nuṭfa* entering the womb and implanting. For them, it was *after* implantation (*istiqrār*) that the *nuṭfa* mixed (*akhlāt*) with the female contribution and then the process of gathering (*al-jam*) occurred with the maternal blood to form the 'alaqa. We know today that fertilization or *akhlāt* occurs before implantation and the gathering of maternal blood in the lacunae and then the placenta *al-jam* occurs after implantation. Therefore implantation *istiqrār* was considered an important event for a vial pregnancy to succeed.

The moral significance of the *mixing* or fertilization was addressed explicitly by scholars like al-Ghazālī (d. 1111), who holds conservative views on the issue and claims the beginning of the means of existence (*mabda'u sabab al-wujūd*) is when the semen locates in the womb (*wuqū' al-manī fī al-raḥim*), and not when it exits the urethra of the male (viz. equivalent to *al-'azl*) because the child is not created from the semen alone but from a combination of germinal fluids of both mother and father. He then asserts that, "this prepares it for life". In other words it is not considered alive as yet, but has the capacity. Here al-Ghazālī indicates that the process of *akhlāt* begins when the semen establishes itself in the womb, in other words after implantation. He then adds that the potential for life is either when the liquid of the man mixes or fuses with the woman's liquid or her blood.⁶³ "It is at this point that aborting is a crime". He deduces this from the legal analogy (*qiyās*) based on the contractual relationship which follows the proposal (*al-ījāb*) and its acceptance (*al-qabūl*) in a marriage contract. Then he states, "Any stage before this is not of same moral value," which suggests he was referring to that which was before implantation, as at that time all jurists were in agreement that normativity post-implantation was of a higher moral status compared to that which was before, deduced from rulings related to *al-'azl*. Classical Muslim jurists believed that the mixing *akhlāt* occurred once implantation had occurred (i.e. the *nuṭfa* was firmly established in the uterus). This has shown to be incorrect as fertilization occurs before implantation. He also admits that aborting in the 'alaqa and *muḍgha* stage is a greater crime, suggesting that he differentiates between the *nuṭfa* stage and the other stages, claiming the former to be of a lesser crime.⁶⁴ This is because he saw the *nuṭfa* stage as the stage prior to *akhlāt*.

⁶³ The reference here to blood was seen to be related to menstrual blood – an ancient Aristotelian understanding that the embryo requires menstrual blood to develop. Aristotle (384 – 322 BC) was a Greek philosopher and scientist who wrote over 400 books on many different branches of learning. (Ogle, W. Aristotle on the Parts of Animals, Kegan Paul, London, 1882).

⁶⁴ إحياء علوم الدين الباب الثالث في آداب المعاشرة وما يجري في دوام النكاح - وإنما قلنا مبدأ سبب الوجود من حيث وقوع المنى في الرحم لا من حيث الخروج من الإحليل لأن الولد لا يخلق من منى الرجل وحده بل من الزوجين جميعاً إما من مائه ومائها أو من مائه ودم الحيض قال بعض أهل التشريح إن المضغعة تخلق بتقدير الله من دم الحيض وإن الدم منها كاللبن من الرائب وإن النطفة من الرجل شرط في خثور (coaguable) دم الحيض وانعقاده كالأنفحة (rennet) للبن إذ بها ينعد الرائب (curdled) وكيفما كان فماء المرأة ركن في الانعقاد فيجري الماءان مجرى الإيجاب والقبول في الوجود الحكمي في العقود فمن أوجب ثم رجع قبل القبول لا يكون جائياً على العقد بالنقض والفسخ ومهما اجتمع الإيجاب والقبول كان الرجوع بعده رافعاً وفسخاً وقطعاً وكما أن النطفة في الفقار لا يتخلق منها الولد فكذا بعد الخروج من الإحليل ما لم يمتزج بماء المرأة ودمها فهذا هو القياس الجلي⁶⁴

قال الإمام ابن قيم الجوزية المتوفى سنة (٧٥١ هـ) في كتابه "التيبان في أقسام القرآن": "ومنى الرجل وحده لا يتولد منه الولد ما لم يمازجه مادة أخرى من الأنثى". وقال أيضاً: "إن الأعضاء والأجزاء والصورة تكوّنت من مجموع المائين، وهذا هو الصواب."

قال الإمام ابن حجر العسقلاني المتوفى سنة (٨٥٢ هـ) في فتح الباري -كتاب القدر- "والمراد بالنطفة المنى وأصله الماء الصافي القليل، والأصل في ذلك أن ماء الرجل إذا لاقى ماء المرأة بالجماع وأراد الله أن يخلق من ذلك جنيناً هيأ أسباب ذلك". ثم قال: "وزعم كثير من أهل التشريح أن منى الرجل لا أثر له في الولد إلا في عقده وأنه إنما يتكون من دم الحيض، وأحاديث الباب (أي الموضوع) تُبطل ذلك".



There is the Prophetic tradition narrated from the companion of the Prophet (saw), ‘Abd Allah Ibn Mas‘ūd that states that the nuṭfa when it enters the uterus, it passes through all the hairs and nails then rests for 40 days and then sinks (*tanḥadara*) into the uterus and then it becomes an ‘alaqa and that is its “gathering” *jamu*.⁶⁵

إن النطفة إذا وقعت في الرحم طارت في كل شعرة وظفر فتمكث أربعين يوماً ثم تنحدر في الرحم فتكون علقة قال فذلك جمعها

Al-Qurṭubī explains that *jam* here refers to becoming an ‘alaqa⁶⁶ Al-‘Aynī also makes mention of this that the meaning of “to gather” (*al-jamu*) has been said to refer to “when the nuṭfa enters the uterus, Allah intends to create from it a human, that circulates around the peripheries of the woman under every hair and nail, and remains for forty nights then descends as blood in the uterus.⁶⁷

It seems that their understanding was that the nuṭfa once entering the uterus circulates, rests for 40 days, and then gathers and mixes *ikhḷāṭ* with the female contribution and/ or menstrual blood in the uterus. This would be interpreted quite differently today. We understand today that the nuṭfa enters the uterus then travels down the fallopian tube, fertilizes the ovum by fusing with it. This fertilized ovum then travels back up the fallopian tube as a nuṭfa (drop), enters the uterus again and then implants within 7 days, after which it is then surrounded by maternal blood in the endometrial lining. There is a difference in sequence and duration between what was assumed and deduced through analogical reasoning and to what we witness today.

Lexically “*al-jamu*” means to gather something from its parts to come together.⁶⁸ Ibn Hajar states that *al-jamu* is to combine (*ḍamma*) parts after they have dispersed.⁶⁹ The meaning according to some Muslim scholars is that the *semen* that enters the womb disperses and Allah (swt) gathers it in the place of birth in the womb.⁷⁰ In ḥadīth material, embryogenesis is described by derivatives of the Arabic root j-m-‘, i.e., as a process of “gathering” or “putting together.”⁷¹ This suggests that the gathering *jam* is quite a different process to fertilization (*yumāzīj*). They were both assumed to occur in the uterus after implantation possibly simultaneously. *Jam* refers to maternal (placental) blood contribution and is sometimes used interchangeably with the process of mixing or fusing with the female liquid.

⁶⁵ فتح القدير، للشوكاني، ٥:٦٧ تفسير قرطبي سزرة الحج: ٥ روي عن ابن مسعود من وجوه أخر قوله صلى الله عليه وسلم إن خلق أحدكم يجمع في بطن أمه أربعين يوماً نطفة قد روي عن ابن مسعود تفسيره وروى الأعمش عن خيثمة عن ابن مسعود قال إن النطفة إذا وقعت في الرحم طارت في كل شعرة وظفر فتمكث أربعين يوماً ثم تنحدر في الرحم فتكون علقة قال فذلك جمعها

⁶⁶ تفسير القرطبي (الجامع لأحكام القرآن) وقوله: إن أحدكم يجمع خلقه في بطن أمه قد فسره ابن مسعود، سنل الأعمش: ما يجمع في بطن أمه؟ فقال: حدثنا خيثمة، قال: قال عبد الله: إذا وقعت النطفة في الرحم، فأراد أن يخلق منها بشراً طارت في بشرة المرأة تحت كل ظفر وشعر، ثم تمكث أربعين يوماً، ثم تصير دماً في الرحم؛ فذلك جمعها، وهذا وقت كونها علقة

⁶⁷ عمدة القارئ ١٣١:١٥٠ تفسير قرطبي سزرة الحج: ٥ خرجه ابن أبي حاتم وغيره وروي تفسير الجمع مرفوعاً بمعنى آخر فخرج الطبراني وابن منده في كتاب التوحيد من حديث مالك بن الحويرث أن النبي صلى الله عليه وسلم قال إن الله تعالى إذا أراد خلق عبد فجامع الرجل المرأة طار ماؤه في كل عرق وعضو منها فإذا كان يوم السابع جمعه الله تعالى ثم أحضره في كل عرق له دون آدم في أي صورة ما شاء ركبك قال ابن منده إسناده متصل مشهور على رسم أبي عيسى والنسائي وغيرهما - قد فسره ابن مسعود، سنل الأعمش: ما يجمع في بطن أمه؟ فقال: حدثنا خيثمة، قال: قال عبد الله: إذا وقعت النطفة في الرحم، فأراد أن يخلق منها بشراً طارت في بشرة المرأة تحت كل ظفر وشعر، ثم تمكث أربعين يوماً، ثم تصير دماً في الرحم؛ فذلك جمعها، وهذا وقت كونها علقة

⁶⁸ لسان العرب ٥٣:٨

⁶⁹ فتح الباري لابن حجر ٤٨٠:١١

⁷⁰ شرح الأربعين النووية، لابن دقيق العيد ١: ٣٧

⁷¹ This ḥadīth material went through several developmental stages during the first three centuries AH



	Ibn Masūd's account	Embryology as witnessed today
Entry	nuṭfa (semen) enters uterus	nuṭfa enters uterus
Travel	Travels outside the uterus (around body)	Travels outside the uterus (fallopian tubes)
Fertilization	Remains 40 days outside uterus	Remains few days outside uterus (mixes <i>ikhṭilāṭ</i> with the female germinal fluid fertilization (<i>nuṭfa amshāj</i>))
Implantation	<ol style="list-style-type: none"> 1. Returns to uterus after these 40 days as semen (nuṭfa) and 2. implants in the uterus and then 3. mixes with the female contribution (<i>ikhṭilāṭ</i>) (nuṭfa amshāj) and/or mixes with the maternal (menstrual) blood (<i>jam</i> ') to gradually become an 'alaqa 	<ol style="list-style-type: none"> 1. Returns to uterus after few days as zygote (also termed nuṭfa) and 2. implants in the uterus and then 3. receives maternal blood (<i>jam</i> ') to gradually become an 'alaqa
Differences	<p>Implants in the uterus as semen (nuṭfa) shortly after <i>re-entering</i> uterus,</p> <p>then fertilization (<i>ikhṭilāṭ</i>) occurs and/ or gathers <i>jam</i> ' with maternal blood</p> <p>(Less significance given to fertilization and more to implantation and its gathering in the womb)</p>	<p>fertilization as a zygote (nuṭfa amshāj) in the fallopian tubes</p> <p>then Implants in the uterus on 8-9th day as a zygote</p> <p>then gathers with maternal blood</p> <p>(Fertilization and gathering of maternal blood quite distinct events before and after implantation respectively)</p>

The nuṭfa was therefore seen by early Muslim scholars as a stage which extended from the time of ejaculation until the implanting of the male semen, mixing with female semen and/ or gathering with maternal blood. As was explained earlier, with current knowledge of embryology this would not be an entirely accurate account. The nuṭfa refers to the drop of semen which goes through a journey of being ejaculated then fertilization, implanting and then gathering with maternal blood to become an 'alaqa.



However, we know that this drop has different constituents throughout this journey. The four stages of *nutfa*.

Stage 1: As a drop containing the destined sperm + a drop containing the female egg (*nutfa*)

Stage 2: The mixing of the drops and fertilizing, and then the same drop now containing the zygote (*nutfa amshāj*)

Stage 3: The drop containing the zygote implanting in the womb (*istiqrār f' il-raḥim*)

Stage 4: The same implanted drop receiving nutritional support from the maternal blood to become an *'alaqa* (*al-jam'*)

The sperm doesn't actually travel further than the fallopian tubes where it fertilizes the female egg (ovum) to become a zygote, and then this zygote, not semen or sperm as was assumed by early Muslim scholars, returns to the womb to be implanted in the uterine lining.

Historically it was understood that the *nutfa* (seen as the male semen) mixes (*akhlāt*) with female contribution but it was not clear that this happens before implantation (*istiqrār*). This led to the belief that the male semen was what became an *'alaqa* and not that the female egg was fertilized by it and this product as a resultant fusion became the *'alaqa*. In other words for earlier Muslim scholars it was the *nutfa* - considered as the male contribution (i.e. semen) which was the determining liquid which implants and not the female egg once fertilized. That is why at times Muslim scholars expressed this as "semen in the womb"⁷²

We know fertilization occurs before implantation and not the reverse, so how does this impact the application of normative legal judgements (*fiqh*)? It is important to note that for most jurists moral significance wasn't applied directly or explicitly to fertilization to the degree it was applied to implantation. Ibn 'Arabi Mālikī (d. 1148) mentions the normative sequence of events, but does not address the issue of *akhlāt*. He describes three states (1) ejaculated semen which enters the female reproductive system (viz. considered the *al-'azl* stage), (2) implantation of the semen (described as an essential stage where abortion is considered a criminal offence), and then finally, (3) ensoulment.⁷³

A reliable explanation for this is that implantation is the stage when the zygote is able to grow and develop with the support of the endometrial and placental blood and so become a child. Implantation is therefore seen as a significant and important event which the embryo depends on to develop and for the viability of the pregnancy to be sustained and succeed.⁷⁴ Even after fertilization the embryo is in need of

⁷²فتاوى أهل سمرقند «وكان يقول: مآل الماء بعدما وصل إلى الرحم الحياة

إحياء علوم الدين وقوع المني في الرحم

ويذهب الإمام ابن العربي إلى أن للولد ثلاثة أحوال "حال قبل الوجود ينقطع فيها بالعزل، وحال بعد قبض الرحم على المني فلا يجوز

قال الدردير في "الشرح الكبير" (٢٦٦/٢) : لا يجوز إخراج المني المتكون في الرحم ولو قبل الأربعين يوماً

نهاية المحتاج ١٦٦/٨ . لا يشكل عليه العزل، لوضوح الفرق بينهما، بأن المني حال نزوله لم يتهيأ للحياة بوجه، بخلافه بعد الاستقرار في الرحم وأخذ في مبادئ التخلق

⁷³ابن العربي، القيس في شرح موطأ مالك بن أنس، ط ١، (بيروت: دار الغرب الإسلامي، ١٩٨٩ م)، ٧/٢، والعربي، والشيخ محمد عليش ١، ويذهب الإمام ابن العربي

إلى أن للولد ثلاثة أحوال "حال قبل الوجود ينقطع فيها بالعزل، وحال بعد قبض الرحم على المني فلا يجوز حينئذ لأحد التعرض له بالقطع من التولد. والحالة الثالثة بعد

انخلاقه قبل أن تنفخ فيه الروح وهو أشد من الأولين في المنع والتحريم. فأما إذا نفخ فيه الروح فهو نفس بلا خلاف"

⁷⁴وكان الفقيه علي بن موسى القمي يقول: يكره لها ذلك، وكان يقول: مآل الماء بعدما وصل إلى الرحم الحياة، فإنه لا يحتاج إلى صنع أحد بعد ذلك، لينفخ فيه

الروح... لأن الماء قبل أن يصل إلى الرحم ليس مآله الحياة، فإنه يحتاج إلى صنع بعد ذلك لينفخ فيه الروح، وهو الإلقاء في الرحم، أما هنا بخلافه



further major intervention before it has increased capacity to develop into a child and hence fertilization itself doesn't assure viable pregnancy because less than 50% of the fertilized eggs go on to implant.⁷⁵

During this stage, between fertilization and implantation, if the zygote is terminated, would this require more stringent conditions than that of *al-‘azl* and less stringent conditions than that after implantation? *Al-‘azl* is a permissible practice before *akhlāt*, but does this extend up to implantation?

Moral Significance of the Equivalence to Implantation

The establishment of the embryo in the uterus, in addition to the embryo having developed enough to accept life, are two important factors which jurists accept as viable pregnancy which holds higher normative status. Any action leading to abortion after this point is seen as a greater crime.

Pregnancy is described in its technical and legal sense by Muslim scholars as, “that which is in the womb of a woman as a child, be it male or female”.⁷⁶ This could be because of the understanding that a greater chance for continued pregnancy is secured once it is established in the uterus.

The Qurān explicitly describes the fertilized drop (*nutfa amshāj*) as being lodged firmly in the uterus.

نُجْمًا جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَّكِينٍ

Then We placed him as a *nutfa* in a firm lodging (*qarārin makīn*). [Q. 23:13]

There is moral significance identified when the embryo (*nutfa*) implants or lodges in the womb. Its place in the womb is seen as pregnancy (*al-haml*) and many Muslim scholars have considered this event as the point after which the conditions of *al-‘azl* no longer apply and more stringent conditions are required to terminate, because this would be considered abortion (*ijhād*).

وَنُفِرُّ فِي الْأَرْحَامِ مَا نَشَاءُ إِلَىٰ أَجَلٍ مُّسَمًّى

“And We settle (*nuqirru*) in the wombs whom We will for a specified term” [Q. 22:5]

The verse suggests that the *nutfa* establishes itself in the womb for the remaining period indicating that it does not move from a fixed place. The only place that this will happen is in the womb or more specifically the endometrial lining in the womb. When the jurists use terms like “the drop in the womb” (*al-mā’ f’il-rahīm*) or “it reaching the womb” (*waṣala ilā al-rahīm*) this refers to the process of implantation as jurists were then unaware about the details of how the embryo implants in the womb other than that it establishes itself there until birth. There are many accounts within their statements like

⁷⁵ Jarvis GE. Early embryo mortality in natural human reproduction: What the data say. F1000Res. 2016;5:2765. Published 2016 Nov 25. (viewed nov. 2019)

⁷⁶ تعريف الحمل: الحمل لغة: مصدر حملت حملا ويقال للمرأة حاملا وحامل إذا كانت حبلية، قال تعالى: {حَمَلْتُهُ أُمُّهُ كُرْهُا وَوَضَعْتُهُ كُرْهُا وَحَمَلْتُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا}. واصطلاحا: هو ما في بطن الأم من ولد ذكرًا كان أو أنثى



gripping or catching of the womb *qabḍ al-rahim* and establish or exist in the womb *mutakawwin f'il-rahim*, that indicate that this is what they would have referred to if they had known.⁷⁷ Their understanding was that when the nuṭfa enters the womb and establishes itself, it is now in a place where it is safe and is not as dependant on any other major intervention i.e. after it has implanted. In other words, all its sustenance and support in this location will suffice for it to become a child. Anything before implantation cannot safeguard its life and its dependence on a major intervention will be required to develop further. This is considered analogous to the situation of the egg embryo⁷⁸ which establishes itself in the egg, in its safe, protected environment requiring no further major external intervention for its growth except the yolk surrounding it.⁷⁹

The Qurān refers to important stages of embryological development that have increasing moral status as the embryo develops. The 'alaqa stage is the stage of viable pregnancy when the embryo is now established in the womb and surrounded by the endometrium and then placenta through its umbilicus receiving its sustenance to develop into a child. These stages are described with terms depicting physical properties of what is visible with the unaided eye. This language used in the Qurān allows for the application of different theories and hence is accommodating to generations through time. Hence, the nuṭfa is the stage making reference to the physical property of drop of liquid which begins from the ejaculate until early process after implantation when the embryo is fully established in the womb with its placenta. 'Alaqa refers to that which has the outward appearance of congealed clot and clings, and it is the critical stage which represents the stage of early viable pregnancy.

ثُمَّ كَانَ عَلَقَةً فَخَلَقَ فَسَوَّىٰ

Then he was an 'alaqa, and [Allah] created [his form] and proportioned [him] [Q. 38:75]

'Alaqa' (singular form) is mentioned 6 times in 5 verses of the Qur'ān, while 'alaq' (plural form) is mentioned only once. The word 'alaqa is translated in Arabic to a 'clot of blood'. This has its problems as the embryo does not go through an embryological stage where we could say that it is a clot of blood.

⁷⁷فتاوى أهل سمرقند «وكان يقول: مأل الماء بعدما وصل إلى الرحم الحياة إحياء علوم الدين وقوع المني في الرحم ويذهب الإمام ابن العربي إلى أن للولد ثلاثة أحوال "حال قبل الوجود ينقطع فيها بالعزل، وحال بعد قبض الرحم على المني فلا يجوز قال الدردير في "الشرح الكبير" (٢٦٦/٢) : لا يجوز إخراج المني المتكون في الرحم ولو قبل الأربعين يوماً نهاية المحتاج ٤١٦ / ٨ . لا يشكل عليه العزل، لوضوح الفرق بينهما، بأن المني حال نزوله لم يتهيأ للحياة بوجه، بخلافه بعد الاستقرار في الرحم وأخذة في مبادئ التخلق ابن العربي، القيس في شرح موطأ مالك بن أنس، ط ١، (بيروت: دار الغرب الإسلامي، ١٩٨٩ م)، ٧/٢، والعربي، والشيخ محمد عليش ١، ويذهب الإمام ابن العربي إلى أن للولد ثلاثة أحوال "حال قبل الوجود ينقطع فيها بالعزل، وحال بعد قبض الرحم على المني فلا يجوز حينئذ لأحد التعرض له بالقطع من التولد. والحالة الثالثة بعد انخلاقه قبل أن تنفخ فيه الروح وهو أشد من الأولين في المنع والتحريم. فأما إذا نفخ فيه الروح فهو نفس بلا خلاف"

⁷⁸ The egg embryo is the analogy used by Muslim jurists to associate moral status to the embryo and a person who is muḥrim (pilgrim) who breaks an egg of a bird that can be hunted will need to pay a penalty.

⁷⁹ وقال ابن عابدين: وكان الفقيه علي بن موسى يقول إنه يكروه فإن الماء بعد ما وقع في الرحم مأل الحياة فيكون له حكم الحياة كما في بيض صيد الحرم وكان الفقيه علي بن موسى القمي يقول: يكره لها ذلك، وكان يقول: مأل الماء بعدما وصل إلى الرحم الحياة، فإنه لا يحتاج إلى صنع أحد بعد ذلك، لينفخ فيه الروح... لأن الماء قبل أن يصل إلى الرحم ليس مأل الحياة، فإنه يحتاج إلى صنع بعد ذلك لينفخ فيه الروح، وهو الإلقاء في الرحم، أما هنا بخلافه « وفي فتاوى أهل سمرقند « إذا أرادت إسقاط الولد فلها ذلك إذا لم يستين شيء من خلقه؛ لأن ما لا يستين شيء من خلقه لا يكون ولداً، وكان الفقيه علي بن موسى القمي يقول: يكره لها ذلك، وكان يقول: مأل الماء بعدما وصل إلى الرحم الحياة، فإنه لا يحتاج إلى صنع أحد بعد ذلك، لينفخ فيه الروح، وإذا كان مأل الحياة للحال كما في بيضة الحرم لما كان مألها أن تصير صيداً يعطى لها حكم الصيد حتى إن من أثلف بيضة صيد الحرم ضمن بخلاف العزل؛ لأن الماء قبل أن يصل إلى الرحم ليس مأل الحياة، فإنه يحتاج إلى صنع بعد ذلك لينفخ فيه الروح، وهو الإلقاء في الرحم، أما هنا بخلافه



This idea that an embryo becomes ‘clotted blood’ is also found in Greek literature and other historical texts, where it was thought that the female menstrual blood gives the drop (nutfa) its congealed blood attributes. The only situation in which an embryo might appear like a clot is either during its early implantation stage when lacunae of placental (mothers) blood are formed around the embryo surrounding it or during a miscarriage when the embryo is expelled with this surrounding congealed blood, in which case the clotted blood that is seen to emerge (much of which comes from mother) is in solid form. This ‘congealed blood’ assumption was concluded by observation of miscarriages and abortions and it is possible that it is in this context that the Qurān refers to this stage. The Qurān appeals to the people of all generations as to what they were able to observe with the unaided eye, yet not conflicting with what science is certain about. We can visualise this stage external to the body as a lump of congealed blood.

However, ‘alaqa has been assigned multiple meanings by contemporary Muslim scholars and translators. These include:

- (a) A leech like structure
- (b) Something which clings
- (c) A clot of blood
- (d) Suspended thing

Historically before the advances in embryology, Muslims had no problem accepting this understanding or meaning of the word ‘alaqa because it agreed with what was observable. As knowledge on embryological development has developed we are able to give a more advanced and microscopic understanding of the meaning of ‘alaqa. Translators have thus changed their understanding of this word to accommodate the contemporary understanding. This has gone through the broad descriptions of the Quranic verse:

ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً

“We made the ‘nutfa’ into a ‘alaqa”, has been translated as

• Keith Moore: “We made the drop of ‘sperm’ into a thing that clings”
• Yusuf Ali: Then We made the sperm into a clot of congealed blood
• Edward Henry Palmer: then we created the clot congealed blood
• Pickthall: Then fashioned We the drop a clot
• Shakir: Then We made the seed a clot
• Arthur Arberry: then We created of the drop a clot
• Aisha Bewley: then formed the drop into a clot
• Abdul-Majid Daryabadi : Thereafter We created the sperm a clot
• Umm Muhammed: Then We made the sperm-drop into a clinging clot
• a leech-like clot – Yusuf Ali, (translation of 1938) 1946[4]
• a clot – Pickthall, (translation of 1940) 1977[5]
• a clot – Maulana Muhammad Ali, 1951[6]
• a clot – Muhammad Zafrulla Khan, 1971[7]
• a clot of blood – N. J. Dawood, 1980[9] Approved by the Supreme Sunni and Shii Councils of the Republic of Lebanon
• Indonesian, segumpal darah (lump of or clot of blood) – Indonesian Department of Religious Affairs, 1984
• Farsi (Persian/Irani), khoon basteh (a clot of blood) – Mehdi Elahi Ghomshehi
• Chinese, xue kuai (blood clot)
• Malay, darah beku (blood clot)
• Al-Muntakhab: Then We made the Notfa develop into a clinging organism
• Rashed Khalifa: Then we developed the drop into a hanging (embryo)
• Muhammaed Asad: and then We create out of the drop of sperm a germ-cell



Translators have tried to make sense of the meaning “leech” as did Moore in association to what is seen after implantation and we have the following translation, “Then from the sperm-drop We created (or fashioned) the thing which clings, and from the thing which clings We created (or fashioned) mudgha”.

*‘Just as the leech derives blood from the host, the human embryo derives blood from the decidua or pregnant endometrium. It is remarkable how much the embryo of 23-24 days resembles a leech. As there [was no microscopy] in the 7th century, doctors would not have known [about] this leech-like appearance’.*⁸⁰

‘Alaq (plural form of ‘alaqa) happen to be the title of the first sura and first verses which came to the Prophet (saw) in Mecca being 96th Sura in the Quran called ‘Alaq (Clots?):

أَفْرَأُ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ - خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ

“Proclaim! in the name of your Lord Who created—created man from ‘alaq. [Q. 96:1-2]

Here the word is in the collective plural. This word form can have other meanings because ‘alaq’ is a derived verbal noun of the verb ‘aliqa’.

In Arabic, blood is ‘damm’, while clotted blood is ‘alaqa’. Arabic words are derived from trilateral verb roots and thus can have many meanings as they derive from the same root consonants-however they are all related in definition, and can be understood by going back to the root verb it was derived from. Both clot and leech are verbal nouns derived from the verb root ‘a-l-q, ‘aliqa’. ‘Aliqa means “to hang, be suspended, dangle, to stick, cling, cleave, adhere, and to be attached”, similarly a ‘leech’ clings on things, while blood cling and stick together forming a solidified clot. It is the process of clotting or coagulating which brings the idea of clinging (‘aliqa-the verb). When blood coagulates the material is primarily known to be sticky which explains the use of ‘alaqa’ (the verbal noun) for this material. In conclusion, it is far more accurate to use the term ‘aliqa’ to describe a clotted blood, instead of just plain blood ‘damm’. Moreover, ‘alaqa’ is not used to refer to any clotted blood, but specifically to clots that stick or cling on surfaces of human tissues, such as the lining of the uterus.

The most predominant translation by Muslim scholars of ‘alaqa was a ‘blood clot that clings’. We recognised that the embryo is not actually a blood clot, rather it looks like one if miscarried and whilst implanted, is surrounded by blood. More importantly Muslim scholars described ‘alaqa as a piece of clot or solid blood (*qaṭ’atu dam jāmida*).⁸¹ Ibn Qayyim asserts that it is called ‘alaqa because of its moisture (*ruṭūba*) and its attachment to that which passes by it. (*ta’alluquhā bimā tamarru bihī*)⁸² ‘Alaqa is described as that which suspends or hangs and is associated/ attached to man.⁸³ The word ‘alaqa is also used in the Prophetic tradition describing what was extracted from the heart of the Prophet (saw) as a

⁸⁰ Keith L. Moore, “A Scientist’s Interpretation Of References To Embryology In The Qur’an.” The Journal of IMA, Vol. 18, p.15, 1986

⁸¹ انظر تفسير أبي السعود (٩٣/٦، ١٢٦)، وتفسير الطبري، سورة المؤمنون (١)، وتفسير القرطبي (٦/١٢)، (١١٩/٢٠)، وتفسير ابن كثير (٢٤١/٣)، وأضواء البيان (٢١/٥)، وانظر مختار الصحاح (ص: ١٨٩). تاج العروس (٣٤٤/١٣) وحديث سرية بني سليم، وابن أبي أوفى لم أقف عليهما مسنين، وقد ذكرهما ابن الأثير في النهاية (٢٨٨/٣)

⁸² ازد المسير في علم التفسير، لابن القيم: سميت علقه لرطوبتها وتعلقها بما تمر به
(⁸³ انظر تاج العروس (٣٥٤-٣٤٤/١٣)، مختار الصحاح (ص: ١٨٩). (لا يظهر لي أن تفسير العلماء ناتج عن الملاحظة بالعين المجردة، بل ناتج عن استعمال أحد معاني الكلمة، فالعلقة باللغة تطلق على الدم، وتطلق على ما يعلق، فالمفسرون اختاروا أحد معاني الكلمة، ولم يطبق المفسرون على هذا التفسير، فقد ذكر ابن الجوزي في زاد المسير المسمى علم التفسير: وقيل: سميت علقه لرطوبتها، وتعلقها بما تمر به" وقد نقله الدكتور البار في كتابه فيما سبق.



process of spiritual purification where the satanic aspects of heart were removed from the Prophet (saw). Here it was also seen as a congealed clot.⁸⁴

The ‘alaqa refers to the manifest physical property seen at this stage by the unaided eye during miscarriage i.e. the embryo surrounded by congealed blood. If we were to appreciate the size in its early stages it would be no bigger than a millimetre and would look like congealed blood (*al-damm al-ghalīth*), just how the formative scholars of Qurān describe it.⁸⁵

Pre-Islam Arabs already used the verb ‘alaqa (to cling) to describe a woman becoming pregnant, which is evident from Arabic lexicons:

وَعَلَّقَتِ الْمَرْأَةُ بِالْوَالِدِ وَكُلُّ أَنْثَى عُلُوقًا حَبَلَتْ

A woman conceived ‘*aliqat* the child and every female who conceives ‘*ulūq* becomes pregnant⁸⁶

وَعَلَّقَتِ الْمَرْأَةُ عَلَقًا، أَي: حَبَلَتْ

The woman conceived ‘*aliqat* ‘*alaqan*, in other words became pregnant⁸⁷

Here ‘*ulūq* is an adjective used to describe a pregnant female i.e. a female who has conceived. It is easy to see that Arabs have used the word ‘alaqa to describe the first stage of pregnancy. So clearly the terms ‘alaq’ and ‘alaqa’ mentioned in the Quran have been derived from a root which resembles the state of the embryo at a relevant stage. ‘Alaqa therefore represents the beginning of the critical stage of viable pregnancy.

Pregnancy is a term used to describe the state of the mother i.e. “the woman is pregnant”, and is not a direct reference to the state of the pre-embryo or zygote. The zygote has its own intrinsic moral status. In IVF (In Vitro Fertilization), fertilization occurs external to the uterus before it is inseminated into the uterus to implant. It would be incorrect to say that the woman who is to have the insemination is actually pregnant when her egg has fertilized outside her body, but rather she is pregnant only when the embryo has implanted into her womb after insemination. Therefore, viable pregnancy begins at implantation, but the process that leads to pregnancy precedes this. What exists prior to pregnancy (pre-implantation) has normative status determined on basis of the moral status of the nuṭfa (seen as the drop containing the sperm and then nuṭfa amshāj, seen as the fertilized egg). Therefore to destroy the nuṭfa would be to destroy or terminate something which has intrinsic moral status. Hence this would apply in situations where embryos are destroyed external to the body during reproductive procedures or experimentation. Pregnancy relates to a nuṭfa after implantation which has undergone a change which Muslim scholars have described as its capacity to exhibit physical human characteristics *takhlīq*. This change has been

⁸⁴ رواه مسلم (٢٦١-٢٦٢). وروى مسلم، قال: حدثنا شيبان بن فروخ، حدثنا حماد بن سلمة، حدثنا ثابت البناني، عن أنس بن مالك أن رسول الله صلى الله عليه وسلم أتاه جبريل صلى الله عليه وسلم وهو يلعب مع الغلمان فأخذه فصرعه فشق عن قلبه، فاستخرج القلب فاستخرج منه علقة، فقال: هذا حظ الشيطان منك، ثم غسله في طست من ذهب بماء زمزم، ثم لأمه، ثم أعاده في مكانه، وجاء الغلمان يسعون إلى أمه يعني ظنره، فقالوا: إن محمداً قد قتل، فاستقبلوه وهو منتقع اللون

⁸⁵ خلق الإنسان بين الطب والقرآن (ص: ٢٠٥-٢٠٦).

⁸⁶ لسان العرب: وعَلَّقَتِ الْمَرْأَةُ بِالْوَالِدِ وَكُلُّ أَنْثَى عُلُوقًا حَبَلَتْ

⁸⁷ تاج العروس: وعَلَّقَتِ الْمَرْأَةُ عَلَقًا، أَي: حَبَلَتْ، نَقَلَهُ الْجَوْهَرِيُّ



shown to be after implantation when it receives maternal placental blood and nutrition and develops human physical features.⁸⁸

Calculating when Pregnancy Begins

It is important to differentiate between what is physically or biologically seen as the beginning of pregnancy and the time pregnancy is standardly calculated. Not appreciating this difference and reasons for this difference can be a source of confusion.

The standard dating of pregnancy is counted from the first day of the woman's last normal menstrual period (LMP), even though the development of the embryo does not begin until fertilization, which is about two weeks later. Pregnancy is calculated from this day because each time a woman has a period, her body is preparing for pregnancy. Counting from the LMP also gives a standard of measurement for health care providers to follow since it is extremely difficult to know exactly when fertilization occurred. Logically, one might imagine we represent a pregnancy by how much time has elapsed since fertilization. Instead, we most commonly date pregnancies from the first day of the last menstrual period (LMP). One reason for not dating pregnancies from the day of fertilization is that we cannot know that day exactly (excluding cases of assisted reproduction), but we can know the first day of LMP, based on what a woman reports to us. Also, when providers all use the same LMP date, we are using one system that provides a standard convention.

The average time between menstrual periods is about 28 days, and ovulation occurs about 14 days before the next period begins. So when we say a woman's estimated gestational age is six weeks' LMP, we mean she conceived about four weeks ago, around the time of ovulation. Ultrasound can be used to date pregnancies, especially when the LMP is not known (for example, pregnancy after a delivery but before a menses occurred or irregular menses without predictable ovulation). Ultrasound dating is based on a series of measurements of the gestational sac in very early pregnancies and of the embryo or foetus itself as pregnancy progresses. However, unless there is a great difference between what is seen on an ultrasound and what was reported as LMP, doctors still use LMP to establish a due date. For example, if in the first trimester the ultrasound estimate falls within one week of the LMP estimate, we still use LMP to determine due date and length of pregnancy. If the ultrasound estimate differs by more than one week from the LMP, we would use the ultrasound estimate for the due date. This method continues in the subsequent trimesters. In the second trimester, the determination also defaults to the LMP unless the ultrasound estimate is more than two weeks different from the LMP. We follow the same process in the third trimester, with a three-week difference.

Traditionally, determining the first day of the LMP is the first step in establishing the Expected Date of Conception, EDD. By convention, the EDD is 280 days after the first day of the LMP. Because this practice assumes a regular menstrual cycle of 28 days, with ovulation occurring on the 14th day after the beginning of the menstrual cycle, this practice does not account for inaccurate recall of the LMP,

⁸⁸ والمراد به الحمل الذي استبان بعض خلقه ، أو كله ، فإن لم يستين بعضه لم تنقض العدة لأن الحمل اسم لنطفة متغيرة ، فإذا كان مضغاً ، أو علقاً لم تتغير ، فلا يعرف كونها متغيرة بيقين إلا باستبانة بعض الخلق بحر عن المحيط



irregularities in cycle length, or variability in the timing of ovulation. It has been reported that approximately one half of women accurately recall their LMP. In one study, 40% of the women randomized to receive first-trimester ultrasonography had their EDD adjusted because of a discrepancy of more than 5 days between ultrasound dating and LMP dating.⁸⁹

In Islam the Quranic stages of development of the human organism from nuṭfa until ensoulment and then birth, is quite different to how we see the stages of pregnancy and its beginning. The calculation of the stages of development as described in the Qurān, are naturally expected to begin from the time the semen enters the vagina as the nuṭfa. This is quite different to how we calculate standard gestational age, but no different to the time we estimate ovulation and fertilization to have occurred.

	Gestational Age	Quranic embryological development	Pregnancy in Islam
Day 1	1 st day of LMP Day 1- Gestational Age (GA) begins		
Day 14 (End of Week 2)	Ovulation Earliest time for fertilization	Day 1- Nuṭfa stage begins – when semen enters the vagina	
Day 21	Implantation		Day 1- Viable Pregnancy Begins
Day 56 (Week 8)		Day 40- ‘Alaqa (Week 6)	
Day 94 (Week 13)		Day 80- Muḍgha (Week 11)	
Day 134 (Week 19)		Day 120- Khalqan Ākhar (En soulment) (Week 17)	

In Islam, viable pregnancy (when we can say that the woman is pregnant) begins at implantation. By that stage the nuṭfa is a week old if it is to develop naturally. It takes less than a day for the semen or sperm to fertilize the egg and nearly a week for the zygote or blastocyst (a later stage of zygote development)⁹⁰ to implant in the womb lining from the time of penetration. Rulings related to inheritance, bequests, emancipation, legitimacy of the child begin from fertilization as this is approximately equivalent to the time of semen entering the vagina. It is important that one does not confuse rulings related to inheritance,

⁸⁹ Methods for estimating the due date. Committee Opinion No. 700. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2017;129:e150–4; <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Obstetric-Practice/Methods-for-Estimating-the-Due-Date?IsMobileSet=false> (accessed 7th Nov 2019)

⁹⁰ A blastocyst is an embryo which has been left to develop until day 5 or 6 and presents a complex cellular structure formed by approximately 200 cells. The blastocyst phase is the development stage prior to implantation of the embryo in the mother's uterus.



bequests, emancipation, legitimacy of the child with what we consider technically the beginning of viable pregnancy, rather these ruling relate from the *nuṭfa* stage as mentioned in the Qurān which is standardly counted from 14 days after the LMP, approximately the time of semen entering the vagina, leading to fertilization and implantation and hence, viable pregnancy. The *nuṭfa amshāj* or fertilized embryo will have moral status and more stringent rulings related to its destruction, which depend on its potential of becoming a human person or child.

Moral Status of Nuṭfa Amshāj

We have ascertained that the *nuṭfa amshāj* or the zygote has a moral status. Considering that we know now that the zygote *nuṭfa amshāj* comes before implantation, (previously assumed to have been after implantation), Muslim jurists will need to decide whether the stage between fertilization and implantation is normatively equivalent to *al-‘azl* or somewhere in between where it holds a normative value more than *al-‘azl* and less than that after implantation. A reliable approach to this would be to assign it the legal normative state of *nuṭfa*, as we are aware that the Qurān terms it *nuṭfa amshāj* and classical Muslim jurists have provided some idea of their position on the normative value of the *nuṭfa* before 40 days, identifying it as one which undergoes *akhlāt*. However we also recognise that the process of *jam‘* will not be occurring until after implantation to form an *‘alaqa*. It is at the *‘alaqa* stage that the embryo is said to begin to develop *takhlīq* (creation of human features) and is assigned higher moral status. The zygote will not develop further, until it has implanted in the womb and is to receive maternal / placental blood. The moral status of the fertilized egg will therefore have a normative value of the equivalence to that between *al-‘azl* and implantation. It will be no more than the moral status after implantation as this is when the probability of survival and development of the embryo has significantly increased due to its stable nature in the safety of the lining of the womb and so it has a greater potential of being a child.

If that is the case, then those who claim that aborting the *nuṭfa* is permissible (most who assumed this to be before 40 days), would accept interventions on the *nuṭfa* that act before implantation, and it may need to qualify slightly more stringent conditions than *al-‘azl* to be accepted as permissible. Whereas those who don't permit aborting the *nuṭfa* even before 40 days demand more stringent competing factors to justify abortion or any intervention on the zygote.

Verdicts of Classical Schools of Jurisprudence

The Malīkī scholars are generally the most conservative. Dardīr (d.1786), asserts that, “It is not permitted to abort implanted semen in the womb even if it be before 40 days and when it is ensouled then it is prohibited (*ḥarām*). Al-Dūsūkī (d.1815) elaborates, “This is the more authentic Mālikī opinion ...it is as if it is not permissible to abort when the semen is established in the uterus even though the *nuṭfa* is in its first stages.”⁹¹ For them the *nuṭfa* holds high moral status and any intervention post-fertilization which terminates its growth and development would be a crime and tantamount to abortion.

⁹¹ قال الدردير في "الشرح الكبير" (٢٦٦/٢): لا يجوز إخراج المنى المتكون في الرحم ولو قبل الأربعين يوماً، وإذا نفخت فيه الروح حرم إجماعاً وقال الدسوقي في حاشيته: إنه المعتمد (الشرح الكبير ٢٦٦/٢). فالنص على أنه لا يجوز ولو قبل الأربعين يوماً كأنهم لا يجيزون إسقاط ما استقر بالرحم حتى ولو كان نطفة في طورها الأول.



The remaining *sunni* schools consider it permissible to abort *nufā*, with stricter conditions than *al-‘azl*. After *alaqa* or *muḍgha* stage, once the human form (*takhlīq*) becomes apparent, these conditions are graver. The Ḥanbalī and Shāfi‘ī jurists prohibit when human form is visible in its initial stages (after *‘alaqa* stage assumed by them to be approx. 80 days gestation), whereas the majority position of the Ḥanafīs is when the foetus is fashioned in complete form (assumed by them to be after *muḍgha* stage approx. 120 days gestation). The analogy of the egg of an ostrich applies when the *nufā* amshāj is in its resting place and is more secure like in implantation i.e. after implantation, and not before. This is when the Ḥanafī scholars apply more stringent rulings.

Ibn Qudāma (d.1223) Ḥanbalī scholar states, “If it is aborted whilst there is no human form then there is no problem with this, as we do not know it as a *janīn* (foetus)... If it is miscarried as a *muḍgha* and this is witnessed by reliable midwives and there is some form then a *ghurra*⁹² will be required. If it is witnessed that it is in its beginning form and there is only part human form, then there are two opinions. The sounder opinion is that there is no issue as it is not fashioned and it is therefore not obligatory, like an *‘alaqa*.⁹³ This is agreed by other Ḥanbalī scholars like al-Bahūtī⁹⁴, Ibn Qudāma,⁹⁵ Ibn al-‘Aqīl al-Ḥanbalī⁹⁶

According to al-Nawawī (d. 1277) Shāfi‘ī scholar, “a *ghurra* is obligatory when there is, due to the crime of abortion, a form of a human. Like eye, ear, hand and other parts, even if part suffices and the whole is not a condition... if the midwives were to state that there are no hidden features, rather it is a whole human even though there remains to be fashioned then there will not be an obligatory *ghurra* according to the school.⁹⁷ The Shāfi‘ī’s prohibit once human form becomes visible as the most authoritative position *mu‘tamad* according to Shāfi‘ī⁹⁸, Al-Ramlī⁹⁹¹⁰⁰, Al-Sharbinī¹⁰¹ Shibrāmīlī¹⁰²

⁹² The Ghurra is the penalty paid in its equivalence to the price of releasing a slave boy

⁹³ ابن قدامة، المغني، (بيروت: دار الكتب العلمية، دت)، ٨٠٢/٧؛ انظر أيضا: اليهودي، منصور بن يونس: كشاف القناع عن متن الإقناع، (بيروت: دار الفكر، ١٩٨٢) ٢٤٤/٦؛ ابن الجوزي، أحكام النساء، (القاهرة: مكتبة التراث الإسلامي)، ص ١٠٩ “وإن أسقطت ما ليس فيه صورة آدمي فلا شيء فيه؛ لأننا لا نعلم أنه جنين... وإن ألفت مضغة فشهد ثقات من القوالب أن فيه صورة خفية ففيه غرة، وإن شهدت أنه مبتدأ خلق آدمي لو بقي تصور، فيه وجهان، أحدهما: لا شيء فيه لأنه لم يتصور فلم يجب فيه كالعلقه

⁹⁴ الروض المربع ٦٠٣/١. ويباح للمرأة إلقاء النطفة قبل أربعين يوماً بدواء مباح العدة شرح العدة ٥٠١/١. وإن ألفت مضغة، فشهد ثقات من القوالب أن فيه صورة خفية، ففيه غرة، وإن شهدت أنه مبتدأ خلق آدمي لو بقي تصور، ففيه وجهان، أحدهما: لا شيء فيه؛ لأنه لم يتصور فلم يجب فيه كالعلقه، ولأن الأصل براءة الذمة، فلا تشغلها بالشك، والثاني: فيه غرة؛ لأنه مبتدأ خلق آدمي أشبه ما لو تصور

⁹⁵ المغني ٣١٨/٨. إن ما لم تحله الروح لا يبعث، فيؤخذ منه أنه لا يحرم إسقاطه، قال ابن مفلح معلقاً على هذا القول: “وله وجه

⁹⁶ الفروع ٣٦٩/١.

⁹⁷ النووي، روضة الطالبين وعمدة المفتين، ٣٧/٩ أن الغرة تجب إذا سقطت بالجنابة ما ظهر فيه صورة آدمي، كعين أو أذن أو يد ونحوها، ويكفي الظهور في طرف، ولا يشترط في كلها... وإن قلن (القوالب): ليس فيه صورة خفية لكنه أصل آدمي ولو بقي لتصور، لم تجب الغرة على المذهب

⁹⁸ حاشية الجبرمي على الإقناع ٤٠/٤، وانظر: نهاية المحتاج ٤١٦/٨. لا يشكل عليه العزل، لوضوح الفرق بينهما، بأن المنى حال نزوله لم يتهيأ للحياة بوجه، بخلافه بعد الاستقرار في الرحم وأخذه في مبادئ التخلق

⁹⁹ نهاية المحتاج إلى شرح المنهاج ١٦٦/٢٠ وفي الإحياء في مبحث العزل ما يدل على تحريمه، وهو الأوجه؛ لأنها بعد الاستقرار آيلة إلى التخلق المهيأ لنفخ الروح ¹⁰⁰ نهاية المحتاج إلى شرح المنهاج ٤٦٣/٢٩. قال المحب الطبري: اختلف أهل العلم في النطفة قبل تمام الأربعين على قولين: قيل لا يثبت لها حكم السقط والوآد، وقيل لها حرمة ولا يباح إفسادها ولا التسبب في إخراجها بعد الاستقرار في الرحم، بخلاف العزل فإنه قبل حصولها فيه... وقد أشار الغزالي إلى هذه المسألة في الإحياء، فقال بعد أن قرر أن العزل خلاف الأولى ما حصله: “وليس هذا كالأستجهاض والوآد؛ لأنه جنابة على موجود حاصل، فأول مراتب الوجود وقع النطفة في الرحم فيختلط بماء المرأة فيفسادها جنابة، فإن صارت علقة أو مضغة فالجنابة أفحش، فإن نفخت الروح واستقرت الخلقة زادت الجنابة تقاضاً، ثم قال: ويبعد الحكم عدم تحريمه. وقد يقال: أما حالة نفخ الروح فما بعده إلى الوضع فلا شك في التحريم، وأما قبله فلا يقال إنه خلاف الأولى، بل محتمل للتزويه والتحريم، ويقوى التحريم فيما قرب من زمن النفخ لأنه جريمة

¹⁰¹ مغني المحتاج ١٠٣/٤. وليس من الضرورة الصوم ولو في رمضان إذا خشيت منه الإجهاض، فإذا فعلته فأجهضت ضمنته، كما قاله الماوردي

¹⁰² نهاية المحتاج إلى شرح المنهاج ١٦٧/٢٠.



Abu Ishāq al-Marūzī Ḥanafī (d. 951) permits abortion of nuṭfa and 'alaqa and transmits this from Abu Ḥanīfa. After implantation there is the potential for *takhlīq*, which is a preparation for ensoulment, and this is not like *al- 'azl*.¹⁰³ The scholars differentiate between *al- 'azl* and implantation (*istiqrār*). The latter being the requisite for *takhlīq*. The former, *al- 'azl* is not a medium for life of the person like what is seen after implantation.

The more conservative Ḥanafī jurist 'Ali ibn Musā, considers this as being disliked (*karāhā*) because semen after having located in the womb, its outcome is life and it is then given the *hukm* ruling of life just like the egg of the prey in the *ḥaram* (the holy site Makka). Others also assert the same and to abort requires a *shar'ī* excuse or qualification (*al- 'uzr*).¹⁰⁴ Other Ḥanafī scholars consider it permissible *mubāh* before ensoulment 120 days- Ibn 'Ābidīn¹⁰⁵, Ḥaskafī¹⁰⁶, Fath al-Qadīr¹⁰⁷

Verdicts of contemporary scholars

Those who have considered it permissible to abort a nuṭfa would allow it for situations of hardship *ḍarrar*. It would not be permissible for parents who choose to abort for reasons related to their careers, education and reasons of hardship in bringing up their children when there is need for good parenting and when it is encouraged to space their children.¹⁰⁸

"اختلفوا في جواز التسبب في إلقاء النطفة بعد استقرارها في الرحم. فقال أبو إسحاق المروزي: يجوز إلقاء النطفة والعلق، ونقل ذلك عن أبي حنيفة، وفي الإحياء في مبحث العزل ما يدل على تحريمه، وهو الأوجه؛ لأنها بعد الاستقرار آيلة إلى التخلق المهيأ لنفخ الروح، ولا كذلك العزل^{١٠٣} تحفة المحتاج في شرح المنهاج- واختلفوا في جواز التسبب إلى إلقاء النطفة بعد استقرارها في الرحم فقال أبو إسحاق المروزي يجوز إلقاء النطفة والعلقة ونقل ذلك عن أبي حنيفة وفي الإحياء في مبحث العزل ما يدل على تحريمه، وهو الأوجه؛ لأنها بعد الاستقرار آيلة إلى التخلق المهيأ لنفخ الروح ولا كذلك العزل اختلفوا في التسبب لإسقاط ما لم يصل لحد نفخ الروح فيه وهو مائة وعشرون يوماً والذي يتجه وفاقا لابن العماد وغيره الحرمة ولا يشكل عليه جواز العزل لوضوح الفرق بينهما بأن المنى حال نزوله محض جماد لم يتهيأ للحياة بوجه بخلافه بعد استقراره في الرحم وأخذة في مبادئ التخلق ويعرف ذلك بالأمارات، وفي حديث مسلم { أنه يكون بعد اثنتين وأربعين ليلة } أي ابتداءه كما مر في الرجعة ويحرم استعمال ما يقطع الحبل من أصله كما صرح به كثيرون وهو ظاهر (ولو ظهر في عدة أقرء أو أشهر) أو بعدها (حمل للزوج اعتدت بوضعه)؛ لأنه أقوى بدلالته على البراءة قطعاً^{١٠٤} وينقل عن الفقيه علي بن موسى القول بكرهه ذلك لأن الماء بعدما دفع في الرحم ماله الحياة، فيكون له حكم الحياة، ومثله في الظهريّة، وعلق ابن وهبان على ذلك بأن إباحة الإسقاط محمولة على حالة العذر أو أنها لا تأثم إنم القتل (نقلًا عن الأستاذ محمد سلام مذكور رحمه الله، وكذلك عن حاشية ابن عابدين رد المحتار ٥٩١/٦؛ وشرح فتح القدير لابن الهمام ٥٣٩/٢؛ البغدادي مجمع الضمانات ص ٥٠؛ كذلك مجلة البحوث الفقهية المعاصرة العدد ١٥ السنة ٤ - أكتوبر ونوفمبر وديسمبر ١٩٩٢ تحت مسائل فقهية ص ٢٦١؛ وانظر كذلك د. محمد نعيم ياسين أحكام الإجهاض بحث منشور في مجلة الشريعة والدراسات الإسلامية بجامعة الكويت السنة ٦ عدد ١٣ إبريل ١٩٨٩). رد المحتار على الدر المختار - وكان الفقيه علي بن موسى يقول: إنه بكره، فإن الماء بعدما وقع في الرحم ماله الحياة فيكون له حكم الحياة كما في بيضة صيد الحرم^{١٠٥} قال ابن عابدين: "بياح إسقاط الولد قبل أربعة أشهر (20) الدر المختار ١٩٢/٣. حاشية رد المحتار ١٩٢/٣.^{١٠٦} بياح إسقاط الولد قبل أربعة أشهر، ولو بلا إذن الزوج هامش حاشية ابن عابدين ٤١١/٢.^{١٠٧} فتح القدير ٤٩٥/٢، وانظر: حاشية رد المحتار ١/٣. هل بياح الإسقاط بعد الحمل؟ نعم بياح ما لم يتخلق منه شيء، ولن يكون ذلك إلا بعد مائة وعشرين يوماً. وهذا يقتضى أنهم أرادوا بالتخلق نفخ الروح، وإلا فهو غلط؛ لأن التخلق يتحقق بالمشاهدة قبل هذه المدة^{١٠٨} ومن الفقهاء من قيّد الجواز بالعذر، وينظر: "الموسوعة الفقهية الكويتية" (٥٧/٢). وجاء في قرار مجلس هيئة كبار العلماء:
1- لا يجوز إسقاط الحمل في مختلف مراحلها إلا لمبرر شرعي وفي حدود ضيقة جداً.
2- إذا كان الحمل في الطور الأول، وهي مدة الأربعين يوماً وكان في إسقاطه مصلحة شرعية أو دفع ضرر جاز إسقاطه. أما إسقاطه في هذه المدة خشية المشقة في تربية الأولاد، أو خوفاً من العجز عن تكاليف معيشتهم وتعليمهم أو من أجل مستقبلهم، أو اكتفاء بما لدى الزوجين من الأولاد فغير جائز" انتهى نقلًا من الفتاوى الجامعة (١٠٥٥/٣).
وجاء في "فتاوى اللجنة الدائمة" (٤٥٠/٢١): "الأصل في حمل المرأة أنه لا يجوز إسقاطه في جميع مراحلها إلا لمبرر شرعي، فإن كان الحمل لا يزال نطفة وهو ما له أربعون يوماً فأقل، وكان في إسقاطه مصلحة شرعية أو دفع ضرر يتوقع حصوله على الأم - جاز إسقاطه في هذه الحالة، ولا يدخل في ذلك الخشية من المشقة في القيام بتربية الأولاد أو عدم القدرة على تكاليفهم أو تربيتهم أو الاكتفاء بعدد معين من الأولاد ونحو ذلك من المبررات الغير شرعية.
أما إن زاد الحمل عن أربعين يوماً حرم إسقاطه، لأنه بعد الأربعين يوماً يكون علقه وهو بداية خلق الإنسان، فلا يجوز إسقاطه بعد بلوغه هذه المرحلة حتى تقر لجنة طبية موثوقة أن في استمرار الحمل خطراً على حياة أمه، وأنه يخشى عليها من الهلاك فيما لو استمر الحمل" انتهى.



Contemporary Muslim scholars hold diverse opinions on abortion before 40 days seen as the *nuṭfa* stage – According to the majority, termination of the *nuṭfa* would be permissible in cases of *sharīʿ* need *hājah*. If it is beyond the *nuṭfa* stage, i.e. ‘*alaqa* stage and beyond, then abortion is permissible only with more stringent conditions ranging from *hājah* to *sharīʿ* necessity *ḍarurah*.

Few moderate contemporary Muslim scholars permit termination of the zygote even when undertaking necessary travel where pregnancy and giving birth would prove a hindrance, such as for education or for work that requires a couple to move or when one is financially strained due to children.¹⁰⁹ They extend the rulings of *al-ʿazl* to the *nuṭfa* stage.

Many of the Indo-Pak scholars take a generally moderate position related to *hāja* and allow abortion at this stage when conception has occurred out of wedlock (*zinā*) and rape. They also allow in serious consequences related to the general physical and mental health of the mother, when she is not able to bear pregnancy, when there is clear harm or danger to her health or her current children (i.e. reduced breast milk production), when the foetus is diagnosed by medical professionals with an incurable and serious disorder, a dangerous hereditary disease or physical abnormality/deformity that will prove to be an extreme burden on the child and its family. The permission to abort the foetus is however disallowed in circumstances of economic difficulty¹¹⁰ or with the decision not to have children generally.¹¹¹

There are stringent views expressed by a few contemporary scholars mainly *Mālikī* scholars that abortion even in *nuṭfa* stage before 40 days is prohibited with rare and serious exceptions like when the life of the mother is at risk.¹¹² In other words when there is a stringent state of necessity *ḍarurah*.

In summary, majority of Muslim scholars allow termination of the *nuṭfa* when there is hardship that qualifies the *sharīʿ* notion of need *hāja*. There are a few on either end, some of whom would allow termination with conditions no different to *al-ʿazl* and others who would prohibit and only allow in dire situation which qualifies the *sharīʿ* notion of necessity *ḍarūra*.

Conclusion

It has been concluded that most classical Muslim jurists and scholars saw the beginning of pregnancy (*al-ḥaml*) from the time of their equivalence to implantation (i.e. when the *nuṭfa amshāj* had firmly established itself in the womb). But this was because they assumed *akhlāt* to have occurred after implantation. *Akhlāt* is the process when higher moral significance is associated to the human organism

¹⁰⁹ Shaykh Muṣṭafā Zarqā (d. 1999), Muṣṭafā Zarqā, *Fatāwā* (Damascus: Dār al-Qalam, 2010), 285

¹¹⁰ This is because it has been mentioned explicitly in the Qurān, “don’t take life of your children for fear of poverty”

¹¹¹ Muftī Maḥmūd Ḥasan Gangohī (d. 1996), *Fatāwā Maḥmūdiyya* (Karachi: Idārat al-Fārūq, 2009), 18:321. Muftī Raḍāʿ al-Ḥaqq, Sayyid Muḥammad Salmān Maṣṣūpūrī, *Kitāb al-Nawāzil* (Muradabad: al-Markaz al-ʿIlmī lil-Nashr waʿl-Taḥqīq, 2016), 16:248-81, Muftī Raḍāʿ al-Ḥaqq, *Fatāwā Dār al-ʿUlūm Zakariyya* (Karachi: Zam Zam Publishers, 2015), 6:756., Zubayr Aḥmad Qāsmī, “*Khāndānī Maṣṣūbabandī*,” in *Jadīd Fiqhī Mabāḥith* (Karachi: Idārat al-Qurʿān, 2009), 1:332, Khālid Sayf Allāh Raḥmānī, *Kitāb al-Fatāwā* (Karachi: Zam Zam Publishers, 2008), 6:218-226

¹¹² Yūsuf al-Qaraḍāwī, *Fatāwā al-Muʿaṣara* (Cairo: Dār al-Qalam, 2005), 2:541-50; ʿAbd Allāh ibn Bayya, *Ṣināʿ at al-Fatwā wa-Fiqh al-Aqaliyyāt* (UAE: Masār lil-Tibāʿa waʿl-Nashr, 2018), 577-78; Wahba al-Zuhaylī, *al-Fiqh al-Islāmī wa-Adillatuhu* (Damascus: Dār al-Fikr, 1985), 3:557.



and when the embryo now has its own potential to become a human. They saw that the process of *akhlāṭ* began once the *nutfa amshāj* had implanted in the womb and not before, and so attributed this stage from implantation.

It is now known that fertilization or *akhlāṭ* occurs before implantation and the gathering of maternal blood in the lacunae and then the placenta *al-jam'* occurs after implantation. Implantation *istiqrār* was considered an important event for a viable pregnancy to succeed. The establishment of the embryo in the womb, in addition to the embryo having developed enough to accept life, are two important factors which jurists accept as viable pregnancy which occur at implantation. Any action leading to termination after this point is seen as a greater crime. The Qurān refers to important stages of embryological development that have increasing moral status as the embryo develops. The *nutfa* is that stage, making reference to the physical property of drop of liquid which begins from the ejaculate, until early process after implantation when the embryo is fully established in the womb with its placenta. The *alaqa* stage follows and refers to that which has the appearance of congealed clot and clings, and it is the critical stage which represents the stage of viable pregnancy when the embryo has a developed source of nutrition from the placental blood.

Muslims should set the standard dating of pregnancy for rulings of shariah from the *nutfa* stage, which should be calculated from fertilization *nutfa amshaj*. This is to be calculated from 14 days after the beginning of the menstrual period. However viable pregnancy is from implantation and is standardly a week after fertilization. That is not to say that what precedes implantation, in the *nutfa* stage, does not hold intrinsic value, rather lesser competing conditions are required to justify terminating the process of development at this stage, but more than *al-'azl*. It is best to be cautious and hence a good position would be to judge the moral legal crime of termination in its equivalence to the *nutfa* stage, as this is how the Qurān terms it, which would require more stringent conditions for all sunni schools, especially for the Malikīs who prohibit.

This would suggest that intrauterine device (IUD) and emergency contraception would be an acceptable means of contraception within conditions requiring more hardship than that which is required at *al-'azl*. However, there is growing evidence that even if we were to accept abortion post-fertilization, intrauterine devices and emergency pills are shown not to lead to harm of the zygote once fertilized and would therefore be considered safe and permissible to use.¹¹³ The cases of reproductive technologies like IVF and research on embryos are permissible only if there is shar'ī need *hāja* and its benefits can be clearly demonstrated and there are no other harms considered as impermissible by the shar'ī ah.

¹¹³ Ortiz, ME et al, Post-coital administration of levonorgestrel does not interfere with post-fertilization events in the new-world monkey *Cebus paella*, Hum Reprod. 2004 Jun;19(6):1352-6; K.Gemzell-Danielsson, L.Marions, Mechanisms of action of mifepristone and levonorgestrel when used for emergency contraception, Human Reproduction Update, Vol.10, No.4 pp. 341–348, 2004; Duranda M et al., On the mechanisms of action of short-term levonorgestrel administration in emergency contraception, Contraception 64 (2001) 227–234



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Allah swt Knows Best

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