

Revisiting the Shari'ah Ruling on Induced Abortion: An Assessment of the Awareness of Muslim Woman

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Abstract: This study reviews the Shari'ah ruling on induced abortion via-a-vis the awareness of the Muslim women of the rules. All the four notable schools of Islamic law unanimously agree that induced abortion is ab initio forbidden in Shari'ah except in the situation of a threat to maternal health. Nevertheless, there appears to be a minor divergence of opinions on the stages of the pregnancy when abortion is impermissible. There is also unanimous opinion that induced abortion attracts the penalty of expiation by the emancipation of a female or male slave, or five camels, or the payment of the value and cost to the parent. The study adopts a combined method of Shari'ah legal approach and empirical approach which includes the use of survey and questionnaire for the collection of data and the use of frequency for the analysis. The finding shows that although, the majority of Muslims women are aware that Islam discourages induced abortion, they lack awareness of the Shari'ah rule on its penalty.

Key words: Abortion • Shari'ah-Rules • Awareness of Muslim Woman

INTRODUCTION

The preservation of life for the continuation of human existence through procreation is one of the five objectives of the Shari'ah law. Therefore, since abortion is antithetical to this objective it is prohibited by the Shari'ah law. Abortion is 'the removal of an embryo or fetus from the uterus in order to end a pregnancy.' [1] Medically, it is 'the termination of a pregnancy after, accompanied by, resulting in, or closely followed by the death of the embryo or fetus [2]. Thus, abortion is the killing of a human that is under the process of complete formation, hence, the unanimous ruling of the jurists and scholars of the notable schools of Shariah law on its prohibition. Therefore, the discussion in this study centred on the Shariah ruling on induced abortion and the rule on the expiration of the transgression. A survey is also conducted to evaluate the level of the awareness of the Muslim women on the Shari'ah rule on abortion.

The study is probably a novelty in providing the empirical evidence of the Muslim women's awareness of the Shari'ah ruling on induced abortion. The finding shows that the awareness of the majority of Muslim

women of the Shari'ah ruling on induced abortion is marginal and peripheral. The deeper understanding of the rule is opaque to most of them. However, it is interesting that Muslim women are willing to participate in the awareness campaign on the ruling amongst the Muslim women in their communities. Thus, the study suggests that an increase level of awareness may significantly reduce the number of Muslim women involving in induced abortion. The study commences with the review of Shari'ah rulings and concluded with the empirical findings.

Shari'ah Ruling on Induced Abortion: The prevention of pregnancy for a legitimate reason is generally allowed by Shari'ah law. However, when pregnancy has occurred, its termination is forbidden. The prohibition of induced abortion by Shari'ah law is premised on the concept of the sanctity of human life. Shari'ah law regards human life as a sacred entity being a breath from Almighty Allah to animate the material body. According to the holy Qur'an the creation of humans involves breathing the soul into the material body by the Almighty Creator (SWT) Who says '*When I fashioned him (in due proportion) and*

breathed into him of My spirit, fall ye down in obeisance on to him [3]. Thus, since life and soul are defined as ‘*the immaterial essence of a human that is conjoined with the material body during life and separate at death* [4]. They appear to be synonymous. This explains the position of the holy Qur’an [5] on the sacredness of the humans involves right from the early stages of its creation in the mother’s womb, his worldly life till his natural death.

Thus, this immaterial part of a human existence has the potential for growing and living in this world before its natural transition into the intermediary spiritual life between the mortal worldly life and the eternal life, through death. That is the eternal life that commences with the *Day of Judgment* when both the material body and spiritual soul will reunite to enjoy eternal bliss or eternal torment as the reward of their worldly deeds [6]. The perception of the Shari’ah of human life is that, it is a sacred being which termination is forbidden regardless of whether is at the stage of fetal formation in the womb of the mother or it is a grown up personality, till its natural demise. Therefore, the termination of human life in any stages of its growth is a crime and a major sin which requires expiation according to the ruling of Shari’ah law. However, although the scholars of the Shari’ah law generally agree that abortion is impermissible, nevertheless, there is disagreement among them on the stage of the pregnancy when an induced abortion becomes unlawful.

Juristic Views on the Stages of Pregnancy when Abortion is Prohibited: The answer to the question of the stages of the pregnancy when induced abortion is impermissible’ divides the Shari’ah jurist and scholars into three groups are as follows:

1st Group: The first group holds the opinion that abortion is prohibited at all stages of the pregnancy. Therefore, when a woman is conceived tampering with the fetus is not impermissible. This is the opinion of the majority of jurists of the *Malikiyyah School* of law [7]. It is also the opinion of some of the jurists of *al-Ahnafiyyah School* of law, *al-Gazali* [8] and some jurists of *Shafi’iyyah school* of law. [9] Other jurists that agree with this opinion are those of the *Dhahiriyyah school* of law and *Shaikh Islam Ibn Taimiyyah* who is of the *Hanabillah school* of law [10].

The position of this group is buttressed with the Hadith of *Abu Hurairah* (R.A.) who narrated ‘*that the holy Prophet (S.A.W.) gave judgment in the case of the woman of Bni Lahyan who fought with a pregnant woman and violently caused the miscarriage of the*

pregnancy by throwing a stone that hit the abdomen of the pregnant. The judgment of the prophet was that the violent woman should pay Ddiyah (ransom/compensation) for the causing of miscarriage and termination of the al-Janin ‘fetus’ by the emancipation of a male of female slave’ [11]. They argued that the Hadith does not refer to any stages of the pregnancy. Therefore, the rule that is established by the Hadith is applicable to any illegitimate induced abortion. They also added that, it is a known general rule that if a pregnant woman commits a crime which the reward is a death penalty, such judgement will not be executed until she delivers the baby. The rule of the delay of the execution of such penalty is applicable to all pregnancies regardless of the stages of its development. The reason for such delay is to preserve the right of the baby to life. According to *Ibn Qudamah* ‘it is not permissible to administer *al-Hudud* (capital punishment) on a pregnant woman until she delivers her baby. More so, the rule is both legitimate and illegitimate pregnancy [12].

They concluded that rule for the delay of the execution of capital punishment on a pregnant woman until she delivers is unanimously agreed upon by all the jurists and scholars of Islamic law [13]. Thus, it then followed that if *al-Hudud* punishment must be delayed to respect, preserve and protect the life of a fetus at any stage of the pregnancy, abortion should generally be considered as the violation and encroachment on the right to the fetus to life and it is unlawful.

2nd Group: Conversely, the second group legalized abortion within the first forty days of pregnancy and prohibit any abortion after such period. They argued that the first forty days are when the pregnancy is at the stage of *nutfah* (semen) [14]. This is the opinion of the majority of the scholars of *al-Hanabillah school* of law and *Lahami* who is a jurist of *al-Malikiyyah school* of law. They maintain that when a pregnancy becomes ‘*alaqah* (a clot of blood) it is prohibited to be tempered with and that, that is after the first forty days of the pregnancy. Their argument is supported by the principle of *al-Ibahah al-al-Asliyah* (that is, presumption of the permissibility of all actions except if the contrary is explicitly promulgated in the Qur’an or Sunnah). They postulate that since there is no evidence that the aborting of semen is prohibited it should be understood as permissible based on this principle. They elaborate that the fetus remains in the womb in the form of *nutfah* ‘semen’ for a period of forty days and only transforms into *alaqah* (a clot of blood) in the second forty days [15].

They also buttress their argument with the *Hadith* of *Jabir bin Abdullah* (R.A.) that permits birth control by the thwarting of the male semen from escaping into the female ovary. *Jabir* (R.A.) narrated as quoted that ‘we (the companions of the prophet) practice *‘azl* (that is the withdrawal of male organ from that of the female partner during cohabitation as a measure for birth control) at the period when the holy *Qur’an* was still being revealed’ [16]. They, therefore, concluded that if ‘*azl* (withdrawal) which prevention of semen from uniting with the ovum in the female partner’s womb is permissible, the aborting of the same semen from fertilization should be permissible. In another word, *azl* was practiced during the era of the holy Prophet (S.A.W.) and while the Holy *Qur’an* was being revealed and it was not prohibited. Thus, since the purpose of *azl* ‘withdrawal’ is the prevention of the *nutfah* (semen) from developing into pregnancy, the prevention of the same semen through the method of abortion should be permissible.

3rd Group: The third group who are the majority of the scholars of *al-Hanafiyyah school of law*, [17] *Shafi’iyyah school of law* and *Ibn ‘Aqeel* who is a jurist of *al-Hanabilah school of law* argue that abortion is permissible at all the stages of the pregnancy that precede the period of ensoulment. The ensoulment period is any time after the pregnancy is one hundred and twenty days old. They argue that a fetus is not considered to be a human before the period of one hundred and twenty days [18] and it is a mere spermatozoa before such period and not a human. They assert that human life only begins by one hundred and twenty days of the pregnancy. That is the period when life is breathed into the material fetus. Therefore, it should be respected as a human from such period upward. This group buttresses their argument with the verse of the holy *Qur’an* that says;

We did create man from a quintessence (of clay); then We positioned him as (a drop of) sperm in a place for a relaxed and firmly fixed spot; then We made the sperm into a clot of congealed blood; then of that clot We made a (foetus) lump; then we made out of that lump bones and clothed the bones with flesh; *then we developed out of it another creature*. So blessed be Allah, the best to create! [19].

According to *al-Tahbari*, some scholars are of the opinion that the word of Allah (SWT) ‘*then we developed out of it another creature*’, suggests breathing of life into the foetus and that it is only then that it becomes human,

which is the period of one hundred and twenty days and above. Therefore, before life is breathed into it, it was nothing but a lifeless posture of a human [20].

In summary, it can be inferred from the discussion that Shari’ah jurists and scholars hold three dissimilar views on the question of ‘of the stages of pregnancy when abortion is unlawful. The first view is that abortion is prohibited in all stages of the pregnancy. The second opinion is that abortion is allowed within the first forty days of pregnancy and that it is prohibited after such period. The third opinion is that which argues that abortion is lawful before the period of ensoulment which is before the pregnancy is one hundred and twenty days old. Having said this, the Shari’ah scholars and jurists agree with the rule of the expiation of the sin and crimes of induced abortion for whosoever commit it.

The Expiation for Induced Abortion (Diyah): There is an undivided opinion among the jurists and scholars of Shari’ah law that the aborting of a pregnancy is impermissible after the fetus has been completely formed and has been ensouled. The disparity is only in their opinions on the stages of the pregnancy. Abortion is considered a sin and a violation human right to life. The Shari’ah jurists further unanimously agreed that, the expiation for the crime and sin of abortion is the payment of *al-Diyah* ‘blood money’ of the emancipation of a female or male slave or the diverting of the cost and the value of such emancipation to the parents. The rule is derived from the *Hadith* of *Abu Huraira* (RA) which states that;

Two women fought during the time of the Holy Prophet (S.A.W.) and one of the women threw a stone at the other woman. The stone struck the woman’s abdomen and killed the foetus in her womb. The case was brought to the holy Prophet (S.A.W.) and he gave judgment that the *al-Diyah* of a fetus is the emancipation of male or female slave [21].

The position of the Shari’ah jurists, including *Ibn Hazmi* on the rules that is provided by the *Hadith* is that *al-Diyah* must be paid on a fetus by whoever caused its premature departure as the expiation for the sin and crime [22]. However, although abortion is generally prohibited by all the schools of Shariah law, nevertheless, there is a general exemption to the rule of its prohibition. That is, if the pregnancy poses danger to the life of the mother. Abortion in such case permissible at any stages of the pregnancy with the requirement of expiation, based on the rule of necessity ‘*al-Darurah*’.

Exemption to the Shari'ah Rule of the Prohibition of

Abortion: As stated in the above, although abortion is disallowed by the Shari'ah law, nevertheless, there are some exceptional situations when it is permissible even after the baby is completely formed. One of such situation is when it is medically confirmed that the pregnancy will put the life of the mother in danger or that it may result in her death. As a result, abortion is then permissible based on the Shari'ah principle of '*al-akhdh bil-a akhfu dararain*' that is '*overriding of lesser of two evils*'. Scholars further argue that rule applicable to such situation, due to the fact that, the life of the mother is already well established with duties and obligation and that she is the origin of the fetus. Consequently, preference is given to the life of the mother over that of the fetus. Unlike the mother, the fetus has not acquired a personality and it has no responsibility or obligation to fulfil [23].

Other exceptions to the general rule, that is, the situation in which abortion may be lawful is in the case a pregnancy that emanates from rape, incest or selective abortion due abnormality in the fetus. Elective abortion in this regard, 'is the interruption of a pregnancy before viability at the mother's request of medically confirmed fetal anomalies. In the humble opinion of the researcher, this type of abortion should be lawful, since its outcome will constitute an ignominy and hardship to the mother and unborn child. This conclusion is based on the Shari'ah maxim '*al-darar yuzāl la mahal*' which means '*evil and detriment should be terminated*'. However, selective abortion in this regard does not include the criminal act of sex-selective-abortion [24]. Having reviewed the Shria'ah ruling on induced abortion, the research will turn to the empirical study to evaluate the awareness of the Muslim women to the rule.

Data and Method: In line with the aim of this study, survey was conducted to collect data about the opinions of the Muslims on the awareness of the Shari'ah ruling on induced abortion are collected using a closed end questionnaire. The closed end questionnaire is of two sections. Section A is about demographic data of the respondent which comprises gender, age, country and religion. Section B comprises 5 questions that focus on the awareness of the Shari'ah ruling on induced abortion. Data were collected through email and this enables participants from 6 different countries which falls under Asian and African continents to participate. Out of 6 countries that participated, 4 are from Asia, which are Malaysia, Bangladesh, Indonesia and Iran while the remaining two countries in Africa. That is, Nigeria and

Cameroon. A total of 40 out of 50 participants return their response without missing data. The majority of participants are from Malaysia and Nigeria with a total of 32 participants. Although, the evaluation of the awareness is centred on Muslim women, but 4 men participants are involved. The male participants represent the expected closest source of the awareness for the Muslim women on induced abortion. Frequency analysis is used in the study used to provide the empirical evidence.

Empirical Result: The result of the survey is provided with 9 tables. The first four tables describe the demography of the participants and the rest five tables provide an opinion of participants regarding each question.

From the Table 1, 40 participants participated in the survey on awareness of induced abortion, 36 of the participants are female while 4 participants were male. Opinion of men participants is based on the assumptions that men can discourage women from involving in abortion if they are aware of the Shari'ah rulings behind it. Since, the focus is not on men, therefore the sample of males, that participated in the survey is minor.

Table 2 provides details on the age range of the participants on Shari'ah ruling on induced abortion. Three different age ranges are used in the survey as shown the Table 2. It is observed that the majority of the participants, which are in the age that range from the age range between 31 and 46 are 32 participants. This is followed by the age range between 18 and 30 with 6 participants, the least age range participated is between 47 and above with 2 participants. This indicates that the majority of the participants are current and future Muslim mother in the Muslim communities, therefore capturing their opinion on the Shari'ah ruling at this moment may reflect a better future for Muslim communities.

Table 3, provides a statistical number of participants in the survey with their respective countries. From the Table 3, total numbers of participants from Asia are 23 while total numbers of participants from Africa are 17. Despite proportional differences in the number participants from Asian and African, number of participants from Malaysia and Nigeria are 16 each following by Indonesia with total of participants 5. The lowest number of participants is accounted from Bangladesh, Iran and Cameroon. This indicates that the majority of participants on the awareness of the Shari'ah ruling on induced abortion in this study are from Malaysia and Nigeria.

Table 1: Participant's Gender

| Gender | Frequency |
|--------|-----------|
| Female | 34 |
| Male | 6 |
| Total | 40 |



Table 2: Participant's age

| Q2: | Frequency |
|---------------------------|-----------|
| I am between 18 and 30 | 6 |
| I am between 31 and 46 | 32 |
| I am between 47 and above | 2 |
| Total | 40 |

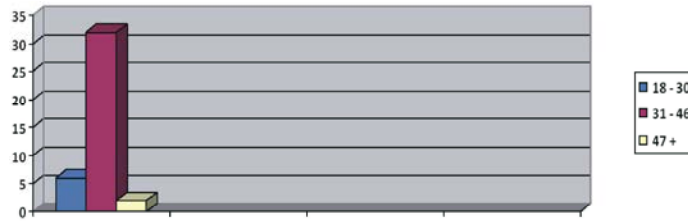


Table 3: Country of origin of participants

| Country | Frequency |
|-------------|-----------|
| Nigerian | 16 |
| Malaysian | 16 |
| Indonesian | 5 |
| Bangladesh | 1 |
| Iranian | 1 |
| Cameroonian | 1 |
| Total | 40 |

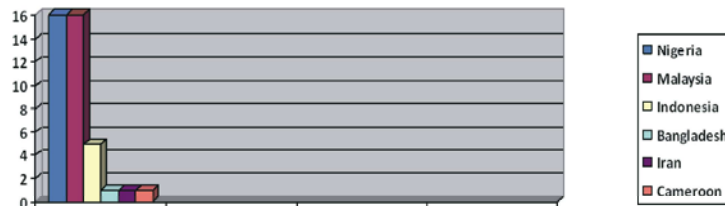
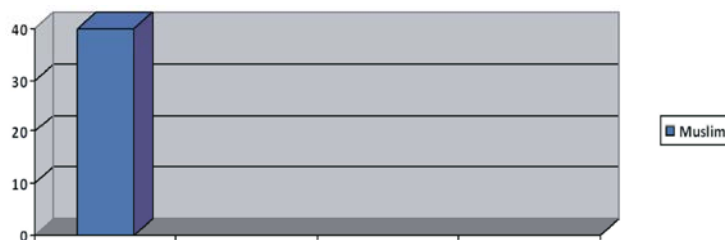


Table 4: Participant's religion

| Religion | Frequency |
|----------|-----------|
| Muslim | 40 |



As the survey focus on Muslim women, Table 4 shows that all participants are Muslims. But, this study accounted for small numbers of male participants, which is assumed to represent the closest source of awareness for women on the issue relating to the Shari’ah ruling awareness. Hence, the proportion of male to female is 4 to 36 as shown in Table 1.

After demographic findings of the participants, the rest of the findings focused on the issue relating to the awareness of the participants on the induced abortion. Each table provides participants’ opinion on each question (Q).

From the report in Table 5, it is observed that the majority of the Muslims have awareness about Shari’ah ruling on induced abortion. Only 2 participants are not aware while 3 participants are not sure. The proportion of being aware of the sum of neither not aware nor not sure is 35 to 5. This indicates that Muslims are aware of the fact that Islam does not allow Muslims to involve in induced abortion.

The report from the Table 6 shows that 14 out of 40 participants believed that women in their community are aware of the Shari’ah ruling on induced abortion. However, 15 out of 40 participants assumed that women in their community are not aware of the Shari’ah ruling on induced abortion while 11 participants are not even sure. With the large number of participants holding the opinion that Muslim women in their community are not aware of the Shari’ah ruling on induced abortion indicates more awareness is required to enlighten Muslim women. This indicates that the proportion of the awareness of the alternatives is 14 to 26 which indicates a low level of awareness about the Shari’ah ruling. Thus, more actions

might be required by the Shari’ah governing bodies to increase awareness on Shari’ah ruling on induced abortion.

The Table 7 further clarifies that actual Shari’ah ruling on induced abortion is somehow not fully understood by Muslim women. Only 11 out of 40 respondents have a deeper understanding that expiration for an induced abortion is the presentation of five camels or the emancipation of a male or female slave or the given of the equal monetary value to the parent. But, the remaining 29 participants are neither not aware nor not sure. This indicates that the majority of Muslims women is aware that Islam does not encourage induced abortion without an understanding of the penalty being on it. At this point, there is a mismatch between being aware of literally level and understanding of penalty on the act it. With this, much has to be done to make Muslim women be aware of the Shari’ah ruling on induced abortion.

Having discovered the mismatch in the awareness and clear understanding of the ruling, this study further explore if the Muslim women are willing to involve in campaign on the creation of awareness and the educating of their fellow Muslim women on the Shari’ah ruling on induced Shari’ah. The detail is provided in Table 8.

Table 8 shows that the majority of the participants are willing to involve in the awareness campaign for the Shari’ah ruling on induced abortion. The sum of 29 participants is holding an opening to involve in the campaign. From the readiness to campaign, it can be inferred that lack of awareness has led Muslim women to involve in induced abortion. Therefore, with campaign and better understanding of the Shari’ah ruling on induced abortion, a number of Muslim women involving in induced abortion may reduce drastically.

Table 5: Q1: Are you aware of the Shari’ah ruling on induced abortion?

| Q1 responses | Frequency |
|--------------------|-----------|
| Yes, I am aware | 35 |
| No, I am not aware | 2 |
| I am not sure | 3 |
| Total | 40 |

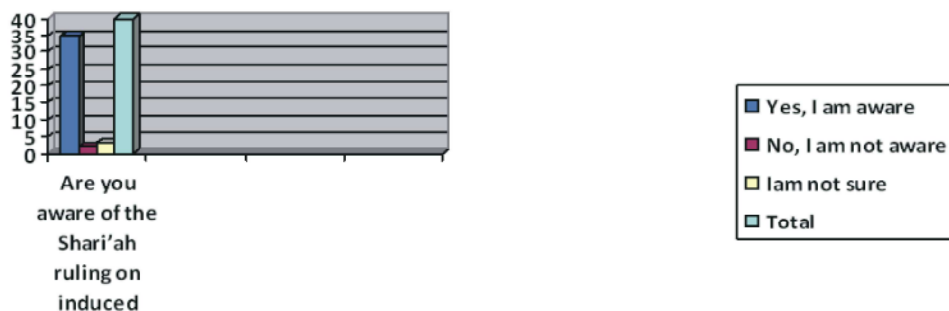


Table 6: Q2: Do you think that majority of Muslim women in your community are aware of the Shari'ah ruling on induced abortion?

| Q2 responses | Frequency |
|-------------------------------------|-----------|
| Yes, I think that they are aware | 14 |
| No, I think that they are not aware | 15 |
| I am not sure | 11 |
| Total | 40 |



Table 7: Q3: Are you aware that the expiation for an induced abortion is the presentation of five camels to the parents or the emancipation of a male or a female slave?

| Q3 responses | Frequency |
|--------------------|-----------|
| Yes, I am aware | 11 |
| No, I am not aware | 21 |
| I am not sure | 8 |
| Total | 40 |



Table 8: How likely the women will participate in the awareness campaign on Shar'iah ruling on induced abortion?

| Q4 responses | Frequency |
|--------------|-----------|
| Very likely | 10 |
| Likely | 19 |
| Unlikely | 11 |
| Total | 40 |

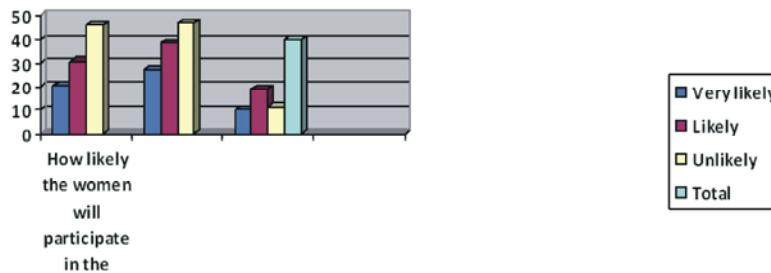


Table 9: How likely will you be contributing to an awareness campaign on the Shari'ah rules on induced abortion among the Muslim women in your community?

| Q5 responses | Frequency |
|--------------|-----------|
| Very likely | 20 |
| Likely | 15 |
| Unlikely | 5 |
| Total | 40 |



Table 9 shows that the sum of 35 participants is willing to contribute to educating of their fellow Muslim women in the community on the Shari’ah ruling on induced abortion. There is matching in the number of participants that are aware and those are willing to embark on a campaign on Shari’ah ruling on induced abortion. This implies that if the right steps are taken in making Muslim women be aware of the Shari’ah ruling on induced abortion, the Muslim community will be willing to accept the campaign and even provide priceless services for the increase awareness. Consequently, that will reduce the involvement of Muslim women in induced abortion.

DISCUSSION AND CONCLUSION

This study shows the opinions of Muslim women on their awareness of the Shari’ah ruling on induced induction. This study covers 6 different countries with a diverse age group. The result of the study shows the level of marginal and peripheral awareness without full understanding of the actual Shari’ah ruling on induced abortion among participants, hence, the call for an increase in awareness among the Muslim women. From closer look, this study provides an interesting report that despite that the majority of Muslims, most especially women, are aware that Islam does not encourage induced abortion, nevertheless, the main Shari’ah ruling behind induced abortion is unknown to them.

Therefore, if there is an increase in creating awareness among the Muslim about the penalty behind induced abortion from Shari’ah perspective, there is tendency that a number of Muslim women that are involved in inducing abortion will significantly reduce. Thus, since the participations are from different countries, global awareness on Shari’ah ruling on induced abortion may be required. This study suggests that narrow look at Malaysia and Nigeria is an evidence that steps needed to be taken on increasing the awareness on the ruling. To increase in awareness of the Shari’ah ruling on induced abortion, there is tendency that less number of women involving relatively to the time of absence of better awareness. This study also provides more in depth

empirical evidence in figuring out the gender participations but due to space constraint the result is not provided here, the result is available upon request.

CONCLUSION

To sum up, the foregoing shows that although there is a minor divergence of opinions among the Shari’ah jurists and scholars regarding the stage of pregnancy when abortion is impermissible, nevertheless, there is a general agreement among them that abortion is forbidden except in some exceptional cases. They also concur that abortion is prohibited due to the fact that it is the act of causing of death to a human’s soul which is forbidden by the holy Qur’an, that *‘anybody that slays a human (except if it is in punishment) for murder or for spreading corruption on the earth, which is a responsibility of the State and not an individual duty) it shall be as if he had slain the whole of mankind; whereas, if anyone saves a life, it shall be as if he had saved the lives of the whole of mankind [25].* In a nutshell, it is evidently clear from this Qur’anic verse and the study that every human being has the right to be born, the right to exist and the right to live as long as Allah (S.W.T.) destined. Thus, no one should be deprived of such right except for a just reason, [26] regardless of whether he is a completely formed, borne and grown human being or a fetus. The empirical study calls for the creation of more awareness on the Shari’ah ruling on induced abortion amongst the Muslim women.

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