

Human Shape: A New Proposed Criterion for Fetal Personhood



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Abstract

This perspective aims at introduction of a new criterion for fetal personhood based on Shii'a thought. Although there is a known idea in Islamic Shii'a jurisprudence which identifies end of fourth month of pregnancy as the moment of acquiring personhood, this paper suggests end of third month as the point at which the fetus has to be considered human person.

Perspective

"Fetal status" involves complicated challenges among ethics philosophers and law experts. Since fetus is naturally originated in mother's womb and far from eyewitness, there has been some ambiguity in its nature. But recently, grace of expedite progress in medical technology including ultrasound 3D scanning, today we know stages of fetal growth in details and have a real picture of what is going on in the womb. Discussion about fetal status has an ancient history which equals to history of human gestation. There is a continuum of ideas about fetal personhood which includes humanity of first stage fetus at one side and non-humanity of fetus even after birth at the other side. This vast range of different perspectives indicates variety of responses to this question: "what is human?" [1-3].

Some scholars believe that humanity starts with birth. As they think, before delivery, fetus is considered a part of mother's body and therefore, abortion is a fundamental right for woman. Some others think that since human fetus is constituted by fusion of male and female gametes, it has to be accounted as human. The milestone of this thought is potentiality of fetus to be born. This potentiality" plays a key role in catholic formal inference of fetal status. Regardless of a view point which misleads humanity with rationality and delays fetal personhood to the time of gaining human rationality, other perspectives identify fetal personhood point somewhere between gametes fusion and delivery.

This opinion aims at reviewing one of these facultative theories which is usually is known as Islamic Shii'a view. According to most of Shii'a jurists, based on some quotations of Shii'a leaders (Imams), a fetus becomes human after 4

months of gestation. In Islamic literature, this moment is called "ensoulment". However, even before this time, abortion without any rational justification is prohibited and results in commitment to pay fine (Di'a), but it is not accounted as "murder". This idea has some similarities with Sunni Islamic jurisprudence and even some Jewish ideas but as we argue, is not the sole thought in Shii'a jurisprudence. The quotations of Shii'almams about the time of ensoulment are different. Some indicate 4 months of pregnancy, some others refer to 6 months and some argue that when fetus' hands, feet, eyes and ears are shaped and are clearly identifiable, the fetus receives its human soul [4-8].

For applying ensoulment theory, we definitely have no means for soul observation. So, we have to seek for an objective change in fetal status in order to identify when it becomes human. Some quotations suggest a biologic criterion for fetal personhood: "human shape". At primary stages of embryo development, it is similar to other non-human species' embryo, but after 3 months of gestation, according to embryologists, human fetus has human face and body in little scales. The hands, feet, ears and eyes are shaped and lie in their final positions. In other words, after 3 months of pregnancy we are able to identify a human fetus at first look. This human image may be an objective criterion for considering fetus as human. Islamic holy book (Quran) has some verses backing this theory. Quran mentions three asynchronous stages for human creation: creation, settlement and adjusting. The Arabic word for settlement means to fit parts of something. In other words, it seems that settlement in Quranic literature is applicable for the first time that fetal body parts are fit in their true positions. Adjusting refers to final development and may be

applicable through after birth body development. On the other side, ensoulment in Quran verses is always accompanied with settlement. Human shape theory emphasizes on this accompany for suggesting a different time for acquiring human personhood which is end of third month of pregnancy [9,10].

This idea has implicit support of few Shii'a jurists and therefore has to be considered as a Shii'a theory of fetal personhood. This opinion is just a brief introduction. The "human shape" theory has an also strong rational milestone which has to be discussed in a comprehensive paper.

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