13331 - Abortion of a foetus resulting from a zina relationship

the question

Is it permissible for a woman who has committed immoral actions to abort the foetus?

Detailed answer

The efforts and ijtihaad of the fuqaha' have focused on abortion in general terms, and the rulings on that and the consequences that may follow. They have not gone into details concerning cases where the pregnancy results from immorality. This may be because they consider that to come under the same ruling as abortion of a pregnancy resulting from a proper marriage. If abortion of a pregnancy resulting from a proper marriage is haraam under normal circumstances, then it is even more so in cases where the pregnancy results from immorality, because permitting abortion of pregnancy which results from immorality would encourage evil actions and the spread of immorality. One of the basic principles of Islam is that it forbids immorality and all the ways that lead to it, e.g., it forbids tabarruj (wanton display of one's charms) and free mixing (of men and women).

In addition, an innocent foetus which has committed no sin should not be sacrificed because of a sin committed by someone else. Allaah says (interpretation of the meaning):

"No one laden with burdens can bear another's burden"

[al-Israa' 17:15]

It is known that the Messenger of Allaah (peace and blessings of Allaah be upon him) sent the Ghaamidi woman who was pregnant as a result of zinaa away until she gave birth, then after the birth he sent her away until she had breastfed the child and weaned him. She came back with the child who had a piece of bread. The Prophet (peace and blessings of Allaah be upon him) gave the child to one of the Muslims, then he gave orders that she should be placed in a hole up to her chest, and commanded the people to stone her. Imaam al-Nawawi said concerning this hadeeth: "A pregnant woman should not be stoned until she gives birth,

whether her pregnancy is the result of zina or otherwise. This is agreed upon, lest her foetus be killed. The same applies if her hadd punishment is flogging; a pregnant woman should not be flogged, according to consensus, until she has given birth." (Saheeh Muslim bi Sharh al-Nawawi, 11/202)

This incident shows us the extent to which Islam is concerned with the foetus, even if it is the result of zina: the Prophet (peace and blessings of Allaah be upon him) delayed the carrying out of the hadd punishment on the mother in order to save the life of the foetus.

Can it be imagined that the Lawgiver would permit killing the foetuses by abortion in order to fulfil the wishes of those who follow their whims and desires?

Furthermore, those who say that abortion is permitted within the first forty days of a legitimate pregnancy based their ijtihaad on a concession, like not fasting in Ramadaan for those who have valid excuses, or shortening the four-rak'ah prayers whilst travelling, but it is stated in sharee'ah that concessions cannot be connected to sins.

Imaam al-Quraafi said: "With regard to sins, they cannot be taken as reasons for concessions. Hence one who is travelling for the purpose of sin cannot shorten his prayers or break his fast, because the reason for doing these is travelling, but in this case the reason for travelling is to commit sin, so the concession does not apply, because granting a concession on the basis of sin will encourage people to sin further." (al-Furooq, 2/33)

Similarly, the basic principles of Islamic sharee'ah do not give the same concessions to a woman who is pregnant as a result of zinaa as are given to a woman who is pregnant as a result of proper marriage, lest that help her in her sin, and it does not make it easy for her to get rid of the results of her evil actions.

In addition, the foetus in the case of zinaa has no guardian, because according to sharee'ah the title of father can only be given to the one who has a child from a woman in a proper marriage. This is part of the meaning of the hadeeth: "The child goes to the owner of the bed and the adulterer gets nothing but the stones (despair, i.e. to be stoned to death)." (Narrated by al-Bukhaari and Muslim). The guardian of the foetus in such cases is the sultan or ruler – the one

who is in charge of the Muslims' affairs – for he is the guardian of those who have no guardian. The way in which the ruler disposes of people's affairs is based on the interests of the people, and there is no interest to be served in destroying the soul of the foetus in order to preserve the mother's interests, because that would involve encouraging her and others to persist in this evil action.